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# *State Monetary Sanctions and the Costs of the Criminal Legal System: How the System of Monetary Sanctions Operates*

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# State Monetary Sanctions and the Costs of the Criminal Legal System: How the System of Monetary Sanctions Operates

ISSUE EDITORS
Alexes Harris, Mary Pattillo, and Bryan L. Sykes

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# Studying the System of Monetary Sanctions

ALEXES HARRIS, MARY PATTILLO, AND BRYAN L. SYKES

Monetary sanctions, also known as legal financial obligations (LFOs), are a highly consequential yet underexplored element of the criminal legal system. LFOs consist of fines, fees, costs, restitution, surcharges, and other financial penalties that are imposed on individuals when they encounter the criminal legal system. This contact can occur via traffic citation, or misdemeanor, juvenile, and felony conviction. Although indistinguishable for the people who are required to pay them, monetary sanctions are variably understood as punishments prescribed by state statutes and local codes, restitution for victims of crime, user fees to recoup system expenses or pay for services rendered, and additional charges for failure to pay. Most monetary sanctions are sentenced on conviction or citation, but some pretrial costs—such as jail booking fees, electronic monitoring, or public defender services in the absence of a conviction—can be passed on to defendants as well.[1] These fines and fees are experienced as bills and debts for those on whom they are imposed and as revenue sources for the courts, agencies, jurisdictions, and states that collect them. Although the practice of imposing fines and fees on convicted persons has existed in law since the Magna Carta in 1215, research shows that the prevalence and amounts of monetary sanctions have grown over the last

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1. Our study did not examine bail or bond practices, which are costs some people are able to pay to be released from jail prior to adjudication (see Scott-Hayward and Fradella 2019). Bail presents a somewhat unique case in that it is ostensibly refundable at the conclusion of a case. However, our research shows that at least a portion of sentenced fines and fees can be deducted from bail monies before refunding them, which makes bail a special prepaid form of monetary sanctions.

five decades across federal, state, and local governments (Bannon, Nagrecha, and Diller 2010; Fergus 2018; Greenberg, Meredith, and Morse 2016; Harris, Evans, and Beckett 2010; Harris 2016; Shapiro 2014; U.S. Commission on Civil Rights 2017).[2]

The policy, legal, and social science literatures on monetary sanctions document critical features of this punishment schema (for an extensive review, see Martin et al. 2018; Martin 2020). Research shows that individuals struggle to pay their court debts, making it even more difficult to pay for essential expenses such as food, housing, health care, medicine, transportation, and childcare, thereby increasing stress (Harris, Evans, and Beckett 2010; Harris 2016; Pleggenkuhle 2018). This burden is not borne solely by those convicted of crimes but also by their family members and communities (deVuono-powell et al. 2015; Katzenstein and Waller 2015). Further, because people are not released from criminal legal supervision until their accounts are fully paid, monetary sanctions prolong supervision, make probation violations more likely, escalate sanctions for new criminal convictions, and result in incarceration for nonpayment (ACLU 2010; T. Atkinson 2016; Kohler-Hausmann 2018; Middlemass 2017; Western 2018). The racially disparate impact of monetary sanctions intensifies the aggressive policing of Black and Latinx neighborhoods because these groups typically find it more difficult to pay (Harris, Evans, and Beckett 2011; Henrichson et al. 2017; Henricks and Harvey 2017; Piquero and Jennings 2017; Sances and You 2017; U.S. Commission on Civil Rights 2017). The criminal legal monitoring and collection of fines, fees, and other costs extends and deepens the punishment of nonpayers and individuals reentering society, and warps the very legal institutions that legislate and implement these practices (Harris, Evans, and Beckett 2010, 2011; Harris 2016; Pattillo and Kirk 2021).

Yet, despite increasing attention to LFOs in criminal legal research and policy, the nascent literature on monetary sanctions has been limited in several ways. First, much of the research is limited to a few states or localities, potentially obscuring the full spectrum of knowledge regarding monetary sanctions across jurisdictions, and curtailing the possible insights from comparative analysis. Second, most studies focus on one component of LFOs, be it law, policy, practice, or people. Because the system of monetary sanctions includes all of these elements, such focused research can miss how law is experienced by those subjected to it, and how policies are transformed when put into practice. Third, data limitations have hampered inquiries into the distinct categories of LFOs and the demographic characteristics of those sentenced to them (Martin et al. 2018), complicating a full specification of the effects of LFOs. Last, few studies go deep into the institutions where monetary sanctions are legislated, imposed, managed, and collected, and hence obscure how legislatures, courts, and other agencies are embedded in the production and maintenance of the inequalities that build from criminal legal debt.

Drawing on data from a multimethod study of eight U.S. states, our project addresses these gaps in the literature and advances knowledge of monetary sanctions across a number of sociological, criminological, legal, and policy domains. The articles included in this volume represent a culmination of five years of work in California, Georgia, Illinois, Minnesota, Missouri, New York, Texas, and Washington State.[3] Since 2015, we have examined each of these state's statutory codes; interviewed and surveyed individuals living under the weight of criminal legal debt; observed court practices and legal logics during pretrial, sentencing, and review hearings; collected administrative court data on the imposition of monetary sanctions over time; and interviewed and surveyed decision-makers and practitioners (judges, attorneys, probation officers, and clerks) about monetary sanctions. Our research team of more than eighty members included faculty and post docs, as well as graduate, undergraduate, and high school student research assistants (RAs). Faculty collaborators included

2. For a discussion of fines outside the United States, see Kantorowicz-Reznichenko and Faure 2021.

3. We are grateful to Arnold Ventures for providing the financial support that allowed us to conduct such a unique, expansive, and collaborative research project.

Alexes Harris (University of Washington, the principal investigator, or PI), Beth Huebner (University of Missouri–St. Louis), Karin Martin (University of Washington), Mary Pattillo (Northwestern University), Becky Pettit (The University of Texas at Austin), Sarah K.S. Shannon (University of Georgia), Bryan L. Sykes (University of California, Irvine), and Christopher Uggen (University of Minnesota). To date, this is the only multistate, mixed-methods analysis indicating how states and local jurisdictions legislatively structure and legally impose and collect financial penalties in criminal and lower courts.

This volume investigates multiple facets of monetary sanctions. The articles present both within- and between-state analyses of racial disparities, geographic differences, homelessness, public assistance, emotional health and family experiences, parenthood, gender differences, economic inequality and disparate impacts, municipal courts, changes in law and practice, notions of accountability, and rural patterns of LFO revenue. Our research is both intensely local (such as Huebner and Giuffre's focus on Ferguson, Missouri) and broadly comparative (such as Harris's and Smith's examination of emotional health consequences across all eight states). Covering the spectrum from local to comparative is an important aspect of our research design because it facilitates discoveries about both deep institutional practices and systematic differences and commonalities across places.

Overall, our work has three main takeaways. First, we emphasize the importance of variation for both individual experiences and policy interventions. Second, monetary sanctions alone (aside from incarceration or a criminal conviction) generate a plethora of collateral consequences, which we conceptualize as "tentacles" that reach into the domains of immigration, housing, health, family, the labor market, public assistance, and more. Third, these tentacles inextricably link monetary sanctions to broader patterns of racial and economic subjugation and social control.[4]

## RESEARCH ON MONETARY SANCTIONS

Whereas other reviews of LFO research are organized along disciplinary lines or substantive foci (Martin et al. 2018; Martin 2020), we focus here on three periods of scholarship that have emerged in the study of the system of monetary sanctions, running roughly from 1980 to 2005, 2005 to 2013, and 2014 to the present. The early set of studies began in the 1980s, and included a detailed report by Fahy Mullaney (1988) that described monetary sanctions across the country and emphasized their proliferation despite a notable absence from policy debates. In addition to fines, court costs, restitution (for property) and reparations (for harm), Mullaney enumerated twenty-three additional "service fees" (such as domestic offense education fee, urinalysis fee), five types of "special assessments" (such as late payment interest), and five "residual economic sanctions" (such as increased insurance rates after a driving under the influence conviction). Mullaney noted a fervent enthusiasm for economic sanctions among policymakers and practitioners, yet warned that monetary sanctions could produce and exacerbate inequalities.

Sally Hillsman and her colleagues similarly identified a growing attraction to the use of criminal fines in state courts as an "intermediate punishment" (1988, 16), between incarceration and impunity (Hillsman 1988; Hillsman and Greene 1992; Hillsman and Mahoney 1988; see also Gordon and Glaser 1991). In this early work, researchers focused on how courts could improve the efficiency of sentencing and collecting fines and fees. For example, in the late 1980s and early 1990s, a series of pilot projects assessed the viability of using day fines—financial sentences calibrated to the severity of an offense and a person's daily wage (Hillsman 1990; Hillsman and Greene 1992; McDonald, Greene, and Worzella 1992; Tonry and Lynch 1996). These interventions showed that means-tested sentencing schema were feasible and generated similar collection dollars as indiscriminate financial sentencing guidelines while offering relief to low-income defendants.

4. We use the term *social control* to reference the ways the criminal legal system, through the punishment of monetary sanctions, monitors, sanctions, and punishes people in order to regulate their behaviors (for a review related to monetary sanctions and the evolution of social control see Harris 2016).

Barry Ruback and colleagues conducted some of the first multivariate analyses of monetary sanctions, studying both the context of sentencing LFOs and the experience of those being sentenced. In an analysis of case- and county-level characteristics associated with sentencing for restitution in Pennsylvania (Ruback, Shaffer, and Louge 2004), the authors find that property offenses and offenses against businesses were more likely to be charged restitution than other types of offenses, and that restitution was more likely to be charged and collected in counties with smaller populations. In a separate study using surveys with people owing penal debt (Ruback and Bergstrom 2006), Ruback and his colleagues found that many people could not make payments and did not know how much they owed or where their money went on payment.

Whereas the first period of relevant research called attention to monetary sanctions, the second period (2005–2013) explored a fuller range of financial penalties across a larger number of jurisdictions and began to examine consequences for affected individuals. For example, a 2008 report to the Washington State Minority and Justice Commission examined the case characteristics of individuals sentenced with fines and fees in Washington State and analyzed the consequences of monetary sanctions for people carrying criminal legal debt (Beckett, Harris, and Evans 2008). Other reports prepared by advocacy and practitioner organizations focused primarily on single states and documented the increased use of fines and fees, the large numbers of individuals incarcerated for nonpayment, and the counterproductive nature of revenue generation (ACLU 2010; Bannon, Nagrecha, and Diller 2010; Reynolds and Hall 2012; Rhode Island Family Life Center 2008; Rosenthal and Weissman 2007; Tran-Leung 2010). These policy reports were accompanied by growing social science interest in and theorizing about the relationship between monetary sanctions and inequality (Harris, Evans, and Beckett 2010, 2011).

A pivotal moment in raising national awareness of the system of monetary sanctions occurred in the aftermath of the August 2014 police killing of Michael Brown, an unarmed African American man from Ferguson, Missouri. The ArchCity Public Defenders released a report about municipal fines and fees in St. Louis County and the resulting criminal debt for residents (ArchCity Defenders 2014). The report prompted a more in-depth investigation by the U.S. Department of Justice (2015), and then a 238-page national study issued by the U.S. Commission on Civil Rights (2017). Together, these studies uncovered the increasing and excessive use of fines and fees in criminal courts, and the disproportionate burden on poor people and people of color.

Elaborating on the unequal racial and class contours of LFOs, *A Pound of Flesh* (Harris 2016) was the first book-length study to highlight the pernicious and permanent consequences for those who are saddled with criminal legal debt. It ushered in the third and current period of monetary sanctions research (2014–2021). *A Pound of Flesh* describes a punishment continuum, whereby counties across Washington State unevenly interpreted and applied laws regarding LFOs. Infused by decision-makers' personal values of personal responsibility, accountability, and redemption, and depending on the county where one was sentenced and monitored, individuals carrying legal debt faced punishments of varying intensity and duration.

Studies of monetary sanctions have grown significantly since 2015 to the present. Legal scholars, sociologists, political scientists, economists, and criminologists have produced a burgeoning body of scholarship. This work can be placed broadly into four categories: statutory and institutional contexts of monetary sanctions, additional costs and revenue generation for courts and locales, consequences of LFOs for individuals and institutions, and theoretical and legal analyses of monetary sanctions.

Studies of the statutory and institutional contexts of monetary sanctions illustrate that it is a *system* of legal statutes, administrative policies, and court procedures that facilitates the imposition, collection, and distribution of financial resources assessed to criminal defendants at the time of sentencing. In interviews with judges in North Carolina, Gene Nichol finds that judges complain about limited discretion because the legislature has "bullied" them into imposing monetary sanctions by

mandating that they justify any decisions to waive fees (2020, 228). Brittany Friedman and Mary Pattillo (2019) describe the system in Illinois as "statutory inequality," whereby penal indebtedness for poor people is inscribed in law on the books. In the juvenile realm, Leslie Paik and her colleague (Paik and Packard 2019; Paik 2020) map the types and amounts of LFOs juvenile courts impose on the guardians of minors, and challenge the primary tropes of restitution as a means by which youth can repair harm and show responsibility. In misdemeanor and traffic courts, scholars explicate the role that LFOs play in expanding state control of an ever-larger number of people (Natapoff 2018; Kohler-Hausmann 2018; Martin et al. 2018; Needham, Mackall, and Pettit 2020; Slavinski and Pettit 2021).

A second body of contemporary scholarship moves outside the legislatures and courtrooms and looks at the additional financial costs associated with other types of sentences, such as community service, offenses related to substance use disorders, and other unfunded mandates imposed on defendants at the time of sentencing (Herrera et al. 2019; O'Neil and Strellman 2020; Harris, Smith, and Obara 2019). Scholars frame these extra costs—and the revenues officials generate from contracts with third-party entities—as "prison retailing" and "kickbacks" (Raher 2020, 5; Katzenstein, Bennett, and Swanson 2020, 259). A recent report relying on data from just twenty-five states approximates that in total $27.6 billion is owed in monetary sanctions (Hammons 2021). Given the mandatory nature of these fines, fees, and costs, Mary Katzenstein and Maureen Waller (2015, 639) describe the "seizure" of resources from system-involved individuals and their families, a process that is more intense in municipalities with higher proportions of Black residents (Sances and You 2017). Considerable research has documented the revenue-generating intentions of LFOs (Mai and Rafael 2020), often with little to show in the way of actual collections, improved policing, or increased municipal services (Crowley, Menendez, and Eisen 2020; Edwards 2020; Goldstein, Sances, and You 2020; Henricks and Harvey 2017; Kirk, Fernandes, and Friedman 2020; Fernandes et al. 2019; Pacewicz and Robinson 2020).

A third body of contemporary scholarship examines the consequences associated with imposing monetary sanctions at both the individual and institutional levels. At the individual level, some studies broadly characterize who is sentenced to pay LFOs (Link 2019), and others focus on specific consequences of LFOs, such as recidivism, the loss of driver's licenses, and voting restrictions (Bender et al. 2015; Colgan 2019; Garrett, Modjadidi, and Crozier 2020; Sebastian 2020; Piquero and Jennings 2017; Uggen et al. 2020). The LFOs that accrue from criminal traffic cases can be especially sticky, leading to new cases of driving on a suspended license, and even incarceration, especially for Black drivers (Edwards and Harris 2020). This body of work also moves beyond identifying the individual-level consequences of debt to show how insurmountable debt and its aggressive collection can lead to the delegitimization of the U.S. criminal legal system and its representatives (Brett 2020; Cadigan and Kirk 2020; Link et al. 2021; Pattillo and Kirk 2020; Ruhland, Holmes, and Petkus 2020; Shannon et al. 2020). Emergent scholarship examines the neighborhood-level consequences for communities of color characterized by high rates of criminal legal debt and poverty (O'Neill, Kennedy, and Harris forthcoming).

A fourth and final line of inquiry in the contemporary literature covers theoretical and legal perspectives on the system of monetary sanctions. Some notable examples include Beth Colgan's (2017, 2018, 2019) examination of the extent to which the long-term debt to which people are sentenced could be viewed as violating the excessive fines and fees clause of the Eighth Amendment to the U.S. Constitution. Torie Atkinson (2016) uses both legal reasoning and empirical analysis to examine the nonsensical practice of municipal fines, which are claimed to be an alternative to incarceration, but in reality the fines coupled with additional fees, payment charges, and other costs, lead poor people to jail. In a similar way, Abbye Atkinson (2017) uses legal reasoning to show the arbitrariness of states' failure to provide relief from penal debt that is disproportionately borne by people of color and the poor. Atkinson's analysis raises interesting questions about who "deserves" debt relief and who does

not. Scholars have also theorized about the system of monetary sanctions as predatory (Harris 2020; Page and Soss 2017; Page, Piehowski, and Soss 2019), unjust (Shannon 2020), and coercive (Pattillo and Kirk 2021).

## THE SHIFTING POLICY LANDSCAPE

As noted, the practice of imposing fines at sentencing dates to the Magna Carta. In recent decades, the scale, prevalence, distribution, and types of monetary sanctions have evolved into a web-like structure that adds costs, fees, surcharges, penalties, and interest. Yet, in response to both the growth in research highlighting the negative consequences of monetary sanctions and the federal level attention to LFOs, new reforms have emerged.

Recently, several states and local jurisdictions have begun revising local policies and state statutes governing the sentencing and collection of monetary sanctions and related punishments. In general, the policy changes have stipulated the extent to which jurisdictions can rely on revenue generated from fines and fees, provided relief for indigent individuals at or after sentencing, eliminated certain types of discretionary fines and fees, and discontinued suspending or revoking driver's licenses related to failure to pay traffic or other court costs.

One of the first set of statewide reforms occurred in 2015 when the Missouri state legislature amended Mack's Creek Law, originally passed in 1999,[5] to limit the percentage of a jurisdictions' annual general operating revenue from traffic citations to 20 percent.[6] In 2016, a more comprehensive bill centered individuals' procedural rights regarding municipal violations. This legislation required indigence standards in sentencing, alternative sanctions including community service, and payment plans. The bill also capped fine and fee amounts, forbade judges from serving in any other legal capacity in the same jurisdiction, and prohibited jail for failure to pay.[7] Along similar lines, in 2018, the Washington State legislature prohibited judges from imposing discretionary fines or fees on defendants if they were indigent, homeless, or mentally ill.[8] In 2020, Seattle Municipal Court judges moved to discontinue imposing discretionary costs in criminal cases.[9] Similarly, in the same year, the California legislature enacted changes to eliminate twenty-three criminal legal fees including costs related to probation and mandatory supervision, public defense, processing for arrests and citations, home detention, electronic home monitoring, and work furlough and release.[10]

In 2018, California abolished all administrative fees imposed in juvenile delinquency cases. Other jurisdictions, such as Orleans Parish in Louisiana and the states of Nevada, New Jersey, and Maryland all limited or abolished juvenile civil fines and court costs, as well as limited fiscal charges to parents and guardians. The Los Angeles County Board of Supervisors went one step further in 2018 and stopped collecting on unpaid juvenile penal debt, which discharged over $89 million in debt.

In many jurisdictions, unpaid parking tickets and court fines and fees can lead to driver's license suspension or revocation, with negative consequences for employment and family responsibilities. Illinois, Virginia, California, New York, and Texas, among other states, have taken various steps to stop or curtail these prac-

5. See Revised Statutes of Missouri (RSM0) 2000, § 302.341.2. Effective August 2013.

6. Missouri Senate Bill (MO SB) 5, https://www.senate.mo.gov/15info/BTS_Web/Bill.aspx?SessionType=R&BillID=160.

7. MO SB 572, https://www.senate.mo.gov/16info/pdf-bill/tat/SB572.pdf (accessed July 24, 2021).

8. WA State HB 1783, https://app.leg.wa.gov/billsummary?BillNumber=1783&Year=2017 (accessed July 24, 2021).

9. Daniel Beekman, "Seattle Municipal Court has stopped charging fees for probation in criminal cases," September 23, 2020, https://www.seattletimes.com/seattle-news/politics/seattle-municipal-court-has-stopped-charging-fees-for-probation-in-criminal-cases (accessed July 24, 2021).

10. CA AB1869, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1869.

tices.[11] Virginia's 2019 law is retroactive, reinstating suspended driver's licenses and waiving fees for cases prior to the bill's enactment.[12] In 2021, the Illinois legislature stopped suspending driver's licenses for unpaid automated speed and red light camera tickets.[13] Also in 2021, New York's governor signed the Driver's License Suspension Reform Act, which ended suspension for unpaid traffic tickets and mandated income-based payments.[14] Similarly, the Texas legislature repealed the Driver Responsibility Program, under which 1.4 million Texans had suspended driver's licenses.[15] When states have not gone far enough, cities have stepped in. The City of San Francisco reinstated some licenses for people who failed to appear in court related to traffic citations.

In addition to policy and statutory reforms, courts are reconsidering ability-to-pay standards and the proportionality of LFOs. In *Washington v. Blazina*, the Washington State Supreme Court established a requirement that sentencing judges hold an ability-to-pay hearing to first assess defendants' current income net of household expenses (such as childcare, housing, food and medical needs) prior to imposing monetary sanctions.[16] In contrast, other state courts decided not to provide such protections. For example, in *Georgia State Conference of the NAACP v. City of LaGrange*, the lower court found that people must pay all their fines and fees assessed by the LaGrange City Municipal Court before they can gain access to the city's utility services.[17] These costs can include municipal court fines and fees unrelated to utility services.

Florida's debate about monetary sanctions and voting has also prompted court review (for analysis, see Morse 2021). A successful 2018 ballot referendum in the state restored the right to vote to most "Floridians with felony convictions after they complete all terms of their sentence including parole or probation".[18] The Florida legislature, however, interpreted "all terms of their sentence" to include monetary sanctions, an interpretation that was upheld in *Jones v. Governor of Florida* by the 11th U.S. Circuit Court of Appeals in September 2020.[19] Christopher Uggen and his coauthors (2020) estimate that this restriction excluded approximately nine hundred thousand Floridians from voting in the 2020 presidential elections.

The U.S. Supreme Court recently decided a pivotal case regarding monetary sanctions in *Timbs v. Indiana*.[20] Tyson Timbs had been arrested for allegedly dealing drugs and conspiracy to commit theft. On his arrest, the police seized Timbs's SUV, which he had purchased with $42,000 from an inheritance. Given that the cost of the vehicle was more than four times the maximum fine ($10,000) for the offense,

11. "Public Safety," in *California State Budget: 2017–18*, 29, http://www.ebudget.ca.gov/2017-18/pdf/Enacted/BudgetSummary/PublicSafety.pdf (accessed July 24, 2021).

12. Virginia Senate Bill (VA SB) 1, https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB1.

13. Illinois House Bill (IL HB) 3653 (effective January 1, 2022), https://www.ilga.gov/legislation/101/HB/PDF/10100HB3653lv.pdf.

14. NY A7463B, https://www.nysenate.gov/legislation/bills/2019/a7463.

15. TX HB 2048, https://legiscan.com/TX/text/HB2048/2019.

16. *State of Washington v. Blazina*, 344 P.3d 680 (Wash. Supreme Court 2015).

17. *Georgia State Conference of the NAACP v. City of LaGrange*, 940 F.3d 627 (11th Cir. 2019).

18. Florida Amendment 4. 2018. "Voting Rights Restoration for Felons Initiative." Florida Association of Counties. https://www.fl-counties.com/amendment-4.

19. *Jones v. Governor of Florida*, 975 F.3d 1016 (11th Cir. 2020).

20. *Timbs v. Indiana*, 139 S. Ct. 682 (2019). For a full review and discussion see Colgan and McLean 2020. Several members of our research team contributed to an amicus curiae for the *Timbs* case to detail the punishment schema of monetary sanctions and the related negative consequences for those who are unable to pay. See *Timbs v. Indiana*, Brief amicus curiae, May 5, 2018, https://www.supremecourt.gov/DocketPDF/17/17-1091/37558/20180305114204540_17-1091%20Amici%20Brief%20Professors.pdf (accessed July 24, 2021).

Timbs's lawyers argued that the punishment was disproportionate given the gravity of the offense. The Supreme Court sided with Timbs, concluding that the forfeiture was unconstitutional under the Eighth Amendment's Excessive Fines Clause. The late Justice Ginsburg wrote that monetary sanctions should be "proportioned to the wrong" and "not be so large as to deprive [a person] of his livelihood."[21] She referenced the nineteenth-century creation and use of Black Codes to convict, fine, and "subjugate newly freed slaves and maintain the prewar racial hierarchy." Further, she concluded that "For good reason, the protection against excessive fines has been a constant shield throughout Anglo-American history" (2019, 5–6).

Despite the difficulties entailed in dismantling multiple layers of monetary sanctions and the related social, fiscal, and political consequences, advocacy, legal, and policy organizations are mounting a robust attack on LFOs as economically regressive, racially disparate, and overwhelmingly devastating (Highsmith 2020; Fines and Fees Justice Center 2020; Berkeley Law 2019; Criminal Justice Policy Program 2016). The legal landscape we were studying shifted under our feet as we observed courtrooms, interviewed stakeholders, and conducted our analyses.[22] However, engaged immersion in the field meant that our developing research findings informed many legal and policy discussions, and observed shifts in policies also became focal objects of social scientific inquiry (see Smith, Thompson, and Cadigan 2022, this volume).

## THE MULTI-STATE STUDY OF MONETARY SANCTIONS

The Multi-State Study of Monetary Sanctions grew out of the first and second eras of scholarship in the study of fines and fees in the U.S. criminal legal system, and our analyses have, in part, shaped and contributed to the current line of inquiry (Harris et al. 2018). Our research aim was to move beyond one jurisdiction or one part of the system of monetary sanctions to construct a dataset that was fully integrated (Seawright 2016). The guiding research questions were, "how does the system of monetary sanctions operate across states, and what similarities and differences exist in policies, practices, implementation, and consequences across and within the states?"

Monetary sanctions are legislated and imposed across all levels of government, calling into question whether a "representative" state or jurisdiction is even possible. The thousands of villages, cities, and counties—across all fifty states and the District of Columbia—have intertwined distinct laws and rules regarding LFOs. The legal, administrative, in-depth interview, survey, and ethnographic data collected in the eight states enable us to explore differences across and within jurisdictions, and our multi-actor interviews and surveys yield information about how stakeholders approach, view, experience, resist, and accommodate LFOs. Finally, our use of qualitative and quantitative data produces a thick knowledge about emotions, bodily experiences, personal histories, and court evaluations and a statistically robust understanding of patterns, disparities, correlations, and trends in relation to monetary sanctions.

### Research Sites and Selection

Our aim is to be painstakingly transparent about our analytic strategies, realities, and methodologies as we collected and processed the data. Our description of the process is a result of a dizzying number of meetings, conference and Zoom calls, compromises, shared documents, second-guessing, training videos, trial-and-error decisions, negotiations, background readings, team building exercises, mutual encouragement, and deadlines, deadlines, deadlines. While Alexes Harris shaped the general study framework, the implementation of her vision was maximally iterative, deliberative,

21. Quoting Justice Ginsburg in reference to Browning-Ferris, 492 U.S., at 271. (*Timbs v. Indiana*, 139 S. Ct. 682 (2019).

22. The Fines and Fees Justice Center provides an updated clearinghouse of legislative and policy developments. See "The Clearinghouse," https://finesandfeesjusticecenter.org/clearinghouse/?sortByDate=true (accessed July 24, 2021).

and collaborative among all team members, regardless of institutional status, academic rank, or disciplinary focus.

The eight states included in the Multi-State Study of Monetary Sanctions were chosen to maximize heterogeneity in population size, demographics (by race, poverty, and immigration), political partisanship, region, and criminal legal policy and practice. The eight states represent roughly 36 percent of the U.S. population, are located on both coasts, in the South, and in the Midwest, and run their legal systems in very different ways: Missouri has municipal courts but Illinois does not; Georgia has private probation, but Washington State does not. More than 30 percent of the adult prison and jail population and more than 40 percent of people on community supervision lived in these eight states in 2014. Brittany Friedman and her coauthors (this volume) elaborate on the diversity of criminal legal regimes in these states as well as how legal financial obligations feed their revenue streams. Their analysis confirms that our selection of states captured significant heterogeneity in systems of incarceration, probation, and monetary sanctions, allowing us to build comprehensive empirical conclusions and policy recommendations through our comparative analysis.

At the same time, geographic specificity is also key. Fines and fees are authorized in state and local (county, village, city) statutes and imposed in criminal and traffic courts located within substate jurisdictions. The original research design called for each state research team to identify three counties and three cities for focused legal review and qualitative data collection. This plan immediately highlighted the heterogeneity in court structures across states and the impossibility of aligning site selections. For example, California, like Illinois, moved away from a three-tiered system to a unified court structure that governs the imposition of monetary sanctions by state (not county or local) laws. Yet, in California (like Washington), each county court is its own superior court, whereas in Illinois county courts are components of multicounty circuit courts. County courts in Illinois hear traffic, misdemeanor, and felony cases. Illinois's court system contrasts with Georgia's five-tiered judiciary system. Misdemeanor and traffic cases without juries can be heard in either municipal or county courts, whereas felony cases and jury trials are always administered at the county level. Meanwhile, in New York, courts of original instance include supreme courts, county courts, district courts, New York City criminal courts, and city, town, and village courts. In other words, whereas cities are relevant court locations in New York and Georgia, they are not in California and Illinois. This ostensibly simple exercise of establishing a research design offers important insight into the challenges of studying, and thus intervening in and possibly reforming, any criminal legal processes, including the system of monetary sanctions.

## Data Collection

The Multi-State Study of Monetary Sanctions was a five-year multimethod project that began in the fall of 2015. Each academic year was dedicated to a discrete aspect of data collection and analysis.

### *Year 1: Legal Review*

The first step in the research involved understanding the legal landscape in each state and the legislative foundations for LFOs. These legal reviews helped us understand how widely our states varied in court structure and nomenclature. Each state team gathered topic-specific information, such as the number of jurisdictions contained within higher-order court units; the relationships between higher and lower courts (where relevant); demographic, historical, or political nuances that affected court administration; and the roles and responsibilities of various court actors in imposing, monitoring, and collecting monetary sanctions.

The core part of this endeavor was the creation of detailed databases of the statutes pertaining to criminal fines, fees, and other monetary penalties at the state level as well as for the sampled counties and cities. Statutes were readily accessible through public online interfaces that local and state governments maintained and updated. Creating the LFO databases entailed searching these repositories for the words *fines*, *fees*, *surcharges*, *costs*, and *penalties* and other financial terminology. Although some state research teams compiled

information on civil fines and fees, the project focused on LFOs attached to criminal infractions, from traffic cases to major felonies.[23]

Statutes governing legal financial obligations are not confined to state criminal codes. In some states, we needed to read across statutory domains (such as health laws and education laws) to discover the full range of legislation governing LFOs. In other states, codes governing LFOs were more neatly contained within the criminal code. Once a statute or administrative rule was identified, it was coded for up to twenty characteristics, such as whether nonpayment triggered license suspension, whether it was eligible for referral to private collections, or whether interest accrued after the due date. Basic information included the statute number, where it appeared in the state code, whether it was a fine or a fee, the year it was passed, whether it was mandatory or discretionary, and either the full text or a summary of the statute itself. We undertook the same process for county and municipal codes within selected jurisdictions to document how local laws relate to state systems of LFOs. This exercise yielded eight state-level spreadsheets with individual statutes and substatutes along with their relevant characteristics.

The second task of the legal review involved a careful reading of legal cases within each state that challenged the imposition and enforcement of monetary sanctions. Within our respective states, several foundational Supreme Court cases establish, or affirm, the importance of due process and equal protection for persons assessed legal financial obligations. *Williams v. Illinois* and *Tate v. Short*, originating in Texas, established that a fine could not be converted to jail time solely because the defendant was too poor to pay. *Bearden v. Georgia* held that individuals could not be incarcerated for nonpayment of a fine or restitution without the privilege of a hearing to determine if nonpayment was "willful," that is, that they had the means but still did not pay.[24] These Supreme Court rulings resulted from cases filed at the local and state levels. We conducted reviews and summaries of such lower court cases in the contemporary period within the eight states. The articles making up section 1 of issue 1 draw heavily from the data collected through these various components of the legal review in Year 1.

### *Year 2: Qualitative Interviews and Surveys with Individuals Sentenced to Pay LFOs*

Across the eight states, we interviewed and surveyed 519 individuals who had been ordered to pay monetary sanctions. Our goal was to capture respondents' experiences, both inside the courtroom and as they managed financial obligations in their daily lives. The target number of interviews was sixty per state. We reached or exceeded that number in all states except New York, where we conducted fifty-nine (table 1). This part of the study—along with the in-depth interviews and surveys of court actors—was approved by the Institutional Review Board (IRB) of the University of Washington (with federal-scale assurances for the University of California-Irvine and the University of Georgia, under UW's IRB) as well as the IRBs at the other collaborating universities.

We interviewed individuals in each state who were currently paying their LFOs and a limited number of those who had already paid in full. The interview sample was diverse by jurisdiction (county or municipality) and offense type (felony, misdemeanor, traffic). We used a range of recruitment strategies. We posted fliers at relevant community organizations (such as YMCAs, legal clinics, and reentry service providers), in courthouses, in public defenders' offices, and in probation and parole offices, if allowable under IRB guidelines. We also advertised on public websites, such as Craigslist. We recruited directly in community supervision offices and following court hearings. Interviewees were paid $15 for participating.

23. Anjuli Verma and Bryan Sykes (2022, this volume), however, document how the codification and coding of California state statutes have blurred the distinction between civil and criminal monetary sanctions associated with punishment because civil code violations can result in criminal charges that impose mandatory monetary sanctions.

24. *Williams v. Illinois*, 339 U.S. 235 (1970); *Tate v. Short*, 401 U.S. 395 (1971); *Bearden v. Georgia*, 461 U.S. 660 (1983).

**Table 1.** Court-Involved Interview and Survey Sample

| State | N |
|---|---|
| California | 60 |
| Georgia | 60 |
| Illinois | 68 |
| Minnesota | 70 |
| Missouri | 80 |
| New York | 59 |
| Texas | 62 |
| Washington | 60 |
| Total | 519 |

*Source:* Authors' tabulation.

Interviews were conducted in respondents' homes, coffee shops, public parks, libraries, probation offices, and even at bus stops and lasted between fifteen and ninety minutes, the target duration being forty-five minutes. The interview encounter included administering the survey. Interviewers later entered responses to the closed-ended survey questions into an online password-protected interface in Qualtrics. Interview audio was uploaded to the research team's central server. The interviews were professionally transcribed and checked for completeness and quality.

We present the interview guides for people with criminal justice debt, as well as the interview guides for judges, in online appendices A and B, respectively.[25] The survey consisted of forty-six questions covering a respondent's convicted offense or offenses, incarceration, LFO amounts and payment history, gender, age, race, education, income, employment, family, housing situation, and use of public benefits, among other topics. The qualitative interview guide included thirteen questions designed to foster open-ended conversation. A crucial miscommunication in Year 2 resulted in state research teams commencing interviews at different points in the year, such that some states began with survey and interview guides that were not yet final. For example, early versions of the survey included no questions about homelessness, housing tenure, or health insurance, but did ask about different types of incarceration. However, after final collection of the data, the survey responses from both guides were analytically mapped onto the same response items. Once the project was in full swing, we also experienced variation in rapport with respondents, which led to some questions going unasked or unanswered, as well as unevenness in how teams entered data into the Qualtrics survey software. We discuss this learning curve more fully in our account of Year 5.

### *Year 3: Qualitative Interviews and Surveys with Court Actors and Courtroom Ethnographies*

By Year 3, the site research teams were more familiar with the landscape of the courts and LFOs in their states such that undertaking two modes of data collection was somewhat more feasible. Across the eight states, we conducted interviews and surveys with 447 court actors to understand their practices and perspectives, and did more than 1,900 hours of courtroom ethnography to document firsthand how LFOs are sentenced, discussed, and monitored in real time.[26] Court actors (or decision-makers) included judges, prosecutors, defense attorneys, probation or community corrections officers, and court clerks.

We solicited interviews by embedding ourselves in court buildings over a period of weeks or months (or years, in some cases) to develop familiarity and rapport. We approached court personnel during breaks or after court. We also sent cold emails requesting interviews and asked for referrals upon completing inter-

25. The online appendix is available online under supplemental materials on the article's *RSF* homepage.. The item response numbering shown in the survey/interview instrument for both the court-involved respondents (appendix A) and judges (appendix B) does not correspond to the final coding scheme for managing and analyzing the survey data.

26. The Missouri team interviewed a bail official and the Texas team interviewed a court bailiff. These categories of court actors were not included in the research design, so we do not include them in the total number of 447 interviews. Also, two interviews lacked transcripts because they were not recorded and two interviews were transcribed but not coded. Because of these issues, authors' tallies of court actors for all eight states vary from 443 to 449 depending on the topic and specific data being analyzed.

**Table 2.** Court Actor Interviews Conducted in Eight States

| | Judge | Prosecutor | Defense Attorney | Probation Officer | Clerk | Total by state |
|---|---|---|---|---|---|---|
| California | 18 | 6 | 22 | 4 | 3 | 53 |
| Georgia | 16 | 6 | 10 | 11 | 7 | 50 |
| Illinois | 28 | 18 | 20 | 8 | 13 | 87 |
| Minnesota | 11 | 17 | 21 | 9 | 6 | 64 |
| Missouri | 14 | 4 | 8 | 12 | 8 | 46 |
| New York | 12 | 4 | 19 | 0 | 9 | 44 |
| Texas | 17 | 18 | 15 | 4 | 11 | 65 |
| Washington | 9 | 9 | 15 | 2 | 3 | 38 |
| Total by category | 125 | 82 | 130 | 50 | 60 | 447 |

*Source:* Authors' tabulation.

views. Interviews lasted roughly an hour and took place across a range of locations, such as judges' chambers, public defenders' offices, court cafeterias, libraries, and local coffee shops. Court actors were not paid for participating.

Variation was considerable across states in access to court actors, as shown in table 2. We aimed to interview twenty-eight judges, eighteen prosecutors, eighteen defense attorneys, eight probation officers, and twelve clerks in each state for a total of eighty-four interviews per state. Probation officers and their managers in New York refused to be interviewed. The research team in Washington was told it could not interview probation officers without undergoing a $3,000 state-level institutional review board process. Most research teams did not face such concrete barriers or outright rejection, but did encounter court actors' lack of time (often reflecting case overloads), distrust of researchers, concerns about public opinion, and other such reasons that are not uncommon when studying elites (Aguiar and Schneider 2016). Because of this differential access, the total number of decision-maker interviews across states ranged from thirty-eight in Washington to eighty-seven in Illinois.

All state teams used the same protocol, which consisted of a short survey and an open-ended interview guide. Given their distinct courtroom roles and relationships to the system of monetary sanctions, not all court actors were administered the same instrument. For example, questions about issuing warrants or using bench cards that were asked of judges were not appropriate for other court actors. Similarly, we asked only court clerks how frequently unpaid fines and fees were sent to private collection agencies. Online appendices C and D show examples of the survey protocols for people with criminal justice debt and judges, respectively. The survey of justice involved people consisted of forty-six questions, and the survey of judges included twenty-five questions about general court practices (such as how often LFOs are imposed, average amounts, frequency of granting waivers). Both survey protocols captured interviewee demographic information, including gender, race, age, and length of employment in their roles. The qualitative component of the interview helped guide an open-ended discussion in which court actors narrated how LFOs worked in their courtrooms and jurisdictions, shared details regarding amounts and ranges of LFOs, discussed the impact of LFOs on defendants and court functioning, and related their personal views and discussions with colleagues about LFOs. Researchers later entered responses to the closed-ended survey questions into a spreadsheet. Interview audio was uploaded to the research team's central secure server. The interviews were professionally transcribed and checked for completeness and quality.

As we were interviewing court actors, we were also observing their courtrooms. This was not a perfect overlap; we interviewed court actors we did not observe and we observed courtrooms without interviewing any of the person-

**Table 3.** Data Gathered through Courtroom Ethnographies

| State | Observation Hours | Number of Cases Logged | Pages of Field Notes |
|---|---|---|---|
| California | 319 | 759 | 76 |
| Georgia | 240 | 772 | 90 |
| Illinois | 241 | 2,036 | 117 |
| Minnesota | 207 | 676 | 36 |
| Missouri | 222 | 772 | 93 |
| New York | 252 | 2,240 | 42 |
| Texas | 282 | no data | 106 |
| Washington | 169 | 2,928 | 130 |
| Totals | 1,932 | 10,183 | 690 |

*Source:* Authors' tabulation.

nel. Spending hours observing a courtroom often provided the necessary familiarity to approach court actors for interviews. Courtroom ethnographies were guided by a standardized observation log sheet and template for writing field notes. Gathering real-time data in courtrooms is extremely challenging. Cases could be as short as fifteen seconds, leaving the observer little time to record information on the observation protocol before the next case commenced. Judges often spoke too quietly for observers to hear, especially as other people in the gallery shuffled, whispered, or grumbled. What had been a plan of methodical documentation on a standardized courtroom observation sheet turned into straining to hear, repositioning in the courtroom, and feverish notetaking.

Following observations, researchers entered as much objective information about the cases they observed as possible into a standardized spreadsheet. In some states and jurisdictions, they supplemented observations with information from online case searches. The full list of variables captured on the courtroom observation spreadsheets includes observer name, date, case start and end time (for cases lasting more than two minutes), county or city, courtroom number, court type (traffic, misdemeanor, felony), case id, offense or charge, type of proceeding (such as plea, hearing, sentencing, continuation), defendant gender, race, age, criminal history, status (in custody or not), judge name, prosecutor name or other characteristics, defense attorney name and type (public or private), court clerk name or other characteristics, court security (how many), fine amount, fees, restitution, surcharges, other LFO amounts, any payment terms, probation or supervision length or terms, jail or prison sentence and length, additional sentence (such as community service), financial penalties discussed (yes or no), and English translator present.

Table 3 shows the total numbers of observation hours, cases logged, and fieldnote pages in each state. The goal was 240 hours of courtroom observations in each state, which we achieved in five of the eight. Variations in the number of cases logged reflect decisions about documenting even the shortest individual cases; it was not uncommon for a case to consist of nothing more than announcing the docket number, calling up the defendant, and swiftly issuing a continuance. Whereas in some states researchers included even these encounters on their spreadsheets, others decided to record only cases with more substantive discussion. Clearer instructions and coordination at the outset may have made the data more comparable across states. Some state research teams also faced staffing constraints. Whereas some teams included a principal investigator and several undergraduate and graduate research assistants—assembled through combinations of separate research funds, unpaid opportunities, or university research mentoring programs—other teams had just a PI and one research assistant. Team Washington's PI unfortunately took medical leave for a year (2016–2017). Despite these particularities, this effort

yielded more than 1,900 hours of observation, more than ten thousand cases observed, and 690 pages of ethnographic field notes.

The goal of ethnography is not quantification, of course, but instead rich description of actions, people, interactions, scenery, and mood (Paik and Harris 2015).[27] To focus our attention in these fast-paced and sometimes chaotic environments, and to be able to compare field notes during analysis, we developed a standardized template for writing field notes, shown in online appendix E. Ethnographers were instructed to describe the surroundings and stakeholders in as much detail as possible and were offered prompts to elicit information about such factors as languages heard during court sessions, whether a courtroom was hot or cold, whether cell phones were allowed, or how strictly a bailiff or security guard maintained order. We wrote field notes only for those cases that involved monetary sanctions. A case relevant to monetary sanctions could be as minimal as the judge announcing the statutory fine or fee for a charged offense or as expansive as a full hearing on willful nonpayment. We wrote detailed field notes regarding dialogue, demeanor, emotions, and outcomes for any courtroom event involving LFOs. When completed, field notes were uploaded to the secure project server for coding and analysis.

*Year 4: Statewide Administrative Court Data*

Accessing statewide, individual-level, administrative court data in all eight states proved to be the most challenging part of the project. The purpose of the administrative court data was to answer the question of who is sentenced to financial penalties and how much they are charged. The gold standard of administrative court data would be statewide and include defendant characteristics (gender, race, age, nativity, criminal background, and so on), case characteristics (charges, plea, adjudication), court characteristics (judge, lawyers, location), and detailed sentencing information, including financial amounts separated into fines, fees, surcharges, interest, payment penalties, amounts waived, and payment amounts. Ideally the data would be available over multiple (at least five) years, which would allow for examining accruals of interest, surcharges, and collection fees and identifying any subsequent police or court contact (such as warrants issued and incarceration) after sentencing. With robust data, researchers could append population characteristics in a jurisdiction from the census and county-level and city-level sources on factors such as caseload size, fiscal budgets and revenues, and political partisanship.

As illustrated in table 4, we were able to reach this gold standard in only two of the eight study states—Minnesota and Washington. New York State does not collect or maintain state-level data that allow for accurate tracking of monetary sanctions. Data from California, Georgia, Missouri, Illinois, and Texas are incomplete, either because they are not statewide or because they are single-year, not individual-level data, limit the population or type of offense, or do not include LFO amounts. Policy advocacy groups and scholars have written about the lack of access to automated court data in various state systems (see Martin et al. 2018; Rabinowitz, Weisberg, and Pearce 2019).

We made extensive efforts over multiple years to assemble appropriate datasets in all states. That courts are state-level institutions means that no federally collected data exist, and the fragmentation of court systems within states results in uneven recordkeeping and reporting across jurisdictions. Many court systems and jurisdictions operated in a world of paper, carbon copies, file folders, and written orders and entered only minimal information into computers. Details regarding monetary sanctions were often secondary to recording the final dispositions and information about prison time or court-ordered program participation. The extreme localism of court processing and management meant that even when records were digitized they were not necessarily publicly accessible or mergeable. Despite these challenges, we collected an enormous volume of quantitative information. Several articles in this volume use administrative data to investi-

27. We are grateful to Leslie Paik who, at an in-person meeting in 2016, helped to train the project research team members in how to conduct courtroom ethnographies.

**Table 4.** Availability of Administrative Criminal Legal Data by State

| State | Administrative Data Accessed |
|---|---|
| California | Statewide individual-level data on 170,999,663 arrests resulting in 69,269,694 case dispositions from 1990 to 2016 (missing fine/fee amounts) |
| Georgia | Statewide cross-sectional individual-level data on active felony probationers<br>Statewide aggregate court-level data on monthly LFO collections |
| Illinois | Nearly statewide case-level data on arrests, charges, court dispositions, and sentences from 2010 to 2018<br>County-level data for the same information for the most populous county |
| Minnesota | Statewide individual-level data on arrests, charges, court dispositions, and sentences from 2010 to 2015 |
| Missouri | City-level data from St. Louis Municipal court on 2,168,517 cases resulting in 2,072,394 dispositions in 2017 |
| New York | None |
| Texas | Statewide case-level data on Misdemeanor A, B, and Felony charges from 2010 to 2016 |
| Washington | Statewide individual-level data on all criminal offenses from 2000 to 2014 |

*Source:* Authors' tabulation.

gate trends and disparities in LFO sentencing and outcomes by race, gender, socioeconomic status, and region in multiple states.

### *Year 5: Data Management and Processing*

Each state research team managed its own legal review data—spreadsheets with all statutes and documents pertaining to legal challenges to LFOs—courtroom observation spreadsheets, and administrative data. These data were available on the project's central server for analysis at the point of writing a specific paper or report. The surveys, qualitative in-depth interviews, and courtroom ethnographies, on the other hand, required more standardized processing and coding to make them analytically comparable.

We used two methods to manage the survey data. For the court-involved population, researchers followed a link to an online password-protected Qualtrics survey where they found a replica of the survey instrument and entered the answers for each unique respondent. We then exported the data from Qualtrics to generate a spreadsheet for all respondents interviewed in the project with rows for each respondent and columns for each survey question. These data were available for analysis in Excel or more advanced statistical data analysis software.

We switched from Qualtrics in Year 2 to entering survey responses directly into Excel in Year 3, for several reasons. First, the Qualtrics interface required an unnecessary middle data-management step given that we ultimately ran data reports in Excel. Second, the Excel file allowed us to include specific tailored instructions for data entry. Third, we learned a great deal about survey execution in Year 2 of the project that we put into practice in Year 3. We learned that we needed more upfront training to ensure that interviewers consistently asked all the questions on the survey, knew how to probe respondents to arrive at maximally precise answers, and knew how to enter ambiguous responses in the spreadsheet. We learned that we could not approach the survey and record the survey information as if it were open-ended; instead, we pushed respondents to be more specific in their answers to the survey questions and we recorded their responses using predetermined variable names and codes. We learned to ensure that all data were entered, saved, and backed up before disposing of the survey sheets. Ultimately, we learned the importance of stan-

dardization for yielding consistent and comparable data for analysis.

The issue of missing data illustrates the challenges posed in our first foray into survey data collection and management. Among forty-six survey items asked of individuals paying off court debt (see online appendix C), twenty-seven questions are missing data for more than 20 percent of the sample. This figure excludes "don't know" or "refused" answers, which were options for only some of the survey items. Because we did not have codes to specify reasons for missing data for every question, it is unclear whether the data are missing because of a skip pattern, because a given interviewer did not ask the question or enter the response, because the respondent did not know the answer or refused to answer, or because the state team used a not-yet-final survey instrument that omitted certain questions. Although we reconstructed a consistent null response category for when no response was given, in most cases we have no way of distinguishing why data are missing. The extent of missing data is further illustrated in table 5 in the data description section.

The survey data are most complete for misdemeanor and felony convictions, LFO amounts, demographic information, education, employment, and household income. These responses provide a solid foundation for many important analyses. Additionally, once we recognized the shortcomings of the survey design and data-entry process, we compensated by adding a data-entry component to the coding of the interview transcripts. Fortunately, we also audio-recorded the entire survey interaction, which then became a part of the qualitative transcript. This practice provided a second opportunity at the point of coding to register important items covered in the survey or elaborated or clarified in the qualitative responses, even if the researcher was using a different survey instrument. These NVivo Classification Sheets provide another basis for analysis, either as standalone datasets or as data merged with the Qualtrics-Excel output from the surveys.

These hard lessons made the survey data for court actors much cleaner. Of eighty-nine total survey questions asked to the various categories of court actors, only twelve items have missing data for more than 20 percent of the sample. For this round, every state research team used the same survey instrument, we collected more precise survey responses, and we gave clear instructions for entering survey data, including differentiating between missing and nonresponsive answers. For data entry, each state team was given a standardized spreadsheet with instructions. Because the surveys differed across court actors, the spreadsheet included a tab for each court-actor category—judges, attorneys (prosecution and defense), probation or community corrections officers, clerks. We developed codebooks for each survey item to transform qualitative answers into numeric values, for example, what type of agency is your probation department? 1= Public, 2=Private, 3=Other (write in). Each state spreadsheet was combined into a master spreadsheet for each court-actor category. These project-wide spreadsheets are the basis for any analyses of the court-actor survey data.

To process the qualitative interview and ethnographic data, we created separate codebooks for interviews with individuals paying LFOs, interviews with decision-makers, and court observation field notes. Codes are themes, actors, actions, or topics that may be of theoretical interest or known to be important from previous empirical research (deductive codes), or may emerge from the research process itself (inductive codes). We developed both kinds. For example, mentions of *assessing ability to pay* (a deductive code) are important to capture because they relate to Supreme Court rulings, whereas the inductive code *case processing* emerged as we watched defendants having to return to court several times because their cases were not ready for adjudication. Other codes include topics, emotions, and actors such as *reprimand or accountability*, *indigence*, *fairness*, *confusion*, *stress*, *discrimination, prejudice or stigma*, and *collecting agencies*.

A codebook is a dictionary that provides detailed definitions for what each code means and examples of the kinds of data that fall into specific codes. For example, the code for *warrant* in the court-actor codebook is defined as "any conversation about warrants." The definition elaborates that such conversa-

tions may include asking for warrants, issuing warrants, serving warrants, or mentioning outstanding warrants, and may be related to crimes individuals have committed, warrants related to LFOs, or other topics.[28] Harris and her research assistants developed first drafts of each codebook. All state PIs and at least one RA from each team added new codes or comments or recommended deletions and revisions. We balanced recognizing team members' wide-ranging research interests (for example, child support, electronic monitoring) with limiting the number of codes to a sum that coders could reasonably keep in play as they coded. This iterative process required several months of discussion, debate, compromise, and resolution for each codebook. The final codebooks for people paying LFOs, court actors, and the ethnographic field notes produced sixty-four, seventy-five, and sixty-nine total codes, respectively.

We used NVivo, a qualitative data analysis software, to code our interview transcripts and field notes. Michele Cadigan (research assistant at the University of Washington) created several training videos specific to using NVivo for our project. These videos and accompanying materials were circulated to all state research teams for consistent coding. The NVivo software and all the transcript and field note data were stored on a secure server at the University of Washington, requiring the use of a secure, remote desktop application (Microsoft RDC), to which approved study team members had access. No coding took place outside of the secure-server environment.

Because of missteps in administering the survey and inputting the data from individuals facing LFOs, we recreated some of the survey items in an NVivo Classification Sheet, which is a database function for closed-ended and categorical information. We recorded information for sixteen variables on the Classification Sheet to supplement information that may have been lost in the survey administration or data-entry process. Using the Classification Sheet, we obtained cleaner and more complete data on type of conviction and housing status as well as whether individuals had made payments on their monetary sanctions.

To code the text, we started by calibrating our coding across coders to establish intercoder reliability. This approach informed several small-group and full-team conversations about what codes meant, how much text to code, and how we might use a code's content in future analyses. This process led to revisions of the codebook before beginning to code the full corpus of data. Each state team coded its own interview and ethnographic data over several months. Once all data was coded, researchers could use NVivo to extract all data coded at a specific code, to count text within codes, to conduct searches with a range of Boolean operators, and to search using many other functions. The contributing authors in this volume explain in greater detail the processes they used to analyze the coded qualitative data.

Our final step in data analysis involved writing research papers. The methods section of each article in this volume outlines how the authors used the data to develop and investigate specific research questions. A common theme was the difficulty in striking an objective tone. As scholars of the criminal legal system, stratification, and inequality, we are well aware of racial disparities in institutional processing and the cumulative oppressive effects this system has on poor people and communities of color (Turney and Wakefield 2019). To be fully transparent, we struggled to find purely objective language with which to frame our analyses and inquiries. Engaging with individuals saddled with legal debt during our interviews, hearing the related consequences, and watching those without the means to pay plead for additional time and relief shaped our interpretations and findings. As researchers, our fram-

28. We spent hours discussing the difference between the instructions to code any conversation or to code any *substantive* conversation. The former is the most thorough and captures any mention of warrants even if in passing or without much consequence, but these data could also be obtained through a simple word search of the database. The directive to code any substantive conversation makes the code output much more useful and relevant but relies heavily on the coder's subjective assessment of an event's substantive value. We had both kinds of instructions and the actual practice likely varied by coder.

ing of the system of monetary sanctions is informed by the tragedies we witnessed in courtrooms across our eight states. Although we sought to maintain as much objectivity as possible, we were no doubt biased by an interest in humanity and dignity.

## Descriptive Data for Individuals Paying Court Debt

Table 5 presents the demographic characteristics of our sample. The average respondent was approximately thirty-eight years old. In our sample, 41 percent of respondents identified as non-Hispanic white, 33 percent identified as non-Hispanic African American or Black, 15 percent identified as Latinx, and 12 percent chose Other. In our study, approximately 16.5 percent had not earned high school diplomas, nearly 28 percent had earned diplomas, and nearly 56 percent had completed some college education or more. This profile is more educationally advantaged than the incarcerated population—where more than half have not earned a high school diploma (see Ewert, Sykes, and Pettit 2014, table 3)—because our sample is more heterogeneous; many had been convicted of traffic or other low-level, nonjailable offenses.

We also observed a gender imbalance among our respondents that mirrored male overrepresentation in the criminal legal system. About 33 percent of the sample identified as women; men accounted for more than 64 percent. People identifying as transgender made up less than one-tenth of 1 percent. Respondents represented a range of family structures and compositions. Nearly 12.5 percent of the respondents were married, and 9 percent lived with a romantic partner. Almost 25 percent reported being separated, divorced, or widowed; more than half had never been married and were not in a romantic relationship. Nearly half reported having children they were supporting at the time of the interview. Among those with children, approximately 42 percent had one minor child and another 34 percent had two minor children. More than 12.5 percent reported having three children, and 11 percent had four or more minor children.

Employment, earnings, and receipt of public assistance reveal a bleak picture of the financial wellbeing of the respondents and their households. Fewer than half (48.1 percent) of the respondents were employed, and approximately 54 percent earned less than $1,500 per month. Only 5 percent reported monthly income in excess of $5,000. Household income (which sums the respondent's income with that of other earners in the household) was less than $1,500 per month for 51 percent of the sample, but more than $5,000 for almost 11 percent. Nearly 65 percent reported receiving some form of public assistance, with an average of 1.25 programs used by respondents receiving aid.

Table 6 displays select measures of the sample population's criminal legal histories and debts. Nearly 95 percent of respondents had been incarcerated at least once in their lives for, on average, 31.2 months. Members of the sample population had been sentenced for 2.7 felonies, disproportionately for nonviolent offenses, with property (34.6 percent) and drug offenses (34.8 percent) the most prevalent categories. Respondents reported convictions for twice as many misdemeanors (6.0), on average, as felonies, with traffic (31 percent) and property (25 percent) offenses eclipsing violent offenses (15.9 percent).

Variation in the assessment of LFOs is considerable. About half of the sample faced LFOs below $3,000 and 21.8 percent faced LFOs in excess of $10,000. The remainder, 28.2 percent, faced LFOs of between $3,001 and $10,000. Nearly one in seven respondents, 14 percent, reported having payments automatically deducted from their work or other type of payment check. Roughly 70 percent of respondents had made payments on their LFOs, with an average payment of $3,282 (the median, not shown, was $952). In sum, we engaged with a racially and socioeconomically heterogeneous group of respondents with a range of criminal legal experiences. To our knowledge, this research is the largest qualitative study of monetary sanctions.

## VOLUME OVERVIEW

This double issue of *RSF: The Russell Sage Foundation Journal of the Social Sciences* examines monetary sanctions in the criminal legal system, both how the punishment system itself operates and its ramifications.

**Table 5.** Persons with LFOs Sample Demographic Characteristics (N = 519)

| Measure | Mean | SD | Observed N |
|---|---|---|---|
| Age | 38.1 | 11.9 | 508 |
| Non-Hispanic White | 0.411 | 0.492 | 492 |
| Non-Hispanic Black | 0.326 | 0.469 | 506 |
| Hispanic | 0.147 | 0.355 | 495 |
| Non-Hispanic Other | 0.119 | 0.324 | 464 |
| U.S. born | 0.963 | 0.189 | 513 |
| Less than high school | 0.165 | 0.372 | 519 |
| High school diploma | 0.277 | 0.448 | 519 |
| Some college or more | 0.558 | 0.497 | 519 |
| Female | 0.337 | 0.473 | 519 |
| Male | 0.642 | 0.480 | 519 |
| Transgender | 0.008 | 0.087 | 519 |
| Married | 0.117 | 0.322 | 519 |
| Live with partner | 0.092 | 0.290 | 519 |
| Separated-divorced | 0.231 | 0.422 | 519 |
| Widowed | 0.015 | 0.123 | 519 |
| Never married | 0.527 | 0.500 | 519 |
| Any children | 0.470 | 0.500 | 511 |
| One minor child | 0.422 | 0.495 | 206 |
| Two minor children | 0.345 | 0.476 | 206 |
| Three minor children | 0.126 | 0.333 | 206 |
| Four or more minor children | 0.107 | 0.310 | 206 |
| Employed | 0.481 | 0.500 | 519 |
| **Monthly Income** | | | |
| <$500 | 0.112 | 0.315 | 251 |
| $501–750 | 0.092 | 0.289 | 251 |
| $751–1000 | 0.120 | 0.325 | 251 |
| $1,001–1,250 | 0.112 | 0.315 | 251 |
| $1,251–1,500 | 0.104 | 0.305 | 251 |
| $1,501–2,000 | 0.127 | 0.334 | 251 |
| $2,001–2,500 | 0.108 | 0.310 | 251 |
| $2,501–3,000 | 0.064 | 0.245 | 251 |
| $3,001–5,000 | 0.112 | 0.315 | 251 |
| $5,001–7,000 | 0.024 | 0.153 | 251 |
| More than $7,000 | 0.028 | 0.165 | 251 |
| **Monthly household income** | | | |
| <$500 | 0.189 | 0.392 | 428 |
| $501–750 | 0.077 | 0.267 | 428 |
| $751–1,000 | 0.086 | 0.281 | 428 |
| $1,001–1,250 | 0.093 | 0.291 | 428 |
| $1,251–1,500 | 0.068 | 0.252 | 428 |
| $1,501–2,000 | 0.093 | 0.291 | 428 |
| $2,001–2,500 | 0.093 | 0.291 | 428 |
| $2,501–3,000 | 0.063 | 0.243 | 428 |
| $3,001–5,000 | 0.131 | 0.338 | 428 |
| $5,001–7,000 | 0.058 | 0.235 | 428 |
| More than $7,000 | 0.047 | 0.211 | 428 |
| Any public assistance | 0.648 | 0.478 | 520 |
| Number of public assistance programs | 1.25 | 0.484 | 263 |

*Source:* Authors' tabulation.

**Table 6.** Persons with LFOs Sample Criminal Justice Characteristics (N = 519)

| Measure | Mean | SD | Observed N |
|---|---|---|---|
| **Ever incarcerated** | 0.948 | 0.221 | 388 |
| Incarceration length (in months) | 31.2 | 50.5 | 338 |
| Number of felonies | 2.68 | 4.47 | 498 |
| Felony property offense | 0.346 | 0.476 | 353 |
| Felony violent offense | 0.201 | 0.401 | 353 |
| Felony drug offense | 0.348 | 0.477 | 353 |
| Felony sex offense | 0.023 | 0.149 | 353 |
| Felony other offense | 0.176 | 0.381 | 353 |
| Number of misdemeanors | 6.0 | 12.2 | 492 |
| Misdemeanor property offense | 0.250 | 0.434 | 364 |
| Misdemeanor violent offense | 0.159 | 0.366 | 364 |
| Misdemeanor drug offense | 0.170 | 0.376 | 364 |
| Misdemeanor sex offense | 0.008 | 0.091 | 364 |
| Misdemeanor traffic offense | 0.310 | 0.463 | 364 |
| Misdemeanor other offense | 0.107 | 0.310 | 364 |
| **LFO amount assessed** | | | |
| 0 | 0.006 | 0.077 | 499 |
| <$500 | 0.140 | 0.348 | 499 |
| $501–1,000 | 0.102 | 0.303 | 499 |
| $1,001–2,000 | 0.154 | 0.361 | 499 |
| $2,001–3,000 | 0.104 | 0.305 | 499 |
| $3,001–4,000 | 0.064 | 0.245 | 499 |
| $4,001–5,000 | 0.050 | 0.218 | 499 |
| $5,001–6,000 | 0.050 | 0.222 | 499 |
| $6,001–7,000 | 0.026 | 0.159 | 499 |
| $7,001–8,000 | 0.024 | 0.153 | 499 |
| $8,001–9,000 | 0.032 | 0.176 | 499 |
| $9,001–10,000 | 0.026 | 0.159 | 499 |
| More than $10,000 | 0.218 | 0.413 | 499 |
| Payments deducted from work–payment check | 0.135 | 0.342 | 497 |
| Made payments on LFOs | 0.718 | 0.450 | 504 |
| Total paid on LFOs | $3,282 | $8,895 | 328 |

*Source:* Authors' tabulation.

## The System of Monetary Sanctions

The first issue includes research on how the system of monetary sanctions is architecturally designed by policymakers through the enactment of law and how court actors interpret and apply the law. Section 1 presents policy-related papers that examine similarities and differences in state enactment of legislative codes and statutes that apply monetary sanctions, highlighting laws on the books. Section 2 presents analyses of law on the ground, or how actors interpret and apply laws in the various institutions that make up the criminal legal world. The section concludes with an article that outlines directions for policy, practice, and research on the causes and consequences of financial penalties in the criminal legal system.

In the first article, "Beyond the Penal Code," Anjuli Verma and Bryan Sykes examine how the architecture of law—or the distribution of monetary sanctions across legislative codes sections—should inform analyses of LFOs. The authors conduct a legal census of the entire California Legislative Code and find that one

in twenty-three statutes contains rules pertaining to monetary sanctions and that these statutes are dispersed throughout every section of the legislative code. Their findings demonstrate the tentacle-like nature of monetary sanctions and highlight the importance of breaking civil–criminal boundaries in research on monetary sanctions to reveal impacts well beyond the penal system.

In "Sensemaking in the Legal System," Tyler Smith, Kristina Thompson, and Michele Cadigan study how court actors interpreted and applied new monetary sanctions laws. They find that the process by which court actors communicate, interpret, and negotiate legal changes is shaped by a variety of contextual factors. Specifically, they find that a strong regulatory agency helped create conformity, but that local normative and cultural factors still shaped legal interpretation and implementation across jurisdictions within each state. Their work has important implications for policymakers because it highlights the many factors that produce legal and organizational variation between courtrooms.

In "The 'Damaged' State vs. the 'Willful' Nonpayer," April Fernandes, Brittany Friedman, and Gabriela Kirk analyze a little-known state practice of suing incarcerated people for the cost of their room and board. Using a review of 102 such lawsuits in Illinois, the authors apply legal frames and the concept of rent-seeking to investigate how the state justifies seeking financial damages and minimizes the harm caused by pay-to-stay lawsuits. Their analysis reveals a legal system that shifts the cost and moral burden to incarcerated people through the application of the willful nonpayer label. The research identifies a neoliberal shift away from welfare provisions toward an almost predatory legal mechanism whereby the state can punish the people in prison in perpetuity through creating a group the authors term *perpetual debtors*.

In the second section of the first issue, we examine how the process of monetary sanctions operates on the ground within the courts and other spaces we studied. The article by Beth Huebner and Andrea Giuffre, "Reinforcing the Web of Municipal Courts," takes us to Ferguson, Missouri. Perhaps more than any other U.S. locality, Ferguson was shaken by events that shed light on the relationship between aggressive policing, municipal revenue generation, and predatory and unrelenting monetary entanglements with the courts. Huebner and Giuffre investigate court practices in Ferguson and St. Louis County after reforms. The authors document what is known locally as the *muni-shuffle*, whereby individuals are cited for violations in several towns and struggle to manage scattered court appearances and mounting financial debt. In the St. Louis region, parochialism, fragmentation, and autonomy ensure that a disproportionate burden on African American and poor defendants has persisted well after reforms were instituted.

In "Pay or Display," Karin Martin and her coauthors uncover striking similarities in New York and Illinois courts in requiring significant time from defendants in lieu of full payment. Because most low-income defendants are unable to pay their monetary sanctions immediately, they are subjected to repeated and prolonged post-sentencing payment-status hearings. In both states, and in contrast to most other sites in the study, the emphasis is more on the time needed for payment rather than on willful nonpayment. The authors propose that in prioritizing procedural integrity, or fidelity to local norms of case processing, the practices of the courtroom workgroups rarely prompt full payment. Instead, defendants are routinely called upon to demonstrate their accountability by going to court repeatedly over often extended periods. Although this performance of compliance together with any signs of deference and contrition displayed in court can engender leniency, actual outcomes tend to result in excessive demands on time rather than substantive justice.

Individuals with few financial resources spend a long time trying to pay off court debt. This means they are often involved in other state systems that serve, process, support, and surveil poor people, especially the various agencies of the welfare state. In "Robbing Peter to Pay Paul," Bryan Sykes and his coauthors use nationally representative data and survey data from seven of the eight study states to show how two faces of the state work in contrasting ways: some government agencies issue mone-

tary benefits that require clients to share information about their families, finances, and whereabouts, whereas other state entities—like courts—issue monetary penalties that engender avoidance and reticence. They find that roughly half of criminal defendants facing LFOs are also receiving some kind of means-tested state benefit, such as food stamps, Medicaid, and disability payments. Defendants thus become conduits through which state welfare aid is redirected to the punitive criminal legal system.

The monetary and nonmonetary costs of probation in Georgia and Missouri is the focus of the article by Beth Huebner and Sarah Shannon. To comply with probation terms, most individuals must pay court fines and fees, but probation itself can generate additional costs. The proliferation of private probation companies in both Georgia and Missouri creates opportunities for excessive profiteering with little oversight by public agencies. By analyzing interviews with individuals on probation in the two states and observing courtroom probation appearances, Huebner and Shannon demonstrate how probation terms under private supervision become disproportionately punitive—both relative to wealthier defendants and given the crime committed—for individuals who struggle to pay off their monetary sanctions.

Focusing on how place and density influence courtroom dynamics, Gabriela Kirk and her coauthors explore law on the ground across different geographies. Courtroom ethnographies and interviews with court actors in Illinois, Georgia, Minnesota, and Missouri reveal that localities with smaller populations—mostly rural and smaller suburban areas—featured dense relationship networks among court actors and between court actors and defendants. Such familiarity in courtroom settings makes court authorities more sympathetic and moralistic toward defendants, resulting variously in financial accommodations or inflexibility. The authors find far less familiarity in major cities, where the imposition of LFOs was much more routinized and perfunctory. Geographic differences in stakeholders' stances toward LFOs were notable. This article highlights the extreme localism of the application of law and policy and suggests how reforms should also consider such specificities.

In the final paper of this first issue, "What Is Wrong with Monetary Sanctions?," Brittany Friedman and her colleagues summarize how monetary sanctions thwart notions of justice. They outline the unequal exposure to the criminal legal system certain populations and communities face, discuss the uneven assessments of monetary sanctions, and examine the disparate impacts of penal debt. The authors outline the lived experiences of people sentenced to monetary sanctions such as expanded system involvement and the arbitrary and excessive nature of fiscal penalties. The authors provide a number of key policy recommendations to improve the administration of justice, mitigate some of the most harmful effects of monetary sanctions, and advance future research.

## The Consequences of Monetary Sanctions

The second issue of the volume examines the ramifications of the system of monetary sanctions. The first section examines the lived experiences of interviewees and others observed in courtrooms across the eight states. These articles examine characteristics of individuals sentenced to monetary sanctions and demonstrate the consequences of debt for families and localities. The second section focuses on the disparate impacts that have been observed in the course of our research. These papers highlight how structural inequalities in the application of monetary sanctions intersect and reverberate across other dimensions of social inequality.

Existing research shows that conviction and incarceration increase individual risks of chronic and acute health conditions, but no research has been done on the emotional health effects of monetary sanctions. Alexes Harris and Tyler Smith fill this gap. Drawing on Leonard Pearlin's (1989) stress process paradigm, they suggest that monetary sanctions create not only legal and economic precarity for people who owe penal debt, but also an overwhelmingly palpable sense of fear, frustration, anxiety, and despair. The authors theorize the ways in which monetary sanctions serve as both acute and chronic health stressors for people

who are unable to pay off their debts, highlight the mechanisms linking penal debt with mental and emotional burdens, and generalize their findings using national data from the United States Federal Reserve. They find that the system of monetary sanctions, through the eyes of people carrying the debt, generates a great deal of stress and strain that becomes an internalized punishment affecting many realms of people's lives.

Housing instability is a major social problem exacerbated by growing socioeconomic inequality. Mary Pattillo and her coauthors extend sociological and sociolegal inquiries into housing instability by examining how financial penalties operate independently of incarceration and the mark of a criminal record to affect housing. They show how a "housing instability–LFO nexus" emerges out of the monetary sanctioning system that induces further financial hardships while deepening strain and undermining housing stability. By leveraging quantitative and qualitative data from national and state-level sources, their work demonstrates how monetary sanctions require situating housing instability within the vicious cycle of structural and individual factors that impinge on, and cascade across, social, economic, and familial contexts.

Next, Amairini Sanchez and her colleagues shift our focus to immigration, in particular *crimmigration*—the intersection of criminal and immigration law and practice. Yet, scholarship on crimmigration overlooks one important mechanism in the crime and immigration nexus: the system of monetary sanctions. In this article, Sanchez and her colleagues examine how immigration status shapes the imposition of monetary sanctions. They find that immigrants are financially exploited through gaps in criminal and immigration law that allow for bail predation. For example, the liminal legal status of undocumented immigrants squeezes them in a trade-off between higher financial penalties and less or no jail time, reducing the risk of deportation while burdening them financially. These individuals thus face *crimmigration sanctions* that arise from opaque spaces in the law that allow judges and prosecutors to impose higher fines and fees, in some cases enabling these individuals to avoid detection by immigration officials. Crimmigration sanctions fuel social inequality within the immigrant community and between immigrants and other defendants, thereby depriving immigrants of due process rights.

The final article in section 1 of the second issue looks at lived experiences not for people assessed legal debt but for their families. In "Monetary Sanctions and Symbiotic Harms," Daniel Boches and his colleagues argue that the notion of symbiotic harms—the negative effects of punishment on family—is also relevant to understanding the impact of monetary sanctions. Legally innocent family members are often leveraged by probation officers to pay the debt of their legal system-involved relatives, and monetary sanctions increase the economic strain, emotional distress, and interpersonal conflict families experience. Social bonds facilitate the repayment of criminal legal debt despite inducing other forms of hardship and severe deprivation. The authors demonstrate how these symbiotic harms place kinship networks at risk of permanent damage from a system that prioritizes the repayment of criminal legal debt.

Section 2 of the second issue examines the disparate effects of monetary sanctions for those who shoulder the burden of penal debt. In "Incomparable Punishments," Lindsay Bing, Becky Pettit, and Ilya Slavinski show how sentencing that imposes standardized legal fines and fees lands unequally on defendants by race. The authors analyze administrative court data and in-depth interviews with respondents in Texas, finding that Black residents carry a disproportionate debt burden and, as a result, are exposed to differential criminal legal treatment and consequences relative to White Texans. This article demonstrates clearly how seemingly race-neutral policies can result in racially disparate outcomes in practice.

Similarly, Robert Stewart and his colleagues explore the disparate application of monetary sanctions in sentences imposed on Native Americans in Minnesota. The authors use a multimethod research design and present descriptive statistics in comparing fiscal sentences given to Native Americans and other groups. They find geographic disparities in LFO sentences and debt; counties located in proxim-

ity to Native American reservations show the highest mean LFO debt relative to other counties. They also find that, compared with other groups, Native Americans are second to Latinos and Latinas in fiscal penalties assessed at sentencing but carry a significantly larger debt burden than any other group. Qualitative interviews reveal how driver's license suspension because of LFO nonpayment in rural reservation communities limited respondents' ability to work, given the few transportation options available. The authors offer a powerful theoretical framework that illustrates how settler colonial domination has shifted from collective to individual wealth extraction.

The final article in this issue and the volume, by Kate O'Neill, Tyler Smith, and Ian Kennedy, studies gender and locational differences in the imposition of monetary sanctions. In an analysis of automated court data from the Washington State Administrative Office of the Courts, the authors find a positive association between county dependence on monetary sanctions and rates at which women are sentenced to incarceration. They find no differences, however, in reliance on revenues between rural and nonrural counties. The analysis implies that the system of monetary sanctions is linked to women's incarceration rates and that this association is likely driven by women's poverty and the policing of low-level offenses rather than by a county's fiscal needs. The article reveals how monetary sanctions matter for population subgroups beyond race-ethnicity, and identifies other factors that contribute to shaping the monetary sanctions system.

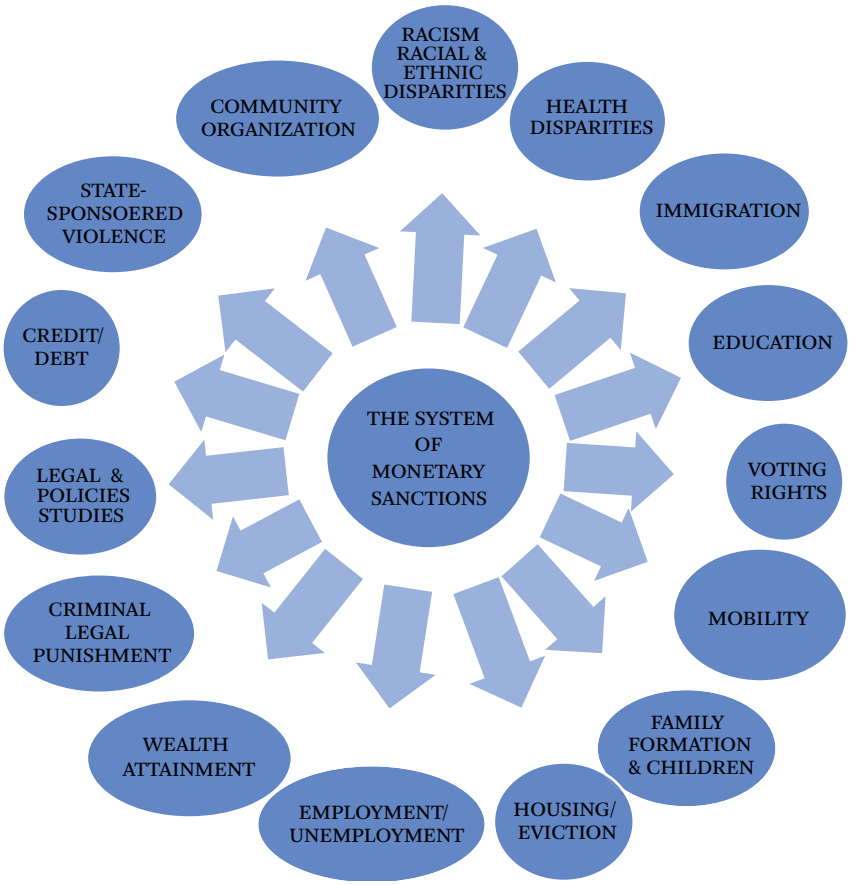
## CONTRIBUTIONS OF THIS VOLUME

Based on the studies presented in this volume and our ongoing collective research, we make three primary arguments about the variation in and reach of monetary sanctions. First, laws and policies vary not only across states, but within them as well, and monetary sentencing practices diverge even within the same courthouse. The articles presented here show clearly that the system of monetary sanctions is fragmented, sprawling, disjointed, and often opaque, without much oversight or regulation despite being rooted in law and regulation (Verma and Sykes 2022; Fernandes, Friedman, and Kirk 2022, this volume). The power to set monetary sanctions lies at the federal, state, and local levels, but who actually governs LFOs in practice can move between judge, clerk, probation officer, prosecutor, collections agent, or even an online payment interface. Discretion, discrimination, carelessness, confusion, and idiosyncrasies can creep in at any one of those levels, making a highly consequential sentence subject to considerable unpredictability. Even though LFOs are routinely and widely imposed for traffic, misdemeanor, and felony cases, many people in the court system did not know how much they owed. None of the states we studied had a central state repository where information on the total amount owed could be found. Even the nomenclature for LFOs—fees, surcharges, costs, assessments, and so on—varied across states.

This primary finding of intense variation helps explain how and why individuals who are processed in this system feel disempowered and perpetually punished and in debt, as the articles in this volume illustrate. Variation also sheds light on the fiscal and legal inefficiencies at the institutional level, such as the slippage between policy reform and policy enactment within courtrooms (Smith, Thompson, and Cadigan 2022, this volume), or the redirection of public dollars from welfare state expenditures to criminal legal revenues (Sykes et al. 2022, this volume). Ultimately, such lack of uniformity and standardization highlights the challenges of instituting meaningful and effective change. Our findings show that operating within the current system allows for only piecemeal efforts—a law change in one city or a legal ruling in one state. On other hand, sweeping transformation of the system would require action at the Supreme Court or federal level, or a substantial chain reaction of state actions. Brittany Friedman and her colleagues (2022, this volume) take up this issue further.

Second, our work demonstrates the importance of examining the system of monetary sanctions in its entirety. Figure 1 illustrates the tentacles of this system and how penal debt and related precarious financial statuses, coupled with legal and social control, negatively affect one's relationships with a variety of institutions, people, and situations. Our scholar-

**Figure 1.** The Extensive Reach of Monetary Sanctions' Tentacles in the Sociological World




*Source:* Authors' framing.

ship reveals how monetary sanctions can disrupt reintegrative practices for the formerly incarcerated through disruptions to employment, housing, mobility (transportation), and health. The financial burdens and the related legal consequences may disrupt family formation and stability, limiting parents' capacity to be healthy and present in their children's lives. Hence, research on families and children should investigate the potential intergenerational effects of both poverty and the oppressively constant criminal legal control that penal debt triggers. Although not explored in the articles in this volume, monetary sanctions' tentacles may also reach into the realms of education, credit profiles, voting rights (Uggen et al. 2020), community organization and stability (O'Neill, Kennedy, and Harris forthcoming), and wealth accumulation (Maroto and Sykes 2020; Sykes and Maroto 2016).

Our conceptualization of the tentacles of monetary sanctions must be situated within an understanding of the hegemony of neoliberal ideologies generally and in the criminal legal system in particular. We see how shifts in governmental policies that center notions of personal accountability and merit become mechanisms for controlling and subjugating populations (Martin, Spencer-Suarez, and Kirk 2022, this volume). The criminal legal system has evolved into a service-based institution that charges costs and fees per person processed. Individuals are now expected to pay for the "services" rendered by police, judges, attorneys, juries, and clerks. For many, these costs are immediately transformed into penal debt,

potentially exposing them to a variety of garnishment mechanisms (Heubner and Shannon 2022) and the redistribution of means-tested public support (Sykes et al. 2022, this volume). From a neoliberal perspective, this debt becomes a social provision (A. Atkinson 2017, 2019), replacing what was formerly a public service supported by taxpayer monies. It is this market-based relationship that puts people in debt to the court and to the state and occasions the multiple collateral impacts that the articles in this volume elucidate. What is proffered as a less restrictive or less harmful intermediate punishment in reality carries a wealth of long-term negative consequences.

Finally, the system of monetary sanctions structures racial and class subjugation and social control. It is plain that poor people are most affected by monetary sanctions. The inability to pay is what triggers repeated court appearances, probation violations, prolonged system involvement, and even incarceration. Affluent people, on the other hand, pay and move on. As a money-based punishment, the class inequalities that monetary sanctions create are perhaps self-evident. Nonetheless, the articles in this volume offer definitive empirical evidence in support of this claim. We also study seriously the racial contours of monetary sanctions. Several articles in this volume show that Black, Latinx, and Native Americans are disproportionately processed within the criminal legal system and, as a result, carry a disproportionate burden of criminal legal debt (Sanchez et al. 2022; Bing et al. 2022; Stewart et al. 2022; O'Neill et al. 2022).

We argue that the contemporary system of monetary sanctions embodies the same hallmarks and historical vestiges of past peculiar institutions (Wacquant 2001). The indebtedness that LFOs beget constitutes an extensive mechanism of social control, requiring unending amounts of people's time and money, and imposing the constant threat of their bodies' being taken into custody. However, the system of monetary sanctions now operates within a putatively colorblind era. According to Eduardo Bonilla-Silva, "contemporary racial inequality is reproduced through 'new racism' practices that are subtle, institutional, and apparently nonracial" (2018, 3). Supposed race-neutral political ideologies operate "without naming those who it subjects and those who it rewards" (3–4). Although policymakers and practitioners view policies governing monetary sanctions as largely race neutral, we uncover racialized disparities in outcomes. Moreover, even the research in this volume that does not investigate racial disparities head-on is informed by the fact that Black, Latinx, and Native American people are disproportionately surveilled, detained, and punished in the U.S. criminal legal system, including immigration law. Therefore, every finding presented here—from the negative emotional health effects of monetary sanctions to the predation of private probation agencies to the impacts on innocent family members—should be read as falling most heavily on Black and Brown people.

## FUTURE RESEARCH

After five years of data collection, coding, and analysis, we have learned much about the system of monetary sanctions in the states under study, yet the questions and observations presented in our research raise new questions and open deeper lines of inquiry as we plot the future direction of this work. As examples, we did not endeavor to compare the system of monetary sanctions in sentencing with other sentencing modes. We have yet to conduct statistical analyses that measure recidivism rates for those with legal debt and those without. Our interview data illustrate that the difficulties of carrying penal debt spill over into the ability to secure housing, maintain employment, and remain healthy. We have not, however, illustrated these relationships statistically.

Moreover, we did not conduct a cost-benefit analysis of court costs imposed and the expenditures necessary to monitor and collect outstanding debt. Although nonacademic reports suggest that in some jurisdictions courts spend more to collect debts than the value of the debts themselves, recouping only pennies on the dollar (Financial Justice Project 2018), important questions remain about how much money is outstanding and collected by local and state jurisdictions, and how the monies are allocated and to whom. For example, to what extent do the jurisdictions we examine rely on fines and fees to generate revenue? And how much are

these jurisdictions paying to recoup outstanding fines and fees?

Finally, because our scope of work focused on traffic, misdemeanor, and criminal courts, we did not explore monetary sanctions for people with civil, juvenile, or federal sentences; nor did we examine the practice and consequences of civil asset forfeiture. These topics merit sociolegal and policy analysis.

## CONCLUSION

Our collective project exemplified a unique academic endeavor. The multistate, multimethod study of monetary sanctions generated a wealth of data and ideas while constructing a collaborative learning and training environment for students and faculty. At the outset, Harris sought to shape a "dream team" of scholars with the aim of collecting data to produce methodologically sound and conceptually informed research that could inform the construction of empirical and theoretical frameworks for research on monetary sanctions. She also sought to build a team of established scholars while training and developing a generation of young scholars in multimethod approaches that include on-the-ground and field experience, spurring new research questions, theories, and empirical inquiries into the system of monetary sanctions.[29]

Our project demonstrates how scholars sharing insights and conceptual frames can develop research agendas that collectively engage all team members in primary data collection and analysis to provide a broad and detailed understanding of an important social system and the accompanying dynamics. To this end, we communicated extensively throughout our project. We developed protocols for authorship, time management, and manuscript development. This is not to say that disagreements, negotiations, and other bumps in the road did not require delicate attention. Nonetheless, we were able to model supportive collaborations in which we addressed and incorporated a diversity of opinions and concerns along the way. Our project also illustrates how we engaged on-the-ground training for undergraduate and graduate students, postdocs, and junior faculty. Every member of our team was able to contribute to instrument design as well as data collection, management, and analysis. Collaborators were encouraged to develop papers across states and areas of interest. The papers and findings produced by the Multi-State Study of Monetary Sanctions truly reflect a collaborative endeavor, shaped by many hands and protean minds.

To conclude, the system of monetary sanctions creates, perpetuates, and exacerbates inequality via one purposeful system of punishment. Our research shows how monetary sanctions and the related debt that poor individuals shoulder creates, perpetuates, and worsens impoverished lives. Despite these chilling findings, the system dynamics associated with monetary sanctions suggest very clear policy reforms that could disrupt negative outcomes. In this volume, Brittany Friedman and colleagues detail policy implications related to our project's findings. In general, we suggest both incremental and dramatic reforms. In no way has this study answered all the relevant and important sociological and legal questions related to monetary sanctions; our work, however, should be instructive to scholars regarding the several directions future studies could take. Most important, our work highlights how one set of policy practices can undermine many societal domains and institutions that facilitate the ability to lead successful, healthy, and happy lives. In so doing, this volume offers a cornucopia of research threads and policy avenues that we hope will disrupt, or dramatically attenuate, the effects of the monetary sanctioning system throughout the United States.

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29. We would be remiss if we did not mention that our team purposefully centered health, wellness, and family within our state teams and across the full team. We had regular discussions about the importance of balancing family, health, and work, and at each in-person meeting celebrated our personal life accomplishments.

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# PART I

# Laws and Policies Governing Monetary Sanctions

# Beyond the Penal Code: The Legal Capacity of Monetary Sanctions in the Corpus of California Law

ANJULI VERMA AND BRYAN L. SYKES

*Knowledge about legal financial obligations in American punishment has been largely confined to criminal law and the penal codes of a few states. Yet in the nation's most populous state, California, there is reason to believe that a wider expanse of law beyond the penal code harbors the legal capacity to impose monetary punishments and indebtedness. A legal census of the entire corpus of California's civil and criminal statutory law identifies the presence and distribution of monetary sanctioning statutes within each and across all of the state's twenty-nine legislative code sections. Results show that one in twenty-three statutes in California law concern monetary sanctions and that they are dispersed throughout every section of the legislative code. Our investigation reveals that monetary sanctions are embedded within the broader architecture of state law, and that variations in the structure, as much as the substance, of statutory schemes must figure into empirical and theoretical accounts of racial disparity in the imposition of monetary punishments.*

**Keywords:** legal financial obligations, monetary sanctions, legal capacity, legal census, statutory inequality

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Legal financial obligations (LFOs)—fines, fees, penalties, assessments, restitution orders, interest, surcharges, and other costs—are routinely imposed on individuals convicted of criminal misdemeanor and felony offenses. Under contemporary mass incarceration in the United States, LFOs breed mass-scale legal debt; in the context of financialization, predatory credit and lending markets, and mass indebtedness among American households by the twenty-first century (Appel, Whitely, and Kline 2019; Pattillo and Kirk 2021; Quinn 2017), LFOs compound crises and consequences for a nation of debtors and populations increasingly reliant on high-interest lines of credit to stave against economic precarity (Graeber 2011; Hyman 2011; Quinn 2019).

Research shows that LFOs, also known as monetary sanctions, in the criminal legal system create barriers to economic self-sufficiency, particularly because people are unable to pay or discharge the sizable legal debts that accrue (Harris 2016; Harris, Evans, and Beckett 2010). LFOs also compound existing socioeconomic inequalities, including racial disparities and selective enforcement of criminal law. The imposition of LFOs has been theorized as an expressive, sociocultural form of punishment that generates and sustains racial and ethnic distinctions in political rationalizations for, and the hyper-concentrated effects of, criminal sanctioning in the United States (Harris, Evans, and Beckett 2011).

More recently, insights from economic sociology about the rise of late-modern financialization and social organization of credit and debt under neoliberalism have been synthesized to deepen theoretical understandings of LFOs in wider markets that demand discipline and control through "coercive financialization" (Pattillo and Kirk 2021) and the category of indebtedness. Moreover, from a political economy perspective, LFOs have come into even starker view as predation (Page, Piehowski, and Soss 2019) beyond punishment, and as a phenomenon consistent with the predatory social processes by which targeted, systematic divestment, extraction, and dispossession are legally legitimated by producing a criminal category in law that authorizes social domination (see Ward 2015).[1]

Yet even as this burgeoning scholarship has expanded theoretical conceptualization of monetary sanctions in the United States, much of our empirical knowledge about state power and the specific legal power to impose LFOs is restricted to their statutory presence in criminal law and penal codes that specify and sanction punishments for crimes defined as such. If LFOs are socially productive sanctions beyond their criminological and legal definition, then whether they are understood as sociocultural expressions of punishment (Harris, Evans, and Beckett 2011), as economic tools of neoliberal social control in an age of financialization (Pattillo and Kirk 2021; see also Sykes et al. 2022, this volume), or as the latest legal cover for human predation and social domination (Page, Piehowski, and Soss 2019), there is reason to believe that a wider expanse of legislative codes harbor and levy fines and fees across multiple regulatory domains beyond the Penal Code (Bannon, Nagrecha, and Diller 2010; Beckett and Murakawa 2012; DOJ 2015; Evans 2014; Friedman and Pattillo 2019; Gordon and Glaser 1991).

In this article, we investigate the extent to which seemingly distal legislative code sections impose similar forms of punishment that extend beyond the Penal Code of the State of California. We ask how the scale, scope, and distribution of codified monetary sanctioning statutes across the corpus, or body, of law create the legal capacity for regulatory agencies to exercise state power in selective ways that stand to produce racial disparity as a social fact in the imposition of LFOs. We conceptualize *legal capacity* as the power that law produces to have social effects, including social inequality. Put in terms of sociolegal scholarship (see, for example, Gould and Barclay 2012), legal capacity is the power produced by law-on-the-books that makes possible the range of social effects, including disparate effects, that can be observed in practice and implementation as law-in-action (see Smith, Thompson, and Cadigan 2022).

We draw on the California Legislative Code

1. Geoff Ward (2015, 1) describes these predatory social processes as "the slow violence of state organized race crime."

as a source of data to assess the state's legal capacity for monetary sanctions in statutory law. By treating the California Legislating Code as a window into various domains of life, each bounded by specific legal parameters and bodies of law—including fine and fee provisions—that can be activated by law enforcement personnel and other agencies, our analysis shows that monetary sanctioning statutes are spread across each of California's twenty-nine legislative code sections, thereby levying some form of legal financial obligation on individuals convicted of a crime, and regulating budgetary allocations for the revenues generated. We also assess the prevalence, distribution, relative concentration, and whether statutory disparities exist in the location of LFOs as codified across legislative code sections. Findings from this analysis speak to the importance of understanding how "statutory inequality" (Friedman and Pattillo 2019) forges social inequality. Findings also highlight the need to reconceptualize the locus of legal power to impose monetary sanctions that breaks civil-criminal binaries to reveal the totality of legal impacts—and the systemic nature of compounding social inequality in monetary sanctions—as economic barriers to reentry and reunification across multiple spheres of social life.

This article examines how the architecture of law, built in part by the distribution of monetary sanctions within and across legislative codes, matters for thinking about the imposition of LFOs and the theoretical and empirical social inequality made possible. Based on our findings from a legal census of the entire California legislative code, we argue that the racial disparities observed within the state's criminal legal system have their antecedents in *legal capacity*—the prevalence and unequal distribution of monetary sanctioning statutes throughout legislative code sections that confer the power to impose civil, criminal, or some hybrid of civil-criminal financial penalties for offenses when state power is exercised, and exercised selectively, by specific agencies tasked with regulating populations and enforcing laws. We find that, overall, one in twenty-three statutes within the California legislative code include rules about monetary sanctions and that these statutes are dispersed across every section of the legislative code. Findings speak to the importance of moving beyond civil-criminal binaries in research and policy interventions to reveal statutory inequalities that inscribe and structure observed social, economic, and racial inequalities in monetary sanctions.

## THEORETICAL FRAMEWORK: THE CIRCUITRY OF MONEY, PUNISHMENT, AND LAW

Based on ethnographic and qualitative interview data collected in the state of Washington, Alexes Harris (2016, 99) observes that "LFOs are imposed and enforced in varying and uneven ways" resulting in what she calls a "punishment continuum," which refers to the scale and severity of not just the dollar amounts of monetary sanctions imposed, but also the degree of monitoring and sanctioning for nonpayment by judges and clerks across the state's county courts. "Divergent interpretations of state law" by county court prosecutors, defense attorneys, judges, and clerks are explained through a process whereby LFO statutory interpretations—and thus the scale and severity of their application—diverged as a function of differences in the "local 'culture of punishment'" across Washington's thirty-nine counties (100). Therefore, "because county judges interpret and apply the state law guiding monetary sanctions in very different ways, counties can be understood in relation to their position on a punishment continuum that is determined in part by the average LFO imposed on defendants" (110). But only in part. Harris's analysis also begins to take account of particular mechanisms by which differential assessments of people who are defendants in criminal court and their willingness and ability to pay LFOs are animated and rationalized in the context of the same legal text and statutory scheme for LFOs under Washington state law.

Harris (2016, 120) argues that "the application and enforcement of monetary sanctions—specifically, the different ways in which legal concepts are interpreted and applied—vary according to the local culture of punishment. A county's punitive orientation does not directly map onto the size of the LFOs it assesses." In other words, not just the amount of LFOs in dollars (and, also, presumably, the number and

prevalence of LFO impositions), but "instead, *how* it assesses, monitors, and enforces LFOs more nearly describes its position on the punishment continuum" (120, emphasis added). As referenced by Harris (120), David Garland (1990, 283) observes that "in a sense, each institutional site gives rise to a distinctive world of its own with its own characters and roles, statuses and rule-governed relationships—as anyone who moves from one setting (or jurisdiction) to the other will readily experience."

Other than what the content of these LFO statutes come to say, where those statutes are situated within the varied terrain and topology of law—how they are classified and cross-classified, located and colocated, according to the historically construed indexical vagaries of legal codes—also stands to engender any LFO statutory scheme a "world of its own" (Garland 1990, 283). Depending on the particular legal code, we can also ask whether LFO statutes might have distinctive worlds of their own that are configured and contoured by the architecture of their particular legal creation and location.

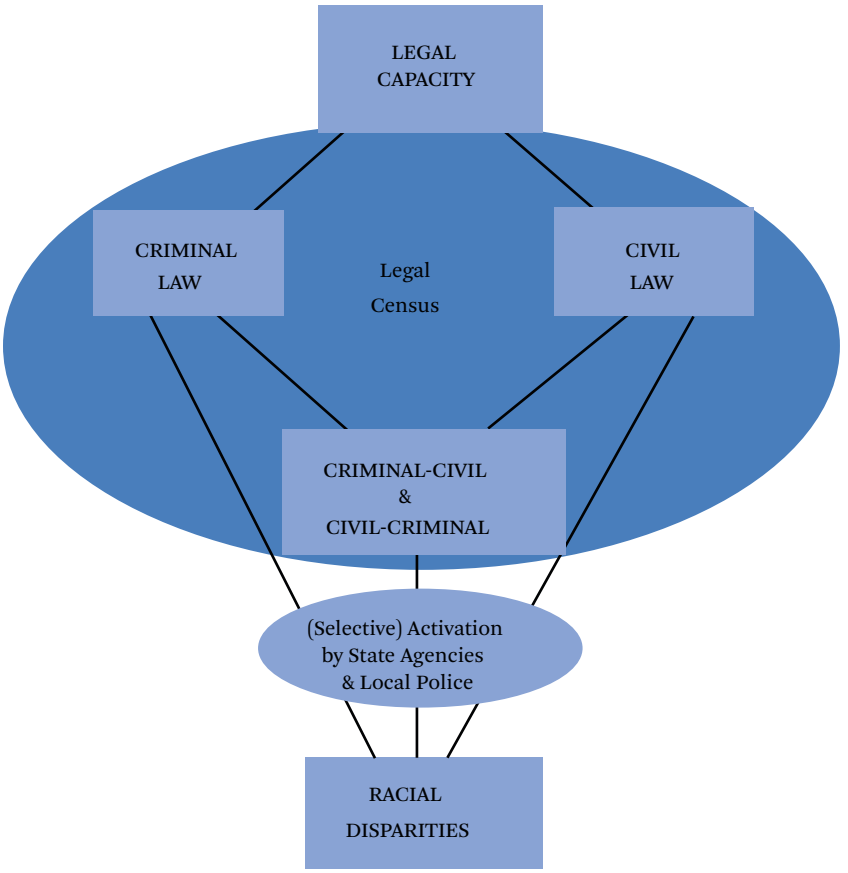
In this study, we conduct a form of census-taking that enumerates and maps the terrain of LFOs in a statutory universe of legal codes. Like previous attempts to conduct a comprehensive accounting of the laws imposing the full breadth of "collateral consequences" in the U.S. criminal legal system (Collateral Consequences Resource Center 2019; National Clean Slate Clearinghouse 2015–2021; National Inventory of Collateral Consequences of Conviction 2020), which Joshua Kaiser (2016, 127) argues ought be understood and named as "extra-legal punishments" rather than as mere "consequences" that are "collateral" to legal punishment, the census we undertook was motivated by a desire to uncover the "hidden sentences" of money and punishment.

In the case of LFOs, we contend that it is, more specifically, the legal capacity to produce the (monetary) sanction that risks remaining hidden in what Katherine Beckett and Naomi Murakawa (2012, 222) call the "shadow carceral state"—first, due to the "inconspicuousness" (Kaiser 2016, 165) of LFOs in fields of view trained on criminal law in the Penal Code and, second, due to the "scope" (156) and "dispersion" (157) of their imposition on people who may have never been incarcerated, or even convicted of a felony. We contend that LFOs are inconspicuous because monetary sanctioning statutes may be codified elsewhere and outside of criminal law, beyond the Penal Code, and thus may never be found by researchers and reformers focused on criminal sanctioning statutes and the imposition of LFOs in criminal law (for example, on the problem of data gaps in the state of California, see Rabinowitz, Weisberg, and Pearce 2019). The scope and dispersion of LFO statutes across the corpus of law implicates the legal capacity for state power to impose monetary sanctions on a vast but hidden population of people who may never have been incarcerated or convicted of a felony, but remain under lengthy periods of correctional supervision (see Natapoff 2018; Kohler-Hausmann 2018; Beckett and Murakawa 2012).

Brittany Friedman and Mary Pattillo (2019, 173) conceptualize "statutory inequality" as a defining feature of monetary sanctioning in Illinois state law, which "legally authorizes further impoverishment of the poor, thereby increasing inequality." We build on Friedman and Pattillo's (2019, 175) crucial observation about the role of statutory inequality in mutually constituting wider social inequality by inscribing penal indebtedness for poor people into law on the books, and we deepen this observation by focusing "on how what law *allows*" can also open a "window into the social, cultural, and political moods about criminals and punishment" that "precedes the unequal outcomes" documented in the literature (see, for example, Harris, Evans, and Beckett 2010).

We draw attention to how the structure of law itself, and the presence and arrangement of monetary sanctions statutes within that structure, facilitates and furthers social inequality through statutory inequality. Specifically, we contend that statutory inequality makes possible social inequality because of *legal capacity*—the prevalence and unequal distribution of monetary sanctioning statutes throughout legislative code sections that contain the power to impose civil, criminal, or some hybrid of civil-criminal financial penalties for offenses when state power is exercised, and exercised selectively, by specific agencies tasked with regulating populations and enforc-

**Figure 1.** Theoretical Model of the Circuitry of Legal Capacity to Produce Racial Disparities




*Source:* Authors' conceptualization based on review of relevant literature and theoretical frameworks.

ing laws. This legal capacity can be activated when particular statutes within specific code sections are selectively applied by state agents to disparate subgroups of the population, thereby contributing to racial and economic inequality in particular sociolegal outcomes. Therefore, mapping the composition and distribution of LFO statutes across and within legislative code sections establishes interdependences, interconnections, and mutual referents that form what is more like a circuitry of power with multiple trigger points and levers than a linear code of law, which we propose, theoretically, functions with nonlinear effects and compounding legal risks as individuals encounter the state in multiple domains of social life, law, and legal regulation.

Figure 1 displays the theoretical circuitry of legal capacity to generate racial disparities. Codified state statutes governing monetary sanctions, and their cross-classifications and synergies within disparate nodes of the state's legislative code sections, locate punishment and penalizing powers within both criminal and civil law. However, the varying size, scope, and dispersion (Kaiser 2016) of legal capacity within each code section is an artifact of the uneven legislative terrain wherein these powers are created. Assumptions that the location of monetary sanctioning statutes are limited to criminal law and penal codes, contributes to the possible concealment, or inconspicuousness (Kaiser 2016), of civil-criminal hybrids, given that some civil offenses can result in

criminal charges and some criminal charges can lead to civil suits (see also Beckett and Murakawa 2012). Only through a legal census of the legislative code can this hybridity be revealed, with particular implications for the study of monetary sanctions and racial disparities therein. The exercise of state power to punish and to penalize people, as well as corporate persons and entities, stands to produce racial disparities in monetary sanctions when regulatory agencies selectively activate, or selectively avoid activating, the legal capacity of specific statutes within legislative code sections.

## The Case and Corpus of California Law

The organization of California law provides a unique opportunity to explore how legal capacity is created, structured, and sustained to produce the state's power to regulate multiple domains of social life. A legal census is necessary to reveal the totality of legal capacity, which is what the California Law Revision Commission's Committee on Revision of the Penal Code undertook; as of January 2020, the commission set out to enumerate and evaluate the statutes, specifically within the Penal Code, that produce and exacerbate well-known racial disparities within the state's criminal legal system (Committee on Revision of the Penal Code 2021).[2]

In California, the body of governing statutory law is known as the California Legislative Code. The California Legislative Code is a collection of state laws passed by the California State Legislature and organized by subject area into categorical sections of code, each with divisions, parts, titles, chapters and sections. Unlike common law systems, in which law is derived from judicial decisions instead of from statutes, civil law legal systems place a stronger reliance on legislative statutes and ordinances for applying and interpreting law. However, under common law legal systems, judicial interpretation in case law is premised on analogical reasoning and proceeds according to precedent, or by applying the precedent set by higher courts in similar cases. The task of judicial interpretation in civil law legal systems relies more heavily, however, on the legislative text of applicable statutes rather than on previous court rulings as precedent, often using research into the legislative history of statutes to gauge legislative intent.

Common law (derived from the English common law system) predominates in nearly all U.S. states; only Louisiana structures its state legal system based on civil law (retaining reliance on the French Napoleonic Code). However, California is one of only three U.S. states to have subjected its body of common law to legal codification—that is, a systematic code of statutes classified and arranged by category into discrete code sections. Legal codification is a distinctive feature of California law for two reasons: first, besides any variations that might be found in the substance of LFO statutes across U.S. states, the structure of the body (its corpus) of law in California departs substantially from that of nearly all other U.S. states, which, but for Texas and New York, have resisted codifying their bodies of common law. Second, the embodiment of legal codification in California implicates the context and structure in which statutes are embedded and organized in the larger body of state law, including legislative history and intent, which become explicit, central considerations in how courts interpret the meaning of state statutes. Legal codes form the basic anatomy of law's textual "body," and each statute enacted by the state legislature is classified into one of the legal codes, such that the specific legal capacity created by and contained in any given statute will have a specific and identifiable location, function, and form (see Field 1890).

Tracing the true dimensions of legal capacity is impossible without conducting a first-order legal census. Just like a census to count, locate, and record salient characteristics of all the members of a population, precisely because some types and groups would otherwise remain systematically hidden from view and rendered invisible in the count (Pettit 2012; Pettit and Sykes 2015), a census of the entire state leg-

2. California Government Code (CA Govt Code) § 8290.5 (2020).

islative code is the imperative starting point for any systemic analysis, empirically and theoretically, of how state statutes crafted by policymakers lay the groundwork for criminal legal practices that perpetuate racial and economic inequality. Taking a legal census is necessary to capture the universe of monetary sanctioning statutes and thus the corpus of LFO legal capacity. Here, the schema of punishment takes particular form in the shape of its embodiment in the unequal distribution of monetary sanctioning statutes in California's legislative code. The theoretical value is that a legal census methodologically approaches the question with no a priori assumptions.

Indeed, the legal census starts from a theoretical premise, which it investigates empirically, that part of the nature of legal capacity is the legal circuitry between and across the criminal and civil that closes off the power it holds from view in the shadowy map of precisely where the power to punish resides and is sustained in the carceral state (see figure 1) (Beckett and Murakawa 2012). Knowledge gained through a legal census of the composition and contours of legal capacity, available to be activated monetarily as punishment, provides researchers and reformers with insight into a crucial existing parameter for state action and discretionary practice among state agents. For instance, a legal census of state law concerning LFOs could inform a range of legal and policy implementation studies about how judges and other practitioners in the criminal legal system construct the "ability" or "willingness" of people before them to pay imposed LFOs, as well as their eligibility as subjects of legal indebtedness (Bing at al. 2022, this volume; Fernandes, Friedman, and Kirk 2022, this volume; Sykes et al. 2022, this volume). The policy implication is that attention to this circuitry of state power contained in the legal capacity that stands ready to be activated, applied, and invoked is that we need to understand how and where the power to sanction monetarily is activated, and the locations of triggers for activation within that circuitry that unleash the state power to impose LFOs where, when, and on whom, from well beyond the Penal Code. Knowing how the circuit runs becomes the map for tracing high-value pressure points for reform, and even discovering circuit breaks.

Notably, the nation's next most populous state after California (Census Bureau 2021), Texas, has already undertaken a legal census of its corpus of law in a *Study of the Necessity of Certain Court Costs and Fees in Texas* (State of Texas 2014; Dahaghi 2017). However, that census was incomplete insofar as the composition and distribution of monetary sanctioning statutes across and within each of the state's legal code sections that govern particular domains of social life was not coded and counted. This incomplete census in Texas thus leaves open important theoretical and empirical questions about legal capacity that we can explore in the case of California. Although the empirics in California will differ, the ability to conduct a complete census that captures both the compositional and distributional dimensions of monetary sanctioning statutes enables researchers and policymakers more broadly who are concerned with racial disparities to understand the location and concentrations of state power and the legal capacity to impose LFOs across their corpus of law (for an example of research investigating the real effects of attempts to reform LFOs in criminal law or policy, see Huebner and Giuffre 2022, this volume). Thus our empirical inquiry seeks to establish the characteristics and attributes of monetary sanctioning statutes distributed and dispersed across the California body of law.

## DATA AND METHODOLOGY

Between February and May of 2016, a team of seven researchers systematically coded each section of the California Legislative Code (see table 1). Our original dataset includes information on whether a statute concerns fines, fees, assessments, or restitution; LFO maximum and minimum amounts; whether the statute imposes incarceration; and the classification of the offense as a misdemeanor or felony. Other contextual details about the statute were also recorded, such as the year of its enactment or amendment (for the full codebook with variable list, abbreviations, and descriptions, see table A1).

First, coders were instructed to use the California Legislative Information (CLI) website as

**Table 1.** California's Twenty-Nine Legislative Code Sections

| | |
|---|---|
| 1. | Business and Professions Code (BPC) |
| 2. | Civil Code (CIV) |
| 3. | Code of Civil Procedure (CCP) |
| 4. | Commercial Code (COM) |
| 5. | Corporations Code (CORP) |
| 6. | Education Code (EDC) |
| 7. | Elections Code (ELEC) |
| 8. | Evidence Code (EVID) |
| 9. | Family Code (FAM) |
| 10. | Financial Code (FIN) |
| 11. | Fish and Game Code (FGC) |
| 12. | Food and Agricultural Code (FAC) |
| 13. | Government Code (GOV) |
| 14. | Harbors and Navigation Code (HNC) |
| 15. | Health and Safety Code (HSC) |
| 16. | Insurance Code (INS) |
| 17. | Labor Code (LAB) |
| 18. | Military and Veterans Code (MVC) |
| 19. | Penal Code (PEN) |
| 20. | Probate Code (PROB) |
| 21. | Public Contract Code (PCC) |
| 22. | Public Resources Code (PRC) |
| 23. | Public Utilities Code (PUC) |
| 24. | Revenue and Taxation Code (RTC) |
| 25. | Streets and Highways Code (SHC) |
| 26. | Unemployment Insurance Code (UIC) |
| 27. | Vehicle Code (VEH) |
| 28. | Water Code (WAT) |
| 29. | Welfare and Institutions Code (WIC) |

*Source:* California Legislative Information, https://leginfo.legislature.ca.gov/faces/codes.xhtml (accessed August 4, 2021).

the official and up-to-date source of all statutes within the legislative code.[3] Each code section was independently reviewed by two researchers, and each statute within the code section was classified and catalogued by statute number if it concerned LFOs. In our coding scheme, different types of LFOs were not coded as mutually exclusive measures for any given statute; for example, one statute can simultaneously impose fines, fees, enhancements, and surcharges, and thus was coded as YES=1 for all relevant measures. The total count of statutes concerning LFOs was calculated by summing the number of observations entered and catalogued by statute number for each and all of California's twenty-nine legislative code sections. Although the attributes coded for each observation were not mutually exclusive, each statute coded as concerning LFOs within a code section records an independent observation.[4]

Second, although the emphasis of this study is on the imposition of LFOs in the criminal

3. California Legislative Information, "California Law, Code Search," https://leginfo.legislature.ca.gov/faces/codes.xhtml (accessed September 1, 2021).

4. Each observation of a statute concerning LFOs was entered separately in its own row and coded according to the unique identifier of the statute number assigned to it, allowing for an enumeration of the total number of independent statutes concerning LFOs reported in summary statistics.

legal system—that is, LFOs imposed by the state on people charged and convicted of criminal offenses—certain LFOs in the civil context were also coded. Statutes that impose a civil LFO that is owed to the state by an individual for a civil violation are also coded, given that these financial penalties also function a form of punishment, or "punitive civil sanctions" (see, for example, Mann 1980; Coffee 1992; Kaiser 2016). However, statutes that impose administrative fees for the mere use of state services in the civil context (such as photocopying documents or state-administered medical care) are not coded because they are not imposed to function precisely as punishment in civil law.

The legal census we conducted in the state of California aimed to identify all statutes concerning the imposition, administration, collection, and enforcement of legal financial obligations. Consistent with the coding methodology used across state field sites in the multiyear, multistate research project (Harris, Pattillo, and Sykes 2022, this volume), once a statute or administrative rule was identified, we coded it for thirty-one characteristics, such as if nonpayment triggered license suspension, if it was eligible for referral to private collections, or if interest accrued after the due date (see table A1). We tracked basic information, such as the statute number, code section, whether it concerned a fine or a fee, the year it was passed, whether it imposed mandatory or discretionary monetary sanctions or sanctioning terms, and verbatim text of the observed statute itself.

Consistent with the Multi-State Monetary Sanctions Study research team as a whole, the "ostensibly simple exercise of establishing a research design offers important insight into the challenges of studying, and thus intervening in and possibly reforming, any criminal legal processes, much less the system of monetary sanctions" (Harris, Pattillo, and Sykes 2022, this volume, p. 9). Our coding scheme seeks to account for how the codification of California state statutes may blur the distinction between civil and criminal monetary sanctions associated with punishment.

Third, a SAS program was written to examine intercoder reliability by identifying differences in recorded statutes for research dyads assigned to a code section. Where differences were observed, a third independent researcher verified and coded the legislative section to resolve discordances. Remarkably, 97.7 percent of statutes were coded reliably between the two independent researchers.

The statutes coded by the research team indicate the total number of statutes concerning LFOs, which represents the overall size of legal capacity for LFO imposition across all sections of the California legislative code. To obtain denominators, we relied on the California Statutes and Court Rules Database and Westlaw Next Online Legal Research. Westlaw Next is an online proprietary database that captures and catalogues legal statutes, their dates of enactment, amendment, and repeal for more than sixty countries.[5] We use Westlaw Next to obtain the total number of statutes, which we use as the denominator for each legislative code section, to construct percentages of LFOs within each code section, as well as across all sections, of the California legislative code. We used the last date of coding (June 8, 2016) as the effective date of coding. Because we had coders enter the last numbered statute in each legislative code section listed on the CLI website, and we were able to confirm that the last numbered statute on the CLI website corresponds to the last statute listed in Westlaw Next, we were able to then systematically determine the Westlaw Next total count of statutes within each California legislative code section.

We construct the proportion of LFO statutes within a code section to report the relative prevalence of LFO statutes as a subpopulation within each of the twenty-nine code sections by dividing the number of LFO statutes within that section by the total number of statutes per the Westlaw Next count described. We also summed both the total number of LFO statutes and the Westlaw Next count of all statutes in total across all code sections to estimate the total prevalence, or density, and the overall distribution of monetary sanctions that populate the whole of California legislative statutes. We

5. Westlaw Next Online Legal Research, https://legal.thomsonreuters.com/en/products/westlaw. Accessed September 1, 2021.

then delve into the density, distribution, and dispersion of specific characteristics, features, and types of observed LFO statutes themselves as a compositional dimension of this legal census-taking to estimate the size, subgroups, and structure of the population of LFO statutes in California law as an exploratory data analysis of the legal capacity to punish through monetary sanctions. This secondary dimension of analysis enables us to consider the composition and dispersion of different characteristics and kinds of LFOs, in addition to size, density, and distribution as relevant parameters for identifying and validly describing the legal capacity to punish that resides in California statutory law. Further, the dispersion of variable characteristics, features, and kinds of LFO statutes themselves are elements of the circuitry of this legal capacity, with different densities, distributions, and flows of power within and across the spans of California law, as codified in twenty-nine code sections.

## RESULTS

We now turn to the first set of results, concerning prevalence and distribution, in which we report the total number of LFO statutes coded across all California legislative code sections and the overall proportion of LFO statutes in the entirety of California statutory law. We also report counts for each of the twenty-nine legislative code sections and, in turn, construct proportions to estimate the prevalence of LFO statutes relative to the total number of statutes within each code section.

### Prevalence and Distribution of LFO Statutes in California Law

Table 2 presents the total number and percentage of statutes concerning legal financial obligations for each section of the California legislative code. Of the 165,607 statutes in the legislative code, 7,043 are LFO statutes, with each code section including at least one statute concerning fines, fees, restitution, or assessments. This results in approximately one in twenty-three LFO statues (a prevalence of 4.3 percent) across all twenty-nine code sections. While it is unknown whether 4.3 percent is relatively low or high—given that complete censuses of legal codes in other states have not been conducted—our enumeration counts and categorizes the presence of monetary sanctioning statutes in other areas of law often ignored in the study of money and punishment and thus can serve as a baseline for future comparisons.

Additionally, we find that each code section

**Table 2.** Number and Prevalence of Statutes Concerning Legal Financial Obligations, by California Legislative Code Section, June 2016

| Legislative Code Section (*n = 29*) | Number of LFO Statutes | Total Number of Statutes | Prevalence of LFO Statutes (%) |
|---|---|---|---|
| Total | 7,043 | 165,607 | 4.25 |
| Penal Code (PEN) | 1,356 | 7,168 | 18.92 |
| Vehicle Code (VEH) | 635 | 4,615 | 13.76 |
| Labor Code (LAB) | 335 | 3,240 | 10.34 |
| Business and Professions Code (BPC) | 670 | 8,295 | 8.08 |
| Fish and Game Code (FGC) | 218 | 3,024 | 7.21 |
| Health and Safety Code (HSC) | 664 | 9,484 | 7.00 |
| Evidence Code (EVID) | 35 | 588 | 5.95 |
| Revenue and Taxation Code (RTC) | 550 | 9,309 | 5.91 |
| Harbors and Navigation Code (HNC) | 82 | 1,703 | 4.82 |
| Food and Agricultural Code (FAC) | 407 | 9,564 | 4.26 |
| Government Code (GOV) | 354 | 9,274 | 3.82 |
| Civil Code (CIV) | 224 | 6,419 | 3.49 |
| Military and Veterans Code (MVC) | 59 | 1,777 | 3.32 |
| Welfare and Institutions Code (WIC) | 324 | 9,885 | 3.28 |

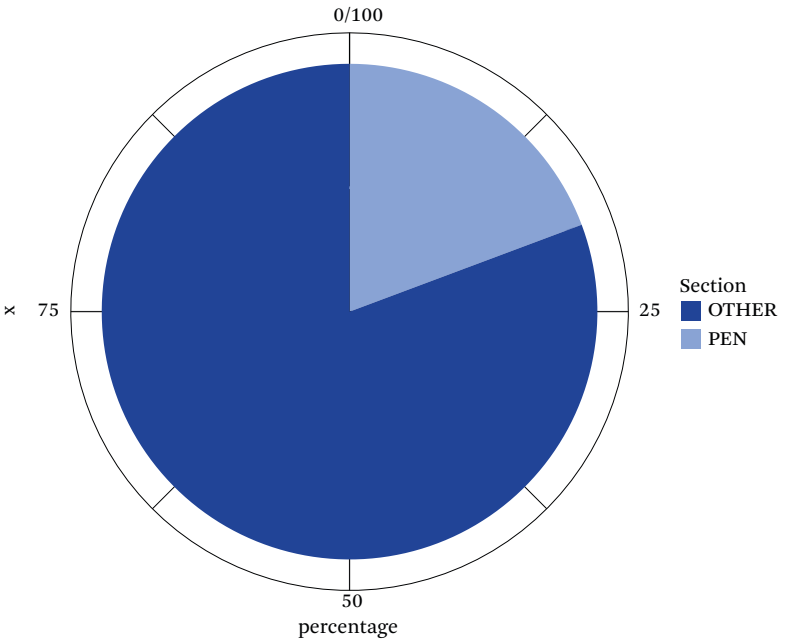
(*continued*)

**Table 2.** (*continued*)

| Legislative Code Section (*n = 29*) | Number of LFO Statutes | Total Number of Statutes | Prevalence of LFO Statutes (%) |
|---|---|---|---|
| Financial Code (FIN) | 200 | 6,312 | 3.17 |
| Unemployment Insurance Code (UIC) | 54 | 1,778 | 3.04 |
| Water Code (WAT) | 230 | 9,701 | 2.37 |
| Family Code (FAM) | 43 | 1,910 | 2.25 |
| Corporations Code (CORP) | 84 | 4,399 | 1.91 |
| Elections Code (ELEC) | 88 | 5,527 | 1.59 |
| Public Resources Code (PRC) | 127 | 9,243 | 1.37 |
| Public Utilities Code (PUC) | 97 | 8,764 | 1.11 |
| Education Code (EDC) | 86 | 9,332 | 0.92 |
| Insurance Code (INS) | 49 | 5,757 | 0.85 |
| Commercial Code (COM) | 6 | 801 | 0.75 |
| Code of Civil Procedure (CCP) | 30 | 5,215 | 0.58 |
| Public Contract Code (PCC) | 8 | 1,923 | 0.42 |
| Streets and Highways Code (SHC) | 19 | 6,594 | 0.29 |
| Probate Code (PROB) | 9 | 4,006 | 0.22 |

*Source:* Authors' tabulation based on California Legislative Information (2021) and Westlaw Next (2021).

**Figure 2.** Percentage of LFO Statutes in California's Penal Code, Relative to All Other California Legislative Code Sections



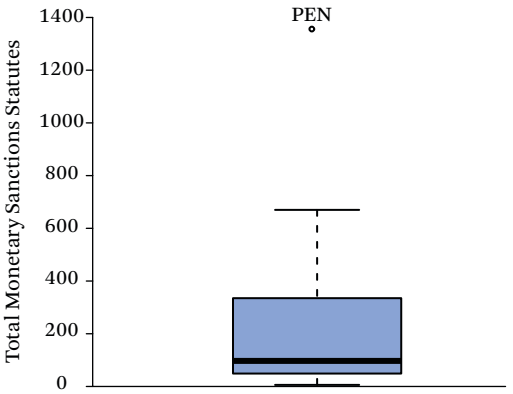

*Source:* Authors' tabulation from original coding of statutes from California Legislative Information, https://leginfo.legislature.ca.gov/faces/codes.xhtml (date of last coding June 8, 2016) and total counts of statutes from Westlaw Next Online Legal Research, "California Statutes & Court Rules" database search queries (effective date: June 8, 2016), https://legal.thomsonreuters.com/en/products/westlaw. Accessed September 1, 2021.

imposes some form of legal financial obligation on individuals found in violation of the law or regulates budgetary allocations for the revenues generated. The Penal Code has the highest percentage of LFO statutes (18.9 percent), whereas the Probate Code has the lowest (0.22 percent). Second to the Penal Code, LFOs are most prevalent in the Vehicle Code (13.8 percent); the Labor Code comes third (10.3 percent), which has been ignored in empirical research on LFOs and in conceptualizing monetary sanctions and their implications for socioeconomic inequality.

Table 2 demonstrates that the Penal Code has the highest prevalence of monetary sanctions, but these findings can be interpreted in other ways. Figure 2 summarizes the percentage of monetary sanctions in the California legislative code. This figure shows that, relative to all other code sections, the Penal Code accounts for only about one-fifth of all LFOs in California law, with four out of five monetary sanctioning statutes in other code sections. This finding is important because it draws attention to the otherwise hidden statutory locations of legal capacity for LFOs that can be activated, if, when, and where needed by the state.

Figure 3 summarizes the dispersion of statutes across the twenty-nine code sections. This boxplot illustrates that the median number of LFO statutes is 97 and the interquartile range is 286 (the difference between the 75th percentile and the 25th percentile is 286 LFO statutes). The 5th percentile has 8.4 LFO statutes, and the 95th percentile has 667.6. Yet, even among these statistics, the Penal Code is a considerable outlier in that the number of monetary sanctions in this code section is more than two standard deviations away from the 95th percentile.

**Figure 3.** Distribution of LFO Statutes Across California's Twenty-Nine Legislative Code Sections



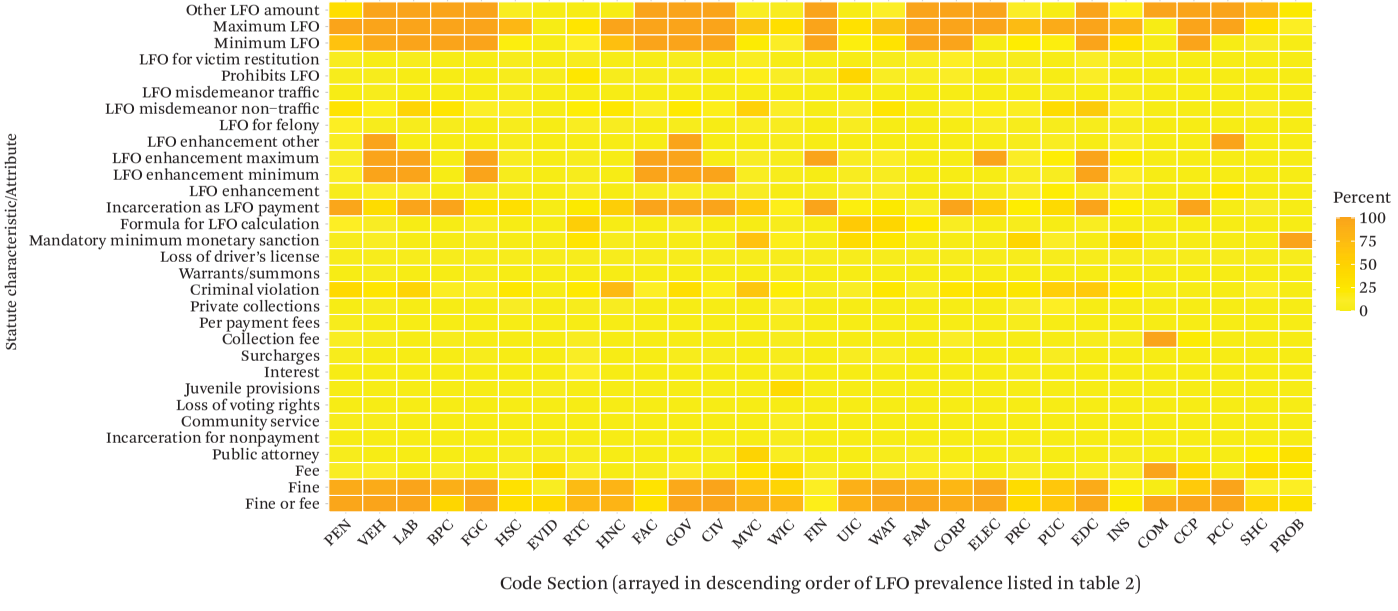

*Source:* Authors' tabulation based on original coding of statutes from California Legislative Information, https://leginfo.legislature.ca.gov/faces/codes.xhtml (date of last coding June 8, 2016) and total counts of statutes from Westlaw Next Online Legal Research, "California Statutes & Court Rules" database search queries (effective date: June 8, 2016), https://legal.thomsonreuters.com/en/products/westlaw. Accessed September 1, 2021.

## Composition and Substance of LFOs in California Law

These results bring the legal corpus of monetary sanctions into distributional relief, revealing that a constellation of statutes concerning LFOs extends well beyond the state's Penal Code. Having shown the prevalence of LFO statutes within each of legislative code sections, as well as their relative distributions across code sections in the whole of California's statutory law, we now move to a deeper analysis of the content and composition of LFOs found across the wide range of code sections and consider the array of substantive differences revealed by displaying both distributional and compositional dimensions of variation.

Figure 4 presents a heatmap of the coded monetary sanctioning statutes and their characteristics across the twenty-nine code sections. The sections are sorted along the *x*-axis of figure 4 in descending order based on the prevalence of LFO statutes (percentage) reported earlier (in table 2), starting left from the Penal Code (PEN), with the highest prevalence (18.9 percent), and ending right, with the least prevalent, Probate Code (PROB) (0.22 percent). The *y*-axis empirically maps the size, composition, and dispersion of the legal capacity to punish through monetary sanctions pertaining to thirty-one LFO characteristics (for descriptions, see table A1). The proportion of each characteristic for all monetary sanctioning stat-

**Figure 4.** Dispersion of Attributes of LFO Statutes, Across California's Twenty-Nine Legislative Code Sections




*Source:* Authors' tabulation based on original coding of statutes from California Legislative Information, https://leginfo.legislature.ca.gov/faces/codes.xhtml (date of last coding June 8, 2016) and total counts of statutes from Westlaw Next legal database "California Statutes & Court Rules" search queries, https://1-next-westlaw-com.oca.ucsc.edu/ (effective date: June 8, 2016).

utes within that section is represented by a shaded gradient: the lightest shade represents the lowest percentage (no density, 0 percent), and the darkest shade the highest percentage (or the most intense density, 100 percent). Percentages between these two bounds are represented by the shaded gradients, as you move from one extreme to the other. Only by examining these thirty-one compositional attributes of LFOs, including their relative concentrations and dispersions across the twenty-nine legislative code sections, do we begin to observe a more complete census of the legal capacity for monetary sanctions as punishment in California law.

Several findings come into relief based on figure 4. First, the heatmap clearly displays that monetary sanctioning statutes are largely composed of fines and fees, as well as specified mandatory minimum and maximum LFO amounts. It is also apparent that incarceration can be used as a form of LFO payment, and that the legal capacity for incarceration as LFO payment is dispersed across many code sections. A less obvious, but no less important, observation is that the prohibition of LFOs exists to *constrain* the legal capacity to impose LFOs in more than half of the code sections, including the Penal Code (1.3 percent).[6] Also, we see that LFO enhancements (specifying enhancement minimums, maximums, and other amounts) appear at high intensities across many code sections.

The second main finding is that, although the Penal Code has the highest prevalence of monetary sanctions (see table 2), the Penal Code does not appear to be unique in the composition of its legal capacity to impose, collect, administer, and enforce monetary sanctions. By vertically examining the Penal Code column, in relation to other code sections, the dispersion and concentration of LFO attributes (arrayed horizontally) appears to show that the Penal Code is less of an outlier in the dispersion of compositional attributes relative to other sections; on this dimension the Penal Code appears not to be markedly dissimilar. This observation suggests that even the code sections that contain relatively few monetary sanctioning statutes relative to the Penal Code (see table 2) may have compositional dispersion that is just as punitive in their legal capacity.

To more closely consider implications of the heatmap in figure 4, we now home in on some exemplars that demonstrate how the composition and dispersion found in this legal census theoretically produces the very elements and circuitries of legal capacity through which the power to punish may flow selectively and disproportionately. Table 3 presents four exemplary cases that underscore the power of legal capacity to theoretically produce racial disparities. We begin by observing four social facts. First, there are racial disparities in arrests for driving on a suspended license (Committee on Revision of the Penal Code 2021). Second, there are racial disparities in employment among people with criminal records (Western and Pettit 2000, 2005; Pager 2003; Pager, Bonikowski, and Western 2009). Third, there are racial disparities in felony arrests and convictions for possession of a controlled substance (Mooney et al. 2018; Shannon et al. 2017). Fourth, there are racial disparities in foster care placement (Needell, Brookhart, and Lee 2003; Child Welfare Information Gateway 2020). Each of these social facts, despite differences in the type of occasion for state intervention, is triggered by a regulatory agency (or agencies) with the power to enforce or, in the case of civil suits, invoke laws on the books. Yet these agencies have such power by virtue of the legal capacity embedded within the broader circuitry of the legislative code (see figure 1) and how LFO statutes are distributed across code sections that govern different domains of social life (see table 2 and figure 4).

Consider, for example, a job applicant who is forced to disclose a previous arrest record,

6. Three code sections with the highest densities of statues prohibiting LFOs are visible to the naked eye: Unemployment Insurance (UIC), 45.2 percent; Revenue and Taxation (RTC), 25.6 percent; and Military and Veterans (MVC), 16 percent. The others are less visible (less than 16 percent): Corporations (CORP), Evidence (EVID), Food and Agricultural (FAC), Family (FAM), Finance (FIN), Harbor and Navigation (HNC), Health and Safety (HSC), Penal (PEN), Public Resources (PRC), Vehicle (VEH), Water (WAT), and Welfare and Institutions (WIC).

**Table 3.** State Legal Capacity to Produce Racial Disparities as Observed Social Facts: Four Exemplars

| Social Fact | Triggering Agency | Type of Offense | Legal Capacity |
|---|---|---|---|
| **1) Racial Disparities in Arrests for Driving on A Suspended License**<br><br>(Committee on Revision of the Penal Code 2021, 81) | Local Police | Criminal (misdemeanor) | 1) Penal Code § 1464 (penalty assessment)<br>2) Penal Code § 1465.7 (criminal surcharge)<br>3) Penal Code § 1465.8 (Court operations assessment)<br>4) Government Code § 70372 (Court construction)<br>5) Government Code § 76000 (County fund)<br>6) Government Code § 76104.6 and 76104.7 (DNA Fund)<br>7) Government Code § 76000.10 (Emergency Medical Air Trans. Fee)<br>8) Government Code § 76000.5 (EMS Fund)<br>9) Government Code § 70373 (Conviction assessment)<br>10) Vehicle Code § 42006 (Night court assessment)<br><br>And if the driver misses court or any of the payments,<br>11) Vehicle Code § 40508.6 (DMV warrant/hold assessment fee)<br>12) Vehicle Code § 40508.5 (Fee for failing to appear)<br>13) Penal Code § 1214.1 (Civil assessment for failure to appear/pay) |
| **2) Racial Disparities in Employment among People with Criminal Records**<br><br>(Western and Pettit 2000; 2005; Pager 2003; Pager et al. 2009) | Labor Commissioner's Office or Department of Fair Employment and Housing | Civil-Criminal (misdemeanor) | 1) Labor Code § 427(a)(1)—an applicant for employment cannot be forced to disclose any information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law.<br>2) Penal Code § 1203.4, 1203.4a, 1203.425, 1203.45, and 1210.1 (judgement and execution of criminal procedure)<br>3) Labor Code § 427(c)—If a person violates this section, or Article 6 (commencing with Section 11140) of **Chapter 1 of Title 1 of Part 4 of the Penal Code**, the applicant may bring an action to recover from that person actual damages or two hundred dollars ($200), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars ($500), whichever is greater, plus costs, and reasonable attorney's fees. ***An intentional violation of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500)***. [Emphasis Added]<br>4) Labor Code § 427 (3)—An employer seeking disclosure of offense history under paragraph (2) shall provide the applicant with a list describing the specific offenses under **Section 11590 of the Health and Safety Code** or **Section 290 of the Penal Code** for which disclosure is sought. [Emphasis Added]<br>5) Labor Code § 427 (3)(j)—As used in this section, "pretrial or posttrial diversion program" means any program under Chapter 2.5 (commencing with Section 1000) or Chapter 2.7 (commencing with Section 1001) of **Title 6 of Part 2 of the Penal Code, Section 13201 or 13352.5 of the Vehicle Code, Sections 626, 626.5, 654, or 725 of, or Article 20.5 (commencing with Section 790) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code**, or any other program expressly authorized and described by statute as a diversion program. [Emphasis Added] |

**Table 3.** (*continued*)

| Social Fact | Triggering Agency | Type of Offense | Legal Capacity |
|---|---|---|---|
| **3) Racial Disparities in Arrests and Convictions for Possession of Controlled Substances**<br><br>(Mooney et al. 2018; Shannon et al. 2017) | Local law enforcement; California Department of Justice | Criminal (felony) | Health and Safety Code § 11350—<br>(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of **Section 1170 of the Penal Code** if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of **Section 667 of the Penal Code** or for an offense requiring registration pursuant to subdivision (c) of **Section 290 of the Penal Code**. [emphasis added]<br><br>(b) Except as otherwise provided in this division, whenever a person who possesses any of the controlled substances specified in subdivision (a), the judge may, in addition to any punishment provided for pursuant to subdivision (a), assess against that person a fine not to exceed seventy dollars ($70) with proceeds of this fine to be used in accordance with **Section 1463.23 of the Penal Code**. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision. [Emphasis Added]<br><br>(c) Except in unusual cases in which it would not serve the interest of justice to do so, whenever a court grants probation pursuant to a felony conviction under this section, in addition to any other conditions of probation which may be imposed, the following conditions of probation shall be ordered:<br><br>(1) For a first offense under this section, a fine of at least one thousand dollars ($1,000) or community service.<br><br>(2) For a second or subsequent offense under this section, a fine of at least two thousand dollars ($2,000) or community service.<br><br>(3) If a defendant does not have the ability to pay the minimum fines specified in paragraphs (1) and (2), community service shall be ordered in lieu of the fine. |

(*continued*)

**Table 3.** (*continued*)

| Social Fact | Triggering Agency | Type of Offense | Legal Capacity |
|---|---|---|---|
| **4) Racial Disparities in Foster Care Placement**<br><br>(Needell et al. 2003; Child Welfare Information Gateway 2020) | County Child Protective Services; California Department of Social Services | Criminal (felony and/or misdemeanor) | Welfare & Institutions Code § 300—A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:<br><br>(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in **Section 11165.1 of the Penal Code**, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse. [Emphasis Added]<br><br>(g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered pursuant to **Section 1255.7 of the Health and Safety Code** and the child has not been reclaimed within the 14-day period specified in subdivision (g) of that section; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful. [Emphasis Added]<br><br>PEN § 270.1.(a)—A parent or guardian of a pupil of six years of age or more who is in kindergarten or any of grades 1 to 8, inclusive, and who is subject to compulsory full-time education or compulsory continuation education, whose child is a chronic truant as defined in **Section 48263.6 of the Education Code**, who has failed to reasonably supervise and encourage the pupil's school attendance, and who has been offered language accessible support services to address the pupil's truancy, is guilty of a misdemeanor punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. A parent or guardian guilty of a misdemeanor under this subdivision may participate in the deferred entry of judgment program defined in subdivision (b). [Emphasis Added]<br><br>PEN § 273 — If a parent of a minor child willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter or medical attendance, or other remedial care for his or her child, he or she is guilty of a misdemeanor punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.<br><br>PEN § 273d.—(a) Any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or an injury resulting in a traumatic condition is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, four, or six years, or in a county jail for not more than one year, by a fine of up to six thousand dollars ($6,000), or by both that imprisonment and fine. |

*Source:* Authors' compilation as cited. Based on authors' coding of LFO statutes beyond the Penal Code in California, from California Legislative Information, https://leginfo.legislature.ca.gov/faces/codes.xhtml (date of last coding June 8, 2016).

regardless of whether the case was dropped or dismissed (table 3, Exemplar #2). This person would have recourse in civil court against the potential employer after filing a complaint with the California Labor Commissioner's Office or the Department of Fair Employment and Housing. The applicant could recover at least $200 from the employer (a form of restitution for a civil offense). Furthermore, if the Labor Commissioner's Office or the Department of Fair Employment and Housing finds that the employer willfully engages in a pattern of such practices, a criminal misdemeanor charge could be brought against the employer, resulting in a possible $500 fine. Moreover, the civil-criminal hybridity in this example reflects the cross-classification and activation of as many as five code sections: the Labor Code, the Penal Code, the Health and Safety Code, the Vehicle Code, and the Welfare and Institutions Code. Court fees would result in the activation of a sixth code section (the Government Code). Similar pathways of code section cross-activation exist in the case of driving on a suspended license (table 3, Exemplar #1), possession of a controlled substance (table 3, Exemplar #3), and child endangerment, abandonment, or chronic truancy (table 3, Exemplar #4). The cross-activation of statutes with legal capacity for the power to punish may explain why the heatmap in figure 4 displays a similar degree of intensity for any given LFO attribute across different code sections outside the penal code.

## CONCLUSION AND IMPLICATIONS

What is often thought of as the "typical" person with legal debt stands in stark contrast to the statutory framework that provides for the imposition of monetary sanctions across a sprawling array of offenses (from felonies to misdemeanors to infractions), adjudicative contexts (from the criminal to the civil and the hybrids in-between), and social circumstances (from the rich to the middle-class to the poor). Rather than approaching this as a gap between law-on-the-books and law-in-action (see Gould and Barclay 2012), we began our analysis by taking a step back to examine the prefiguring of "statutory inequality" (Friedman and Pattillo 2019) to produce racial disparity. In doing so, we reveal how the circuitry of law itself constructs the legal capacity for activating the inequality inscribed within monetary sanctioning statutes.

Findings from our work draw attention to how state power flows through this circuitry of LFO statutes embedded within and across legislative code sections, and comes to represent a form of structural inequality through legal capacity—with legal capacity being the necessary precursor for configuring the statutory inequality (Friedman and Pattillo 2019) that stands to produce racial and economic stratification when monetary sanctions are imposed. Features we found based on our analysis reveal that statutory inequality can also legally authorize *prohibitions* and *limits* on both the imposition and maximum amounts of LFOs; on the other hand, we also found statutes that legally authorized LFOs and enhanced the upper limits of LFO amounts, thus producing the legal capacity and legal risk to ratchet discretion upward to ever higher ceilings (see Lynch 2016).

Several points about our study are particularly important for researchers and policymakers. First, the application of monetary sanctions, in practice, remains an empirical matter, which we do not take up in this analysis. Our research here is limited to examining the observed statutes, but it does show that questions about the exercise of state power through the activation of legal capacity in practice and on the ground should be investigated, empirically, as law-in-action beyond that of penal codes. However, the implications and conclusions of our analysis here speak to the jurisdiction of LFOs and their statutory framework as a corpus, or body, of law, and as a political technology of power for producing proper subjects of control via legal debt and indebtedness (Bourdieu 2014; Foucault 1977; Simon 2013).

Second, the legal capacity we have identified and traced is more than just the amalgamation of 7,043 LFO statutes across twenty-nine legislative code sections in the state of California. State power and the power of law is its legal capacity to create a category of available subjects—subjects in their forms as individuals and populations, but also the legitimacy to govern various subjects or domains of life (Foucault 1970, 1977, 2007). This is where the social and the state, the civil and the criminal, meet

(Beckett and Murakawa 2012; Coffee 1992). The legal capacity of LFO statutes produces the legal category of debtor-subjects and indebtedness as a legally specified and authorized mode of existence, which makes money and punishment, and people's money and time, the jurisdiction of the state (Pattillo and Kirk 2021).

Indebtedness may be a distinctive sociolegal category (Evans 2014; Graeber 2011; Hyman 2011; Mathiowetz 2007; O'Malley 2013; Walmsley 2019).[7] As the criminological and sociological literature about being "on the run" and "having a warrant out" (Goffman 2009, 2015) shows, however, its logic and function as a legally legitimized disciplinary category, rendered in criminal law to facilitate surveillance beyond criminal law, is nothing new (see Brayne 2014; Kohler-Hausmann 2018; Murakawa and Beckett 2010). The main contribution of our study is to provide evidence for the contention that these disciplinary categories are structured, in part, by the sprawling presence of statutes concerning money and punishment in a corpus of control well beyond the Penal Code that forms the basis for legal capacity to punish and penalize. Our excavation of money and punishment in California law, which finds LFO statutes within and across all twenty-nine legislative code sections, suggests that the state power in this corpus depends on a legal dialectic between the criminal and the civil, as a way to enforce both contracts and control, in multiple domains of social life.

The findings of this study speak to the importance of examining monetary sanctions beyond binary civil-criminal boundaries in research and policy in order to reveal legal capacity wherever it may exist in the legal circuitry of social inequality. The implication is that this circuitry leads to the legal structuration of racial disparity, divestment, and dispossession when the legal capacity created by LFO statutes as they are inscribed, yet unevenly distributed across civil and criminal codes, is activated by the state. It is therefore notable that the statute governing the Penal Code Revision Committee's creation, purpose, and powers specifically delineates the committee's authority to make recommendations to adjust the terms of criminal sentences under state law,[8] and that it may do so considering "empirically significant disparities between individuals convicted of an offense and individuals convicted of other similar offenses" as one of the five factors explicitly listed.[9] Yet the statutory text remains silent on the overt question of race and societal racial inequality, including racially selective criminal justice surveillance, arrest, and enforcement as a salient and already empirically evident fact of life in the Golden State. Indeed, California Governor Gavin Newsom's opening remarks at the Penal Code Revision Committee's first public hearing in January 2020 took no time to read between the lines of law to express, in no uncertain terms, the executive intent of the governing statute.[10] As the committee reports, "Governor Newsom acknowledged many of these issues when he addressed the Committee, noting 'jaw-dropping' racial disparities in sentencing across the state. He encouraged us to address the 'deep racial overlays and the deep socioeconomic overlays that often determine the fate of so many in our system'" (Committee on Revision of the Penal Code 2021, 5). Although the committee is poised to make consequential inroads in reducing racial inequality in *criminal* sentencing, less is known about how the legal capacity to produce racial disparities will be ameliorated within those domains of life falling under the *civil* and, no less, often overlapping *civil-criminal* jurisdictions of law. Within and, crucially, beyond the Penal Code, it will take reform, revision, and excision rather than recodification of both the form and the compositional substance of monetary sanctioning statutes to make them less a part, or no part, of the sprawling corpus of California law.

7. Dean Mathiowetz (2007) engages, in particular, the distinctive human *subjectivities* that inure to historical transformations in "the juridical subject of 'interest'."

8. CA Govt Code § 8290.5 (2020).

9. CA Govt Code § 8290.5[b][5] (2020).

10. CA Govt Code § 8290.5 (2020).

With the inauguration of the Penal Code Revision Committee in 2020, California has followed Texas's suit, albeit in a manner of limited revision, and possible excisions, of statutes from the state's Penal Code. Texas undertook the legal census of its corpus of law from the starting point of problems identified in the statutory framework that might exist for monetary sanctions. By contrast, the effort to take stock, rationalize, and revise but one of California's twenty-nine code sections—the Penal Code—arrived by the end of its first year where Texas began (see Bing, Pettit, and Slavinski 2022, this volume; Dahaghi 2017): the need to rein in the legal capacity to impose LFOs as punishments with racially disparate effects within as well as beyond the Penal Code. The California Committee on Revision of the Penal Code's very first recommendation was to "eliminate incarceration and reduce fines and fees for certain traffic offenses" (2021, 14; see Exemplar #1 in table 3).

As codification rather than common law states, Texas and California have taken their first steps to rein in the legal capacity for LFOs (Committee on Revision of the Penal Code 2021; State of Texas 2014). Less is known, however, about the efforts of New York, the only other fully codified U.S. state, to approach something akin to the legal census necessary as a first step in mapping the circuitry of power that stands to produce racial disparities in the imposition of LFOs and legal indebtedness. The implications of this work for the other forty-seven states, where the locus of inequality in the law of LFOs may not be codified as such but nevertheless operates in powerful ways to produce racial disparities as a social fact of monetary sanctions, requires the analyst and policymaker alike to reckon with the entire body of state law, beginning with the first-order task of conducting a legal census that maps the totality of legal capacity and, in turn, has the potential to reveal the full power of the state to punish.

Former California Governor Jerry Brown put it succinctly to the California Penal Code Revision Committee in 2020, "die by fire or you can die by ice"—meaning that the committee can be too timid, but at the same time cannot go too far in embarking on what Brown called "virgin territory" to revise the state's Penal Code (Committee on Revision of the Penal Code 2020). By his last term as governor, Brown's critique of California's Penal Code was clear; he stated that "the penal code, littered with thousands of provisions, had become utterly counterproductive and a far cry from a fair and effective system of criminal justice" (Brown 2018). As the thirty-fourth (1975–1983) and thirty-ninth (2011–2019) governor of California, Brown said in his latest testimony before the state's Penal Code Revision Committee that "the California Penal Code 2020 is a monster" and characterized it as "a giant ball" and "a cornucopia of bad ideas that you can pluck at will as you wander through the provisions" (Committee on Revision of the Penal Code 2020). By all accounts put forth before the committee over a full year of hearings and testimony during 2020, the heart of the problem with California's Penal Code had become decidedly conspicuous: the proliferation of criminalizing statutes and the sheer scale of *legal capacity* for the state to punish, and not least, according to Brown, who concluded his remarks with a commentary on the fate of ever-expanding state capacity to police, punish, and imprison, thus, "if you build it, they will come" (Committee on Revision of the Penal Code 2020).

The legacy of legal codification in California can be observed today in the decisive force for lawmaking outside the judiciary and the legislature: "the people," who invoke direct democracy to forge both new legal capacities for, as well as to constrict, state power through voter-initiated ballot propositions and referenda (Barker 2006, 2009; Miller 2013, 2016). Recently, Californians exercised such power in 2018 through their repeal of Senate Bill 10,[11] which the legislature passed to abolish cash bail in the state's criminal justice system; under Proposition 25, 56.4 percent of California voters elected to repeal the legislature's abolition of cash bail by referendum, thus recodifying money and punishment into California

11. California Senate Bill 10, "Pretrial Release and Detention," August 28, 2018.

law.[12] In that same election, however, California voters approved Proposition 17,[13] which extended voting rights to those who have served their prison sentences but remain on state parole, thereby excising the legal capacity to constrain civic life beyond the prison walls for people on parole, many of whom are likely to have outstanding LFOs and carry the burdens of legal debt (Uggen, Larson, and Shannon 2016).

Ultimately, the unexplored terrains of law necessitate examining legal financial obligations as embedded in both criminal and civil codes, and recognizing LFOs as forms of punishment, regardless of where they may be located in the larger corpus of law. The recognition that LFOs function as sanctions, by way of obligation, leads to a reconceptualization of punishment itself as a legal capacity, within, but also beyond, the Penal Code. Boaventura de Sousa Santos observes, "by constantly changing colours according to certain biological rules, the chameleon is truly not an animal but rather a network of animals—as much as law is a network of legal orders" (1987, 299). The constantly changing colors of money and punishment, as they circulate within and beyond the Penal Code, and their evolving classification and reclassifications of legal jurisdiction across criminal and civil codes, render legal financial obligations more or less visible as monetary sanctions in the corpus of California law.

12. California Proposition 25, "Referendum on Law that Replaced Money Bail with System Based on Public Safety and Flight Risk," November 3, 2020 (failed).

13. Proposition 17, "Restores Right to Vote after Completion of Prison Term," November 3, 2020 (constitutional amendment).

**Table A1.** Codebook: Variable List, Abbreviations, and Descriptions

CODER—coder
First and last name initials of research assistant who coded this section.

DATE CODED—date
Date of coding session and therefore the date of the online version of California law coded.

STATE—state
Two-letter abbreviation of the state (CA).

CODE—codesec
Abbreviation for one of California's 29 Code sections containing particular reference to monetary sanctions imposition or administration.

STATUTE NUMBER—statute_n
Number that identifies each separate statute referencing monetary sanctions imposition or administration.
**Note: Enter each statute number separately in its own row.*

ADDITIONAL STATUTORY CITATIONS—statute_n2
As applicable, enter any additional bibliographic information on how to locate this law.

TITLE—title
If applicable, enter the title of the statute.

YEAR ENACTED—yr_enact
Initial year that a particular law or statute was implemented, if known. Enter Year (NUMERICAL VALUE) or NA if Unknown.

LAST AMENDED—yr_amend
Last year in which a particular law or statute was amended, if known. Enter Year (NUMERICAL VALUE) or NA if Unknown..

FULL STATUTE TEXT—text_full
Verbatim text of the observed law or statute. Copy and paste TEXT from code.

SUMMARY—text_summ
Brief summary statement of the relevance of this law for the imposition or administration of monetary sanctions, written by the researcher. Aim for less than two sentences when possible.
**Note: Indication of a question or a flag that a statute repeats or cross references another statute was entered into this field during the data cleaning process.*

FINE-FEE—finefee
Does this law concern a particular fine AND/OR fee (excluding surcharges, financing charges, interest)? YES=1 or NO=0.
**Note: FINE-FEE should be coded as YES=1 whether it imposes or prohibits the imposition of a fine and/or fee.*

FINE—fine
Does this law define a particular FINE (excluding surcharges, financing charges, interest)? YES=1 or NO=0.

FEE—fee
Does this law define a particular FEE (excluding surcharges, financing charges, interest)? YES=1 or NO=0.
**Note: Statutes concerning the payment of attorney fees in *civil* litigation (i.e., to plaintiff's attorneys) should not be coded.*
**Note: FEE should be coded YES=1, however, for statutes that may combine *criminal* fees and any fees in the civil context.*

(*continued*)

**Table A1.** (*continued*)

PUBLIC ATTY—atty
Does this law require those sanctioned to pay any amount for the provision of a public attorney for themselves or for others? YES=1 or NO=0.

NONPAY INCAR—incarc_nonpay
Does this law (a) provide for the detention or incarceration of those who do not pay monetary sanctions for any reason or (b) enable the application of credit to legal debt for time incarcerated (sit it out)? YES=1 or NO=0.

COMM SERVICE—commserv
Does this law provide for credits toward monetary sanctions for community service work? YES=1 or NO=0.

VOTING—vote
Does this law curtail the voting rights of those with unpaid monetary sanctions? YES=1, NO=0, or PROVISIONAL.

JUVENILE—juv
Does this law have special provisions for those under the age of 18? YES=1 or NO=0.

FINANCING INTEREST SURCHARGE—interest
Does this law allow for interest fees over and above the imposed monetary sanction? YES=1 or NO=0.

SURCHARGE—surcharge
Does this law impose particular surcharges over and above the imposed monetary sanction? YES=1 or NO=0.
**Note:* surcharge *is a charge in addition to the usual amount paid for something, or to the amount already paid (i.e., a processing or handling fee).*

COLLECTION FEE—collectfee
Does this law allow for the collection of financing or processing fees over and above the imposed monetary sanction? YES=1 or NO=0.

PERPAYMENT FEE—perpayfee
Does this law allow for jurisdictions to charge per payment fees each time a person makes a payment over and above the imposed monetary sanction? YES=1 or NO=0.

PRIVATE COLLECTION—privcollect
Does this law enable private agencies to administer or collect monetary sanctions? YES=1 or NO=0.

CRIMINAL CATEGORIZATION—crim
Does this law classify a particular violation as criminal (as opposed to civil)? YES=1 or NO=0.

WARRANTS SUMMONS HEARINGS—warrant
Does this law allow for the issuance of warrants or summons, or require hearings for non-payment, extension, or financing of monetary sanctions? YES=1 or NO=0.

LOSS OF LICENSE—license
Does this law allow or require the loss of a driver's license for non-payment or delayed payment of monetary sanctions? YES=1 or NO=0.

MANDATORY MIN SANCTION—mandmin
Does this law mandate the imposition of a monetary sanction (as opposed to allowing officials to use discretion in its application)? YES=1 or NO=0.

MINIMUM LFO AMOUNT—amount_min
If indicated, the *minimum* dollar amount of the monetary sanction. Enter in NUMERICAL VALUE.

**Table A1.** (*continued*)

MAXIMUM LFO AMOUNT—amount_max
If indicated, enter the maximum dollar amount of the monetary sanction. Enter in NUMERICAL VALUE.

OTHER LFO AMOUNT—amount_other
If indicated, any other dollar amount of monetary sanction. Enter in NUMERICAL VALUE.

LFO FORMULA/CALCULATION-TYPE—formula
Does the statute specify a formula for calculating an LFO? YES=1 or NO=0.

LFO COMBINED W/ INCARCERATION-TYPE—incarc_lfo
Does the statute provide for various ways that incarceration (either in jail or prison) be combined with or substituted for payment of LFOs? YES=1 or NO=0.

LFO ENHANCEMENT-TYPE—enhance
Does the statute specify ways that LFO may be enhanced (i.e. for certain kinds of offenses)? YES=1 or NO=0.

IF ENHANCEMENT-TYPE, ENHANCED MINIMUM LFO AMOUNT—enhance_min
If indicated, the *minimum* dollar amount of the *enhanced* monetary sanction. Enter NUMERICAL VALUE.

IF ENHANCEMENT-TYPE, ENHANCED MAXIMUM LFO AMOUNT—enhance_max
If indicated, the *maximum* dollar amount of the *enhanced* monetary sanction. Enter NUMERICAL VALUE.

IF ENHANCEMENT-TYPE, ENHANCED OTHER LFO AMOUNT—enhance_other
If indicated, any *other* dollar amount of the *enhanced* monetary sanction. Enter NUMERICAL VALUE.

FELONY—felony
If indicated, is the monetary sanction applied for a felony crime? YES=1 or NO=0.

MISDEMEANOR (NON-TRAFFIC)—misd_nontraff
If indicated, is the monetary sanction applied for a *non-traffic* misdemeanor crime? YES=1 or NO=0.

MISDEMEANOR (TRAFFIC)—misd_traff
If indicated, is the monetary sanction applied for a *traffic* misdemeanor crime? YES=1 or NO=0.

PROHIBITS LFO—prohibits
Does the statute *prohibit* the assessment of any kind of LFO? YES=1 or NO=0.

VICTIM RESTITUTION—victimrest
Does the statute impose a LFO for the purpose of victim restitution or payment? YES=1 or NO=0.

*Source:* Authors' tabulation compilation based on the Multi-State Monetary Sanctions Study research design, as implemented in California, for reviewing law and policy concerning LFOs across all state study field sites (Harris et al. 2017: X; Harris et al. this issue).
*Note:* Date of Final Codebook, May 27, 2016.

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# Sensemaking in the Legal System: A Comparative Case Study of Changes to Monetary Sanction Laws

TYLER SMITH, KRISTINA J. THOMPSON, AND MICHELE CADIGAN

*Legal scholars have long studied why laws are implemented differently across local court contexts. Key to understanding this localized variation is understanding how new laws are communicated, interpreted, and negotiated within the legal field. Few studies, however, have directly examined the process by which court actors interpret and negotiate new laws within the court. We explore these sensemaking processes through interviews and observations of court actors in Washington and Missouri after changes to monetary sanction laws. We identify three primary forms of sensemaking and analyze contextual factors that shape these processes. We find key differences in sensemaking based on differing levels of regulatory oversight but also that normative and cultural factors were still important in determining legal interpretation and implementation within each state. These findings have important implications for our theoretical understanding of courtroom communities and for policymakers seeking to enact reform.*

**Keywords:** legal change, monetary sanctions, courtroom communities

Local variation in the implementation of legal mandates and policy guidelines is a consistent theme in the study of criminal courts (Myers and Talarico 1987; Dixon 1995; Engen and Steen 2000; Kirk et al. 2022, this volume; Stewart et al. 2022, this volume). Much of this research emphasizes the courtroom as a field where representatives from different judicial occupations and sponsoring agencies interact in the common workspace of the court. Through interaction, negotiation, and conflict resolution, these *courtroom communities* develop their own localized norms that guide court actor behavior (Flemming, Nardulli, and Eisenstein 1992). When new laws are enacted, their implementation is not only affected by the institutional

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context in which they are passed, but also filtered through established and localized "processural orders" (Strauss 1993; Ulmer 2005). Unpacking the interplay between lawful mandates and the contexts in which they are applied is critical because the resultant change in courtroom practice within any given jurisdiction may or may not align with the proposed goals of legal changes.

Recently, scholars have begun to critically examine the process by which laws are interpreted and negotiated between court actors (Clair 2020; Johnson 2005; Van Cleave 2020). Such interactive work is especially important after changes in the law, when court actors must engage in shared decision-making in order to implement new courtroom procedures. We agree with Jeffery Ulmer (2019) in thinking of courts as *inhabited institutions,* which is a concept that characterizes legal establishments as "inhabited" by organizational actors that use their agency to interpret and react to institutional pressures and organizational demands. Ulmer further suggests that we align this perspective with the literature on *courtroom communities,* which emphasizes how individuals from different professional agencies interact in the courtroom field. Local court practices arise through the interaction of court actors as their different interpretations of policies are negotiated, contested, and resolved. In addition, how these interactions and negotiations play out is shaped by a nested set of contextual and organizational dimensions (Scott 2008).

One of the major tasks under this perspective is to better understand the processes by which conformity develops both across and within local courtroom communities. Organizational researchers have long studied isomorphic processes, but understanding how these processes operate within the criminal justice system requires a ground-level examination of courtroom sensemaking. Even though new laws and guidelines are ordered from the top down, implementation of new procedures hinges on the formal and informal characteristics of each court's local culture, norms of interaction, and structural embeddedness.

Drawing on interviews and courtroom observations, we explored the mechanisms of legal interpretation and change based on changes to monetary sanction laws (also known as legal financial obligations, or LFOs) in Missouri and Washington State. Given our fortunate placement in the field during or soon after changes in the law, we were able to capture how information about these laws were diffused within local court systems, how court actors oriented themselves toward these changes, and how they engaged in discussion, negotiation, and contestation with other court actors in relation to necessary changes in practice. We identified three distinct forms of meaning-making in our field sites: *collaborative interpretation,* when courtroom decision-makers met with the explicit purpose of interpreting legal changes; *contested negotiation,* in which court actors disagreed on either how to interpret the new law or how to put the new law into practice; and *passive acceptance,* when court actors in one profession deferred to court actors in another profession or adapted their behaviors to maintain the dominant processual order.

We also outline contextual features that shaped how these meaning-making processes played out. Of particular importance was the different regulatory frameworks across the states. Courts in Missouri were given a greater degree of regulatory guidance, which ensured that courts across jurisdictions engaged in greater levels of collaborative sensemaking and congruence with the new laws. However, the differing legal structures of the two states was not wholly determinant and the effectiveness of regulation was still mitigated by several other factors. Transitioning to new courtroom practices was more or less effective depending on how the new laws aligned with local court cultures, previous policies, and the realities of case processing. In addition, the professional siloing of courtroom communities limited opportunities for sensemaking across professional boundaries in nearly every jurisdiction in our study. So, although increased regulative pressure in Missouri seemed to increase understanding of new laws and induced a higher degree of conformity across courts compared to Washington, it was not a panacea.

Whether court actors passively accepted, collaboratively interpreted, or contested and negotiated legal actions depended on a variety of local and state-level factors that included the

extent of oversight and guidance from regulatory agencies, the organizational structure of courtroom communities, existing local processual orders, and the ideological orientation of the courts.[1] Overall, we contribute to understandings of local conformity and variation in practice by applying Ulmer's framework and identifying circumstances that lead to laws being differentially applied across courts.

## COURTS AS INHABITED INSTITUTIONS

A key concern for all criminal justice systems is the uniform application of legal mandates and sentencing guidelines. However, researchers consistently demonstrate court by court variation in the implementation of formally mandated practices at both the federal (Spohn and Fornango 2009; Ulmer and Johnson 2017) and state levels (Hester 2017; Ulmer 2012). Understanding why these guideline departures occur is an important and robust area of theoretical and empirical examination.

To understand conformity and difference across courts, Ulmer (2019) suggests viewing court systems as *inhabited institutions*.[2] This approach combines insights from legal and organizational scholarship by emphasizing both the interactive process between court actors and the larger social context in which they are embedded. By conceptualizing court systems as institutional fields, we can study how court actors "interact with knowledge of one another under a set of common understandings for the purpose of the field, the relationships in the field, and the field's rules" (Fligstein and McAdam 2011, 3). Such a framework allows us to borrow insights from organizational research that can help us understand the broader influences that impact court systems.

Expanding on the foundational work of Paul DiMaggio and Walter Powell (1983), Richard Scott (2008) suggests three primary types of influences that shape institutional fields. First are regulative influences that attempt to outline accepted behavior, establish expectations, and administer sanctions. Conceptions of regulatory power often center on the ability of administrative bodies to use coercion to enforce conformity to specific guidelines. This kind of coercive influence is an important part of the legal field, given that regulatory bodies attempt to ensure the uniform application of the law. However, regulatory influences may also enable and empower individuals by "conferring licenses, special powers, and benefits to some types of actors" (Scott 2008, 61). Certain actors may be given special legal authority within a given social space that allows them to dictate daily activities and enforce their conceptions of expected behavior.

The second type of influence develops from normative pressures that produce action based on the perceived norms of the field and ideas of legitimacy. Normative systems can be broken into two main components. *Values* designate the legitimate or accepted motivations behind organizational action, generally in accordance to "macro-myths" that define the reasoning behind institutional practices (Meyer and Rowan 1977). For the criminal justice system, these include ideas about justice, due process, and equality before the law. *Norms* refer to behaviors that are considered to be the correct or appropriate methods for achieving alignment with these values. Many normative actions within court systems can be thought of as attempts to align with local logics about the proper purpose

1. Such findings align with recent explorations of the tension between jurisprudence and the practicalities of courtrooms. Franklin Zimring (2020), for example, argues that efforts to change sentencing outcomes (mass incarceration) could be more successful if they identified and altered the power dynamics that shape sentencing practices.

2. A pair of articles in this volume offer additional theoretical discussion about how the inhabited institutions perspective may be used to understand monetary sanctions. In one, Karin Martin, Kimberly Spencer-Suarez, and Gabriela Kirk (2022) use this framework to understand local norms around accountability. They find that these norms often require defendants to engage in performances of accountability and lead to the discretionary use of time as punishment. In the other, Kirk and her colleagues (2022) explore local acquaintanceship density as an important factor in the interactive process between court actors and those involved in the criminal justice system.

of criminal justice and the roles of the actors within the system.

The final type of influence on court systems comes from cultural-cognitive factors. These represent the shared meanings and social frameworks that actors within a given field adopt. Such dimensions operate across nested levels—including the subjective interpretation of signs and symbols by individuals, the creation of collective understandings through interactive creation of field-level rules and practices, and the crystalized beliefs and ideologies that make up larger cultural frameworks (Berger and Kelner 1981; DiMaggio and Powell 1983). Understanding these cultural-cognitive factors helps us recognize often overlooked factors that determine organizational action. In addition to being dictated by coercive forces and guided by repetitive norms, specific behaviors are often based around the legitimacy that comes from conforming to common definitions, actor roles, and organizational templates (Scott 2008, 74). Here we may think of the operational structure of courts and how that structure aligns with broader ideals of justice as accepted cultural frameworks for understanding criminal justice systems.

It is important to consider these factors as they operate within the unique structure of U.S. courts as outlined by the *court community* framework (Eisenstein, Flemming, and Nardulli 1988). A courtroom community can be thought of as the combined efforts of representatives from different sponsoring agencies who interact within the shared, common workspace of the court to create local court cultures.[3] Broadening this conception of court communities using organizational theories offers important addendums to the court community perspective. It allows us to understand court systems as "inhabited" by individual agents who "constantly interpret and make sense of rules and formal structures" in accordance with the organizational expectations of their sponsoring agencies and their own personal understandings of courtroom rules and expectations (Ulmer 2019, 484). As individuals engage with each other in strategic interactions during their daily work, they are constantly producing, maintaining, and transforming localized court norms and common cultural expectations (Kirk et al. 2022, this volume; Strauss 1993). These processes not only shape local practices but are also consequential for citizens involved in the criminal justice system. Evidence from Missouri demonstrates how local economic and political priorities influence the application of low-level justice (Huebner and Giuffre 2022). This dynamic, interactive process is thus an essential and consequential component of variation within and across court systems.

An organizational framework also calls for us to explore the interactive effect of field-level factors at various levels. The sensemaking process itself is directly shaped by the other influential factors that exist within that given organizational space. We are also reminded that court communities exist within an even larger set of nested institutional fields and that the regulative, normative, and cultural-cognitive influences of these contexts are important variables in understanding courtroom practice. Considering the importance of sensemaking in the creation of localized practice, it is essential that scholars understand the specific sensemaking processes that occur in the legal field and the potential contextual factors that shape them.

## SENSEMAKING AFTER LEGAL CHANGE

Changes to the law that require changes to courtroom practice introduce essential moments of sensemaking that can help us understand local guideline departures. Regulatory action that attempts to change courtroom behavior is an important form of coercive influence on court system functioning. However, these changes must be implemented by the actors within a given court system with its own set of norms and cultural expectations. Changes in the law must go through the inter-

3. A sponsoring agency refers to the professional group that a court actor belongs to and represents in the court process, including the judges bench, the prosecutor's office, the defense attorney's bar, the probation office, and so on. Thus, although individuals belong to the court system, they are also representatives of specific professions within it and may act in accordance with the orientations and needs of those professional groups.

active sensemaking process by which all activity within the field of the court system is interpreted, negotiated, and crystallized from the outcomes of previous strategic interaction (Berger and Luckmann 1967). The introduction of new rules and regulations, or laws that alter previous practices, disturbs the established normative order of the court and requires a new set of agreed-upon rules for behavior and interaction. As Ulmer explains, "Informal norms and arrangements often emerge as negotiated solutions to problems not covered by existing rules, ambiguous or conflicting goals, or conflicts over resources. These solutions persist until challenging new situations render them inadequate. Then, new negotiation processes occur through which informal arrangements are adapted in an attempt to resolve the new problems" (2019, 90).

Although we have made the importance of this sensemaking process clear, the process is difficult to examine directly. Further, few studies examine the process of sensemaking during a transition in practice after legal change. Many studies of guideline departures are quantitative comparisons of case processing outcomes or look at guideline departures after new guidelines have been established for some time (Johnson 2005; Ulmer and Johnson 2004). In addition, although some of these studies examine larger contextual factors (Hester 2017), they do not adequately show how these factors affect the sensemaking process itself. A more robust study requires a closer inspection of actor interaction, negotiation, contestation, and acceptance during the period court actors are actively trying to put new laws into practice.

In this article, we theorize about the dynamics and structure of the sensemaking processes that court actors engaged in after changes to monetary sanction laws and outline some of the important regulative, normative, and cultural-cognitive dynamics that shaped, hindered, or facilitated this process. Drawing on in-depth interviews with court actors and thick descriptions of courtroom procedures from our ethnographic fieldwork in Washington State and Missouri, we contribute to the literature in two key ways. First, we outline the qualitative aspects of the sensemaking process itself. We observed three types of interactive sensemaking that were common to our sites and identified where and when they occurred in the court process. Second, we outline the contextual factors that shaped these processes, including how aspects of each state's legal system impacted perceptions and receptivity to change, how the court's organizational structure shaped sensemaking opportunities, and how larger cultural and institutional factors helped or hindered efforts to produce court-wide conformity. Overall, we provide a deep examination into the influences that shape local courtroom practice.

## DATA AND METHODS

While we conducted field work in Missouri and Washington, both states experienced reform efforts aimed at redesigning their monetary sanction systems. This offered us a unique opportunity to explore how court actors discussed their ongoing attempts at making sense of the new laws and how they negotiated their interpretations. It also allowed us to directly observe instances of sensemaking in the courtroom more clearly, given that the new policies were not fully routinized (or still subject to multiple interpretations) in many of our court sites.

The most significant and publicized legislative change in Missouri was Mack's Creek Law,[4] which was passed in direct response to the police killing of Michael Brown and subsequent Justice Department investigation of the city of Ferguson. The primary focus of the law was to limit the amount of money that municipalities could raise for their general revenue through fines, bond forfeitures, and fees.[5] The key text capped the amount of money generated from ticketing and fines at 20 percent when it had

4. Missouri Senate Bill CCS/HCS/SS/SCS/SB 5 (2015), https://www.senate.mo.gov/15info/BTS_Web/Bill.aspx?SessionType=R&BillID=160 (accessed August 20, 2021).

5. For further discussion of the consequences of municipal regulations (or lack thereof), when combined with strong incentives to use low-level sanctions as a revenue source, see Huebner and Giuffre 2022, this volume.

previously been 30 percent,[6] and the total dollar amount for combined fines and fees for each individual could not exceed specified amounts depending on the number of violations.[7] Finally, this legislative mandate reiterated that defendants cannot be jailed for failure to pay at the municipal level. In addition to changes in how LFOs were to be imposed and collected in Missouri, one of the core issues this new legislation dealt with was previously low oversight of municipal courts. Implementation was thus paired with significant oversight from Missouri's Office of State Court Administrators (OSCA), which provided bench cards that showed the expected dollar amounts for each type of case and facilitated annual conferences to educate and train court members.

Changes to monetary sanction laws in Washington State resulted from the 2013 court ruling in *State of Washington v. Blazina.* The Washington State Supreme Court ruled that local courts must make an individualized inquiry into a defendant's current and future ability to pay before imposing discretionary LFOs.[8] If it is determined that a defendant does not have the ability to meet his or her financial obligations, judges must waive nonmandatory fines and fees. These rules were clarified further during our data collection in *State of Washington v. Ramirez* in 2018.[9] Additionally, the Washington legislature passed House Bill 1783 in the spring of 2018.[10] HB 1783 modified many of the existing rules and guidelines for determining ability to pay, assessing willful nonpayment, and attempted to clarify which fees were mandatory. HB 1783 mandated that judges use the state's poverty guidelines in determining ability to pay assessments and judges must allow indigent individuals to set up reasonable payment plans. It also clarified that individuals could not be jailed for nonwillful nonpayment of their LFOs and that determinations of willful nonpayment must be based on current and future ability to pay.

## ANALYSIS

To investigate the sensemaking process of legal practitioners, we drew on eighty-five semi-structured interviews with key decision-makers and 391 hours of ethnographic observations within fourteen jurisdictions in Washington State and Missouri collected in 2018 and 2019. Jurisdictions selected for the study represented a range of rural, urban, and suburban court systems within each state that handled a variety of offenses ranging from misdemeanor and traffic cases to felonies.

The data used for this project were collected as part of the Multi-State Study of Monetary Sanctions, which examined the system of monetary sanctions across eight U.S. states.[11] Although the broader purpose of the project focused on understanding the assessment of legal debt and the experiences of those burdened with this debt, discussion around recent legal changes emerged as themes within our selected states. We leveraged this fact to better theorize how legal change is interpreted and implemented in real time within local court systems.

6. Municipalities operating in the St. Louis County area were initially capped at 12.5 percent, but this different standard was struck down in *City of Normandy et al. v. Greitens et al.*, No. SC95624 (2017).

7. $225 for a minor traffic violation, $275 for a first or second municipal violation, $350 for a third violation, and $450 for any further violations within a twelve-month span.

8. *State of Washington v. Blazina*, No. 89028-5 (May 2013).

9. *State of Washington v. Ramirez*, No. 95249-3 (September 2018). This ruling requires judges to make specific inquiries when determining ability to pay, including assessments of income, debts, assets, living expenses, employment history, indigency status, and whether they will be incarcerated. The decision also clarified that these inquiries must be made on the record to be considered a sufficient examination.

10. Washington State House Bill 1783 (2018), https://app.leg.wa.gov/billsummary?BillNumber=1783&Year=2017 (accessed August 20, 2021).

11. For further information about the methods of the broader project, how jurisdictions were selected, and sampling processes, see Harris, Pattillo, and Sykes 2022, this volume.

**Table 1.** Court Actor Type by State

| Court Actor | Missouri (N = 47) | Washington (N = 38) |
|---|---|---|
| Defense attorney | 8 | 15 |
| Prosecutor | 4 | 9 |
| Judge | 13 | 9 |
| Court clerk | 9 | 3 |
| Community supervision officer | 12 | 2 |
| Other | 1 | N/A |
| Hours of courtroom observation | 93 | 106 |

*Source:* Authors' calculations

Semi-structured interviews with courtroom decision-makers included prosecutors, defense attorneys, judges, court clerks, and community supervision officers (see table 1). Respondents were asked a series of questions about local court norms regarding assessing and imposing monetary sanctions, the process for recouping unpaid debt, how willful noncompliance is determined, the function of LFOs more broadly, and their experience with any changes in laws regarding monetary sanctions. Responses to these questions were transcribed by an external professional transcription service and uploaded to a secure server.

The transcripts were then coded by a trained team of researchers using a uniformed code book of topical codes that was applied to all decision-maker interviews across all field sites that were part of the larger study. From these broader codes, we engaged in more targeted analytic coding of themes related to sensemaking and legal change. Our analytic coding followed the process of identifying and coding text for the purpose of interpreting emergent themes, reflecting on members' meanings, and generating explanations or ideas about the data (Richards 2015). Specifically, we closely examined all data coded at topical codes that examined court culture, local and state politics, discussion of the legal system, the process of imposing LFOs, and decision-maker experiences and opinions about the laws governing LFOs (see table 2).

From this analytic coding, we identified three common pathways through which local court actors engaged in sensemaking to implement new laws—passive acceptance, contested negotiation, and collaborative interpretation. We constructed analytic memos (see Emerson, Fretz, and Shaw 2011) for how each sensemaking process occurred in each state and what factors affected how that process functioned. Once these memos were complete, we met to discuss and refine our definition of these approaches based on the data.

To understand what shaped court actors' approach to interpreting and implementing legal changes, we engaged in another round of analytic memoing in which we identified the approaches used in each jurisdiction and type of court actor using this strategy. We then compared these approaches across jurisdictions and states, paying particular attention to where strategies diverged within or across jurisdictions and professions. We noted any contextual factors that appeared to be associated with particular approaches and identified several mechanisms that emerged as important for facilitating particular pathways.

## FINDINGS

Broadly, we identified three processes that decision-makers used when interpreting legal changes and implementing them in courtroom practices. Actors engaged in *collaborative interpretation* when they came together to discuss, interpret, and make sense of legal changes in a collaborative way. Discussions centered around both formal policies that had to be implemented and how new laws would affect informal or localized changes to practice. These collaborative circumstances were particularly common among judges and often achieved through established methods of communication at the local level (such as scheduled judges meetings) and state level (such as statewide

**Table 2.** Topical Codes Used for Analytic Coding

| Category of Code | Topical Codes |
|---|---|
| Procedural codes | Determining ability to pay<br>Waiving, suspending, or reducing LFOs<br>Monitoring or collecting LFO payments<br>Willful nonpayment |
| Court culture | Normative culture of the court<br>Purpose of legal system, practices, or procedures—to determine orientation of the DMs in particular courts<br>Purpose of LFOs |
| Politics and legislation | Legislation and policy<br>Policy recommendations<br>Politics and fiscal politics |
| Legal system | Fairness of LFOs<br>Professional training<br>Traffic violations and DUIs<br>Discretion<br>Information flow and dissemination |
| Decision-maker experience | Professional history and orientation<br>Involvement in other institutions, professional organizations, or programs<br>Confusion or lack of knowledge |

*Source:* Authors' tabulation.

judges conferences). Court actors also engaged in informal means of collaboration, such as defense attorneys meeting with prosecutors outside of court, although this appeared to be a rare occurrence. The important aspect of collaborative interpretation was available space for discussing legal changes as a group, not necessarily achieving consensus. Even if consensus was not reached through this collaborative work, individual decision-makers came away from the process with a better understanding of how other members of their profession or larger courtroom community understood and implemented the new laws.

Another type of active sensemaking occurred through instances of *contested negotiations.* These were times when decision-makers disagreed on either how to interpret changes in law or how to put these changes into practice and action was taken to contest different attempts at implementation in the courtroom. We found that these disagreements related to the interpretation of the legal mandates themselves as well as disagreements on how specific courtroom practices were put in place. Although disagreements would sometimes arise during courtroom proceedings, the most obvious forms of contestation were formal channels outside court. For example, contested negotiation often occurred during plea agreements between attorneys when one attorney would not yield to the other's interpretation of new legal mandates or in the filing of legal briefs written by defense attorneys trying to get judges to align their understanding of the new laws with their own interpretations. This yielded changes to normative practices as otherwise predictable processes of the courtroom became contested and drawn out.

The third type of sensemaking we observed were forms of *passive acceptance.* Passive acceptance occurred when decision-makers did not make explicit attempts at interpreting or understanding legal changes. Instead, court actors deferred to other individuals to interpret and apply legal changes or adapted their behav-

**Table 3.** Summary of Key Findings

| Sense-making outcomes | Institutional Influences (Scott, 2008) | | |
|---|---|---|---|
| | Regulative | Normative | Cultural-cognitive |
| Passive acceptance | Regulatory oversight (+)<br>Legal ambiguity (–) | Court efficiency macro-myths (+)<br>Conflicting assumptions of decision-making power [moderates court-efficiency pathway (–)] | Siloed court communities (+) |
| Collaborative interpretation | Regulatory oversight (+) | | Siloed court communities (–) |
| Contested negotiation | Legal ambiguity (+) | Reformative cultures (–)<br>Conflicting assumptions of decision-making power (+) | |

*Source:* Authors' tabulation.

iors to accommodate changes without substantial disruption to courtroom activities. We found passive acceptance occurred when the necessary changes in the law were already part of a court's routine activity or aligned with the legal culture of that court. This allowed actors to accept changes without the need for extensive discussion. Passive acceptance also occurred whenever court actors simply deferred to the interpretation of individuals in a higher position of power. This was most common when prosecutors deferred to the interpretation of judges, although in some cases judges deferred to plea agreements and left it to the attorneys to figure out how to apply the legal changes correctly.

## Factors that Affected Sensemaking Processes

Whether court actors passively accepted, collaboratively interpreted, or contested legal changes depended on the interrelation between a variety of regulative, normative, and cultural features at both the local and state level. Taken together, all of these factors shaped the sensemaking process and how legal changes were ultimately implemented. This highlights the need to consider these factors together when understanding how change becomes disjointly applied across and within criminal legal systems. Table 3 provides a summary of the findings that follow, showing how these influences promote or hinder the specific sensemaking processes that we have identified.

### *Regulative: Regulatory Oversight and Statute Clarity*

Auxiliary agencies often provided clarity and guidance on the role of monetary sanctions. Their presence in daily court actions varied considerably, however. Because the legal changes in Missouri were written in response to previously low oversight of municipal courts, the state's judicial regulatory bodies ensured a great deal of supervision in regard to the implementation and diffusion of new laws and procedures, especially at the municipal level. In addition to providing standardized information on the expected dollar amounts for court costs in a given case, Missouri's Office of State Court Administrators organized annual conferences that brought together court actors from across the state. These events provided an opportunity for statewide collaboration between OSCA and local courts. This led to greater "organizational coupling" across different court systems whereby practices more closely matched broader institutional policies (Meyer and Rowan 1977). OSCA's extensive guidance via organizing professional forums and providing an explicit space for collaborative interpretation worked to formalize the process of raising

and addressing questions of ambiguity. Although OSCA may not have been active in every courtroom, this collaborative space was used to incentivize conformity and clarify ambiguity.

Missouri's regulatory body also had a history of policing courts over policy violations. Court actors in Missouri cited instances when regulatory bodies would step in to ensure that courtroom actions were being implemented according to their expectations. A municipal judge in Missouri, who sat on a committee organized by the Missouri Supreme Court, described the corrective actions taken to identify and contest misapplications of law. This passage illustrates the judiciary's role in contesting local-level processes. More specifically, the committee identified potential misapplications of revised license suspension rules and provided a corrective process to ensure that those subject to fines and fees would not be suspended for nonmoving violations:

> and when Ferguson came around I went to the fine and collection people and I went to the director and said, "Hey, if this is happening you're going to go through there and you're going to look and see anything that's coming in here and pull it out on the state court level." We found some places where there were seat belt violations and some of that and we went through and you pull all those suspensions out. If it's not a moving violation you do it. We still occasionally have . . . I just corrected one this morning. We found one where a seat belt had a suspension. I called up there. It's not a problem anymore because they've become much more aware of it and stuff.

So although regulatory agencies helped to create space for interpretation of the new laws, they also applied regulatory coercion to help ensure conformity and passive acceptance of legal change. This is in contrast to Washington State. Instances of collaborative sensemaking were cited in Washington, especially by judges who attended regular meetings in their local jurisdictions and statewide meetings set up by the Administrative Office of the Courts. However, our participants did not discuss any heavy regulatory action that took place to ensure that legal changes were being enacted correctly. This is not to say that regulation was lacking, but that it lacked the intensity we found in Missouri.[12] The absence of such a strong regulatory body in the state of Washington may explain why court actors were less likely to cite broader instances of collaborative sensemaking across different courts compared to Missouri.

In addition to regulatory oversight, the clarity of new regulations affected how court actors negotiated and accepted legal changes. Court actors often articulated a passive acceptance of statues that were beyond their control. We observed more variation in the imposition of court costs when the laws were less clear or in opposition to other laws. In Washington State, contestation often occurred around the fines associated with driving under the influence (DUI) charges. When changes in the law made it a requirement for indigent individuals to have all nonmandatory fines and fees waived, interviews and observations indicated that court actors were unsure whether this meant that DUI-specific fines and fees were seen as waivable or were mandatory. A defense attorney in Washington told us that judges would choose between the conflicting laws based on their views of what the laws should be:

> INTERVIEWER: Do the amounts vary by the judge?
>
> DEF ATTN: In district court more it does because there's a lot more discretion with the DUI stuff. Also, the prosecutors on those, for some reason, those are the cases where you really see, "Well, we want a $500 fine," seemingly for no reason. Sometimes, the judge will split the baby. Ever since, I think more recently with *Ramirez* and *Blazina*, the judges are just saying, "I'm not imposing fines on this person." . . . Or they'll say that *Blazina* doesn't matter, we agree to the terms of the plea agreement so we're going to impose it.

12. This is likely related to the political salience of the Ferguson report and subsequent backlash against the use of predatory fines and fee collection practices in Missouri.

INTERVIEWER: Why do you think they vary? What kind of factors lead to variation?

DEF ATTN: I think there's a lot. I think some judges just simply don't care. I think they know what the law is, and they don't care. They'll say this on the record, "Appeal me. I know this is reversible. Appeal me." They know a lot of our clients don't have the time and money and energy to go through that and they know that they're never going to get appealed. It could be that. I think a lot of times, the judges are just not reading the law like they should be. I think they think they're doing what is the law, but they're not actually. I think those are probably the two biggest variations, either not caring or not knowing.

Although defense attorneys protested these DUI-specific LFOs, ambiguity allowed for the judge's interpretation to be implemented. Our findings suggest that the very nature of the revised statutes, and their interplay with previously established court norms, influenced how courts adapted to legal change.

### *Normative: Local Normative Orders and Macro-Myth Incongruence*

The local sensemaking process of each court was also affected by each court's normative conditions. In particular, we found three factors that appeared particularly salient: the court's orientation toward monetary sanction reform efforts, ideas about who had the power to interpret new laws and implement legal changes, and the congruence between efforts to uphold justice and run an efficient criminal legal system. We expand on each of these factors and describe how they affected acceptance or opposition to the new laws.

In both Washington and Missouri, actors described certain local court cultures as being oriented toward the purpose of the revised statutes before they were put into place. Actors in these courts told us that they had informally adjusted their courtroom practices in a way that aligned with the reforms before the formal legal change and that they liberally waived nonmandatory fines and fees for most defendants. The legal change observed in Washington, for instance, mirrored existing normative expectations and orientations in at least one superior court. Both judges and attorneys we interviewed in that court suggested that the adoption of monetary sanction reforms went more smoothly than in other counties because they were already engaged in many of those practices. Such examples were also evident in Missouri. In an interview with a Missouri judge, they indicated that their court had not incarcerated anyone for failure to pay prior to the legal change barring the use of jail for nonpayment: "Honestly, we didn't change a lot with the reform. We didn't put people in jail for failure to pay for it, we brought them back on show cause [hearings]. We've always done pay agreements since I've been here and before I got here. The forms were already in place. We've done pay agreements."

Overall, the degree to which legal changes aligned with the normative culture of the courts determined how easily those courtroom communities were able to implement these changes. As the data show, conformity with the law was sometimes achieved even before changes in the law itself.

By contrast, one of the key barriers to a uniform court orientation toward monetary sanctions appeared to be generational differences on the judge's bench, which often contributed to contested negotiation of the new laws. One public defender told us that changes in the Washington State statutes were sometimes met with hostility by the "old guard":

> There is one judge that we have that's retiring in one or two months. He's hesitant to change. I mean to me it's a very simple thing that I'm asking the judge to do. In my opinion, I'm asking the judge to follow the law. But I guess I don't have the same perspective as somebody that's maybe been on the bench for thirty years. There's an ego there. . . . someone is telling them that you can't do something that they've [been doing] for thirty years. . . . I think the amounts of LFOS and the habits. The presiding judge is really hesitant to waive warrant costs that have been processed like the processing fee for warrants. It's $100 for each warrant. The presiding judge, she is hesitant to waive those. And so if I'm before her, I'll make a specific mo-

> tion. I will explain how my client qualifies as indigent and how those costs must be waived. If it's the younger judge, the newest one on the court, I don't need to make that motion. He'll just do it on his own.

In this example, the attorney notes that habits played a significant role in how the judiciary approached monetary sanctions. Consistent with other established processual orders, we found that public defenders adjusted their actions to remedy the disconnect between the spirit of the new statutes and the reality that judges are primarily the powerbrokers in court. We suspect that this dynamic likely plays out differently across courtrooms depending on the extent to which other court actors subscribe to the power dynamics and normative policies around conflict.

An important consideration for court actors was whose role it was to interpret and enforce certain legal practices. We found a consistent pattern of adjusting behaviors based on the normative expectations of judges' power. This was especially true in the probation and parole court community. When asked whether probation revocation was pursued for unpaid fines and fees, a probation officer in Missouri noted, "We used to write a violation report for any individual that still had an outstanding court cost balance. And sometimes judges would take action on that. And we didn't want that happening, but they did. So, our department kind of changed our expectations related to that."

Such practitioner views illustrate how expectations of judicial behavior shaped community supervision decisions, and subsequently shaped the experience of the defendant. Established expectations and processual orders were also evident in Washington where one judge noted that in-court challenges to LFOs are relatively rare. A second judge also indicated that as attorneys become more familiar with the common practices in the court and the "judge's tendencies," they can adjust their expectations around monetary sanctions: "I think, once any attorney, any prosecuting authority, knows the judge, they'll know the judge—what their tendencies are, what they tend to impose, what they don't tend to impose, right? And they'll, if they're smart, would adjust to that."

Although the quoted actors reported the established processual orders as a pathway to bypass conflict (passive acceptance), conceptions about who held power in the courts could also generate conflict in court proceedings. We found this to be true in Washington and Missouri, where court actors' interpretation of legal changes regarding waiving LFOs for indigent defendants would come into conflict. In one Washington court, a public defender explained that judges regularly assume that plea recommendations align with law. Such judges would not hear arguments from public defenders when they pushed back:

> And in their [prosecutor's] manual, they've got something in there that says they have to at least ask for $350 in a first time DUI charge. They just always do. And most prosecutors will not budge on waiving that, cause they're just like, "It's in the manual" and that's the end of the story. And a lot of prosecutors will say, "Well, the judge could waive it if he wants to". And this is where it kind of gets into this, the judge is like, "Well, it's an agreed recommendation. You agreed to it." And I'm like, "Yes, because of the case law that says ultimately you decide. And the prosecutor relied on you ultimately deciding."

In this example, the general flexibility around who is responsible for upholding particular statutes in a discretionary setting creates an inevitable conflict. This finding was reinforced in other interviews where court actors under the same state system had no consensus regarding the responsibility of ensuring equality under the law for the defendant, especially in response to new directives.

A few judges across jurisdictions claimed that attorneys were the ones who needed to be the most informed about changes and it was the attorney's responsibility to negotiate plea deals that complied with any recent changes in the law. However, judges maintained discretion in sentencing, which created some contested negotiations in open court where prosecutors or defense attorneys would argue over how the new laws should be practiced. In St. Louis City, a public defender explained that it was often best to argue in court over fines and fees and

bypass plea negotiations (pursuant pleas) because judges were more amenable to waiving LFOs than prosecutors.

> St. Louis City is notorious for looking at all the priors, and believing that each sentence has to gradually increase, or become more punitive without respect to what actually happened in the case itself and what kind of harm was done. In our jurisdiction, it actually works out much better to open plea or blind plea. I think I've had maybe five pursuant pleas in the entire time that I've worked in that office, just because [prosecutors] make terrible recommendations. That, and then the judges are almost always more willing to cut people a break, especially with regard to monetary amounts, because they're more realistic.

We saw this tactic play out in court both in Missouri and Washington State, where public defenders would argue with judges to waive LFOs in open court, citing the recent changes in law.

The ability of strong court norms to facilitate the anticipation of other actors' decisions developed in other Missouri courts as well. At the county level, judges indicated that state prosecutors knew how much wiggle room they had from the judge in terms of sanction variations. Relatedly, the judge mentioned the outcomes in the court, once established, were relatively stable across cases. Likewise, defense attorneys would anticipate the going rates for particular types of crime. In such cases, they would not engage with the prosecutor to negotiate or contest the norms around sentencing.

Finally, interactional sensemaking was expressed differently depending on the level of tension between reform ideals and the procedural realities of the statutes. Broad courtroom workgroup goals such as expediency and efficiency contributed to passive acceptance of legal changes whenever those changes did not conflict with court processing. One judge in Washington explained: "There's this inherent pressure in our system to be fast, right? To do as many hearings as we can in the shortest amount of time, but you don't want to sacrifice, obviously, doing things right because of that. But at the same time, you want to recognize the pressures on judges of trying to be efficient." During courtroom observations, these interviews confirmed what we noted as quick conversations around ability to pay that felt superficial and the routine waiving of nonmandatory LFOs.

Where considerations of willful nonpayment were concerned, actors in Missouri cited the additional administrative requirements as being in conflict with efficient case processing. Judges, prosecutors, and court clerks reported that the additional steps needed to find a defendant in violation of nonpayment shaped their behaviors as they were often not worth the extra effort:

> You gotta get them an attorney. I think the prosecutor has to be appointed. You gotta appoint the prosecutor and it's the prosecutor's job to prove if they have the ability to pay. I don't think the court engages. I've never engaged. I mean, sometimes . . . we're humans and honestly, do you sit there and make assessments and what you think? I think that's part of figuring out if someone's indigent. Yeah. You sit there and go, hmmm. And I look, did they post bond in three other courts. Well, that goes to say . . . I look at that, yeah.

As this prosecutor related, the additional barriers to ensure constitutionality, when combined with cultures of efficiency, produced more informality around willful nonpayment. One county judge in Washington echoed this sentiment and further described the full range of labor that would be incurred:

> It'd have to be a show cause or violation of probation for me to do that. I would never do it just for. . . . Judges don't have time to mess with costs. We're not looking at costs. We're not looking at costs and fees. We don't have time for that. We're moving on to the next case. If somebody doesn't pay, we're not going to investigate it or put a bench warrant out on them. And the prosecutors don't care whether costs get paid or not, so you got to sit there and start thinking, "Who's making the application for bench warrants?" Judge

isn't going to do it on his own. He doesn't have the amount of time in the day to even go to the restroom.

The cultural goal of efficiency held across courtrooms of all levels and sizes, although municipal court actors expressed this sentiment more regularly. The examples suggest that efficiency largely worked in the defendant's favor, but municipal court actors in Missouri also highlighted the conflict of expediency even with the opportunity to informally discuss ability to pay with defendants: "Municipal court is a time-constrained business anyway. You see a lot of people. A lot of times part-time judges and you see a lot of people during that time. So, when there's a lot of administrative stuff, and we file a lot of compliance notices, which is good that we're complying, but that takes time away from doing . . . the other things, the more engaging things. Having those conversations and doing some of that."

Overall, the legal changes in Missouri and Washington, which increased the standards of fact-finding for the courts, sometimes clashed with the broader organizational goal of efficiency. In response, actors essentially complied with the law by avoiding the precursors that would require additional engagement with the new statutes. Alternatively, in some spaces fines could still be distributed inequitably and where the goal of expediency overrode values of the revised statutes, even if actions were technically compliant.

### *Cultural-Cognitive: Professional Silos in Court Communities*

Organizational coupling among court actors was often tightest within each profession because individuals with shared tasks and goals are the most likely to interact and develop expected practices (Eisenstein, Flemming, and Nardulli 1988). Here we consider the accepted organizational structure of modern U.S. court systems. Different agencies working together as a legal community is a cultural expectation for criminal justice. Such a construction outlines the expected cultural template for what a court should look like, what roles actors play within it, and expected scripts for action. This includes an inherent siloing of different professions that share information primarily within their own agencies. We found that such professional siloing had a significant impact on sensemaking within our court systems.

Court actors noted that most of their interpersonal conversations occurred within their own sponsoring agencies. For judges, this occurred at periodic judge's meetings or through statewide professional judges organizations. As a St. Louis judge noted, "Yeah. I just had lunch with a judge today, we were talking about LFOs, as a matter of fact, and how we . . . the financial burden that it causes people. It's something that's talked about. When our court, when the judges meet for our monthly meeting, municipal court reform comes up. Typically, it's always something that, because our presiding judge is responsible now, for the supervision of all the municipal courts, he gives us input on how that's going."

Some court actors in Washington also told us that judges met regularly to discuss daily operations of the court and how recent legal changes might impact their practice. These meetings provided a regular opportunity for collaborative meaning-making across judges within the same court network.

Information dissemination for other court actors also flowed primarily within their own agencies. Defense attorneys mentioned receiving information, notices, or training on recent legal changes from their offices. It also appeared that each defense attorney's office tried to create a unified message around the new changes and defense attorneys would advocate for this interpretation in court. Prosecutors also mentioned that changes in the law were communicated through their office. In one Washington State county, prosecutors followed written guidelines disseminated by the local prosecutors office. These guidelines were more rigidly structured and often changed without direct argument. Importantly, despite the presumed guidance of higher-level bodies, mention was still made of deviation based on individual prosecutor's orientations.

Communication was common within professions, but contact across professional channels was less so. For example, one public defender in Washington discussed the barriers to

communicating with judges in lower-level courts:

> I don't have as much access as I would like to have to the judge. You can't just walk to the door and knock and ask for their opinion or anything like that. I hear that used to be different twenty years ago or something. Right now, I don't have as much access as I want. They kind of keep the judges away from us in district court. Even more so than I realize in superior court. I think the superior court attorneys are able to have a little bit more access to the judges. Like they're able to ring for them, present a motion, and have access to them at any time. Oftentimes we write motions, we want it signed, we want a judge's opinion on it right away. Superior court attorneys can do that. I can't. And so, for me, clerks are my gateway to the judge. Often, I use the clerks to know . . . they kind of give me clues as to what the judge is thinking or what the judge wants out of a certain situation.

As the attorney noted, accessibility and interaction across courtroom workgroups varied at the jurisdiction level, where local power dynamics contoured interactions. Several court actors emphasized deference to the judge, and rather than attempts to negotiate through contestation, the general impetus was to anticipate the judicial decision-making process. Thus, at the courtroom workgroup level, passive acceptance manifested in contexts that were especially disconnected and where actors rarely interacted in any formal way outside of the courtroom. Such settings allowed for individuals to shift sensemaking of legal change and other responsibilities to other actors.

We also highlight two important counterexamples. In one Washington State superior court, we found a unique instance of collaborative interpretation where legal change spurred discussions and coordination between court actors. More specifically, a superior court clerk told us that prosecutors, public defenders, and clerks had come together to discuss how they planned to enact the new requirements for assessing future ability to pay and dealing with payment compliance. They agreed to monitor compliance in a more informal way: a public defender and the superior court clerk would meet with folks who stopped making monthly payments and talk through a plan to get them back on track and almost always resulted in more time to comply with payment orders.

Our conversations with Washington defense attorneys also told us that they would write briefs in response to what they believed were judicial misinterpretations of the new statutes. They believed these briefs would be discussed at monthly judge's meetings. As one attorney explained, "The judges have a regular meeting amongst themselves and often discuss certain subjects. And so, I know that in the past we've brought issues to them, which include things like, 'Hey, you're not using your discretion with regard to fines.' And that gets discussed amongst the judges. And sometimes after one of those meetings, you will see the judges do things appropriately because we brought it to their attention that it's not been effectuated properly."

Although this appeared to be a way for information to be discussed across types of decision-makers, the process of interpreting these briefs and drawing conclusions was reserved for judges. Rather than collaboratively interpreting legal change, public defenders in Washington contested judges' interpretation either in court or through these formal briefs. There were not common processes across our observations for court actors of different professions to regularly meet collaboratively within any given court district in Washington State.

## Summary

The importance of contextual factors in determining the course of interpreting and implementing changes to monetary sanction laws in Missouri and Washington State is clear. One of the biggest factors, and one that differed the most between the two states, was the presence of a strong regulatory entity. The political salience of LFOs in Missouri meant that the legislature was particularly motivated to ensure a large degree of conformity across jurisdictions in the wake of legal changes. The OSCA effectively provided standardized information at all court levels, offered training of court actors

during annual conferences, and implemented corrective actions when necessary. These actions limited the sensemaking needs of court actors because they were provided clarity on how to interpret the new laws and directive actions on how to implement new practices. Thus Missouri courts were much more likely to engage in a collaborative process of discussing the new laws and passive acceptance of changes that OSCA dictated to them. This differed from Washington, where regulatory oversight was not as stringent. In Washington, the integration of legal changes into practice was mostly left up to the individual jurisdictions. Although collaboration and passive acceptance did occur, when court actors had differential interpretations of the law, it was more likely for legal changes to be contested in Washington.

Despite the presence of higher regulation in Missouri, the legal structure did not guarantee conformity across all jurisdictions. We still found that the sensemaking process was influenced by other important factors and that many of these factors were found to be important in similar ways *within both states.* Sensemaking was affected based on how well the laws aligned with the previously established context of the courts. This especially related to the localized court culture of each jurisdiction. Because these new monetary sanction laws were based on reform efforts, we saw jurisdictions in both states described as more liberal or reform-oriented engage in greater collaboration and acceptance of legal changes. In courts described as less reform oriented, contestation and disagreement between court actors was much higher. In other words, whenever local court cultures were oriented toward the legal changes, actors often passively accepted those changes as a matter of course. We also saw greater contested negotiation when the laws were either in conflict with previously established laws or perceived as ambiguous. Ambiguity in the new laws led to confusion by court actors over how to implement the new required practices and who was responsible for keeping track of these changes. When ambiguity was high, our interviewees were more likely to indicate instances of contested sensemaking and disagreement. Finally, actors also engaged in a kind of passive change of practice in order to align new practices with established norms of case processing to keep courts operating in an efficient and uniform manner.

The sensemaking process was also affected by the larger organizational configuration of U.S. courts. In both states, collaboration across court professions was the exception. Although we found instances of within-profession interpretation of new laws (such as judges talking to judges, defense attorneys talking to defense attorneys), efforts to engage across professional lines outside the courtroom itself appeared rare. Thus, although our understanding of courtroom communities can help us investigate how court actors from different agencies engage in courtroom practice, it can also point us to the ways in which this legal structure inhibits the flow of information and collaboration within the larger court context.

Overall, we found important factors that shaped congruence both across and within our two states. The presence of a stronger regulatory institution led to greater conformity across courts within Missouri compared to Washington. However, courts within Missouri still showed levels of disagreement on the implementation of new laws. Within both Missouri and Washington, we found the process of interpreting and implementing new laws to be impacted by the different organizational, normative, and cultural configurations of each court.

## DISCUSSION

In this article, we examine the processes by which court actors interpreted, negotiated, and implemented new legal practices following changes to monetary sanction laws in Missouri and Washington. We find that this sensemaking generally took one of three forms: actors accepted changes to practice as a matter of course or in automatic response to the actions of other actors (passive acceptance); actors engaged in opportunities for collective and collaborative interpretation and discussion of legal changes (collaborative interpretation); and actors engaged in contested forms of disagreement, argumentation, or negotiation over the interpretations or actions of other actors (contested negotiation).

We also identify an assortment of institutional factors that shaped, helped, or hindered

these processes in key ways. We especially highlight the importance of regulatory oversight in determining greater courtroom conformity in Missouri relative to Washington. However, the stated goals of new legal mandates did not always translate to clear changes in courtroom behaviors or perspectives in either state—even when strong regulative features were imposed. Across our study sites in both states, we find that normative and cultural-cognitive features informed the nature and extent of interpretation. How these factors shaped the interpretative process proved to be consequential in determining congruence with changing policies. Consistent with other work on this project (such as Kirk et al. 2022, this volume), we find that the localized nature of courts and their communities are consequential to the success of broader changes to monetary sanction policy.

Overall, this study demonstrates the viability of understanding courts as inhabited institutions. Such a perspective helps us highlight the importance of organizational and institutional factors in determining legal outcomes. The ways in which new laws are passed, how information about those laws are disseminated, and how new policies are regulated help to determine courtroom activity. Of course, an essential aspect of the inhabited institutions perspective is in emphasizing ground-level action. Although stricter oversight of monetary sanction practices led to more consistency, the implementation of these laws clearly went through localized interpretative activity in both states. Court agencies, workgroups, and individual actors all engaged in strategic responses to new laws and engaged in an interactive process of meaning-making with other court entities to facilitate (or hinder) practical change. Such findings are consistent with Karin Martin, Kimberly Spencer-Suarez, and Gabriela Kirk (2022, this volume), which suggests that fidelity to local norms informs how punishment is applied, and where opportunities for discretion occur. In their work, cultures of defendant accountability among court actors engendered attention toward how long it might take to pay a sanction, even though regulatory frameworks largely emphasized assessments of inability to pay at all. Ulmer's suggestion that "courts are governed by institutional rules and laws but are inhabited by courtroom workgroup actors with agency and court community organizations with their own informal norms, culture, politics, and constraints" is thus crucial for identifying how disparities emerge, even when mandates and reforms are in place (2019, 493). This organizationally oriented perspective underscores the importance of both the decision-making of street level actors and the range of multilevel variables that influence their actions.

We believe our approach offers a unique perspective, but recognize the key limitation that our study only compares and contrasts two states. A wider examination of states, and the changes they introduce to the courtroom, would further clarify the impact of the factors we have described. Future work would yield important insights with a more robust comparison of legal frameworks across states and jurisdictions. In Missouri, the changes to LFO laws came primarily from legislative action with plenty of regulatory oversight and a greater sense of political pressure. By contrast, changes in Washington occurred first through case law and Supreme Court decisions, and only later were LFOs reformed through a legislative bill. This is not to say that Missouri lacked discretionary influence or that Washington lacked regulatory oversight, but that the origin of legal change in Missouri and Washington differed in ways that may have shaped sensemaking processes. Furthermore, although previous work using the court community framework has explored contextual factors that help foster cross-court uniformity, our findings may indicate that it is the court community structure itself that hinders isomorphism. Although we are limited in our ability to fully investigate the consequences of court structure on case outcomes, emerging evidence from Minnesota links "jurisdictional mazes" with respect to tribal populations to differential case outcomes (Stewart et al. 2022, this volume). Future work should further explore the role of court structures by comparing more federalized states with those that have unified court systems.

All mandates to change courtroom practice, such as those that Brittany Friedman and her

colleagues propose (2022, this volume), will enter into a transformative process by which new laws are interpreted, negotiated, and implemented in accordance with local sensemaking practices that are in turn shaped by the structure of the court and the context in which it is embedded. Such findings are not only relevant to understanding the translation of legal changes, but also may help explain instances where defendants are subject to different outcomes despite being heard under the same legal mandates (see Kirk et al. 2022, this volume; Stewart et al. 2022, this volume).

From a policy perspective, the findings not only apply to reform efforts, but also are useful for identifying how legal change manifests in practice. Certainly, changes to criminal justice policies are often invoked with reformative language and in hopes of instituting broadscale changes in outcomes. For example, in Missouri, Macks Creek Law was aimed at reducing monetary sanctions as a tool for resource extraction (Huebner and Giuffre 2022, this volume). Yet, as Franklin Zimring notes (2020), the assumption that court actors at the individual level will automatically reorient themselves to align with the broader reform effort is untenable. Instead, our findings show that the interpretation of laws is inherently local and subject to often unmeasured power dynamics. Thus, meaningful alignment between the goals of a legal change and eventual outcomes requires sensitivity not only to the regulatory frameworks that are intended to shape the reform, but also the normative and cultural-cognitive factors that influence their interpretation. In the wake of perpetual legal change, identifying and understanding the relevant characteristics of local courts—particularly in ways not normally captured in traditional empirical analyses—is essential to crafting policies that meet their intended goals.

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# The "Damaged" State vs. the "Willful" Nonpayer: Pay-to-Stay and the Social Construction of Damage, Harm, and Moral Responsibility in a Rent-Seeking Society

APRIL D. FERNANDES, BRITTANY FRIEDMAN, AND GABRIELA KIRK

*States increasingly look to incarcerated individuals as a source of revenue to alleviate the fiscal burden of incarceration, which results in suing prisoners for these costs. Through lawsuit complaints, states claim they have suffered damages and seek reimbursement from incarcerated individuals through pay-to-stay fees. Drawing from an original dataset consisting of 102 civil complaints from Illinois, we examine how the state constructs damage, harm, and willfulness through pay-to-stay lawsuits. We find that the state achieves this beneficial outcome by labeling incarcerated individuals as* willful nonpayers *and thereby morally responsible for what it terms damages suffered. Our empirical and theoretical contributions position civil lawsuits as part of imagining incarcerated individuals as fiscally responsible for their incarceration within a rent-seeking society, contextualizing the social linkages between willfulness, legal moralism, and perpetual indebtedness.*

**Keywords:** monetary sanctions, pay-to-stay, willful nonpayer, labeling, legal moralism, rent-seeking

"We should, I believe, make prisoners pay rent." In 1994, a law clerk penned an op-ed in the *Chicago Tribune*, asserting that the fiscal responsibility of incarceration lay at the feet of the incarcerated individuals in state prisons, and that they should "pay their fair share" (Shacknai 1994). The clerk, Daniel Shacknai, is describing pay-to-stay provisions, which were implemented in the state of Illinois in 1981 through the Prisoner Reimbursement Act,

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mandating that incarcerated individuals pay a per diem rate for room and board. Such proposals have seen renewed nationwide interest with the skyrocketing costs of mass incarceration, forty-nine states having some form of pay-to-stay provision designed to treat incarcerated individuals as clients of correctional services (Aviram 2015; Eisen 2015, 2017; Plunkett 2013). The first modern incarnation of pay-to-stay was passed in 1935 in the state of Michigan, yet the fiscal crisis of the 1980s, strained correctional budgets, and resulting austerity debates over who should pay for the welfare state spurred other states such as Illinois to adopt similar provisions (Kirk, Fernandes, and Friedman 2020). In practice, states mobilize pay-to-stay provisions by selectively suing incarcerated individuals for the costs of incarceration in civil court under the guise of violated contractual agreements. Recent research on Illinois has shown that pay-to-stay provisions are a legal template according to which lawmakers legally craft incarceration as a public commodity with the state as the producer, the imposition and recoupment of pay-to-stay fees justified by positioning incarcerated individuals as free-riding consumers of public goods and services (Friedman, Fernandes, and Kirk 2021). This research reveals how lawmakers adopt consumerism as an institutional logic to foster a producer-consumer relationship between the state and those incarcerated in an effort to legitimately extract assets from within a structurally and physically captive market. However, these extractive practices are made possible by the hybridity of criminal, civil, and administrative legal authority, the resulting annexation of institutions that are traditionally outside the realm of criminal justice, and the framing of pay-to-stay as nonpunitive (Friedman 2021).

In this article, we contribute to the conversation by building on recent research on pay-to-stay and captive consumers to trace the creation and application of social labels endemic to a market-system that depends on perpetual indebtedness, the legal concept of willful nonpayment, and the moral sanctioning of free riders. Specifically, we ask how the state constructs damage, harm, and willfulness through pay-to-stay civil lawsuits. We find that the state labels incarcerated individuals with debt as *willful nonpayers*, meaning that their unpaid financial obligations and the state's decision to sue them signal deliberate deviance and thus an immoral violation of civility warranting civil damages. We draw from 102 state-initiated civil lawsuits against incarcerated individuals to recoup pay-to-stay fees in Illinois to document how incarcerated individuals are characterized as eschewing their moral responsibility to the state, but most important to its citizens, by purportedly refusing to fiscally reimburse the state and the Illinois Department of Corrections (IDOC) for the cost of their incarceration. We argue that the concept of willfulness functions as a social label applied to incarcerated individuals, meaning that "social groups create deviance by making the rules whose infraction constitutes deviance, and by applying those rules to particular people and labeling them as outsiders. From this point of view, deviance is not a quality of the act a person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender,'" who is a person perceived as violating moral codes (Becker 1963, 9). We explore how the state of Illinois implicitly evokes and applies the label of the willful nonpayer, particularly through the construction of damage and harm against the state, in bringing pay-to-stay lawsuits against incarcerated individuals for the costs of their incarceration.

The labeling of incarcerated individuals as willful nonpayers in pay-to-stay lawsuits is constituent of broader movements to deem people ensnared within the criminal legal system as undeserving of the use of state resources. Our analysis suggests that the social label of willful nonpayer is applied to populations to legitimize their perpetual indebtedness by linking payment to one's moral responsibility to society. We argue that this linkage is endemic to rent-seeking behaviors that face public scrutiny, such as those demonstrated by the state. As the source of governance and extraction in a rent-seeking society, the state legitimates behaviors that foster costly, one-sided appropriation of wealth by situating them within existing legal mores. Such efforts are an essential step in legally and socially validating these actions to the public, engaging both the legal and

moral justifications for rent payments. To be an austere state or a welfare state is the question—one particularly salient to democratic capitalist economies—when competition over resources and property encourages and reinforces rent-seeking behavior, meaning that "actors seek benefits at little to no cost to themselves" (Kaufman 2004, 552). Accordingly, institutions of justice (law enforcement, courts, and corrections) are but one site of inquiry for researchers seeking to uncover the social labels and moral assertions that undergird a broader state beholden to competing special interests. When applied to the criminal legal system, rent-seeking behavior can be broadly understood as attempts to transfer resources from clients to the state in a competitive fashion no matter the social cost to the populace or the state. We argue that pay-to-stay lawsuits exemplify such practices by activating willfulness as a marker of moral failing, with compensation to the state in the form of rent as moral and fiscal recompense.

## LINKING WILLFULNESS TO MORAL RESPONSIBILITY IN A RENT-SEEKING SOCIETY

> willful—A willful act is one done intentionally, without justifiable cause, as distinguished from an act done carelessly or inadvertently.

Pay-to-stay lawsuits are yet another tool in the arsenal of the state to transfer the responsibility for payment to the "users" of correctional systems, and morally justify such provisions by characterizing incarcerated individuals as willful in their withholding of funds to satisfy debts. In the wake of mass incarceration where imprisonment soared and incarceration costs rose dramatically, states faced budget shortfalls that necessitated tapping into alternative forms of revenue (Lynch 2009; Harris, Evans, and Beckett 2010; Harris 2016; Soss, Fording, and Schram 2011; Wacquant 2010; Eisen 2015). The growing literature on monetary sanctions demonstrates that revenue generation became a central aim for law enforcement agencies and court systems as they expanded the universe of court fines, fees, and costs (DOJ 2015; Friedman and Pattillo 2019; Martin 2018; Sobol 2015). Although pay-to-stay provisions existed long before this shift, today's use of these lawsuits exemplifies yet another way the state attempts to alleviate the burden of incarceration costs by shifting the responsibility to the "users" of the system (Kirk, Fernandes, and Friedman 2020; Friedman, Fernandes, and Kirk 2021). We argue that in doing so the state positions the ability to pay and the intentional withholding of funds as an immoral and thus deviant act to make pay-to-stay lawsuits legally and socially solvent. In this article, we explore the literature surrounding the endogenous fiscal and moral culpability of system-linked individuals and how the determination of who epitomizes the willful nonpayer becomes central to the widespread use of pay-to-stay lawsuits in the pursuit of unburdening the state and its citizenry at the expense of the incarcerated.

### Pay-to-Stay

Throughout the country, as carceral populations ballooned and federal and state coffers seized under the weight of social service obligations, states such as Illinois, among others, opted to transfer those costs to incarcerated and institutionalized people and their families, releasing the state, ostensibly, from the fiscal burden and casting the incarcerated as undeserving consumers of a vital commodity (Friedman, Fernandes, and Kirk 2021). Who has the right to consume public resources has long been a contentious question, under which people in contact with coercive state agencies are framed by the state as consumers yet denied the protected status consumers traditionally enjoy vis-à-vis consumer affairs bureaus and watch groups. The construction of the willful nonpayer stigmatizes consumption as a public cost, stripping system-constrained people of their most fundamental human rights. Instead, the inverse occurs: the extractive rights of state agencies are protected against willful nonpayers by officials who were, ironically, elected by the public to protect consumers, such as the attorney general. The application of the willful nonpayer label as a way to protect state institutions from their consuming clients thus reveals the legitimation problem endemic to a rent-seeking class interest that is also pub-

lic facing.[1] Consumption is a capitalist right for privileged members of the free public and stigmatized as theft for members of the captive public. A consistent theme throughout the literature cites the conditions of institutions—whether carceral or therapeutic—as exceeding the quality necessary for the residents housed within them. Characterizations of prison accommodations by both legislators and journalists describe them as luxurious or "plush" (Wynn 1983), equating them to "the biggest hotel chain in the state" (Ahmed and Plog 1976) or akin to "country club-style living" (Lynch 2009, 121). Although the characterization of prisons as luxury hotels is patently false, in these conceptions, legislators not only highlight the undeservingness of incarcerated people for any services rendered, but also cast them as central villains in this struggle for state resources. Legislators' stated perceptions of incarcerated people as living comfortably on the state's dime without contributing their fair share, though false, provides the necessary fodder—and taxpayer support—to introduce and pass legislation that would further pay-to-stay style provisions. In her work on the Arizona prison system, Mona Lynch (2009) finds that such characterizations are influential in steering the passage of bills that continually shift the burden to incarcerated people. In these imaginings, the state casts itself as victim of the rising and burdensome costs of incarceration; therefore, it both needs and deserves reimbursement for per diem room and board expenses. Within pay-to-stay provisions, the state is essentially reframing incarceration not as a social institution, serving a widespread function, but instead as a fiscal burden, created and sustained by incarcerated people, who are free riders leeching from the state (Friedman, Fernandes, and Kirk 2021). These characterizations of pay-to-stay as a recoupment mechanism rather than a punitive measure are an essential piece of the state's making its case to taxpayers and to a broader public for suing prisoners for the cost of a state-run service (Friedman 2021).

The free-rider principle becomes part and parcel of how incarcerated people are regarded by the state and its agents, under the dual assumption that they are trying to game the system using state resources while both actively and passively avoiding their responsibility to the state by withholding per diem payments (Friedman, Fernandes, and Kirk 2021). Much of this discourse operates mostly within the legal bureaucracy as a type of self-justifying narrative across legislators, prison officials, and the courts, although penal actors such as sheriffs, law clerks, and lawmakers have gone public with these patterned sentiments in public statements and published op-eds. For example, regarding the implementation of a policy to charge jail inmates for food, housing, utilities, and services provided during their incarceration, Sheriff Jim Pitts of Elko County, Nevada, asserts, "These guys shouldn't have a free ride. . . . Society shouldn't be paying for their wrongs" (*Elko Daily Free Press* 2014). Pitts makes a clear delineation of who is responsible for the incidental costs of incarceration: by virtue of a criminal conviction, incarcerated individuals have opened themselves up to such charges. Such sentiments were echoed in Lynch, who cites an Arizona Republican senator suggesting that the luxury accommodations of prisons should be eliminated because "they are bad people. They were put there [in prison] because they committed crimes" (2009, 121). In answer to Pitts, a defense attorney in Elko offers the counterpoint to the state's position of harm and responsibility: "Feeding and housing them and providing them a proper environment and proper care, that's their [the County's] responsibility once they decide to house them." Here the tension between the state's fiscal culpabil-

1. An anonymous reviewer inquired about how the construction of willfulness is transmitted back to the public. Annual reports by the IDOC and investigative reporting by the *Chicago Tribune* and other media outlets have been integral in communicating to the public about the amount of money owed and collected through pay-to-stay lawsuits. However, in the past fifteen years of annual reports, the IDOC reported only on the amount collected in 2010 and 2011, and then only coupled with other external funding from grants and educational programs. We also suggest the language and logics used in the IDOC reporting aids in internally legitimating pay-to-stay and other similar practices that center on the stigmatization of the incarcerated as the justification for such policies and practices.

ity for the costs of incarceration and its statutory duty to provide the services of care, custody, and rehabilitation is manifest. Regardless, the state's harm and need for reimbursement proceeds reign supreme, disregarding the pains of incarceration and the enduring harms of indebtedness that pay-to-stay provisions create and sustain.

Our contribution reveals how the social construction of damages and harm supports the application of labels that allege nonpayment constitutes immorality. This linkage allows the state to assign the blame and stigma necessary to hold incarcerated individuals fiscally but ultimately morally responsible for the costs of incarceration through civil lawsuits. Blame is assigned for the wrong of nonpayment and stigma is assigned for the willfulness of the act. We argue that this labeling process reveals how the state collapses questions of moral and fiscal responsibility, such that the imposition and recoupment of monetary sanctions evidence the extractive dark side of legal moralism within the confines of a rent-seeking society. Our work focuses on two conceptions of rent—first, in Shacknai's rendering of paying for services rendered through per diem costs, much as one pays their monthly rent expenses. Rent here becomes a tacit and involuntary contractual obligation borne out of the use of services of room and board within prison facilities, which contrasts with how such payments are arranged outside the institution. The second use of rent refers to the actions of the state in rent-seeking to increase revenue without increasing the value or improving the conditions of the resources and services offered in their revenue extraction scheme. In framing itself as victim and labeling the incarcerated as willful nonpayers, the state casts the subjects of the lawsuits as debtors in perpetuity, both to the state and to its citizens. This expansion of punishment through debt payment offers a complex view of how this process operates to free the state while bounding the incarcerated person to the tethers of incarceration. We suggest that legal moralism and resulting labeling processes are useful theoretical tools to understand the proliferation of righteous undertones undergirding what could be understood as rent-seeking, practices scholars have previously described as "stategraft," "predation," and "layaway freedom" (Atuahene and Hodge 2018; Page and Soss 2017; Pattillo and Kirk 2021).

## Monetary Sanctions Expansion and Willfulness

The growing empirical interest in monetary sanctions has explored the exploitative nature of fines, fees, and costs associated with criminal justice contact (Page et al. 2019; Harris, Evans, and Beckett 2010; Harris 2016; Conboy 1996; Martin 2018; Goldstein, Sances, and You 2020). Central to the assessment and collection of monetary sanctions is nonpayment, for which penalties range from driver's license suspension and revocation to arrest warrants and incarceration (Salas and Ciolfi 2017; Bannon, Nagrecha, and Diller 2010; Harris 2016; King 2015; Wallace 2019). The related justification lies in the supposition that they can pay but choose not to satisfy their debt to the state. In the language provided by court systems throughout the country, "a 'willful' act is one done intentionally, without justifiable cause, as distinguished from an act done carelessly or inadvertently."[2] The concept of willfulness for nonpayment of courts debts was addressed in *Bearden v. Georgia*, in which the standard for willfulness was a refusal to pay or the failure to make efforts to secure the resources to pay (Harris 2016; Harris et al. 2017).[3] The concept of the willful nonpayer suggests an obstinate debtor who has the means but not the desire to do their part in atoning for their criminal behavior by paying fines and fees. This concept is a central feature of the rhetoric that surrounds a vast array of state services from incarceration and institutionalization to welfare and state-mandated child support payments (Harris 2016; Bonds 2009; Haney 2018; Lara-Millán and Gonzalez Van Cleve 2017; Lara-Millán 2014). Bryan Sykes and his colleagues (2022, this volume) find that the state often engages in a form of

2. New Mexico Second Judicial District Court, "Willful," in *Glossary of Legal Terms*, https://seconddistrictcourt.nmcourts.gov/glossary-of-legal-terms.aspx (accessed August 6, 2021).

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

"financial double-dealing," ultimately transferring funds provided to citizens through social services back to the courts, claiming it is owed the same resources it at one point provided.

The willful nonpayer is akin to the language used for the "deadbeat dad" in child-support cases or the "welfare queen"—images of individuals living in relative luxury, eschewing their responsibility to their children, to the productive labor force, to civil society (Bonds 2009; Haney 2018; Hancock 2003; Mincy and Sorenson 1998; Cammett 2014). In her work on prison expansion in the rural regions of the northwestern United States, Anne Bonds refers to the "imaginations of the poor'' as part of the framing strategy to obscure the responsibility of the state and mask the role of neoliberal machinations in creating and sustaining existing fiscal crises (2009, 416). These characterizations or imaginations become a central element of concerted efforts to shift blame and the focus away from the state and its responsibility to citizens, incarcerated or not. These imaginations underlie the assessment of deservingness for state services, suggesting those who are connected to the criminal legal system, whether alleged or actual, are indeed unworthy of the use of said services (McCorkel 2004; Lara-Millán and Gonzalez Van Cleve 2017; Lara-Millán 2014; Goldstein, Sances, and You 2020). In essence, such determinations suggest a diminished citizenship that follows perceived or actual criminal justice contact and incarceration, where the services and provisions rendered free to residents of the state become contingent on criminal status (Miller and Alexander 2015; Miller and Stuart 2017; Battle 2018; Lerman and Weaver 2014). Existing scholarship exemplifies such contingencies, showing that access to state resources has declined in line with the shrinking welfare state and concerted austerity measures to stave off fiscal instability (Beckett and Western 2001; Kirk, Fernandes, and Friedman 2020; Atuahene and Hodge 2018; Jain 2017; Page and Soss 2017).

## Legal Moralism, Monetary Sanctions, and Mass Incarceration

Linking willful nonpayment to moral responsibility proliferates in the United States because rent-seeking behaviors find refuge in the legal system given its grounding in legal moralism, where elites compete as moral entrepreneurs who regulate right and wrong by creating norms and policing outsiders (Becker 1963). Legal moralism advocates the law as the arbiter of morality, where actions deemed outside the realm of societal norms are subject to the application of deviant labels or criminalization, or both. It is the perceived immorality of an action that exposes a person to possible, but not certain, identification and sanction (Murphy 1966). We suggest that monetary sanctions statutes are laced with codes about what behavior is inherently immoral, particularly within a capitalist economic system in which morality is intimately tied to one's value and the fiscal performance of responsibility.

The concept of willful nonpayment reverberates throughout the criminal and civil legal systems to claim that people with debt cause deliberate damage and harm against the state and its citizens and should be coercively held accountable for these actions. Work on monetary sanctions has pointed to the elastic nature of willfulness as a legal concept, court agents often making individual determinations of the ability to pay (Harris, Evans, and Beckett 2010; Beckett and Harris 2011). Any ability to pay, in the eyes of the court, can be enough to mandate payment and thereby discipline people for nonpayment through consequential extraction schemes such as wage garnishment, civil liens and lawsuits, and credit reporting (Conboy 1996; Friedman and Pattillo 2019; Harris 2016; Harris et al. 2017; Henricks 2019). Karin Martin, Kimberly Spencer-Suarez, and Gabriela Kirk (2022, this volume) find that even when the ability to pay is financially impossible court actors maintain procedural integrity by requiring defendants to perform accountability, mandating appearance in court or community service.

We suggest that in a rent-seeking society timely payment of debt is culturally linked to codes of civic moral responsibility and clientelism, both through law-on-the-books and law-in-action. We assert that institutions of justice are nested within a rent-seeking society and, as a result, the increasing financialization of social institutions has transferred particular social labels and mores regarding nonpayment to the criminal legal system. This is particularly

consequential given that institutions of justice are predisposed to legitimate state-sanctioned violence in the name of punishment, meaning they have the capacity to cause great harm to those perceived by rent-seekers as willfully withholding resources. Pay-to-stay lawsuits present an ideal case in which to explore constructions of willfulness within a rent-seeking society increasingly geared toward extending the reach and pains of punishment beyond the bounds of incarceration.

## DATA AND METHODS

This project draws on pay-to-stay lawsuits collected and compiled by the authors from the state of Illinois. We analyze the case files of 102 lawsuits brought against current and former incarcerated people, ranging from 1997 to 2015. These case files include complaints identifying the costs and "damages" the state sustained and outline the state's right to file the lawsuit, an attachment order detailing the incarcerated individual's financial assets, motions from both parties, and court summons of the various parties. These files are a written conversation and negotiation involving the Illinois Department of Corrections, the state, the incarcerated individual, and often the incarcerated individual's financial institutions. Because it was often difficult for the incarcerated individual to be physically present in court hearings, much of the case transpired largely on paper. These documents reveal a great deal about the arguments, logics, and conceptualizations of the law in these cases.

To obtain these case files, we first submitted two Freedom of Information Act requests to the Illinois Attorney General's Office in 2017. The first asked for a list of all cases filed between 1980 and 2016, which garnered a list of 159 case numbers of lawsuits filed under the pay-to-stay statute. It also asked for copies of the complaints filed after 2010, which resulted in thirty-one complaints. We then contacted the clerk in each of the thirty-one county courthouses where these cases were filed, receiving copies of at least one case file from twenty-nine of them. The courts varied widely in their cost for these files and in their capacity to locate and copy these documents. Older files were sometimes lost or damaged, kept on microfilm, or stored off site, in some instances, inaccessible because of the ongoing pandemic. Ultimately, we compiled records for a subset of the cases, collecting complete or mostly complete records for 102 lawsuits. The cases and documents available vary widely. Some cases were dismissed or resolved quickly, resulting in files of only twenty-five pages or fewer, but most cases lasted months to years and contain hundreds of pages of documents. In some instances, the incarcerated individual appealed the case, resulting in additional documentation. This rich dataset allows us to better understand how the state frames incarceration and incarcerated people to provide justification for bringing these lawsuits. Of the 102 complaints, thirty-one were dismissed, eighteen were granted in part, thirty-five were granted in full, and eighteen had outcomes that were unclear because the files were incomplete.

Illinois is an optimal case study for the use of pay-to-stay given its persistent and widespread use of these lawsuits to recoup incarceration costs. Illinois has been cited in a host of local, national, and international media articles for the use of pay-to-stay lawsuits (Walters 2015; Mills and Lighty 2015), its statute and lawsuit language similar to that of the first state, Michigan, to implement pay-to-stay (Kirk, Fernandes, and Friedman 2020). In addition, Illinois recently repealed its pay-to-stay statute,[4] making it a prime case study to understand the dynamics of the creation, increased use, and ultimately, dissolution of pay-to-stay within the state.

### Analysis

We analyzed the lawsuits by first reading through them and manually coding observations, patterns, and connections. We then crafted separate analytic and substantive memos on these lawsuits, and convened afterward for an iterative process of comparing, contrasting and identifying themes, divergences, and repeating commonalities. Despite similarities in the initial orders for attachment that detail how the amount of the lawsuit is calcu-

4. Illinois Public Act 101-0235 (2019), https://www.ilga.gov/legislation/publicacts (accessed August 6, 2021).

lated and the state's claim to those funds, variation in how the lawsuits proceed is considerable. The defendants varied in the degree to which they fought back against these lawsuits and in the legal arguments they deployed, the state also varying its responses. In the back and forth of the lawsuits, we were better able to seize on evidence that shows the state implicitly labeling incarcerated people with some level of assets as willful in their nonpayment of incarceration costs, and thereby undeserving of the use of state resources. This analytical process allowed us to delve into concepts of willfulness, perpetual indebtedness, and rent-seeking within the context of pay-to-stay lawsuits.

## FINDINGS

The nature of pay-to-stay provisions and the practice of suing prisoners for the costs of incarceration are in line with Shacknai's proposal that incarcerated persons are inherently responsible for the costs of incarceration and therefore should "pay rent" to alleviate the fiscal burden on the state and its noncommitted citizens. Such sentiments are integral to broader rent-seeking efforts that typify modern shifts in policing and the criminal legal system. In the analysis of the lawsuits, we show how the Illinois and the IDOC, in their pursuit of rent, connect indebtedness to a moral imperative to pay through the application of the willful nonpayer label. In the language of the lawsuits, the state and IDOC cast themselves in the role of victim, asserting that they have suffered damages as a result of the soaring costs of felony imprisonment. Incarcerated people with any modicum of assets thus become willful nonpayers, intentionally withholding money from the state and eschewing not only their fiscal debt but their moral debt to the state and society as a whole. The limited recoupment suggests the pursuit of rent seeks to render a moral punishment rather than function as a sure and effective method of fiscal reimbursement. We detail how the verbiage of the lawsuits typifies the state's argument of willfulness through an iterative process of assigning blame, denying harm, and claiming both fiscal and moral damage to the state and its citizenry.

Essential to the concept of the willful nonpayer is the dual identity of incarcerated persons as both debtor and committed person. In the Illinois Unified Code of Corrections, those who are incapacitated by the state are deemed to be responsible for the debt incurred as a result of their incarceration or institutionalization: "Debtor is, within the meaning of the Illinois Unified Code of Corrections, a committed person."[5] In fact, they are responsible both for their incarceration and their subsequent indebtedness: "Alvin Sievert is, due to his own actions, separated temporarily from society and is being given temporary care and maintenance by the State, plaintiff, Department of Corrections."[6] At the heart of the lawsuits, and principally stated in certain versions of the complaints, the incarcerated person is synonymous with the debtor, institutionalization equating the use of public resources, even involuntarily, and owing broader society, but specifically, the Department of Corrections, a debt. This dual identity establishes the incarcerated person as fiscally and morally culpable and subject to the conditions laid out in the pay-to-stay statute.

### Ability to Pay

Inherent in the concept of the willful nonpayer is the ability to pay. For the state and IDOC, the ability to pay is narrowly defined as the possession of assets in any form: "Section 3-7-6(d) of the Unified Code of Corrections (730 ILCS 5/3-7-6) provides: 'The Director, or the Director's designee, may, when he or she knows or reasonably believes that a convicted person committed to the Department correctional institutions or facilities, or the estate of that person, has assets which may used to satisfy all or part of a judgment rendered under this Act.'"[7] In terms

5. *IDOC v. Moore* (2015), 2.

6. *IDOC v. Sievert* (2002), 109.

7. *Illinois Department of Corrections v. Hawkins*, No. 110792 (2011), https://caselaw.findlaw.com/il-supreme-court/1571793.html (accessed August 6, 2021).

of these lawsuits, the supposed willfulness is evidenced by the asset and income forms collected by the courts or prison officials as a condition of incarceration and interrogatories sent to banking institutions to assess the nature and amount of any available assets. These forms provide the necessary intelligence to differentiate between those who are unable to pay for the costs of their incarceration—and therefore, not willful—and those who have a modicum of means that could partially reimburse the state and IDOC for the costs incurred.[8] In these cases, willfulness is defined narrowly, as the possession of assets in any form, rather intentionally hiding assets or resisting payment of room and board "debts." To enact the harm of willfulness, the state frames the incarcerated individuals as holding wealth in the form of assets, painting those with any assets as wealthy and therefore justifiably the subject of lawsuits to recoup the costs of incarceration: "The attorney general calls attention to the fact that the legislature was largely motivated by the fact that there is no legal, moral or economic reason why prisoners who are owners of substantial estates or become such while in prison should not be obligated to pay for their keep."[9] In reality, however, the amount of the incarcerated individual's assets identified in the lawsuit is often only a small fraction of the total costs of incarceration as assessed by the state and IDOC (Conboy 1996). Routinely, the amount is between 1 and 6 percent of the total costs cited in the lawsuit, and these funds are often tied to either inmate trust accounts or to checking or savings accounts, which are often the only source of income the incarcerated individual has to sustain their inside and outside obligations.

In fact, individuals subject to these lawsuits are required, under threat of penalty and punishment, to provide financial information to the IDOC. Therefore, the willful withholding of information or assets does not apply. The complex nature of this ability to pay, however, is borne out in the lawsuits with incarcerated defendants suggesting that payment of these costs depends on the exclusion of certain assets from seizure, individual debt obligations, both inside and outside carceral walls, and the capacity to truly understand the nature of the various documents, legal jargon, and the financial power exerted by the state. Of incarcerated defendants who attempt to counter the state's claim, asking for the exclusion or exemption of certain types of assets, the state asserts that having potential exclusions exemplifies an ability to pay.[10]

> The primary purpose of section 3-7-6(a) of the Uniform Code of Correction is to shift, whenever possible, the financial burden of the expenses of incarceration from the general public to the individual inmate able financially to bear either a portion of or all of the statutory obligation. . . the main purpose of the statutes would be defeated by exempting any property. Consequently, the exemption

8. Questions about whether those incarcerated persons with substantial means should be subject to the willful nonpayer label are outstanding. These are beyond the bounds of this article, but our analysis did uncover one case of an incarcerated person who had assets sufficient to cover the entire cost of their incarceration. However, this was an outlier. There is a distinction between those who are indeed wealthy and those who have assets that aid in sustaining them and their families during their incarceration, and while all incarcerated people with assets are painted with a broad brush, such nuances are important to consider when discussing the application and implications of the willful nonpayer label.

9. *IDOC v. Garcia* (2002), 165.

10. Exemption challenges were brought by defendants to protect assets related to personal injury settlements, pension funds, inheritance payouts, inmate trust fund holdings, among others. While some were successful in their challenges, others settled with the state for a portion of their total asset holdings. An anonymous reviewer asked about nonliquid assets and whether those would satisfy judgments. In our analyses of this subset of cases, we did not come across any nonliquid assets (such as cars and houses) that were subject to attachment orders by the state. The state statute, however, does suggest that such assets would be subject to attachment and potential liquidation.

> would benefit the inmate while burdening the public. An action to recover the costs of incarceration is comparable to an action seeking the recovery of the costs of commitment of the mentally ill in State institutions. Both actions focus on an ability to pay. . . . Nevertheless, to assert that property is exempted constitutes an admission of an ability to pay.[11]

This passage underscores the narrow definition of willingness and reiterates the state's position that the incarcerated person has no claim nor use for the assets in dispute. In addition, the state asserts the supremacy of harm, stating that any burden to the incarcerated person as a result of the lawsuit does not supersede the burden placed on the public for the cost of their incarceration. This tension is central to the next step in labeling the willful nonpayer: establishing the costs of incarceration—and the act of incarcerating—as a harm to the state.

## Damage to the State

The lawsuits begin with asserting damage to the state from the costs of incarceration: "By reason of the foregoing, the Department has suffered and sustained damages in the Sum of $77,180.11."[12] The state and the IDOC position themselves as victims of the expense of maintaining carceral systems, and satisfying their statutory duty to provide "care, custody, treatment or rehabilitation." In providing such services, the IDOC lays claim to any and all assets amassed by currently and formerly incarcerated persons to alleviate damage done to the state and its citizens. By suing for amounts that far exceed the assets of defendants, the state and the IDOC are attempting to illustrate the monetary damage that incarceration—and the individual defendants—ostensibly cause and therefore lay claim as the rightful beneficiaries of these funds. In the case of the state and the IDOC, the financial need is central to the existence of carceral institutions, positioning the individuals involuntarily housed within as debtors to the state and the act of incarceration as a burden.

According to the state, the damage is then compounded by willful nonpayers, who are deliberately withholding funds from the state and IDOC and failing to meet their financial and moral responsibility to the state and its taxpayers. In the lawsuits, the state accuses defendants of concealing or liquidating assets to avoid satisfying incarceration costs: "The plaintiff would suffer immediate and irreparable loss if the Defendant were serviced with a summons and complaint, without an attachment order, because it is likely that Defendant will attempt to move, transfer, or otherwise divest himself of such money, so as to defeat or avoid the Plaintiff's claim."[13] The state makes clear that they have staked a claim on the assets and asserted the damage if the funds were not rendered to the state. Implicitly, the state is framing incarcerated individuals as willful nonpayers, not only intentionally withholding funds from the state but also doing so in a malicious and covert manner. In another lawsuit, the state asserts willfulness in the spending of available inmate trust fund money: "That the defendant's 'financial inability' is at least partially self-caused. Defendant was served with this summons and complaint on January 10, 2002, at which time he possessed approximately

11. *IDOC v. Garcia* (2002), 150.

12. *IDOC v. Garcia* (2002), 150. The language of damages is referenced in tort law and contract law when referring to the range of economic and noneconomic damages (Merkel 2006). In tort law, damages often refer to noneconomic costs of pain and suffering (Avraham 2006), whereas in contract law, the emphasis is on the costs associated with the violation or breach of contract (Bovbjerg, Sloan, and Blumstein 1988). In using this language, the state appears to be connecting to the spirit of contract law in asserting damage to the state and its citizens arising from a breach of contract between the IDOC and the incarcerated person to satisfy the economic costs of incarceration through payment of per diem incarceration costs. However, the state also seems to be invoking tort law. Although the relief being sought is economic, the impetus behind the lawsuits seems to revolve more around punishment than compensation.

13. *IDOC v. Washington* (2005), 10.

$920 . . . seeing imminent attachments, he simply 'cleaned out' said account to its present low level."[14] Here, the state places the burden of the inability to pay on the defendant, simultaneously suggesting a malicious act in using personal funds before filing the lawsuit. By seemingly eschewing their duty to reimburse, the defendants are failing to alleviate the burden of those deemed by the state and IDOC to be unworthy of these costs: taxpayers.

The state artfully extends the harms and costs of incarceration not only to carceral institutions but also to the citizens as a whole, suggesting that the withholding of payment for the costs of incarceration is harming the public as well: "Since these charges partake of a public charity, (rather than a government purpose), the original cost of which is borne by the public, it is entirely proper and fitting that the patients, their estates and relatives, in so far as they are able, should reimburse the State for so much of the expense of their care as possible, and thereby lessen the burden upon the public."[15] Embedded within a legal moralistic system, such framing is reminiscent of rent-seeking behaviors that seek to commodify public services in periods of austerity as punishment rather than compensation. Thus the state distances incapacitation in the form of incarceration or institutionalization as a public good or government function, yet bemoans the burden placed on taxpayers as a result of the soaring costs of incapacitation. The willful nonpayer is therefore hurting not only the state but also its inhabitants, placing the blame for curtailed social services or crumbling infrastructure or subpar housing on those who, in the mind of the state, refuse to contribute to a collective good. This ostensible refusal is an affront not only to the financial responsibility aim of the pay-to-stay provisions, but also to the moral and personal responsibility functions that seek to "rehabilitate" through recoupment. In establishing themselves as victims of the fiscal burden of incarceration, the state and the IDOC are denying the harm and strain that pay-to-stay provisions and the lawsuits to recoup costs render on incarcerated people.

## Willfulness: Denial of Harm

The state and IDOC assert that the goals of pay-to-stay provisions and resulting lawsuits are to reimburse the state, to teach incarcerated persons financial responsibility, and to unburden the public from the costs of incarceration. Maintaining themselves as victims of their own incarceration systems, the state and the IDOC also suggest that the reimbursement functions of the lawsuits and attachment orders are providing a service to the defendants and allowing them to fulfill a moral obligation: "This payment requirement represents an insistence that the prisoner bear an expense that they can meet and would be required to meet in the outside world. The remedy recognizes the moral duty of every person to pay his just liabilities."[16] Such sentiments are in line with rent-seeking efforts by states under austerity controls, harkening back to Shacknai's equating of rent payments and the costs of incarceration, suggesting that these individuals—if not wards of the state—would have to pay for room and board, and therefore should be subject to the same accountability regardless of the statutory duty of the state to provide care and maintenance. It is this responsibility of the state that differs from a private citizen. The state and IDOC assume control over these individuals and are subject to what they term their statutory duty to provide care, custody, treatment and rehabilitation to individuals within their charge. The responsibility, on its face, clearly lands on the state, but yet it frames itself as victim, as suffering damages as a result of this statutory duty, thereby making the pay-to-stay provisions a logical solution when an incarcerated person is found to have even a modicum of assets, to alleviate the burden on the state and ease the tension between the duty to provide and fiscal strain of incarceration costs.

14. *IDOC v. Edwards* (2001), 278. For reference, the lawsuit was seeking damages of $66,844.31. The accounting of the inmate trust fund at the time of filing was $98.01.

15. *IDOC v. Bruner* (2007), 61.

16. *IDOC v. Garcia* (2002), 218.

The nature and outcomes of these lawsuits, however, suggests that another implicit purpose is to punish the individual by garnishing all assets and creating sustained hardships linked with the inability to satisfy obligation both inside and outside prison walls. In defendants' answers to the initial complaints, they detail how the deprivation of funds creates and sustains financial hardships when assets are frozen or garnished: "The Order of Attachment has and continues to cause financial hardship upon the Defendant by leaving the Defendant virtually penniless except for State Pay of $14.40 per month, which must be used to purchase hygiene items on the Inmate Commissary."[17] In addition, these attachment orders can cause difficulties in dealing with existing legal cases and can extend harm beyond the incarcerated individual:

> Any ruling in favor of the plaintiff would cause undue hardship on the Defendant where Defendant is currently incarcerated serving a 20 year sentence at 75% and has no other source of income other than $15.00 state pay monthly. Defendant currently has outstanding legal fees due to this incarceration in the amount excess of $7,500, and legal fees still incurring from his ongoing appeal in the amount excess of $5,000. The freeze placed on Defendant's inmate trust account and account at Busey Bank has placed a strain on Defendant's attorney/client relationship with this attorneys due to lack of payment. Next, Defendant's 18 year old daughter . . . recently graduated from high school in Champaign, Illinois in May of 2015 and will be attending college in the state of Georgia. Defendant will be required to assist with his daughter's college expenses.[18]

The state answers such claims by asserting that they provide all of the necessities incarcerated individuals might need, and therefore, the defendant has no use for the funds being attached and garnished, but it is instead the state that is in desperate need: "Acting in loco parentis, the Department of Corrections provides the prisoner with care and maintenance. No inmate has any reasonably foreseeable current needs."[19] Even when that state acknowledges expenses beyond room and board, it attests that such payments satisfy the state's broader purposes of instilling personal responsibility and money management skills: "Requiring inmates who have the ability to pay for legal photocopying and medical care to pay for those services, regardless of whether their funds are derived from the income from a prison job or from an outside source, furthers the . . . legitimate interest of promoting inmates responsibility and prudent management of money. . . . The payment requirement represents an insistence that the prisoner bear an expense that he can met and would be required to meet in the outside world."[20] Here the state echoes Shacknai's supposition that rent is to be paid by incarcerated people, equating life within an institution to that outside the walls of a prison, suggesting that they are one and the same. Such claims further distance the state and IDOC from their fiscal and care responsibilities of incarceration, contradicting their claim of acting in loco parentis as they eschew their responsibility to those under their care and maintenance.

## Denial of Debt

In many of the affidavits, defendants push back on the supposition that their needs of care, treatment, or rehabilitation are satisfied by the IDOC: "Defendant does not agree with allegation number 6, because during the period of January 23, 1998, through November 13, 2001, the Department provided below standards of care, treatment, or rehabilitation at correctional institutions or facilities, within the meaning of the Uniform Code of Corrections."[21]

17. *IDOC v. Bruner* (2007), 46.

18. *IDOC v. Palmer-Smith* (2015), 61.

19. *IDOC v. Sievert* (2002), 102.

20. *IDOC v. Garcia* (2002), 216.

21. *IDOC v. Edwards* (2001), 95.

Defendants are often adamant that they do not use DOC-provided resources but instead provide their own basic essentials: "I have not used any of the following state issued items: soap, washing powder, tooth paste, shaving cream, razors, and shoes."[22] In fact, defendants claim they in fact contribute substantially to their own incarceration through the payment of medical co-pays and the use of commissary to supplement the meager basics that the state provides:

> Defendant relies on and is dependant [*sic*] on his late mother when the Plaintiff fails to or refuses to provide for Defendant. For example: i. Defendant, for one meal, was given to eat, one (1) hot dog, pork and beans (counting 19 beans in all), three (3) teaspoons of applesauce, and water. This is not sufficient for a meal where Defendant must provide additional food to eat, provided by funds from his late mother. ii. Plaintiff does not and will not provide gloves or hats at the time of need and weather. Defendant must do so himself by funds of his late mother.[23]

The defendants make the case they are indeed paying for their incarceration during their sentence, and that the state and IDOC discounts these expenses when assessing the true costs of incarceration: "Exhibit C shows that, through commissary purchases, Defendant provides for a large portion of the cost of his incarceration, thereby offsetting the cost incurred by the Plaintiff."[24] Taking these payments into account suggests incarcerated people are not willful nonpayers, but instead contributing financially to their own subsistence and offsetting costs for the state and IDOC through co-pays and labor that is not acknowledged in the lawsuits. Incarcerated people are instead cast as steadfast in their willfulness, wantonly using state and IDOC resources without regard to cost or fiscal burden to the state. The full scope of the lawsuits suggests, however, the state and the IDOC benefit from the contributions made by incarcerated persons and their largely unpaid labor in service of the institution and the state:

> The court should consider respondent's contribution to his incarceration, including but not limited to: Respondents [*sic*] 1 year employment in the institution printshop to which he was paid $45.00 a month, $2.00 per month taken to offset the cost of his incarceration; respondent must pay a mandatory 25% mark up on all items at the inmate commissary. The 25% markup is used to pay state employee wages, commissary and food service supervisors; respondent's continual purchase of items from the inmate commissary that IDOC is required to provide by statute, see 730 ILCS 5/3-7-2 soap, deodorant, toothpaste, clothing, shoes, underwear, food and etc. that respondent is consistently purchasing from the inmate commissary because of deplorable conditions of the inmate kitchen make it unsafe to eat meals on a daily basis.[25]

In this answer to the initial complaint and attachment order, Spaulding not only points to his own labor as contributing to the state and IDOC coffers, but also to the failures of the state in adequately providing for the needs, survival, and well-being of its charges. The defendant pushes back further, connecting his contributions to state and IDOC expenditures, clearly showing how his labor and his money have been offsetting the costs of his incarceration and providing for the needs of the institution. Another defendant extends this argument, suggesting that the state's claims are baseless given that the state receives ample resources to cover the costs of incarceration: "Plaintiff lacks standing to bring a claim for attachment against Defendant for cost incurred due to his incarceration where the Plaintiff receives federal benefits specifically provided for the care

22. *IDOC v. McCain* (2004), 28.

23. *IDOC v. Washington* (2005), 51.

24. *IDOC v. Palmer-Smith* (2015), 71.

25. *IDOC v. Spaulding* (2015), 82.

and treatment of a committed person from the federal government."[26] In both answers to the state, the incarcerated persons seem to expose the rent-seeking efforts of the lawsuits, suggesting that the state and IDOC are attempting to extract payment in the form of rent for services provided for both by federal revenue and the contributions of those incarcerated.

Further, the state denies that the orders of attachment cause either immediate or long-term harm: "Where necessary and current needs are administered by the facility due to the inmate's incarceration, attachment has no seriously adverse impact. The obligee is already a public charge, not in brutal need."[27] The displacement of harm serves the state's aim of centering the damage to state coffers over the lasting economic damage that incarceration renders. In the analysis of the lawsuits, it is apparent that these funds constitute the whole of the assets of these individuals, who face often insurmountable odds for gainful employment after release. And though the state contends that the defendants have no need for money, the apparent implicit assumption is that these incarcerated individuals will be incarcerated in perpetuity, and the needs for the funds to soften the reentry into society after the completion of their sentence or to pay debts outside of prison are irrelevant: "The Court also finds that the defendant's allegations that he has other pending debts, and would therefore be unable to pay any judgment, are irrelevant to this solely statutory action."[28] In answers to the state's complaints, defendants offer assessments of their needs for the funds being attached and garnished:

> Defendant Melvin Moore will have served 20 yrs [*sic*] in prison when he is released Oct 21, 2015. Melvin Moore is indigent and has little education besides a Certificate in "Custodian Maintaince" [*sic*] which he intends to use to become self employed. Melvin Moore does not have any known employment upon his release Oct 21, 2015. Melvin Moore does not have a house nor a apartment of his own. Melvin Moore does not have any clothes or money for food the basic essentials to survive upon his release Oct 21, 2015. Melvin Moore does not have a car nor any means of transportation. Mr. Moore does not have medical insurance. Yet Mr. Moore suffers from high blood pressure and heart disease. . . . Melvin Moore needs the $13,705.21 that the state is attempting to take away and so much more if Melvin Moore is to have a safe transition to society after serving 20 yrs in prison.[29]

Mr. Moore's statement speaks to the lived reality of formerly incarcerated individuals and pushes back on the supposition that current and formerly incarcerated individuals with assets are high-flying millionaires willfully withholding money from the state. Instead, these individuals have often spent years, if not decades, in prison, hoping these small amounts of inheritance or settlement payments will sustain them through their reentry process. The picture painted by the state of the willful nonpayer is a seemingly false narrative when juxtaposed against the reality most of these individuals are facing during reentry (Kirk and Wakefield 2018). The ability to pay then becomes a complicated determination—it is not simply cash on hand but instead the ability to earn money after release, which is severely curtailed for those with felony convictions, and especially those who have served years in prison. Mr. Moore offered an itemized list of things he needed for a successful reentry, which justifies, on his end, the need for this money that supersedes the state's interest in the money. For Mr. Moore, this inheritance was his lifeline, it was everything. For the state, it was a drop in a very deep bucket that will never sufficiently "repay" Mr. Moore's more than $300,000 debt to the IDOC. The amount they were attempting to take from Mr. Moore ($13,000) was approximately 4 percent of their calculated total for

26. *IDOC v. Palmer-Smith* (2015), 71.

27. *IDOC v. Garcia* (2002), 212.

28. *IDOC v. Edwards* (2001), 292.

29. *IDOC v. Moore* (2015), 23.

room and board over his twenty years in custody, and therefore inconsequential if reimbursement and recoupment is the driver of pay-to-stay provisions. Another defendant suggested that such state efforts inhibit the possibility of successful reentry, thereby upending the state's supposition that it provides rehabilitative services:

> The defendant disagrees with number (10), because Equal Protection of the Laws are outweighed by the costs incurred and is excessive in relation to the prime goal of corrections is that after a convict completes a sentence of incarceration, that convict will become rehabilitated and become a decent citizen. All of society will benefit if that happens but we know that all too often it does not. The rehabilitative task of a convict upon release is often difficult. Placing a substantial financial burden on a convict at that time is counterproductive and I do not think that the legislation involved here is intended to do so.[30]

Another defendant contended that the life insurance payment from his mother's death was vital to his reentry and garnishment was in fact working against the interests of rehabilitation: "Defendant has been using his one time payment to live off of, pay for mothers [*sic*] funeral and prepare himself for release where he may better be able to support himself. Plaintiff, by requesting all of Defendants [*sic*] funds and more, is only denying Defendant the chance to be rehabilitated or productive. Said funds would allow Defendant to rejoin society in a positive way and self sufficient."[31] To counter such claims, the state and IDOC reimagine pay-to-stay payments as essential to the rehabilitative process, thereby justifying the lawsuits and revenue collection as aiding, not hindering, reentry. The displacement of need becomes important to building the case both for the willful nonpayer but also for how the state frames itself in terms of damages suffered, and how the need of the state outstrips those of currently incarcerated individuals. In the conception of the state, this lack of need solidifies the incarcerated individual as a willful nonpayer, for they have no ostensible use for the funds themselves and are therefore intentionally depriving the state of funds the state and IDOC need to maintain a functioning carceral system.

## The Perpetual Debtor

The concept of the willful nonpayer suggests a debtor in perpetuity, given that the state suggests in the language of the lawsuits that all assets and funds are subject to attachment and collection: "The assets of the committed person . . . shall include any property, tangible or intangible, real or personal, belonging to or due to a committed or formerly committed person including income or payments to the person from social security, worker's compensation, veteran's compensation, pension benefits, or from any other source whatsoever and any and all assets and property of whatever character held in the name of the person, held for the benefit of the person, or payable or otherwise deliverable to the person."[32]

In essence, these charges are succeeding in making individuals perpetual prisoners in their indebtedness to the state. Wilbur Griswold was assessed $90,450.92 as the total cost of his incarceration.[33] In a rare outcome, a settlement was reached in which Griswold agreed to pay $100 per month for the remainder of the sum. Rough calculations suggest that if paying at the same rate, it would take Griswold more than seventy-five years to satisfy the judgment, making him a debtor to the state in perpetuity, well beyond the span of his natural life.[34] Such ar-

30. *IDOC v. Garcia* (2002), 277.

31. *IDOC v. Washington* (2005), 25.

32. 730 ILCS 5/3-7-6(3).

33. *IDOC v. Griswold* (2001).

34. The final case notes state that Mr. Griswold has missed the last four payments to the state. No other information or follow-up is provided. Yet this outcome speaks to the supposition that such lawsuits and collection

rangements seem not necessarily based on a revenue generation goal, but one of punishment and retribution for bringing costs to bear on the state and its citizens, and furthering the incarcerated person's devolution into civil death (Friedman 2021). Lynn Haney (2018) analyzes both the accumulation of the debts of imprisonment and the imprisonment of debt that surrounds those who are subject to costs post-incarceration. The characterization of fathers who do not—or cannot—pay for their child-support arrears as obstinate dovetails with the attribution of willfulness for the nonpayment of incarceration costs, with the weight of indebtedness becoming its own form of incapacitation and erasure from social existence (Haney 2018; Friedman 2021; Battle 2018; Eisen 2015). Brittany Friedman (2021) suggests that such fiscal obligation is linked to a recurring banishment on the basis of indebtedness to the state, where the state is given the legal right to reach even beyond lived time to collect. Additionally, the initial lawsuit complaint asserts all assets now or in the future are subject to attachment by the state:

> Section 3-7-6(d) of the Unified Code of Corrections (730 ILCS 5/3-7-6) provides: "The Director . . . may, when he or she knows or reasonably believes that a convicted person committed to the Department correctional institutions or facilities, or the estate of that person, has assets which may be used to satisfy all or part of a judgement rendered under this Act . . . authorize the Attorney General to institute proceedings to require the persons, or the estates of the persons, to reimburse the Department for the expenses incurred by their incarceration . . . plus costs and fees, and any and all additional relief of any nature or kind whatsoever as may be proper."[35]

In fact, the state has initiated petitions to revive dormant judgments, allowing them to reopen cases with unsuccessful initial collection efforts, stating recoupment can be sought for decades after release: "Section 3-218 of the Code of Civil Procedure (735 ILCS 5/13-218) provides: 'Judgments in a circuit court may be revised as provided by Section 2-1601 of this Act, within 20 years next after date of such judgment and not after'."[36] Therefore, individuals become not just current debtors to the state and the IDOC, but ongoing, perpetual debtors who are always subject to subsequent lawsuits and other collection procedures. Further, this debt obligation does not end with the incarcerated individual, but extends to their families and children, wrapping them into an omnipresent indebtedness.

Further, the defendants asserted the damage pay-to-stay provisions would render on their potential for a successful reentry: "I pray that you don't take all my money so I'll have money when I'm released on August 24, 2006. I have nothing when I get out of here. I'm trying to get my life back in order."[37] The difficulties formerly incarcerated persons face during the reentry process is compounded by the extension of their debtor status to the state, which thereby prolongs their fiscal precarity (Levingston and Turetsky 2007). The harm the state has rendered is summarily dismissed and replaced by the damages suffered not only by the Department of Corrections and the state budgets, but also by taxpayers themselves. The needs of the state in recouping per diem costs therefore supersede those of the incarcerated person: "The case at bar is similar to Davis since defendant is a prisoner whose care and maintenance has been provided by the Department of Corrections . . . defendant has no need for his social security disability benefits."[38] In denying the

procedures are not based on a revenue model but instead on a punishment model. The amounts assessed will never be collected in full; however, what the state takes to satisfy the small portions of these judgments will likely disadvantage these individuals and their families beyond their time incarcerated.

35. *IDOC v. Edwards* (2001), 2.

36. *IDOC v. Thirston* (2002).

37. *IDOC v. Robbins* (2006), 32.

38. *IDOC v. Sievert* (2002), 102.

incarcerated person's need for funds within the institution, in essence, the state conceives of the defendants as perpetually committed persons, without obligations outside prison walls and continually contained within the confines of a carceral institution.

## DISCUSSION

The pay-to-stay provisions and the resulting lawsuits are a commitment by the state to make incarcerated individuals "pay rent" to alleviate the fiscal burden on the state and its citizens. As Shacknai suggests in his 1994 *Chicago Tribune* op-ed, the responsibility for the costs of incarceration lies at the feet of those who receive these services of care, custody, treatment, or rehabilitation and this debt should be rendered to the Illinois Department of Corrections and to the state as a result of damages suffered due to this financial strain. The resulting lawsuits not only cast incarcerated individuals as responsible for these costs, but also maintain that those with any modicum of assets are willful nonpayers, purposefully withholding money from the state and the IDOC to prolong and sustain the burden and damage to the state. In this article, we analyze the lawsuits and the state and defendant's responses to allow for a more complex understanding of this framing of incarcerated persons as willful and how this imagining suggests an abdication of the state's responsibility for the service of incarceration as well as shifting of harm from the incarcerated person to the state. In this way, the state becomes victim, seeking reimbursement for the costs of incarceration while negating the damages of incarceration these individuals must bear both within and outside of carceral institutions. This article sheds light on how the characterization of willfulness is part and parcel of a neoliberal shift in criminal justice contact and incarceration, moving hand in hand with similar rent-seeking provisions and the shift of the fiscal and moral burden from the state to the users to create perpetual debtors.

The criminal legal system in the United States constitutes a set of rent-seeking institutions nested within a legal moralistic framework, pursuing monetary compensation for a public service to enact moral punishment. Pay-to-stay lawsuits are a prime example of such efforts, using willfulness as a signal of moral failure and thereby justification for rent-seeking in the form of per diem incarceration costs. In line with legal moralism, the lawsuits center on the moral imperative of rights and responsibilities, harms, damages, and costs to determine moral and fiscal culpability for the financial burden that incarceration creates. The state and IDOC establish themselves as the victims of soaring incarceration costs, identifying the incarcerated as fiscally responsible given their use of state and IDOC resources. Such a position sidesteps the state and IDOC's statutory duty to provide for the care, custody, treatment and rehabilitation of incarcerated people as a public service (Lara-Millán 2014), foisting the blame for these rising costs on those incapacitated. The use of pay-to-stay lawsuits falls in line with the predatory practices of the state, to extract resources from the users of essential state systems (Friedman 2021; Friedman, Fernandes, and Kirk 2021; Page and Soss 2017; Eisen 2015). Anjuli Verma and Bryan Sykes (2022, this volume) encourage scholars of monetary sanctions to look both at the substance of law and the structure to uncover sources of inequality. Here we look at both the statutes themselves and the legal documents submitted when the statute was enacted. The justification of predatory practices related to pay-to-stay provisions is enshrined first in the state statutes that provide the legislative opportunity and legal justification for states to sue the incarcerated for their imprisonment. The language of the state statutes then becomes evidentiary in the text of the lawsuits constructing financially predatory behavior as "acceptable" and justified given the nature of the services the incarcerated individuals use. Herein lies the connection between services rendered and the state and IDOC suggesting that they have "suffered damages" as a result of incarceration and the outstanding debt owed for the services of "care, custody, treatment or rehabilitation." The reframing of responsibility and the idea of who is being punished becomes a pernicious tool in justifying the letter and intent of the lawsuits while casting the incarcerated individual as the fiscally and morally responsible villain, who is intentionally punishing the

state and its citizens by virtue of withholding payment for incarceration costs. Thus the incarcerated person emerges as the willful nonpayer, withholding funds the state and IDOC have deemed to be their property on the basis of the damages they have suffered.

Willfulness becomes an essential element in this establishment of deservingness, characterizing those who owe the state as grifters rather than those who have a legitimate claim to their funds and assets. The stigmatized intentionality of this imagined characterization places the blame squarely on the incarcerated individuals for their own indebtedness by involuntarily partaking of state services such as incarceration (Friedman and Pattillo 2019). Such sentiments are a mainstay of the growing literature on the shifting fiscal burden from state to system user, wherein the obligation for the debt lies solely with the incarcerated individual, and the state assumes the role of teaching fiscal responsibility through pay-to-stay (Haney 2018; Eisen 2014). Their responsibility is embedded within their criminality, making them undeserving of accessing services without payment (Lara-Millán 2014; Bonds 2009). In her work on monetary sanctions, Alexes Harris finds "determinations of good faith and willfulness are tightly linked to conceptualizations of worthiness and accountability" (2016, 22). Such judgments harken to the historical and contemporary images of the "deadbeat dad" or the "welfare queen," figures cast as unworthy and undeserving of state resources due to their moral and fiscal debt, and their willful disregard for fiscal responsibility (Cammett 2014; Haney 2018; Battle 2018). The lawsuits are linked to similar arguments of deservingness claims of fiscal and moral culpability resulting in the implicit questioning of the financial liability for systems of court processing and incarceration. Inherent in the monetary sanctions system in a rent-seeking society is the presumption that those who traverse the system should be responsible for "doing their part" to contribute to the expenses accrued as a result of processing a criminal case or housing someone in jail or prison. These lawsuits bring such supposition into stark relief, suggesting that incarcerated and formerly incarcerated individuals owe not only a financial debt but also a moral one for the damages rendered to the state and its citizens.

Enacting the label of willful nonpayer necessitates the attribution of harm for the debts rendered as a result of nonpayment. Shacknai's equating of rent and incarceration highlights this concept of the willful nonpayer, suggesting that the incarcerated individual has entered into a fiscal obligation, as one would with a lease for an apartment, but has decided to not satisfy their debt. However, the incarcerated individual has not entered into a lease with the IDOC or the state and is under no contractual duty to pay. The rent concept is instead for the public, to frame the incarcerated individuals with some amount of assets as negligent in the eyes of the state for not keeping up with their financial and moral responsibilities. These individuals are cast as getting something, be that room and board in a prison facility or welfare benefits for their children, for nothing, and thereby taking advantage of the system. If costs are justified not only by state statutes but also by the characterization of the individual as free rider, then the idea that damage has been done to the state seems in line with the consumer logic framework, which presupposes finite resources and a contractual agreement to repay for such services (Friedman, Fernandes, and Kirk 2021). By constructing those who are or have been incarcerated as financially responsible but also avoiding their responsibility to "make good" on their agreement, the agents of the state and the IDOC highlight an intersection between the inherent justifications embedded in the neoliberal consumer logic and the need to instruct criminally involved individuals in a moral manner about personal responsibility.

Pay-to-stay lawsuits exemplify yet another expansion of the shadow carceral system, operating through civil contempt charges, resulting in fiscal and moral indebtedness for the incarcerated and a ceding of duty for the state (Beckett and Murakawa 2012; Friedman 2021). Although the state claims in its lawsuits to be providing necessary services and provisions within carceral institutions, the defendants amass ample evidence to suggest not only that the state and IDOC fail to satisfy their statutory duties to provide for the health and sustenance of incarcerated people but also, in fact, that

those imprisoned are critical to maintaining the fiscal surety of the IDOC through their contributions to their own survival and well-being while incarcerated. In fact, incarcerated people are providing their own care, treatment, and rehabilitation through medical co-pays, commissary purchases, and labor (Lynch 2009; Gilmore 2007). The state and IDOC are therefore not meeting the needs of incarcerated individuals and are not satisfying the terms set out in the lawsuits. Incarcerated defendants question the ability and right of the state and IDOC to bring such charges and lay claim to their assets (see Becker 1963). Therefore, the incarcerated defendants are reversing the moral imperative to cast aspersions on the state and IDOC for failing to properly satisfy their responsibilities to incarcerated populations. In so doing, they question the charging of "rent" for the statutory duties of incarceration that are a public good. Their contributions to their sustenance and well-being suggest they are indeed paying rent to a system that has failed in its duties to provide adequately for those in its charge. Enmeshed in a rent-seeking society under fiscal constraints, the lawsuits exemplify attempts by the state to frame itself as victim not only of the incarcerated but also of federal austerity measures that fail to sufficiently fund incarceration services. These shifts of monetary and moral blame and duty lay the groundwork for framing the incarcerated as willful in failing to right the wrongs and pay the debt of larger government bodies and their active and passive contributions to mass incarceration.

The driving force behind this concept of the willful nonpayer is rooted in a historical rendering of the criminal as both a free agent and morally reprehensible (Harris 2016). The moralistic tone and motivation of neoliberal rhetoric allows for the state and its agents to be indignant toward those extracting state resources, using the consumer logic of punishment to justify the heaping on of increased fines, fees, interest charges (Friedman, Fernandes, and Kirk 2021). Furthermore, the amount of money in these accounts—be they pension accounts or personal injury settlements or inmate trust fund accounts—is often insufficient to cover the outstanding balance stated in the lawsuit. The goal of the state and the IDOC, therefore, seems to be less about recouping costs but more about imposing a moral punishment on previously incarcerated individuals, making certain their contractual and personal responsibilities are enforced. In this way, any money supersedes no money in terms of the overall goals of the lawsuits. The amounts collected are often a small fraction of the total incarceration costs but just as often the entirety of the individual's savings, suggesting that reimbursement is less about the money and more about the message it sends about the culpability, responsibility, and moral duty of incarcerated persons. The lawsuits then become symbolic, less about the money than the act of punishing individuals with a modicum of assets for deigning to use public resources without being subject to payment. Similar to the charging of interest for child support and frequent court hearings and other sanctions for nonpayment of traditional monetary sanctions, the act becomes less about generating revenue and more about imposing punishment for willfulness (Martin, Spencer-Suarez, and Kirk 2022, this volume).

Conceiving of those subject to these lawsuits as willful and then taking action to coerce payment has ramifications for levels of inequality, especially in the process of reentry. A wealth of research underscores the substantial and omnipresent barriers to reentry for those with a felony conviction (Kirk and Wakefield 2018; National Research Council 2014). Barriers to employment, housing, educational attainment, and family well-being hinder the returning individual from establishing the essential markers of stability needed to sustain a successful and lasting reentry (Roberts 2003; Pettit and Western 2004; Western 2006; Comfort 2007). However, the lawsuits appear to target the potential for stability for those who have amassed any assets. Given the substantial collateral consequences that result from felony incarceration, these financial assets may be one of the only sources of economic stability returning prisoners have access to after reentry. By characterizing incarcerated individuals as willful nonpayers, both explicitly in the legislative debates and implicitly within the lawsuits, Illinois and the IDOC are ensuring further disadvantage for these individuals in terms of their re-

entry process by denying them the funds needed to start and sustain their reintegration. Furthermore, shifting the burden from the state and its taxpayers to the incarcerated extends the indebtedness not only to the incarcerated person but also their family and estates, thereby inhibiting stability and resource accumulation for a wider swath of the population (Katzenstein and Waller 2015). Such practices seek to separate the incarcerated as well as those connected to them from the ranks of citizenship and the use of public goods and services. Pay-to-stay laws and practices present another tool that seeks to expand and solidify indebtedness as central to the pains and erasures of incarceration, ensuring ties to the state and the institution will exist in perpetuity and render those with debt civilly dead (Friedman 2021). Such connections extend the reach of punishment, eliminating any possibility of freedom from the strictures that characterize the perpetual incarceration of debt.

In denying the incarcerated persons' need for funds within the institution, in essence, the state conceives of the defendants as perpetually committed persons who do not have obligations outside prison walls and who will be continually contained within the confines of a carceral institution. The displacement of need becomes important to building the case both for the willful nonpayer and for how the state frames itself in terms of damages suffered, and how the need of the state outstrips those of incarcerated individuals. In the conception of the state, this lack of need solidifies the incarcerated individual as a willful nonpayer, for they have no ostensible use for the funds themselves and are therefore intentionally depriving the state of funds needed to maintain a functioning carceral system. The denial of need of incarcerated people for these funds speaks to their master status as perpetual debtor, forever linked to the carceral state, even after release and cessation of parole requirements. The practice of reviving dormant judgments reaffirms the willfulness of the incarcerated while reserving the right to extract assets beyond time and space, thereby expanding indebtedness and willfulness in perpetuity. As Friedman (2021) suggests, the state ultimately views the incarcerated as perpetual prisoners, rendering them civilly dead as a result of indebtedness; thus civil death is linked to permanent monetary subjugation. System-linked debt results in further dispossessing the formerly incarcerated individual, compounding the existing social, political, and economic erasures of a felony criminal record. Indebtedness, whether for the costs of incarceration or child-support arrears, creates a feedback loop of disadvantage that reverberates beyond the bounds of incarceration (Haney 2018). These loops maintain the formerly incarcerated individual as a perpetual debtor and prisoner to the state—no longer a physical manifestation of incarceration but instead one of economic incapacitation, bound in state statute, legal precedent, and a civil system that eliminates the potential for appeal. The individual is imagined as a willful agent, solely responsible not only for events leading up to their incarceration but also for the debt resulting from incapacitation, holding them in perpetuity to the state and its collection procedures as well as to their permanent moral and fiscal indebtedness.

## CONCLUSION

In its analysis of pay-to-stay lawsuits through the lens of willfulness, this project offers a nuanced view of the interplay of neoliberal provisions, perceptual imaginations of the incarcerated, and the rent-seeking forces that underlie the unburdening of the state to the detriment of those imprisoned by the state. Framing incarcerated people with assets as willful nonpayers furthers the state's need to distance itself from duties and responsibilities linked with welfare state services while demonizing those who are imprisoned. The labeling of willful nonpayer is yet another degradation of the incarcerated people, prompting the public to see them as a drain on resources rather than deserving of aid and assistance both during and after incarceration. Such sentiments further erode public support for reentry services as well as safe and equitable conditions within carceral facilities, and worsen the existing gap in the conceptions and imaginations of the incarcerated population. Framing the incarcerated as willful suggests that they are not morally deserving of the use of state resources during their involuntary incapacitation, thereby dis-

mantling their rights and protections as true citizens of the state, the public, and the country at large. The erosion of citizenship becomes a central theme not only of labeling the willful nonpayer in pay-to-stay lawsuits, but also of the reverberating costs and debt continually tethering system-linked individuals to levels and patterns of surveillance, confinement, and control on the basis of their indebtedness (Miller and Stuart 2017). Reentry is a racist and individualized concept, wherein societal conditions encourage then punish recidivism as a personal failure. And yet, "the afterlife of mass incarceration" is actually emblematic of a well-traveled road littered with blocked opportunities (Miller 2021). With the deck already stacked, narratives from formerly incarcerated individuals describe the devastating impacts of pay-to-stay debt and how the threat of civil judgments effectively extinguishes what little chance they have of successfully reentering society. As a newly released person with pay-to-stay debt aptly summarized, "there is already so much against you. Every day, every moment is survival . . . I was never the working poor. . . . But I guess being in prison and sleeping on iron prepared me for this" (Friedman 2021, 81). Pay-to-stay creates perpetual indebtedness and yet another shackle to the state, eradicating the possibility of freedom from the pervasive and disastrous impacts of unjust systems.

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# PART II

# Monetary Sanctions in Practice

# Reinforcing the Web of Municipal Courts: Evidence and Implications Post-Ferguson

BETH M. HUEBNER AND ANDREA GIUFFRE

*Investigations in Ferguson, Missouri, revealed that many individuals, particularly Black people, entered the criminal justice system for relatively minor offenses, missed court appearances, or failure to pay fines. Municipal courts were focused on revenue generation, which led to aggressive enforcement of municipal codes. Although subsequent reforms were passed, little is known about whether and how the legislative changes influenced the law-in-action in the municipal courts. Using data from qualitative interviews with St. Louis area residents and regional court actors, as well as court observations, this article documents the legal structure of municipal courts in the region after Ferguson. We address how the parochial nature of municipal courts in St. Louis County perpetuates the financial marginalization of residents through the layering of punishment, and how the state legal structure further facilitates control, even after reform.*

**Keywords:** monetary sanctions, municipal courts, policing, Ferguson, race

Misdemeanor arrests are the most prevalent form of social control in the criminal justice system and make up three-quarters of all criminal cases filed—a total of thirteen million cases each year, most for relatively minor offenses (Stevenson and Mayson 2018). The scope and implications of misdemeanor arrests came to light to many after the shooting death of Michael Brown, a Black man, in Ferguson, Missouri, a St. Louis County suburb. An investigation by the U.S. Department of Justice (DOJ) exposed a practice of generating revenue through law enforcement, particularly the aggressive enforcement of municipal code violations, and by court actors issuing warrants for missed court appearances and payments, a

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practice commonplace in the region. In 2013, a little over 20 percent of the city of Ferguson Missouri's total revenue came from the payment of legal financial obligations (DOJ 2015). Josh Page and Joe Soss (2017, 142) contend that "what the DOJ discovered in Ferguson is not exceptional in relation to the past or present of US governance." They characterize monetary sanctions as financial predation of marginalized communities—stemming from a long history of race and class control sustained in an era of neoliberal governance. Aggressive enforcement, particularly of lower-level offenses, unduly affects Black people, who were more likely to be stopped and arrested by police, had longer case processing times, were required to make multiple court appearances, and have their cases lead to a warrant (Ferguson Commission 2015).

Scholars and policymakers have written broadly on the use of monetary sanctions in Ferguson and elsewhere (DOJ 2015; Harris 2016; Rios 2019). This work adds to previous writing in several ways. First, we seek to address how the legal structure of municipal courts in St. Louis County influences justice in the context of monetary sanctions. We deepen the work on legal financial obligations, or LFOs, by considering small contacts with the justice system, whereas much of the foundational work in this space has been conducted with felony courts (Harris 2016). Particularly, we consider how the parochial nature of the municipal courts has assisted in the maintenance of monetary sanctions as a broad system of control past the writing of the Ferguson report and passage of associated reforms. Secondarily, we document how state legal structures further perpetuate the cycle of control and extend and deepen the consequences of a criminal conviction, particularly for people of color and individuals with fewer economic means.

To do so, we draw on data from interviews and court observations to examine how individuals with legal debt and court actors characterize their experiences with the municipal courts in the St. Louis region in the context of monetary sanctions. We describe how the independent structure of the municipal courts in the St. Louis area facilitates the need for revenue generation tactics such that individuals living in poverty and persons of color get trapped in a revolving door of misdemeanor justice, a phenomenon deemed the *muni-shuffle*. We define the muni-shuffle as the process by which parochial governance fosters low-level, routine interaction with the police and courts and sustains such contact by limiting remedies for resolving debt, including the monetization of legal representation, and fragmenting information flow between municipalities and to citizens. Municipal sanctions, primarily traffic tickets, unduly target and affect people with fewer economic means and people of color (Hepburn, Kohler-Hausmann, and Medina 2019), and the associated sanctions and conditions of compliance tether people to the system (Harris, Evans, and Beckett 2010; Pattillo and Kirk 2021). We contend that the lack of oversight on the part of the state combined with the individualistic, racialized construction of municipalities has allowed these systems of control to continue since Ferguson.

## MISDEMEANOR JUSTICE AS CONTROL

The past three decades have seen a growth in the number of municipal and ordinance citations issued (Stevenson and Mayson 2018; Mayson and Stevenson 2020), which come with fines and fees attached (Harris 2016). The system of misdemeanor justice is far reaching and extends the penal sphere to significant numbers of the population (Kohler-Hausmann 2018; Natapoff 2018). This system is unique because most people have had contact with these courts, unlike felony courts, often because of traffic and ordinance offenses; many can afford to pay their monetary sanctions promptly. In fact, new online payment portals allow those with economic means to bypass the system altogether (Bing, Pettit, and Slavinski 2022, this volume). Those who cannot pay in a timely manner confront opportunity costs including extended system contact, additional financial assessments and legal penalties, and associated time costs and procedural hassles, all of which can further the inequities of this system of sanctions (Colgan 2018; Martin, Spencer-Suarez, and Kirk 2022, this volume).

The sheer volume of cases and what is perceived by many as low-stakes proceedings limits targeted legal reform as well as scholarly and

public attention to the discriminatory practices within the system (Mayson and Stevenson 2020). Monetary sanctions can be extracted "in plain sight" with the full participation of the court and thus can further control and humiliate marginalized populations under the pretense of law (Pattillo and Kirk 2020, 76). Mary Pattillo and Gabriella Kirk (2021) describe how court actors use the law and profusion of penal power to legitimate the chastisement of individuals with fewer economic means and threaten them with incarceration for nonpayment of monetary sanctions.

Although the initial amount of monetary sanctions assessed may be small and burden those with fewer economic means financially (Harris 2016), it is the process of attending court and being marked and shamed repeatedly that is also punitive in nature (Feeley 1979). In the courtroom, the onus is on the person who cannot pay monetary sanctions to prove that he or she is compliant rather than on the state to recognize differing abilities to pay (Page and Soss 2017). Compliance with the misdemeanor court system is performative and extracts costs that extend past the financial sanctions owed and tether individuals to the system (Martin, Spencer-Suarez, and Kirk 2022, this volume). This population is sorted, tested, and regulated (Kohler-Hausmann 2018). Individuals must undertake a significant burden to comply with formal legal proceedings. Transportation challenges, incomplete information about court appearances, childcare, and employment can be barriers to court attendance (Zettler and Morris 2015; Cadigan and Kirk 2020; Garrett, Modjadidi, and Crozier 2020). Transportation can be particularly challenging given that some courts suspend driver's licenses for unpaid economic sanctions or failure to appear in court (Martin et al. 2018; Shannon et al. 2020). When individuals get a ticket they cannot pay, it is common for courts to put them on a payment plan under which they must make recurring appearances (Huebner and Shannon 2022, this volume; Pattillo and Kirk 2021). Consequently, individuals who cannot pay their monetary sanctions become "tethered" to the system (Harris 2016) or kept on an "invisible leash" (Pattillo and Kirk 2021).

Overall, monetary sanctions on their face appear benign and neutral but in fact reinforce bias in their execution (Bell 2017). The increasing imposition of monetary sanctions further entangles those with fewer economic means in the criminal legal system, and sneakily reinforces racial and class inequalities by regulating quality of life (Harris, Evans, and Beckett 2010; Harris 2016). Individuals with fewer economic means are doubly taxed through government seizure related to criminal legal system operations and the procedural hassles associated with compliance that fuel racial disparities (Fernandes, Friedman, and Kirk 2022, this volume; Slavinski and Pettit 2021).

## PAROCHIAL GOVERNANCE

The costs assessed by justice systems have grown exponentially in recent years, particularly during periods of financial austerity for local governments (Fernandes et al. 2019; Graham and Makowsky 2021; Kirk, Fernandes, and Friedman 2020). As state and local budgets and financial reserves declined, many communities focused on revenue generation by increased use and costs of monetary sanctions, costs that were predominantly assessed by municipal courts and local police departments (Martin 2020; Slavinski and Pettit 2021). For example, evidence indicates that communities use measures of police officer productivity tied to the number of citations issued as a way to fund local operations; a phenomenon documented in the Department of Justice's (2015) investigation into the Ferguson police department, but part of local governance in the United States for many decades (Page and Soss 2017; Kohler-Hausmann 2018; Natapoff 2018).

The parochial nature of communities further facilitates the hidden nature of control and the rise of monetary sanctions. Scholars argue that municipal governments are critical instruments of control and produce racial disparities (Page and Soss 2017; Rios 2019). It is not the fragmentation of communities that is a problem per se, it is the economic and political structure of municipalities that have in practice led to disparate outcomes for individuals across many domains, including the criminal legal system. The process occurs in a few phases. First, the fragmentation of communities within a region means that substantial competition

for often very limited resources. In this patchwork governance, resources are often accumulated in a small set of more affluent locales, often wealthy White suburbs, that further disadvantage other communities and lead to greater racial segregation (Gordon 2013, 67).

In addition, the new economic structure also often requires communities to raise funds for local services. The ability to generate revenue varies widely and often favors White, suburban locales. In Missouri, municipalities can keep sales taxes that are generated locally (Gordon 2013). Local funding structures lead to inequalities in local services because less affluent municipalities have less of a tax base from both residents and commercial businesses (Pacewicz and Robinson 2021). The sociologists Josh Pacewicz and John Robinson (2021) call for an understanding of the racialization of municipal opportunity—highlighting the unequal ways in which White and Black majority suburbs operate fiscally. Middle-income, White suburbs are often located next to hyperwealthy White suburbs, giving them an opportunity to appeal to business investment while drawing revenue from local property taxes. On the other hand, middle-income Black suburbs are typically adjacent to lower-income Black suburbs, reducing their ability to attract commercial business and revenue from local property taxes. What follows is that the White suburbs grow and Black suburbs frequently fall short of necessary municipal operating budgets. Thus Black suburbs turn to fines and fees to make up for what they lack in investment and property taxes. This reliance on fines and fees reproduces racial disparities because those who have less income in the first place are targeted by their communities for revenue extraction (Pacewicz and Robinson 2021). Similarly, the criminologists Shytierra Gaston and Rodney Brunson (2020) find that police officers in St. Louis engage in highly discretionary activities such as proactive traffic and pedestrian stops in majority Black and racially mixed neighborhoods. People of color are more likely to be stopped in these neighborhoods, and police justified these stops based on perceived criminogenic conditions of the community. Evidence indicates that predominantly Black municipalities extract revenue from their citizens through "formal and informal practices that appear rational and routine" but are fundamentally unequal in their application (Rios, 2019, 236). Overall, evidence indicates that the racial patterns of policing and revenue extraction remain extreme in suburban communities, especially in those with larger groups of people living under the poverty level (Beck 2019), a higher proportion of Black residents and individuals who voted for Republican candidates, or larger police forces (Slavinski and Pettit 2021).

At the individual level, scholars have suggested that a *new parochialism* has afforded legitimacy to surveilling young people of color. When municipalities lack dense private-level ties, private citizens tend to rely more on public institutions, like the police, to address social problems. New parochialism, therefore, represents a blending of parochial and public social control in that private citizens rely on public agents to address crime and "disorder" (Carr 2003; Becker 2014). Community members pressure police to address problems of disorder by using language that invokes an image of a person of color without talking about race directly (Boyles 2015). Without addressing their implicit racism, White people thus frame people of color as dangerous or criminally prone (Bonilla-Silva 2010).

This color-blind rhetoric legitimizes disproportionate police contact with people of color and increased police contact legitimizes White citizens' concerns about alleged disorder, promoting a feedback loop of control (Carr 2003; Becker 2014). For example, the sociologist Andrea Boyles (2015) notes that police routinely surveil young Black men hanging out in public places and target them based on extralegal characteristics stereotypically associated with deviance (such as clothing like sagging pants and hairstyles such as dreadlocks). Police then justify disproportionate contact with people of color for obscure code violations by relying on "color-blind" rhetoric and the White public's support (Becker 2014). Order maintenance policing by enforcement of code violations continues to criminalize an entire population of young, Black men simply for existing (Boyles 2015). As stated in the Ferguson report (Ferguson Commission 2015), a key part of misdemeanor justice is undermining trust as well

as cultivating fear and avoidance of public authorities in communities of color, not necessarily just advancing fines and fees. We argue that parochial governance fosters initial contact with police and prompts people with fewer economic means, and especially people of color, to get trapped in the municipal court system.

## STUDY SITE

St. Louis County is characterized by parochial governance and is an ideal case study for the broader understanding of localized systems of justice. Missouri courts are divided into three levels: circuit courts, appeals courts, and the Supreme Court. Circuit courts adjudicate misdemeanor and felony criminal cases as well as civil matters, and municipal courts, which often focus on traffic and city ordinance violations, are divisions of the circuit courts and are subject to local rules. St. Louis County has eighty-eight municipalities—eighty-three of which have independent courts to enforce municipal codes and local ordinances—and more than fifty independent police agencies or collaboratives (Missouri Attorney General 2020).[1] The state of Missouri has the fourth highest number of municipalities (944) of all fifty states and the District of Columbia. Illinois, Texas, and Pennsylvania each have more than a thousand, suggesting that this phenomenon is not geographically unique. The average is 382 (Census Bureau 2017).

### Racialized History of the Criminal Legal System

The localized structure reflects the racialized history of the St. Louis metropolitan area. In 1876, St. Louis City and St. Louis County separated into two discrete counties, which began the process of White exodus and fracturing of the region. The parochial structure of St. Louis County accelerated after 1943, when ninety-two municipalities were established in St. Louis County during an eleven-year period and state law allowed for independent police departments and courts. The area is also known for its "redevelopment" or "blighting" plans, which aimed to increase real estate values by downsizing or razing historically Black enclaves. At the same time, many highways were built in place of these enclaves and some municipalities banned multifamily units and blocked off roads (Johnson 2020). Thus the St. Louis Metropolitan region has been historically racially segregated, which has been furthered by the incorporation of predominantly White municipalities, zoning regulations, and gerrymandering of school districts (Gordon 2019). Because fewer local resources were available to draw on, decline and disinvestment began to plague the predominantly Black and economically challenged northern communities in St. Louis County, and courts have had to pick up the deficits to generate revenue in the absence of local property and sales taxes (Gordon 2019).

Evidence, most notably the investigations conducted in Ferguson, is considerable that Black people are disproportionately stopped by police (DOJ 2015), and this practice continues. In 2019, the Ferguson Police Department reported that the disparity index in police stops, measured as the proportion of stops to proportion of the population, as 1.44 for Black people and 0.24 for Whites people (Missouri Attorney General 2020). The use of warrants in the region is also commonplace; 150,423 warrants were issued in St. Louis County in 2019 (Office of State Court Administrator 2020). Black people were just over four times more likely to be arrested for a bench warrant than Whites, and most warrants were issued for failure to comply with an ordinance violation that includes traffic offenses, minor drug charges, and vagrancy, among others (Slocum, Torres, and Huebner 2020).

## LEGAL REFORMS

Revisions to the Missouri statutes have influenced how monetary sanctions are imposed in municipal court. Responding to the events in Ferguson and the ensuing Department of Justice investigation, reforms enacted in 2015 were intended to increase oversight of municipal courts; limit municipalities' ability to generate revenue from citizens in the form of fines, fees,

1. For a list of municipal courts, see "Municipal Court Contact Information," https://wp.stlcountycourts.com/municipal-division (accessed August 7, 2021).

and bond forfeitures; and lessen the overall financial burden of monetary sanctions on Missourians (see also Smith, Thompson, and Cadigan 2022, this volume). One of the most significant changes was restricting the maximum amount for a fine and reducing the percent of the city's budget that could be derived from fines and fees from 30 percent to 20 percent.[2] However, this change was largely symbolic given that the City of Ferguson during this time collected about 23 percent of itsr general fund from economic sanctions (DOJ 2015); therefore, the legislation mandated very little substantive reform in enforcement practices. Other changes include capping fines and fees for minor traffic violations at $225,[3] barring court costs for indigent defendants, and mandating community service as an alternative to financial payment.

Despite these new standards, scholars have pointed to the burden of even relatively small monetary sanctions, alluding to the harsh consequences for nonpayment (Pleggenkuhle 2018). In the analysis that follows, we denote that simply reducing the dollar amount assessed does not mitigate the multiple jurisdictional entanglements nor preclude courts from issuing warrants for failure to appear. We argue instead that it is the economic and social features of the region that fuel the need for revenue generation and the court and legal structure of the state prevents adequate legal representation and remedies for resolving debt, and fragments information flow, ultimately leading to inequitable outcomes and increased state control.

## METHOD

Our analyses address, first, how the legal structure of municipal courts in St. Louis County and the broader legislative structure of the state influence the imposition and collection of monetary sanctions in municipal courts and, second, the consequences of this structure for individuals, particularly for those who do not have the financial ability to comply.

### Data

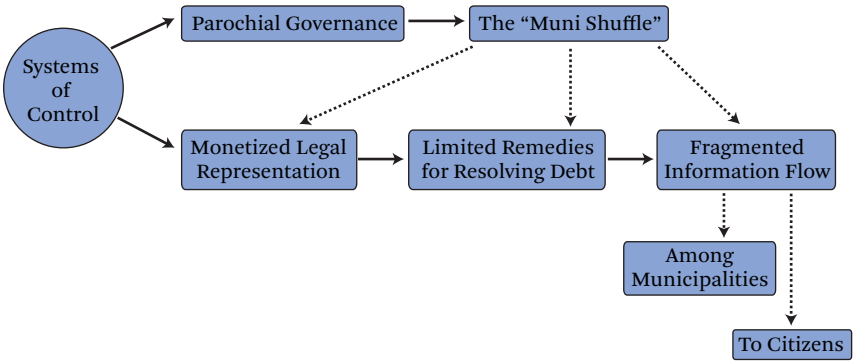
Data come from interviews with court actors and individuals with legal debt and are supplemented with observations of court proceedings. Data were collected as part of a larger project on monetary sanctions (Harris, Pattillo, and Sykes 2022, this volume). Data collection began in 2016, shortly after the Missouri legislature enacted the noted legal reforms. We interviewed thirty-seven individuals with current legal debt from the metropolitan St. Louis region, recruited several ways, including flyers posted on Craigslist and Facebook and referrals made by local social services agencies and state probation and parole offices. Consistent with local demographics and the population of people with monetary sanctions, the sample predominantly included Black men. In total, 75 percent of the sample were Black, and the remainder was evenly split between individuals who identified as White, Asian, and Multiracial. Males made up 84 percent of the sample.

We also interviewed twenty-five court actors (four defense attorneys, two prosecutors, eight judges, three clerks, and eight probation officers) from the greater St. Louis area and conducted more than ninety hours of court observation from the St. Louis circuit and municipal courts. All but three of the court actors were White, and a little more than half were women. We assigned each of the individuals with legal debt and court actors a unique pseudonym. Court actors were recruited using multiple methodologies. At the onset of the study, the researchers made lists of all judges and directors of the local probation and parole offices and the lead public defender and prosecutor. All local judges were invited to participate. Division leaders were contacted to request participation as well as approval to contact other agency staff, including clerks. The researchers developed a rapport with court actors by spending time in court buildings and correctional facilities over several years. Court actors were solicited in person, by phone, or by email to participate in the project. At the same time,

2. Revised Statutes of Missouri (RSMo), Section 479.359 (2016); see also Missouri Senate Bill 5, 98th General Assembly (2015), https://www.senate.mo.gov/15info/pdf-bill/tat/SB5.pdf (accessed August 8, 2021).

3. RSMo 479.353(1)(a).

**Figure 1.** Framework of Control




*Source:* Authors' tabulation.

given our rapport with some individuals, we used a snowball methodology to contact other court actors (Biernacki and Waldorf 1981). We also used snowball sampling in sending cold emails to court actors around the St. Louis region to request interview participation and to ask for recommendations for other court actor interviews after the initial interviews were completed. Multiple entry points were used to increase sample diversity and reduce the potential for selection bias in the resulting sample (Atkinson and Flint 2001).[4]

## Analysis

We used a semi-structured interview guide to frame our conversations with individuals with lagal debt and court actors (Harris, Pattillo, and Sykes 2022, this volume). The interview protocols allowed for ample elaboration on personal experiences with the justice system and how individuals viewed the process of assessing monetary sanctions. Keeping with a constructivist grounded theory methodology, we focused on how individuals were embedded in larger structures, networks, and relationships (Charmaz 2006).

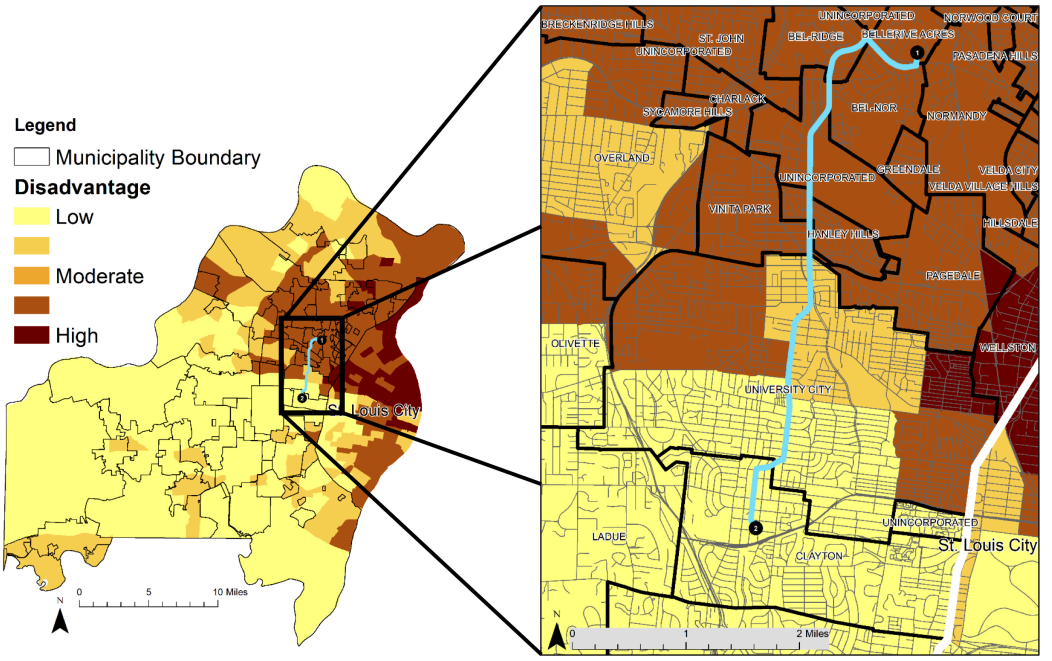
Taking the sensitizing concept of "systems of control" as a starting point for our analysis (Blumer 1954), we sought to understand how monetary sanctions were structured and assessed in the post-Ferguson era. Accordingly, we selected particular codes from the codebooks for court actors (monitoring LFO payments, court structure), individuals with legal debt (confusion; discrimination, prejudice, and stigma; failure to appear; multiple jurisdictional entanglements; neighborhood; police and policing; transportation; warrant), and field notes (bail, bond setting, consequences for nonpayment, defendant confusion, descriptions of courtroom, reprimand or accountability, suspended license, multiple jurisdictional entanglements). A keyword search was also conducted on the word Ferguson.

We developed analytic memos using a modified axial coding framework with systems of control at the center of the axis. The sociologist Kathy Charmaz (2016) describes how axial coding can be used to better understand the relationships among emerging categories and themes in qualitative data. However, rather than imposing a predetermined structure of categories and themes around one axis, we used this strategy as a loose guide to map emerging information. As we learned about experiences represented by the themes, we used the modified axial coding framework to link and develop subthemes. Figure 1 presents the relationships among themes.

We used the constant comparative method

4. We faced particular challenge in recruiting attorneys. Despite repeated requests for interviews, attorneys did not respond to our solicitation. Interviews with individuals with legal debt and court actors lasted about an hour and took place at local state-run offices, libraries, local restaurants, and coffee shops. Institutional Review Board (IRB) approval was sought and granted from the University of Missouri–St. Louis.

**Figure 2.** Municipal Courts in Saint Louis County, Missouri




*Source:* Authors' tabulation.

to search for evidence that would disconfirm the patterns in our data or deviant cases and looked for similarities both within and across interviews and field notes (Glaser and Strauss 1967; Charmaz 2006). Even though the information presented in this project cannot be generalizable to a broad population, the depth and detail of qualitative analysis provide a theoretical lens through that we can link systems and control and monetary sanctions. Rather than make claims about the causality of a particular phenomenon, we seek to understand the processes by which monetary sanctions gained and maintained control in the St. Louis area.

## SYSTEMS OF CONTROL

The profit-focused and parochial nature of the municipal courts in the greater St. Louis region has led to systems of control that unduly affect individuals living in poverty and persons of color. We begin our analysis with an explanation of how decentralized municipal courts extract monetary resources through traffic stops and warrants.

### Profit and Parochial Governance

Figure 2 illustrates the parochial structure of St. Louis County. The route marked on the map is a typical one from the Ferguson region to the county seat in Clayton. It runs 5.48 miles and passes through six communities, each with an independent police department and court, and an unincorporated area. The drive takes approximately nineteen minutes by car and eighty minutes by bus. Limited public transportation in the region makes driving the preferred way to travel.

The numerous independent law enforcement agencies in the region increases the opportunity to come in contact with the police. Police in the region routinely pull over and ticket individuals for traffic violations or as part of a pretextual stop, often for perceived seatbelt violations. Many of these infractions involve crimes that are tied to vehicle maintenance, such as a broken tail light. Individuals must pay a poverty penalty, by way of traffic citations, because they lack the means for routine car maintenance (Harris 2016). Despite some decline in misdemeanor traffic arrests in some parts of

the region after the reforms, racial disparities in enforcement remain (Slocum et al. 2020). Those who do not have the resources to comply are saddled with the legacy of harsh local enforcement.

Because of the parochial nature of the region, participants commonly reported that they had multiple infractions, largely related to traffic offenses, across municipalities, all for the same violation. Isaiah, a twenty-one-year-old Black male described how he had "had to go to seven places at one time" to address traffic infractions related to speeding, which he deemed the "world tour." Probation Officer Phillips indicated that "more than half" of his caseload had multiple municipal cases that have not yet been resolved.

Municipalities are also allowed to enact special zones in concert with the Missouri Department of Transportation.[5] In these zones, associated fines are doubled as a means of revenue extraction. The statute is vague, stipulating that a highway safety analysis must show that the area has a greater number of fatal or disabling car crashes than other comparable roadways.[6] Probation Officer Turner described how one agency designated a region of the local highway, a popular thoroughfare, as a safety zone: "You drive down the inner belt and you're going through all these different places and every one of them can ticket you for what have you. The doubling and the tripling of the fines, you go by the airport and you go too fast on 70 by the airport, it's designated as a safety zone and they triple the fine. It's like, really? So, the ability to enforce your own regulations I guess that doesn't seem to be fair." He was concerned that municipalities' power goes unchecked, where laws may unfairly target individuals as part of a revenue-generating strategy. Probation Officer Phillips further explained that the majority of individuals targeted by these laws have a lower income: "You see folks that have when we run their record check, they've got half a dozen things from different small municipalities that are just hung there because they can't get them closed out because there's a cost associated with it." The discretion is afforded to police and courts unduly burdens those without sufficient economic means to comply, which helps perpetuate racial inequalities (Bing, Pettit, and Slavinski 2022, this volume).

The widespread use of bench warrants in the region extends control, further entrapping people without the means to pay. Although warrants can no longer be issued for failure to pay in municipal court, judges can issue failure to appear warrants if an individual misses their court date. In this way, failure to appear becomes failure to pay. The sheer number of warrants executed by municipal judges in the region is large and continues despite reforms (Slocum, Torres, and Huebner 2020). For example, the City of Pagedale, with a population of 3,295, issued 3,666 warrants in 2019, a per capita rate of 1.11 (Office of State Court Administrator 2020). The city is 92 percent Black and the police department is under a consent decree.

In addition, recent legal reforms that remove or reduce sanctions for moving violations do not address old warrants or tickets; the legacy of the earlier court systems therefore continues. For example, Attorney Thompson described the frequency and enduring nature of municipal and traffic offenses for his clients: "Most of my clients, demographically speaking, would be Black males, probably between 20 to 35 I would say." He then noted, "It is very rare for a client to come into my office and not have six municipalities that they have to deal with and a lot of times they didn't even know it. Then I'll run their DOR [Department of Revenue] report and they have holds in three other places. Then I call those places and they're like, 'He owes us $700 from 1982 and we still want our money.'" He contended that the municipal courts are less interested in justice and more focused on revenue, a theme echoed by Probation officers Phillips and Turner.

Warrant checks are often triggered during a routine traffic stop. Many participants, particularly people of color, reported that they were pulled over for probable seatbelt violations or other minor infractions, and many felt that they

5. For more information, see Missouri Department of Transportation, "Travel Safe Zones," https://www.modot.org/travel-safe-zones (accessed August 8, 2021).

6. RSMo 304.590.

were targeted by the police because of their race.[7] Noah, a twenty-nine-year-old Black male, described being profiled by police as someone with outstanding warrants, a theme echoed most often by Black participants. Noah's license was suspended for failure to pay child support. He contended that when police see him driving, they pull him over and check for warrants, which can start a cycle of incarceration and warrants for failure to appear in other municipalities. He argued, "So every time they see me they flag me. And they be like, they tell me, 'You got six warrants.'" Similarly, Jayden, a twenty-year-old Black male, indicated that he was "harassed a lot in the county." He described how he was pulled over because a police officer could not read his temporary license plates. One recent experience was when he driving in his community, a predominantly Black neighborhood: "I rode past a police officer. He looked at my car and I had a hood on and I still had my uniform on. He went down the street, turned around and sped up to catch up with me. I told my little sister, I'm like, 'They going to pull me over, watch.' When I was getting ready to change lanes he cut on his lights. He walked to my car. He said the reason I pulled you over was because I can't read your temps."

Both Jayden and Noah were pulled over on suspicion of a crime. Many municipal and ordinance violations are a reflection of order maintenance policing and confer police with immense discretion. Infractions, like a potential seatbelt violation that comes with a $10 fine, are passed under the guise of safety. However, in application, this ordinance provides an avenue to target people of color, as police officers only have to perceive the absence of a seatbelt to make a traffic stop. This finding is consistent with research of this type that finds that lawmakers use words like disorder, safety, and quality of life to describe symbolic assailants, which justifies police and court contact with people of color (Boyles 2015). These laws allow municipalities to predatorily extract resources from citizens by repeatedly stopping on the suspicion of minor traffic offenses that may start a cycle of returning to court to pay off debt and when individuals miss court dates, and reveal additional warrants. On its face, the reforms are neutral in their development. In application, however, the police and the courts have discretion that unduly affects those without the economic means to comply, which further perpetuates racial inequalities (Bing, Pettit, and Slavinski 2022, this volume).

## THE MUNI-SHUFFLE

The decentralized and profit-focused nature of the municipal court system and the preponderance of tickets and associated warrants lead some to become further entrenched in the system. Several participants remarked on the muni-shuffle, whereby routine contact with the police can further deepen control, a consequence imposed most often on people of color and those with less economic means. The shuffle often begins with a small infraction but can escalate if one is ticketed by multiple jurisdictions and a warrant is issued. The process then becomes a revolving door of contact that is difficult to escape. Attorney Roberts described the process: "If it's a broken tail light, and they run through St. Charles Rock road, it has four different municipalities. They get pulled over by each municipality. They will shuffle you once you take care of business in one county, if you were to get arrested on a warrant, you go to the next county, and the next county, and the next county until you're released."

The cycle of entrenchment in the municipal court evolves in several phases. First, individuals enter the municipal court system for a minor crime, most often a traffic or driving-related offense, because these courts have the legal authority only to adjudicate misdemeanors and ordinance crimes. Those who have the financial means to comply are, for most offenses, able to pay the fine with the clerk in person or online and have no further involvement with the court. Those who do not have the means or who would like to contest the charge are required to attend court for a hearing. Attorney Thompson explained:

> There's eighty-one little bitty courts in a very small area so people are getting ticketed for the same problems with their car over and

7. RSMo 307.178 requires a seatbelt for the driver of any passenger car.

> over, and over again. That is a systemic thing as opposed to how much money everybody is charging. If you had a tail light out and the fee was $100, maybe. You got a ticket in St. Louis County, let's assume there's only one St. Louis County Court. If you got a ticket there for $100, and you were able to pay that back in $25 month increments, that might not be too bad but instead with your taillight, you've got a ticket in [three communities that have predominately Black residents]. You've driven five miles to restrictive North County and you've gotten a ticket for the same thing over, and over, and over again. That's exacerbating the problem.

He contended that the nature of the problem extends beyond the cost of the legal financial obligations. Because municipalities are ticketing individuals over and over for the same offense, the problem appears organizational and unduly affects people with fewer economic means. Even though the initial ticket may not pose a large burden, being ticketed multiple times across municipalities quickly balloons the cost and further solidifies the tether to the system (Martin, Spencer-Suarez, and Kirk 2022, this volume).

When asked why they believe that individuals in the more affluent communities are less likely to have outstanding obligations to municipal courts, Probation Officer Roberts replied, "I think it comes down to income. I think we get into areas where the median income is lower and the unemployment rate is higher and you just got people that get stuck." He emphasized, like Attorney Thompson, the systemic nature of the shuffle. Individuals get caught in a web of fines and fees, and potentially warrants, that become unwieldy, if not impossible, to resolve.

Entanglement in the municipal court system continues if individuals are not able to pay because they must return to court to enter into a payment agreement and continue to attend court until the sanction is paid in full. Individuals who miss more than one court date can be issued a failure to appear warrant that mandates appearance in court and authorizes arrest. Attorney Roberts elaborated: "Like what happens is that if you get a number of these tickets, you get these tickets then go to warrant, then they get your license, and then of course your insurance is super high, so you can't afford it."

Finally, the shuffle begins if individuals accrue multiple sanctions across courts. Individuals must shuffle from municipality to municipality to attend court, pay monetary sanctions, and attend to other conditions of compliance. Individuals are required to settle warrants separately in each court, because the court system is not unified, which further extends entanglement. Compliance with court orders requires regular transportation and having the time to attend hearings. Each hearing comes with procedural hassles that compound the challenges of compliance (Kohler-Hausmann 2018; Cadigan and Kirk 2020).

Probation Officer Phillips described the same pattern wherein a traffic infraction can lead to substantial consequences: "If they don't pay those traffic fines or if they don't show up to the traffic court, they're going to lose their driving privileges. And it mushrooms into being an issue being where then they pick up a driving while revoked. And then, they pick up multiple while revoked. And then, we see people come on supervision for driving while revoked. And that's the cycle that really is uncomfortable from this point of view."

The cycle of municiple court involvement can be further complicated by the loss of a driver's license. By statute, individuals in Missouri who fail to appear in municiple court on traffic charges involving moving violations or who have enumerated points for law violations will have their license suspended, and licenses can be barred for renewal for failure to pay.[8] As part of the reforms, driver's license suspension and renewal cannot be barred for minor traffic violations, classified as not having an accident or injury.[9] However, individuals who can hire an

8. RSMo Section 302.341 governs reporting failure to dispose of a traffic violation through payment of costs and fines. Section 544.045 requires the department of revenue to withhold the renewal of the defendant's driver's license.

attorney can get amendments to the number of points assessed against their license, making revocation less likely, whereas those who cannot pay are not typically offered such remedies (Arch City Defenders 2014).

By way of example, Antonio, a twenty-four-year-old Black male, explained that he had been cited for driving with a suspended license an estimated, "four or five" times and had accrued warrants in municipalities. He accumulated enough points on his license for it to be suspended: "A couple of nonmoving violations that I had and the tally points, obviously, up against my license until they had to suspend me. After you get charged with so many traffic offenses, your license gets suspended. I probably did it up on myself, not driving the best of cars, but just trying to use what I had. It was usually just me driving a raggedy car that honestly got me in a situation."

Like many participants, he did not have the financial ability to purchase a new car and was regularly tagged for traffic and ordinance violations, including a citation for a broken tail light. He did not have a valid license at the time of the interview. When asked why, he noted that he was "just putting it off because I felt like I didn't have the money to actually pay the tickets off or pay off the court fees or the fines" and that he did not drive any longer because of the infractions.

Enforcement practices, coupled with the lack of representation, clearly widen disparities. Antonio's inability to keep up with car maintenance and failure to pay the resulting tickets led him to lose his driver's license. Because he did, he could not legally drive to work in an area that offered little public transportation. We argue that individuals with legal debt like him become trapped when they cannot afford to pay for car maintenance or are stopped on suspicion of a crime or other pretextual reason, acquire tickets in multiple municipalities, and then lose their driver's license so that they cannot legally drive to work and make money to pay off their legal debt or drive to court to resolve the debt. Individuals enter this cycle largely because of poverty that is further perpetuated by the parochial nature of the municipalities, which makes escaping the revolving door of monetary sanctions inordinately difficult.

## EXTRA-LOCAL CONTROLS IN AN ERA OF REFORM

Despite municipal court reforms following the Ferguson investigations, the presence of state law that upholds the independence of courts and the concomitant lack of oversight of the courts further perpetuates the cycle of control. The hands-off nature of the legislature also allows the police great discretion and can lead those with fewer means and less power, particularly people of color, to be harshly punished based on their lack of access to state systems (Garland 2001; Wacquant 2009). Despite reforms, the state has continued to abdicate control of the municipal courts and has maintained the practice of placing the onus for funding representation and finding information to the client, which further increases the disproportionality of municipal and ordinance charges.

### Monetized Legal Representation

The right to counsel is a central element of a fair legal system; however, access to representation in Missouri municipal courts depends on the ability to pay. In Missouri, individuals who enter the municipal courts are not eligible for a public defender because the Missouri Code of State Regulations mandates services to be provided only to individuals charged with a felony.[10] Individuals with municipal cases must hire a private attorney or represent themselves, which leads to a disproportionate cost to litigants. The state places the obligation to find and fund represen-

9. RSMo Section 479.350 describes the categorization of minor traffic offenses. Minor offenses cannot include an accident or injury. Offenses for driving more than nineteen miles over the speed limit or for exceeding the speed limit in a school or construction zone are not considered minor offenses.

10. Missouri 18 CSR 10-2.010 (Definition of Eligible Cases) makes this determination. For more, see Missouri State Public Defender, "How to Apply for Services," https://publicdefender.mo.gov/clients-and-families/how-to-apply-for-services (accessed August 8, 2021).

tation on the litigants rather than recognizing the need for representation and providing access to justice (Page and Soss 2017).

The decentralized nature of the multiple court system makes rectifying tickets more daunting for litigants and attorneys alike, which amplifies the potential negative outcomes for people without economic means to hire an attorney. Defense attorneys commented on the arduous process required to resolve debt in multiple municipalities. Defense Attorney Thompson said that he would "have a person with municipal tickets on my docket for a year-and-a-half just waiting for them and helping them and encouraging them and tracking their stuff." Further, he explained, "People are afraid of that process and I think with good reason, so that process doesn't always happen for folks that aren't represented or who aren't represented by a lawyer and who have to go back time after time to get it done."

In this case, Thompson's client worked two jobs but was evicted from her apartment and needed money to pay for a down payment on a new place. Thompson was able to go to court and speak on his client's behalf so that she would not need to fear being incarcerated. Individuals who did not have an attorney may have had a different fate.

Some attorneys, Thompson noted, are not willing to take the time to attend the necessary court hearings to resolve debt and that unrepresented individuals fare even worse as they lack the expertise to properly communicate with the courts. Individuals who are deemed indigent do not have representation. Pro Bono Attorney Roberts remarked that "A lot of people have public defenders. But of course, they're only defending the state case." Individuals may, he said, "be incarcerated for the state case, but they could have a host of other warrants in other municipalities. And because the attorney is able to take care of those state cases, and we're only able to take care of the state case, they do the shuffle into different counties."

The fragmented system tasks lawyers with additional communication work, hampering their ability to efficiently and cost-effectively resolve outstanding debts and warrants. It is the complex parochial system that makes this more difficult—each municipal court sets its own local rules that attorneys must learn if they are to resolve debt. System impacted people receive even less information about how the courts operate. When this lack of information is coupled with performative aspects of attending court (such as arriving on time when there is little parking and dressing to judges' standards), resolving court debt becomes a near-impossible burden.

## LIMITED REMEDIES FOR RESOLVING DEBT

The finding of indigence is one way to mitigate the collateral consequences of monetary sanctions. State law in Missouri allows for the full waiver of fines, fees, and court costs in felony cases, something we observed with great regularity in court observations. Conversely, state laws offer little relief or guidance for individuals who cannot pay in municipal court. Although the reforms mandate assessment of the ability to pay in municipal courts and that individuals be offered community service in lieu of a financial sanction, legal actors felt that guidance on how to demonstrate indigence was minimal. One judge remarked that municipal courts seem to be overlooked and are not as sensitive to individuals' ability to pay as state cases: "I think the same, I don't want to say protections, but the same thought process or reason behind, find out if people can really afford to pay on the municipal should be the same way we look at state cases. I don't know why, it just hasn't developed that way. But I certainly think that should be the national progression." Judge Clark echoed a theme of frustration and bewilderment common in narratives. He did not understand why the system of justice was so different in the state and the municipal courts.

Some attorneys expressed frustration that the process of proving indigence is difficult for them, let alone any unrepresented individual. Defense Attorney Thompson felt that judges were not receptive to lowering or dismissing fines. The performative process required to prove their clients are unable to pay their debts is arduous, such that they attempt to obtain "support letters from the caseworkers they're working with and occasionally I'll drag the caseworkers on the court with me." To resolve the debt, Thompson said that they must "set a

hearing so that we can convince the judge that our client cannot pay and that our client is not sitting on a stack of money somewhere just laughing at the court that they're actually struggling, that they're in poverty, that they have a situation that is beyond their control that was preventing them from being able to satisfy the obligation to the court." Attorneys can ask for an indigence hearing, but this mechanism is often unknown to individuals without representation.

The process of resolving court debt was so complicated that many individuals with court debt indicated that they worked with their probation officer to help navigate the system, but they often face similar roadblocks as their clients. Probation officers faced difficulty both locating the municipalities in which their clients owed debt and convincing other court actors of their clients' limited ability to pay. All of the probation officers interviewed reported that they will often reach out to municipalities to resolve their clients' debts, but have difficulty keeping track of individuals' progress because their clients often had debt managed by multiple courts and each court maintained different processes and policies. Probation Officer Philips explained it this way: "I think we've got a lot of officers who will reach out to different municipalities and say, "You've got a warrant out for this guy for failure to appear. Do you really want him because he's sitting in my office? But we've also got this and this going on with him." And a lot of times, they don't want them. They want them to show up to court and pay. But that's one more wrinkle in what we have to deal with because we've got to try to figure out where the line is at each municipality." In the end, some courts may be more forgiving when considering individuals' ability to pay. However, the expectation among the municipal courts is unclear, leaving defense attorneys and probation officers usually tasked with extra communication work to find out to whom the debt is owed and how it can be resolved.

Overall, the performative work of compliance was arduous. Several respondents indicated that they simply gave up rather than continually engage with the court. Kevin, a fifty-one-year-old Black man, reported that he resolved a license suspension by waiting until the legal judgment against him expired. He explained that he would "just wait until ten years was up" to get his drivers' license back rather than fight with the courts because he could not afford representation. He explained the tiresome cycle of compliance with the municipal courts:

> I was in a car accident and I was working and I had to go to court. I was working in a service station where I was in the booth. I was there by myself and I couldn't leave the booth. I miss a court day and when I went down there after work, and the judge said he was going to reschedule it, but they put me as defaulting and I had to pay for it. I had to get a SR-22, I had to pay for the insurance in order to get my driver's license. Every time, say if I get employed and it elapse, I have to start all back over.

This narrative highlights the disproportionate and enduring costs of municipal sanctions, particularly for individuals without the means to pay or to hire legal counsel. Lack of state guidance on indigence has made the process of determining the ability to pay so difficult that individuals with legal debt avoid courts entirely and probation officers and attorneys spend an immense amount of time and resources convincing courts that their clients cannot pay.

## FRAGMENTED INFORMATION FLOW

Participants routinely noted that a fundamental challenge to compliance is the lack of information available on a case. Before recent legislation, the state did not require municipalities to publish information on municipal court cases publicly nor did it maintain or fund an information portal for litigants; something that is a funded mandate for state courts. As part of recent legal reforms, the Office of State Court Administrators is developing a standardized data system. The reform comes at the cost to litigants; all municipal court cases are assessed a $7.00 court automation fee, a cost not assessed for state cases.[11]

11. Missouri Court Operating Rule 21.01(a)(4).

Many participants reported that they have trouble finding information about their cases and determining how much they owe (see also Supreme Court of Missouri 2016). Defense attorneys and individuals sentenced to debt said that this issue stems from the archaic methods courts use to notify individuals of their debt and from online data entry errors on the part of court staff that makes the case information inaccessible. For instance, individuals are still expected to rely on paper slips to keep informed about their debt and future court proceedings. Joaquin, a thirty-one-year-old Black man, described the process: "If you get help and go to court, and then they start your payment plan, then they'll give you a piece of paper with every month and day you have to come and pay it. Instead of just sending you a notice every month, they give it to you on a piece of paper." He went on to explain that if an individual were to lose that piece of paper, he was not aware of any way to look up future court dates. Defense Attorney Thompson described the process of information retrieval in detail: "If they owe money they're given a slip usually in the court that tells them how much money they're supposed to pay and when they're supposed to come back. If they lose that slip, then they can either call the court or now they can look online and some of the courts here report to municourt.net or they report to Municipal Court Records Search or they report to Case.net and you look on there and see how much fines you owe."

However, they also noted that although some municipal courts have moved to an online court record system, there are multiple portals for different communities, all based on different data systems, and the information is often misleading. Defense Attorney Thompson explained that the online system does not function as intended because courts will "auto-fill the presumed amount for that fine so even if the person hasn't pled guilty, it will show a fine amount on the public record." Individuals sentenced to debt have trouble tracking what they owe because the courts rely on paper slips handed out in court, fail to update the online system, do not provide reminders of court appearances, and do not communicate with one another.

Further, the lack of communication between courts can lead to additional sanctions. Several participants noted that they were given sanctions for failure to appear because they were incarcerated in another jurisdiction. Individuals are not routinely given a letter of incarceration; and the lack of a comprehensive database makes documenting the reason for missing court more difficult. Noah described his experience: "Well, before I got locked up I had set in the justice center for three days. Then I went to city court, and you know, they gave me a new court date. But I end up getting arrested for a probation violation like, before I could make that court date." Noah faced a host of potential sanctions because the systems were not connected.

In addition, few legal mandates consider accessibility to the courts or require frequent or regular hearings. None of the municipalities in St. Louis County hold court daily and some meet only once per month, which can seriously prolong the term of interaction with courts and make it difficult for people to attend court to resolve their legal financial obligations (Arch City Defenders 2014; Supreme Court of Missouri 2016). When observing courtrooms, research assistants for this project had difficulty finding courts. One municipal court, for example, was held in the basement of police department headquarters and city hall. Our observer found it tucked behind a residential area, with a For Sale sign on the side of it and with limited parking. Cars filled the small lot and lined the street, making parking difficult.

Finally, because of the decentralized nature of the courts, coupled with the lack of a central data system, participants often were not always aware of the agency that issued the ticket or where the court was located, and some participants lost their tickets. The lack of information on court cases increased the procedural costs associated with compliance. Individuals with legal debt discussed having to drive multiple places just to find the court. For example, Kevin, a twenty-year-old Black male, knew he had a ticket but was not sure where it was issued and did not know where to find the information on his case. He remarked, "I don't know whether Court A and Court B have the same courthouse building, so I'm going there today

to make sure." Individuals without representation are tasked with keeping track of paper slips for payments and finding obscure court locations that meet only once a month.

In summary, the opaque nature of the municipal courts is difficult to navigate for litigants and decision-makers alike, and the system is allowed to flourish under the laissez-faire management of the state. A comment from a prosecutor exemplifies the phenomenon. When asked how they got this way, Prosecutor Anderson said, "I think for years and years and years they didn't pay attention to municipal courts. You didn't have anybody from the Supreme Court administrator, you didn't have anybody from the Supreme Court, you didn't even have your circuit judges. Didn't give a damn about municipal courts, just 'cause there's too many of them."

The municipal courts, he felt, have become too large and unruly to manage. We conclude that though the U.S. Department of Justice (2015) report on Ferguson provided an impetus to reduce the amount of revenue generated through municipal police and courts, the structure of the court system allows the same practices focused on revenue generation to continue.

## SUMMARY AND CONCLUSIONS

The results from this analysis suggest that the larger systems of control, including parochial governance, have allowed the municipal courts to maintain a dominant role in many people's lives even after the state legislature placed limits on revenue collection. The problem is systemic, not necessarily driven by any master plan, and self-perpetuating as court actors and defendants have to come up with ways to cope with a system that emphasizes free-market exchange but also advancement through state and market powers that forcibly expropriate resources (Beckett and Murakawa 2012; Page and Soss 2017). As a result, municipalities continue to aggressively enforce traffic and ordinance violations, which disproportionately affect people of color. Those with legal debt are often shuffled from municipality to municipality, resulting in license suspension and warrants that further perpetuates the cyclic nature of criminal legal involvement. Even after reform, the sheer number of tickets for municipal infractions have declined in some communities, and others have folded, but most of the proposed reforms were symbolic in nature and others have not been achieved, such as expanding access to alternatives to monetary sanctions including community supervision (Forward through Ferguson 2018) and the patterns of revenue extraction persist in the region for governance and continue an age-old cycle that has disproportionate effects on people of color (Rios 2019).

At the same time, the municipal court system in Missouri, much like that observed in the rise of mass incarceration, has been allowed to continue—beyond the symbolic changes—without intervention from political actors (Gottschalk 2006). Individuals who enter municipal courts are barred from the same legal protections given to those in felony courts (see also Huebner and Shannon 2022, this volume). We find that the decentralized nature and independence of the municipal courts fragments information flow about monetary sanctions among municipalities and to citizens, and the reforms that are designed to provide more access to court information come with a cost to those involved in the system. The parochial nature of the court is further supported by state legal structures. The Municipal Division Work Group to the Supreme Court of Missouri contends that the root cause of municipal tickets is that "state law that enables municipalities to profit financially from ordinance enforcement activities, and the judicial selection and retention procedures that expose the judges and court personnel to undue and improper pressure from the executive and legislative branches of municipal government" (2016, 26). In the end, although misdemeanor justice is a local phenomenon, larger structures at the state level act as a catalyst for individual control.

The results of the research are important for policy. One key theme that emerged was the call for restructuring or altogether elimination of the municipal courts. This refrain has been echoed by many local advocates and scholars (Arch City Defenders 2014; Boyles 2015; Ferguson Commission 2015). When asked to propose policy recommendations, Probation Officer Turner said, "I'd get rid of the munies." Prose-

cutor Anderson echoed him: "people ought to be able to go one place for the municipal court in order to reduce confusion about what individuals' are charged with and what fines they owe." Anderson also contended that a centralized system would potentially decrease the disparities in punishment across communities and made note that consistency in punishment may breed compliance. We argue that centralization may improve public services by increasing information flow both between courts and to citizens, as demonstrated in other states with centralized court systems (see Verma and Sykes 2022, this volume). Easily accessible information about what is owed and to whom may reduce the number of missed court appearances leading to warrants.

However, policy reform will not affect outcomes and structural inequalities if they are symbolic. The fundamental structure of municipal funding was not changed as part of the reforms. Without altering the way that law enforcement and courts are funded, we cannot expect legal actors to find new avenues of financial support except by way of those who enter the system (Friedman et al. 2022, this volume). As Karin Martin et al. (2018) argues, the precarity of funding streams, particularly as it relates to the judicial branch, has led to short-sighted, "monetary myopia," when revenue takes priority over other community needs and goals. In the St. Louis region, the need for financial support of legal systems had resulted in some communities punishing their residents to keep afloat, a strategy that will further disadvantage the earnings and long-term success of community members, many of whom are people of color (Harding, Siegel, and Morenoff 2017).

The results from this work portend the need for systemic and cultural reform at the statutory, local community court, and judicial levels. However, structural change itself will not be successful unless judges are "applying standards in a manner consistent not only with the policy itself, but also with the principles that animated the policy reform" (Nagrecha, Brett, and Doyle 2020, 97–98). Reformers should look beyond simply changing the structure of the court and also consider the potential in a democracy-enhancing jurisprudence, which encourages judges to heed the calls made by local advocacy groups and to take an active role in considering and documenting the needs of litigants by writing opinions and writing new court rules that better reflect the need of constituents (Bell, Garlock, and Nabavi-Noori 2020).

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# Pay or Display: Monetary Sanctions and the Performance of Accountability and Procedural Integrity in New York and Illinois Courts

KARIN D. MARTIN, KIMBERLY SPENCER-SUAREZ, AND GABRIELA KIRK

*This article proposes the centrality of procedural integrity—or fidelity to local norms of case processing—to the post-sentencing adjudication of monetary sanctions. We draw on insights gained from observations of more than 4,200 criminal cases in sixteen courts in New York and Illinois and find that procedural integrity becomes a focal point in the absence of monetary sanctions paid in full and on time. This examination of the interplay between the sociolegal context and workgroups within courtrooms brings to light how case processing pressure, mandatory monetary sanctions, defendants with pronounced financial insecurity, and judicial discretion inform the role monetary sanctions play in court operations.*

**Keywords:** monetary sanctions, surcharges, case processing, courts

As state legislatures have dramatically expanded monetary punishment, establishing new fines and fees and increasing the dollar amount of those already on the books, implementation is left to the courts. Yet, because defendants are seldom able to pay these sanctions promptly and in full, the courts must adapt their practices to managing the tension between these policy mandates and defendants' material realities. In the New York and Illinois court systems, the performance of accountability dominates the assessment, administration, and collection of monetary sanctions. Practices in both jurisdictions emphasize how much time is needed for payment rather than willfulness or inability to pay. Moreover, in each state—regardless of whether the court handles infractions, misdemeanors, or felonies—a substantial amount of time is spent on frequent but brief appearances related to ongoing payment of outstanding debt by defendants and the scheduling of subsequent hearings. This

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dynamic, in which often-recurring appearances and small payments serve as ways defendants can (and are often expected to) engender leniency and forestall escalating consequences, is a core feature of the processing of monetary sanctions in these two states (see also Pattillo and Kirk 2021; Cadigan and Kirk 2020). Mary Pattillo and Gabriela Kirk (2021) find that this manipulation of one's time when it comes to paying back court debt leads to a form of "layaway freedom" and coercive financialization, punishing beyond simply the financial burden. Here, we explore what factors, other than the desire to punish, lead courts to engage in collection practices that extract considerable time not only from defendants but also from the court. We find that the cardinal priority is the display of procedural integrity—or fidelity to local norms of case processing—rather than transparency or efficiency of case processing being guiding principles.

To explore these dynamics of accountability performance and procedural integrity, we draw on ethnographic observations of court proceedings and interviews with court actors in a variety of courtrooms across Illinois and New York, collected as part of the broader Multi-State Study of Monetary Sanctions. These data provide particular insights into practices surrounding post-conviction collection of monetary sanctions (legal financial obligations, or LFOs) and how court actors justify the time demands these practices place on the system, often with little success in actual financial collection due to the lack of consideration for defendants' ability to pay. Insights from several literatures provide a framework for analyzing our data. Jeffery Ulmer's (2019) construction of courts as "inhabited institutions" takes into consideration the sociolegal context in which courts operate, at the same time accounting for the agentic capacities, relationships, and perspectives of the individual actors who enact the courts' quotidian functions. Centering organizational culture in the analysis of sentencing and other judicial decisions helps clarify how criminal justice policy is actually implemented. Empirical and theoretical work on the concepts of leniency and compliance shed light on the dynamic between the defendant and court actors.

How the court's authority interacts with the defendant's assent to that authority is the fulcrum of our analysis, yet whereas the literature primarily concerns sentencing, we focus on the post-sentencing stage. This analysis centers on three dimensions of the courts' approaches to administering monetary punishment after cases have been adjudicated. First, we find that *case processing* is defined by statutory constraints on judicial discretion in the sentencing of monetary sanctions. Judges in Illinois and New York cannot forgo imposing mandatory monetary sanctions, even though doing so results in the courts' protracted management of indigent defendants' debt obligations, thereby undermining efficient case disposition and exacerbating the problem of high caseloads. Second, we examine how *interpersonal dynamics* guide post-adjudication handling of monetary sanctions. Through their everyday interactions, courtroom workgroups construct localized norms and routines, which then determine how the court will handle most of the cases that come before it. Common types of charges generally correspond to typical penalties, or "going rates," though we extend this concept to encompass the ways in which courts account for time in the enforcement of monetary sanctions. Our analysis indicates that payment plans and extensions are an important mechanism through which courts exercise discretion over monetary sanctions enforcement.

Third and finally, we find that salient aspects of *nonpayment and its consequences* entail direct negotiations between judges and defendants and the enactment of compliance "rituals" (Huebner and Shannon 2022, this volume). Unable to expeditiously enforce monetary sanctions, the courts compel defendants to engage in drawn-out performances of accountability, including repeated appearances to make small payments and displays of deference and contrition. These performative scripts function as an avenue through which courts navigate statutory requirements that are at odds with defendants' financial capacities, thereby upholding what we refer to as procedural integrity.

## CONCEPTUAL FRAMEWORK

Our conceptual framework brings together insights from several lines of literature that ad-

dress how courts function, factors influencing decision-makers working in courts, and the demands courts place on defendants.

## Inhabited Institutions

Ulmer's (2019) concept of courts as inhabited institutions draws on insights from organizational sociology to propose that those who participate in court (judges, attorneys, defendants, among others) create the culture of a court and enact the implementation of criminal justice policy. In this framing, broader legal constraints inform but do not wholly dictate what transpires on a day-to-day basis in a courtroom. Instead, the institution of court and the individuals working in it are mutually influential. At the heart of Ulmer's thesis is the realization that people working in courts have agency, which drives behavior and interactions, thereby creating organizational culture. An important implication of this insight is that clarity about the "interactions that jointly produce discretionary decisions" (2019, 485) may be more useful than attempting to parse the specifics of discretion exercised by, for example, judges versus prosecutors. The underlying question is how court actors constantly navigate the terrain where formal rules and laws meet informal norms and shared perceptions.

In Ulmer's conception, contested space frequently exists between formal and informal constraints on decisions in the courtroom. He explains that "macro myths and their categorical rules are often at odds with organizational realities, with competing interests, or with the contextual circumstances and constraints. The result is localized adaptation and selective circumvention of formalized rules and structures of control" (2019, 488). In the case of post-sentencing adjudication of monetary sanctions payment, the pertinent macro myth may be "equality and uniformity before the law," meaning that people have a responsibility to pay what they owe—be it for deterrence, revenue-raising, or both. However, courts also have an interest in minimizing case processing time at the same time that dockets are often filled with people without enough funds to fulfill their monetary obligations. Situating monetary sanctions in the framework of courts as inhabited institutions thus raises the question of how external factors interact with courtroom decision-making in the confrontation of unpaid court-ordered debt as an individual reality. In our analysis, this interaction engenders a commitment to procedural integrity, wherein court actors cocreate and adhere to the local norms of managing time and payment related to monetary sanctions.

The crux of the court as an inhabited institution is the workgroup (Ulmer 2019). In essence, interactions among court actors, day in and day out, are what yield case outcomes. Judges, attorneys, and other court actors cocreate criminal sentences by interpreting the law and negotiating (Ulmer 2012; Kim, Spohn, and Hedberg 2015). Importantly, no sentencing decision is a one-off. Likewise, the workgroup is not static, but instead in a continual state of development. Through this ongoing coproduction, the workgroup's going rate for appropriate sentences for typical offenses is established (Eisenstein, Fleming, and Nardulli 1988). The going rate is defined as the typical punishment for a typical crime in a given courtroom, often locally determined. A similar construct exists in Malcolm Feeley's (1979) idea of case worth, in which workgroup members mobilize facts about the defendant and the case, framing them in a certain way that ends up significantly affecting the subsequent plea deal. In terms of procedural integrity, the concepts of going rate and case worth suggest that the courtroom workgroup will establish locally acceptable parameters for managing on-going payments and related court appearances.

The notion of a going rate in sentencing is useful for illuminating the routinization aspect of adjudicating monetary sanctions. Indeed, Tyler Smith, Christina Thompson, and Michele Cadigan (2022, this volume) leverage this concept to explicate how the localized norms allow attorneys to anticipate the responses of other court actors, especially judges. These norms also allow attorneys to modulate their adversarial strategies accordingly, shaping the sensemaking processes through which these actors collaboratively interpret and implement monetary sanction reform measures handed down by state legislatures. In their day-to-day functions, courtroom workgroups often use going rates as a cognitive template for how to pro-

ceed with a case (see Ulmer 2019). For example, plea bargains may fall into patterns of standardized sentences for crimes the court sees regularly, particularly those it sees frequently (Lynch 2019; see also Sudnow 1965). However, when it comes to decision-making in the allocation of permissible time in the enforcement of paying monetary sanctions, the idea of a going rate has notable limits. On the one hand, the analog in terms of judges determining an acceptable amount of time to pay is clear. The amount of time defendants are given is significant, given that court actors in Illinois and New York often have little discretion in the dollar amount and no formal systems to consider individual circumstances, often known as *ability-to-pay* determinations. Yet judges do have the authority and discretion to impose constraints on payment as well as consequences for nonpayment. On the other hand, the nature of post-sentencing management excludes from the proceedings much of the courtroom workgroup that would otherwise play a role in determining the going rate. Instead, decisions about minimum payment amounts and how long a person has to pay are typically a result of negotiations between the judge and the defendant.

The focal concerns concept encapsulates the idea that individual decision-making occurs in a particular context of commonly understood norms. That is, each courtroom has its own organizational culture with its own local norms, existing in a broader institutional context. Early work proposes that cognitive shortcuts and biases such as heuristics or stereotypes influence the assessment of the three focal concerns of blameworthiness, protection of the community, and practical constraints (Steffensmeier, Ulmer, and Kramer 1998). Several practical concerns and aspects of blameworthiness are particularly relevant to protracted monetary sanction payment. When a person is making repeated court appearances related to monetary sanctions, the judge must make administrative decisions about scheduling, payment plans, and dollar amounts while assessing the defendant's compliance with the court's previous orders. The norms surrounding both the pace and frequency of court appearances as well as what makes a defendant deserving of punitive action or leniency constitute focal concerns. Thus the concept of focal concerns provides a basis for interpreting decision-making related to monetary sanctions and opens new lines of inquiry into this topic. In particular, it is helpful in understanding how fidelity to local norms of case processing (procedural integrity) occurs.

The concepts of courtroom workgroups, going rates, and focal concerns in concert provide a useful foundation for the study of how monetary sanction payment is managed. Moreover, by applying these concepts to a noncustodial sentence, we expand and deepen the literature in useful ways. First, courtroom workgroups help explain how monetary sanction sentences are determined and what local shared norms are. For instance, workgroups influence the use and amount of discretionary fines. However, the relevance of courtroom workgroups may be diminished when post-sentencing payment is negotiated between the judge and the defendant. The determination of a payment plan can involve only the judge and the defendant rather than the entire workgroup. We can thus observe what happens when the courtroom workgroup shifts to include the defendant in a limited way. Second, the idea of a going rate for sentencing is useful in describing typical processes related to monetary sanctions. Going rates may set informal parameters for the types of monetary sanctions assessed or payment amounts. Our data allow us to investigate the applicability of going rates when what is at stake is time to pay as opposed to whether or how much to pay. Third, this analysis goes beyond the typical use of focal concerns as an explanation of inequalities in sentencing outcomes. Instead, we use the concept as a point of departure for interrogating the interplay between context and individual decision-making in the sphere of monetary sanctions. Together, these concepts provide useful building blocks for understanding the origination and function of procedural integrity.

## Performative Aspects of Compliance

The ways in which courtroom participants enact performative scripts of accountability are key to developing a holistic understanding of what transpires during a court session. Central elements include the actions and affect of de-

fendants, who are obliged to demonstrate a degree of deference in order to maintain good standing with the court. They must undergo the "procedural hassle" of continual hearings and the attendant opportunity costs (childcare, lost wages, and so on), while abiding the courtroom's strict rules and customs—sitting quietly and attentively and waiting for long periods, sometimes amid confusion and "enforced ignorance" about the status of one's case (Kohler-Hausmann 2018; see also Slavinski and Spencer-Suarez 2021). Not only must defendants adhere to court orders, their presentation inside the courtroom is also subjected to scrutiny. As Issa Kohler-Hausmann notes, "Court actors react to how defendants perform under procedural hassle not only because that performance might proxy general law-abiding character, but also because they interpret the performance as a meaningful demonstration of who the defendant is and therefore what he deserves" (2018, 230). Beth Huebner and Andrea Giuffre's (2022, this volume) examination of monetary punishment in St. Louis, Missouri, with its fragmented patchwork of relatively autonomous municipal courts, highlights just how onerous these requirements can be (see also Huebner and Shannon 2022, this volume). They find that many defendants, unrepresented by counsel and inadequately informed about their cases, are unequipped to shepherd themselves through the legal process. Yet, because most cannot pay off their encumbrances, their cases drag on and on. It is perhaps unsurprising then that some simply give up and cease their efforts to comply. Conversely, defendants who persist through the gauntlet of hearings and court mandates are effectively exhibiting personal accountability to the court. This tends to engender leniency on the part of judges and other relevant authorities, perhaps leading to a more favorable outcome in their case. Defendants' consistency and scrupulous comportment in court appearances may be especially important signifiers of deference to the court, and certainly more so than monetary sanctions payment, given that many defendants are unable rather than unwilling to comply with legal financial obligations.

To a large extent, the performance of accountability plays out in the interactional dynamics in the courtroom, of which affect is an important constituent element. During criminal proceedings, the various actors' demeanors and feeling states, particularly those of defendants, can prove highly consequential. Contrition presents a notable example, one particularly relevant to the performance of deference. Substantial evidence indicates that evaluations of defendant remorse play a key role in sentencing and parole decisions, as do determinations about whether to try a minor as an adult, and forensic assessments (Bandes 2016b; Wood and MacMartin 2007). Remorse is also an explicit evaluative criterion for juries in capital cases (Bandes 2016a), thus being grounds for literal life-or-death decisions. Work on the assessment and impact of contrition in front-end criminal legal processes focuses on the sentencing context (see, for example, Wood and MacMartin 2007). It is clear that expressions of remorse may induce some measure of leniency on the part of jurors or judges. As Jeffrey Rachlinski, Chris Guthrie, and Andrew Wistrich note, "Apologies are intended to convince the recipient that the transgressor's actions reflect a less malevolent mental state or that the transgressor's long-term proclivities are not as destructive as his or her exhibited behavior would suggest. A successful apology restores at least some of a transgressor's status as a trustworthy individual" (2013, 1195). When decision-makers see contrition as genuine, it can attenuate perceptions of the defendant's blameworthiness (Steffensmeier, Ulmer, and Kramer 1998). Taken together, the literature on courts as an inhabited institution, the concepts of a going rate for criminal sentences and the focal concerns of a court workgroups, and foregrounding the performative aspect of compliance lay the groundwork for our attention in this analysis to procedural integrity.

Procedural integrity refers to a fidelity to process that may eclipse other concerns. Judges are obliged to implement criminal justice policy through their interpretation of the law. The law may constrain sentencing options but not the details of how court proceeds on a daily basis. Instead, the court workgroups cocreate a culture in which the parameters of acceptable sentences and consequences for nonpayment are largely settled. The stability of

such decisions goes hand in hand with the approach to case processing in any given court. In the case of post-sentencing adjudication of monetary sanctions, the connection between the two manifests as a routinization of repeated court appearances for nonpayment that shows little variation in outcomes. The importance of the act of coming to court seems to overshadow what transpires during court. Maintaining constancy of the court process looms large.

Using procedural integrity as a lens through which to understand our data helps clarify the role of case processing concerns in court actors' decision-making. The concept of procedural integrity synthesizes aspects of inhabited institutions, focal concerns, and going rates to capture a phenomenon specific to the handling of monetary sanctions in our two sites. The data we bring to bear on this question can advance the literature by emphasizing the "interpretation, culture, and processes" surrounding the adjudication of monetary sanctions (Ulmer 2019, 485). By offering insight on how interactions reflect discretion around the pay or display issue, we deepen current understanding of the nexus of court processes and monetary sanctions. We find that statutory constraints, concern with efficiency, caseload, and speed of hearings all emerge as significant factors. Our data illuminate how workgroups, the going rate, and procedural integrity are all mutually reinforcing. Finally, our findings reveal that negotiation in the judge-defendant dyad, minimal sporadic payments, and the performativity around time as punishment are all significant to the post-sentencing adjudication of monetary sanctions.

## CASE DESCRIPTION

Illinois and New York are two of eight states studied as part of the Multi-State Study of Monetary Sanctions (Harris, Pattillo, and Sykes 2022, this volume). In this work, the authors note several structural similarities in court proceedings between these two states in particular that motivated this comparison and analysis. However, the two states operate remarkably different court systems, with different levels of jurisdiction, that led to differences in our data collection strategies.

### Illinois

Illinois criminal courts are characterized by a single unified, county-level court system and a recent history of reform in the domain of monetary sanctions. Each of the 102 counties in Illinois has its own court system, the largest of which—Cook—includes the city of Chicago and numerous courthouses; many smaller counties host only a single courtroom.

We conducted interviews with court personnel and observations of court hearings in seven counties spread across Illinois (downstate, midstate, and the Chicago metro area). We spent time in both suburban and city courthouses in Cook County. The remaining counties were one in the suburban Chicago metro area, two adjacent in the midstate (one home to a small city), and three adjacent small rural counties downstate. We focused our observations on Cook County courtrooms that were likely to discuss monetary sanctions such as traffic cases, misdemeanor cases, and status hearings for felony cases. In the smaller counties we often observed the entire court call for a given day.

Many cases were hearings regarding outstanding debt and typically lasted between three and five minutes, sometimes less. This was largely true both for the busiest traffic courtrooms in Chicago and for the small one room rural courthouses. Across the counties we observed, little consideration was given to ability to pay; these conversations typically involved a quick update as to whether a payment had been made, how much time was needed, and when the next court hearing would be.

### New York

New York courts are organized on the basis of geography, case type (housing, families, and so on), and whether an offense is a felony or a misdemeanor. The court system has three levels and is divided geographically into four judicial departments and thirteen judicial districts. New York City is unique in the state. The Criminal Court of the City of New York handles misdemeanors and lesser offenses. Outside New York City are district courts (six), city courts, town and village justice courts, and county courts (located in each county outside New York City). Outside New York City, felony

trials only take place in county courts. In addition to observing cases in the Criminal Court of the City of New York and the Bronx Criminal Court, we conducted observations in two county courts, two city courts and three town and village justice courts. New York courts handle more than four million cases a year. Town and village justice courts are important to the discussion of monetary sanctions because they number almost 1,300, are presided over by 2,200 judges, and handle about two million cases a year. These courts hear both civil (small claims, landlord-tenant) and criminal matters (misdemeanors and violations, as well as arraignments for felonies). They exist everywhere in the state except for New York City and are often run by part-time judges and clerks. Approximately two-thirds of the town and village court judges do not have a law degree.

Courts in New York have "parts" or specific courtrooms that handle a particular type of case. We observed evidence of uniformity on some aspects of courts around the state. For one, the frequency of observing cases involving monetary sanctions varied significantly depending on the part. Some days, very few or none of the cases involved monetary sanctions; other days, almost every case did. The role of the bailiffs and clerks appeared to be standardized across the state. Clerks exerted no authority over the imposition, administration, or collection of monetary sanctions beyond filling in and filing the necessary paperwork. Bailiffs in all the courtrooms played a role in checking people in as they arrived at court. Courts around the state were busiest in the morning, but routinely began anywhere from five to thirty minutes after the posted start time. Court business typically concluded in the early afternoon and courthouses were nearly entirely empty on Fridays. Many cases were hearings related to unpaid debt, typically lasting less than five minutes, often less than two minutes. We observed little explicit consideration of ability to pay. Exchanges between the judge and defendant typically involved a quick update as to whether a payment had been made, how much additional time was needed, and when the next court hearing would be.

## Commonalities Across Sites

Our experience was that researcher anonymity was impossible in the courts we observed, so we often did not pursue it because of our note-taking while in court and because we were often recruiting court actors for interviews. Court security tended to remember the researchers within two or three visits. Nearly without exception, if one of us was present when the docket was complete, we would end up being addressed or summoned by the judge. But defense counsel, prosecutors, and court security all—at various times on their own initiative—introduced themselves, asked us about what we were doing, and then introduced us to the judge. Sometimes the judge was curious about us while court was in session and once even summoned one of us to the bench during the proceedings. In neither site were the bailiff or clerks involved in the process of monetary sanctions other than completing paperwork, checking people in, and managing the behavior of defendants. In many post-adjudication hearings and lower-level misdemeanors or traffic cases in both New York and Illinois, defendants did not have attorneys. Ultimately discussions involved the state's attorney (prosecutor), the judge, and the defendant.

Despite some structural differences, the two sites had a number of similarities relevant to the adjudication of monetary sanctions. Both Illinois and New York are slow to impose jail time or other punitive consequences for nonpayment, instead scheduling additional postconviction hearings to draw out the length of time for payment. Both have post-conviction in-person hearings, typically in the absence of legal representation for the defendant. This process of a judge and a defendant having repeated contact in order to discuss unpaid monetary sanctions affords an opportunity to examine both interpersonal dynamics and legal outcomes. As a result, we are able to observe a type of court proceeding that is common yet specific to monetary sanctions and therefore offers insights into how those involved navigate the interplay between institutional and hyperlocal forces. Unlike states where clerks may play an administrative role in this process, judges in these hearings hold all of the discretion surrounding repayment.

**Table 1.** Illinois and New York Interview Participants

| | Judge | Prosecutor | Defense Attorney | Probation Officer | Clerk | Total by State |
|---|---|---|---|---|---|---|
| IL | 28 | 18 | 20 | 8 | 13 | 87 |
| NY | 12 | 4 | 19 | 0 | 9 | 44 |
| Total by Category | 40 | 22 | 39 | 8 | 22 | 131 |

*Source:* Author's calculations

Further, both Illinois and New York have a system of monetary sanctions dominated by mandatory surcharges, fines being much less prominent than at other sites in the larger study (see Harris, Pattillo, and Sykes 2022, this volume). Finally, although the differences between rural and urban courts were notable across a number of states, we observed comparable features in both Illinois and New York—such as the stability of the courtroom workgroups in both large and small courthouses and the tendency for rural court professionals to draw contrasts between their own courts and urban ones.

## DATA AND METHODS

In Illinois, we observed 2,036 unique cases during the study period. Monetary sanctions were discussed in some way in 716, about one-third. Our analysis draws on ethnographic data from 241 hours of courtroom observations and interviews with eighty-seven court actors in Illinois, consisting of twenty-eight judges, eighteen prosecutors, twenty defense attorneys, thirteen clerks, and eight probation officers. In New York, we observed 2240 cases, approximately one-third involving monetary sanctions. The New York data represent 252 hours of courtroom observations and interviews with fifteen judges, four prosecutors, sixteen defense attorneys, and nine clerks (see table 1). We recruited these participants by approaching them in their courtrooms following courtroom observations or in-person visits to their offices. Data collection occurred between 2016 and 2018 (for a more detailed discussion of recruitment, collection, and analysis strategies, see Harris, Pattillo, and Sykes 2022, this volume).

We discussed several initial themes based on recollections of the data. Initial explorations of the interview and ethnographic data suggested a number of potentially fruitful topics to probe more deeply. We ultimately decided to explore the role of repeated court appearances, contrition, minimal sporadic payments, leniency, performances of accountability, and the role of time generally.

Using the master codebook for the broader project, we focused on a subset of codes related to these themes. We reviewed the following codes in the ethnographic data: appearance, comportment; indigency; waiving, reducing; payment plans; making, not making payment; explanations for nonpayment; compliance-noncompliance; case processing; reprimand and accountability; and leniency. We focused on payment plans; making, not making payment; and compliance-noncompliance. We also used the master codebook for the decision-maker interviews and focused on the following codes: waiving or suspending LFOs, alternatives to payments, monitoring LFO payments, stay continuance or reschedule, postconviction hearings, purpose of LFOs, system strain and efficiency, discretion, and debtor motivation. After pulling the relevant data from these codes, we then wrote and exchanged several rounds of analytic and descriptive memos summarizing these data. Through this iterative process, we arrived at a set of themes with strong empirical support.

## FINDINGS

In keeping with Ulmer's notion of courts as inhabited institutions, we organize our findings into those related to aspects of the sociolegal context of the courts as well as the specifics of what transpires in the courtroom.

## Case Processing

Case processing emerged as a focal point in both study sites. Our data show how judges, in particular, navigate the external pressure imposed by legislation coupled with large caseloads and protracted efforts to induce payment of monetary sanctions.

### *Statutory Constraints*

In both Illinois and New York, mandatory surcharges and assessments dominate the domain of monetary sanctions. In Illinois at the time of our research, the state used a complicated and byzantine system of fines and fees largely determined by statute. Ninety-six unique statutory entries pertained to monetary sanctions (Friedman and Pattillo 2019). These compilations of fines and fees are disbursed to various agencies, government bodies, special funds, and the state's general fund. Speaking with court actors in Illinois made it clear that they often forwent imposing discretionary fines because the amounts of mandatory fines and fees had so increased in the previous decade. Despite being delineated by statute, each county often had different interpretations of the statutes or were missing certain fines or fees, resulting in variation across jurisdictions. In New York, a mandatory surcharge is imposed for every violation ($95), misdemeanor ($175), and felony ($300). What is known as a Crime Victim Assessment fee ($25) applies to all offenses and a DNA Databank fee ($50) is assessed in misdemeanor and felony convictions. These mandatory sanctions are not popular with judges or attorneys. As a defense attorney in upstate New York explained,

> I think that it's just plain stupid for the most part because it's got these compulsory surcharges. And way, way back when they invented surcharges, it was a comically small amount of fee. It was almost nothing. Okay. And they used to probably give people more fines back then, but when times are tough and so when the judges realize that imposing a fine just doesn't make sense. And so, the legislature says, "We don't care what you think. You're going to impose our fine, and we're going to call them surcharge and we're going to say that we're going to use it for crime victims or something like that," but it all really just goes into the general fund for whatever other thing they want to spend our money on. And so, yeah, it's just a tax system, and it doesn't bear any relation to the reality of what happened in a particular case.

This sentiment was common among judges who nevertheless felt that it was their duty to impose the law, which specified and required the payment of a certain amount. Judges often stressed that the amounts were "mandatory," as one in Illinois explained: "We are powerless to waive them with one exception [very old or very long running cases]." A New York judge expressed a similar sentiment: "As the judge, um, I'm simply kinda following the rules of what it should be. So I don't know if there's much variation." Court actors often absolve themselves of any responsibility in this system by describing "their hands as tied" when it comes to monetary sanctions. However, judges would also stress that they were able to use their discretion in the amount of time allowed for payment, which was intended to minimize the burden of these mandatory sanctions.

Mandatory surcharges set firm parameters around at least one aspect of sentencing. Judges had to impose these monetary sanctions, even if they were not fond of doing so. Judges who were attuned to the hardship some people had in paying them would reclaim some discretion in the domain of time. They could not waive certain sanctions, but they could adjust the time people had to pay. This transfer in judicial authority from money to time is a cornerstone in the foundation of procedural integrity.

### *Concern with Efficiency and High Caseloads*

In both New York and Illinois, judges were concerned with the efficiency of case processing in light of perpetually high caseloads. Courtrooms often heard a large number of cases in one session—typically averaging a minute or less for each case. Notably, though, this rapid processing was most characteristic of courtrooms handling lower-level cases (vehicle and traffic offenses, misdemeanors, violations), where discussion of monetary sanctions was more frequent. Substantial time was spent scheduling continuances and payment hear-

ings. In these lower-level courtrooms, across both Illinois and New York, courtroom workgroups rapidly churned through cases.

For example, in an upstate small city court in New York, we observed a financial hardship docket. The cases progress quickly regardless of whether the defendant is in the room. The judge moved swiftly through the first batch of cases, in which no defendant was present. Each case took a minute or less. The judge read the status of the case and his decision into the record in an empty courtroom. A summary of the judge's comments during the first seven cases taking place between 1:06 and 1:11 p.m. is as follows:

> Defendant promised he would have it paid off in May; owes $94, bail set at $100/$200 [arrest warrant issued].
>
> Defendant told me she'd be paying $50/month and now she's not here; bail set at $300/$600.
>
> Defendant owes $795; he is making payments; has been indicted on class D felony; enter civil judgment for fine and surcharge.
>
> She's not here and she hasn't paid a dime, so we'll issue a warrant; bail set at $300/$600.
>
> Defendant is supposed to be paying $50/month "didn't pay a dime" "and she's not here, so bench warrant" bail set at $250/$500.
>
> Judge says "again no payments" he's not here; "so I'll issue a bench warrant."
>
> Defendant owes $438 didn't pay a dime; so it's a bench warrant, no payment; bail $450/$900.

This five-minute snippet of the court proceedings reveals the factors the judge considered important to put on the record: the defendant's payment history, the terms of the payment plan the defendant agreed to (time and amount), whether the defendant is present, and whether a warrant is being issued. Even when no defendant is present, the judge emphasizes compliance by noting whether anything has been paid. Similarly, in Illinois, bail amounts for failing to appear for payment review hearings were set at the total amount of outstanding fines and fees. This context of high caseloads and the desire for efficient, speedy processing is important to keep in mind as we assess judges' role in choreographing prolonged demonstrations of accountability on the part of defendants who have unpaid monetary sanctions.

Judges also made explicit the connections between people's failure to pay and concerns over the efficiency of the court. In one case lasting less than four minutes, we observed the judge say this: "Mr. F__, the only reason you're here is money. The only sentence I gave you was the minimum fine and surcharge and you still owe $258. . . . You made a payment yesterday, which reduced it to $83. . . . I need to know what's gonna happen with the balance. . . . It's been three years, it's embarrassing. If you don't pay it, you're going to go to jail. I see all the notes and all the promises you made. I'm not messing around. . . . No reminders, that's it. . . . You pay it by 8/31 [four weeks from day of hearing] or that's it."

At the same time that he declares a three-year payment period "embarrassing," he also emphasizes that he gave the defendant the minimum fine, an amount over which the court has little control. It is not entirely clear who is experiencing embarrassment, however. Is it the defendant, who should have paid more quickly? Or is it the judge and the court who should have enforced collection more harshly to prevent such a delay? The ambiguity is worth noting because it simultaneously conveys external pressure and a lack of compliance. The judge also invokes the defendant's responsibility and accountability by referencing "all the notes and all the promises [the defendant] made." Our observations revealed how the court must continue to encourage such payment hearings—even when the ability to pay is incredibly limited—to preserve the procedural integrity of the court proceedings. However, these small hearings exacerbated the court's overwhelming caseloads and impinged on its ability to process individuals quickly out of the system.

Tying the behavior of the defendant to the functioning of the court reflects the role of judges in implementing criminal justice policy. They are the pivot point between the demands of a large public institution and the financial realities of the people encountering that institution.

Judges in Illinois appeared to prefer bringing defendants back for short payment hearings and spreading the payment out over time. They often suggested payment plans or were flexible about how many hearings it would take to pay off the balance. Judges were continually frustrated with the increasing legislature-imposed monetary sanctions but also held a strong moral commitment to avoid establishing "debtors' prisons," avoiding using incarceration as a consequence for nonpayment. A judge in a rural community in downstate Illinois described the situation this way: "The court system is strained because of compliance court requirements that the payments be monitored, so the judge and the prosecutor and the clerk have to come back to court again, and again, and again, to monitor compliance by individuals who are ordered to pay money that no one believes they have the ability to pay, and that no one believes they should have been ordered to pay, except for . . . I'm going to stop there." This process often went on for years and it was not uncommon for us to observe cases that were from five or ten years prior. The judge later described this as the "transactional costs of this revenue-enhancing mechanism that has become the State of Illinois legislature." Here, we observed the balance of the court's desire to collect payment at the expense of efficiency. Although more payment hearings were preferred because of the lack of online payment options in many jurisdictions, these payments hearings subsequently filled many court dockets.

Altogether, we find general concern with the passage of time related to how long it takes a person to pay monetary sanctions in their entirety. Even as judges play their part in holding people accountable, the reality of recalcitrant or, more often, impoverished defendants thwarts their capacity to do so expeditiously. Instead, judges can enforce attendance at court, even if the result is years of hearings related to unpaid monetary sanctions. In this way, procedural integrity is upheld, even in the absence of significant progress toward successful payment.

## Interpersonal Dynamics

Assessment of what transpires between people in the courtroom is key to understanding how contextual factors influence decisions made in court.

### *Workgroups*

In both states, we observed stability in terms of courtroom workgroups. We noted indications of familiarity involving judges, clerks, bailiffs, attorneys, probation officers, and even defendants in some cases. In our field notes, for example, we recorded instances of court professionals inquiring about one another's children, house remodeling projects, and other personal details. Members of the workgroups would occasionally hug when first seeing each other or exclaim in apparent delight when seeing someone they had not seen in a while (see also Kirk et al. 2022, this volume).

In the urban courtrooms we observed are hundreds of judges and hundreds of state's attorneys and public defenders. These actors, however, tend to be consistently assigned to the same courtroom or set of courtrooms. This means that even in a city and criminal justice system as large as Chicago's or New York's, the assistant state's attorney, public defender, clerk, and judge tend to know each other well and work together each day. These appointments were fairly stable over the months we spent observing cases.

In smaller New York counties, the stability of the workgroups was even more pronounced, some counties having just a few judges in all. In smaller Illinois counties, typically at least one of each court actor would be permanently assigned. In both states, the working groups tended to be very stable over the course of many, many years. A rural probation officer in Illinois exemplifies the level of familiarity and stability in the courtroom workgroup:

> I think because we're a closer-knit county, pretty much everybody . . . Our former state's attorney was here for twenty-seven years, so he knew, basically, everybody in the county. Our sheriff, he's a hometown guy. He's been the sheriff, I think, this is going into his third or fourth term. Before that he was the chief of police, so he knows a lot of people. Our new state's attorney, he's from this area, so a lot of our people. . . . Our judge is from this area. A lot of our people are right here from

> A___ County. It's not people coming in from other counties or were not born and raised here. All of . . . Our state's attorney, our judges, they were born and raised here. Everybody that works in this office, probation, was born and raised here, so it's a lot of . . . Us, that work in the court system, we're from this area and we, pretty much, all of us together know everybody. I think that makes A__ County a little bit unique.

Although the speaker characterizes the county where he works as unique for having a long history of people knowing each other, we actually found this to be the case in most of our jurisdictions. Such familiarity speaks to the incentive people have to maintain good working relationships with each other, perhaps leading them to prioritize those relationships over the needs of any specific case (see also Kirk et al. 2022, this volume). As one rural defense attorney in Illinois explained, "Oh yeah. If you get mad at an assistant state's attorney, and really get mad at them, the next time you want to negotiate something, they're going to remember that. They're going to say, 'Well, I'm not giving you anything. I'm not going to give you any offers. Heck with you.' That happens. Most of the assistant state's attorneys, I'd have to say, are well treated by private attorneys."

We also find evidence that people owing money to the courts become familiar to the workgroup because of repeated visits to court to make payments. An Illinois attorney explained it this way: "And you're back into the treadmill of trying to get out of jail, trying to get your stuff done. It goes over and over. But yeah lots of people that get caught up in all these little fees and costs and they can never get out or it takes them years, I mean years and years and years. We know them like their personal friends now. 'How you've been? How's your family? Is your son in school?' Stuff like that."

The stability of the workgroups and the repeated court appearances of defendants create situations that generate significant familiarity between people, regardless of their specific role in the proceedings and regardless of the size of the court.

The implications of the workgroup for managing payment of monetary sanctions are twofold. For one, evidence of familiarity within workgroups and the acknowledgment of the incentive to maintain good will highlight the parameters within which decision-making occurs. Similar to the pressures of case processing, the social pressure to conform to the norms of the court influences how monetary sanctions are handled. Second, workgroups are the mechanism that produce adherence to procedural integrity. In this way, the standards for how cases proceed are mutually influential with the people who process the cases. One is not separable from the other.

### *Going Rate*

A number of factors influence the going rate for monetary sanctions and how they are handled post-sentencing. One factor is the interplay between mandatory surcharges and discretionary fines. As explained earlier, state-imposed mandatory surcharges are the predominant monetary sanction in both Illinois and New York. Judges assess a mandatory surcharge, cost, or assessment for nearly every case—traffic, misdemeanor, and felony, with exceedingly rare exceptions. DUIs and other violations of traffic and vehicle statutes tend to garner the largest mandatory sanctions. However, judges in our data do not typically assess discretionary fines, but when they do it tends to be closer to the minimum allowed by statute rather than the maximum. An attorney in New York explained: "In practice, the judges here don't impose any fines that aren't required. That is to say if no fine is required, they usually don't impose a fine."

Another factor influencing the going rate is how the workgroup interprets the often-convoluted statutes related to monetary sanctions. In Illinois, we noted significant confusion at the county level as to which fees were truly mandatory and when. This led to strong going-rate dynamics within counties where court actors used consistent amounts across types of cases. Often the going rate was higher in rural and suburban counties than in Chicago and Cook County. Court actors often told us that these amounts were mandatory (despite the slight variation we observed) and believed the amounts to be legislatively imposed.

In New York and Illinois, monetary sanctions rarely serve as an alternative to punishment, but more often instead as one piece of a list of sanctions that can include jail time, mandatory treatment, community service, and other programming. Failing to complete these other requirements can lead to supervision violations or additional status hearings, but in both states none gave rise to as many court hearings as monetary sanctions. This was often the result of defendants entering into payment plans with the court that either required frequent appearances in court to make payments or required court appearances to explain why payment in full continued to be impossible.

That is, our evidence supports the extension of going rates to payment plans. For people who were struggling to pay (and therefore had repeated court appearances), judges in both states would typically ask whether they could pay between $25 and $50 a month. Maintaining the appearance of effort, however, could require as little as $5 or $10. By engaging in activities deemed meritorious for reflecting personal accountability (such as repeated court appearances, contrition, minimal sporadic payments, and so on), defendants can engender leniency in the enforcement of monetary sanction payment. In this way, procedural integrity demands time more than money.

## Nonpayment and Consequences

At the same time that the court's mandate is to ensure "equality and uniformity before the law," the vast majority of people who come through the criminal court system are impoverished and otherwise marginalized and lacking in social capital. This tension between the macro myth of the court's ethos and the court's everyday reality proves to be fertile ground for treating both time and money as valuable resources. As we explored the management of post-sentencing payment, a few themes emerged. We find evidence of negotiation between judges and defendants as well as a preponderance of minimal sporadic payments. In these repeated contacts between defendants and court actors, a performative aspect of the interactions became clear, as did the specific roles of compliance and contrition.

### *Negotiation*

The literature on criminal sentencing often focuses on the discretion or interaction of judges and prosecutors (Kim, Spohn, and Hedberg 2015). But with post-sentencing enforcement of monetary sanctions, the negotiation of payment happens between the judge and the defendant. Legal counsel was only sporadically present in the cases we observed. A dialogue of negotiating the portion of the monetary sanctions that corresponds to time rather than negotiating the amount or searching for solutions to payment was a common occurrence in our observations. Frequently, defendants would report that they were unable to pay anything on a given day due to job loss or unemployment, other outstanding debts, or unexpected financial responsibilities. "I need more time" was a frequent refrain and the judges we observed frequently granted the extension (Pattillo and Kirk 2021).

We conceptualize this dynamic as a trade-off in terms of the use of time in light of functionally unpayable financial punishment. As long as defendants expressed or demonstrated the effort of payment by appearing before the court, by requesting more time, and by providing a plausible story as to their nonpayment, the court granted additional time to pay. This shift in negotiation reveals how judges interpret their role in implementing a component of criminal justice policy. They may be statutorily limited in what monetary sanctions they must impose, but judges have wide discretion over the period in which payment occurs. Time therefore becomes a tool implemented in pursuit of procedural integrity.

A good example of the type of exchange we observed occurred in a case involving a man who had been charged with possessing fifteen grams of cannabis, which had been found during a probable cause search, which in turn are notoriously subject to police discretion. The hearing lasted less than five minutes. Here the judge seems to be taking into consideration the defendant's stance prior to sentencing as well as after.

JUDGE: "All right, is [First and Last Name of Defendant] here? Why don't you come on up sir?"

DEFENDANT approaches defense lectern.

JUDGE: "Now that you've had two weeks to think about it, what do you wish to do?"

DEFENDANT: " I don't believe I should've been pulled over in the first place." The defendant then attempts to explain his rationale and that he is pleading guilty because this is his third time in court. The judge issues a sentence that includes a $75 fine and a $120 surcharge, saying "I have nothing to do with [the surcharge]. I can't waive it."

JUDGE: "I do need to know when you can pay the state of New York $195, which you do owe . . . I can work with you on that." The defendant agrees to pay $100 that day then the remaining $95 within two months. The judge explains the financial hardship hearings, saying that "your one chance to let us know [about financial hardship] is September 28th" [two months later]. The judge goes on to say that "if you can't pay . . . then a lot of bad things can happen," which includes "a warrant for your arrest, a civil judgment."

This exchange illuminates how discussions of payment open the door for judges to tailor the payment terms to a person's circumstance. It also shows how the backdrop of mandatory surcharges limits discretion as well as the judge's need to justify his decision, given that he can and does point to the state of New York as the recipient of the funds.

The reconviction phase of the criminal legal process is designed to be adversarial and has been shown to constitute its own form of punishment (Feeley 1979). However, post-sentencing and in the realm of monetary sanctions, a different dynamic emerges. Defendants are in position to have input into the terms of payment and this input is given directly to the judge. Often, no attorney is present. The negotiation within the judge-defendant dyad is a constitutive element of procedural integrity. This negotiation facilitates successful payment, insofar as defendants can and do accurately assess their ability to meet the payment terms. It thus helps fuel ongoing contact with the courts.

### *Minimal Sporadic Payments*

A strong connection between the exigencies of court and the lack of financial resources of people with a criminal conviction exists in the ubiquity of minimal sporadic payments. At the same time that the court seeks to hold people accountable, people have limited means with which to satisfy their financial sentence. The result is that some end up coming to court repeatedly to make small payments on what they owe. Small payments of $10 or $15 were frequent in Illinois even if the outstanding balance was much larger, as was the case with a defendant we observed in a suburban Illinois court who was charged $23,371 and made a $100 payment. A few examples from our field notes capture the practice:

> Each time the judge also asked how much people could pay and most people could pay small amounts ranging from $15 to 50, but many also said they couldn't pay anything at the moment.
>
> Next was a Black man in his forties. He was paying $30 today. The judge asked him, "Do you want to come back in one more or two?"
>
> NY clerk instructed a defendant to make a payment of at least $20, "you need to pay something."

This demonstration of effort was important to court actors. Court actors described wanting to see defendants "do the work" in these shows of compliance. This work often did not mean that defendants actually had to repay their court-ordered debt. Instead, it meant a standard trade-off of time—of coming to court, appearing, and stating one's case. For instance, we observed an interaction between a public defender and a female defendant in Illinois. "He asked if she had 'made any progress.' She said she paid $10 a month. She said she was a single mother and it was hard. That's all she could do. He said that's all they needed to see, that she was trying and making an effort." Her appearance, the time and effort she was putting into the impossible task of paying off this debt functioned as a signal to the court, both as a punishment in itself and a delaying of possible additional punishment due to nonpayment.

Court professionals are also aware of the practice and even have nicknames for it. As an

Illinois attorney explained, "I mean I've seen in Union County, which is north of here, the first Friday of every month is, they call it a 'pay and repair' day. And these people who have not paid their fines and costs come in and give an accounting of themselves. I hate to say this but for a lot of the individuals that show up, they'll walk in and pay five dollars and think that's enough to keep them from getting into further trouble with the court."

Court professionals also acknowledge the burden these small, regular payments may be: "I've got people who come in and pay $5 a month, that means something when you're listening to somebody say they could pay zero a month. There are people who try and the trying means something, which means the lack of trying has to mean something so that the people who are trying knows it matters. You're aware, you're aware that it's an impact."

These minimal sporadic payments illuminate how people who cannot pay in full and on time become tethered to the courts. They also show a certain awareness of the futility of pursuing these payments on the part of the courts, constrained as they are by the law and local norms. In pursuing the ideal of accountability for all, judges insist on payment. In reckoning with the poverty of many people with criminal convictions, judges allow flexibility in payment. If people do not have money to pay, they must spend time. This trade-off between time and money is essential to procedural integrity. It echoes the dynamics of the going rate and the statutory constraints: discretion emerges where it can.

### *Compliance and Contrition*

Demonstration of the proper behavior and affect are key components of what procedural integrity demands of defendants. The norms of the court required not only how time is spent inside and outside court but also certain displays of deference to the court's authority, including compliance and contrition (see Heubner and Shannon 2022, this volume). Such displays illuminate the experiential aspects of going through a system where, due to the macro myth explained, fidelity to case processing overshadows payment of monetary sanctions.

Because defendants' socioeconomic circumstances often precluded them from meeting their legal financial obligations, the court had to rely on other indicators of deference to assess the individuals' compliance and thus to determine what kind of treatment they deserved. Two essential criteria were how consistently defendants appeared for their scheduled hearings and the degree to which they abided by court customs and expectations of behavior. Defendants who failed both to comply with the terms of payment and to appear in court were subject to firm disapproval. A good example is the response of a judge in an upstate New York city to a defendant's record of failing to appear: "First of all, you need a license. Second of all, oh my goodness, looks like you come and go as you please!" She took an admonishing tone with him and asked about his paying anything. The judge then noted, "The People are ready to declare on two PL [penal law] charges" and he needed to get a license, "but you don't like to show up." She continued, "If you show up, I won't put bail on you." She instructed him to "pay off one at a time" with directions about where and how to pay ("next door" at city hall). She also noted, "These are all failure to appear summonses. . . . You need to pay *something*!" Similarly, defendants were reprimanded for not behaving appropriately in court and were often forced to spend additional time waiting to have their case called. This occurred with a defendant we observed in Illinois who looked tired and was falling asleep while he waited. The judge became annoyed and postponed his hearing further, to the end of the court call that morning. We again observed this kind of dynamic in an urban New York courtroom when a judge explained, "I've said it before and I'll say it again. Let's not see any more phones. The way we have to enforce it is to move your file to the very back of the line. So you'll be here a very long time." Thus the court both rewarded defendants who complied and punished those who did not conform to the rules.

Cooperation with the court's efforts to orchestrate procedural integrity—making all scheduled hearings, appearing to give one's time freely and without frustration or complaint—meant those defendants received more flexibility in scheduling, while avoiding addi-

tional punishment. Yet, despite such flexibility on the part of judges, this additional imposition of extending time and additional demands on defendants' time does not necessarily lessen the punishment enacted by this process, and can actually exacerbate it. Moreover, these frequent appearances and routinization of payment turn the court into a debt collector, a coercive financialization that commodifies freedom and amplifies control over the individual (Pattillo and Kirk 2021). Affective displays of remorse were another way defendants performed and court actors assessed deference to authority and procedure. During our observations, we occasionally noted overt demonstrations of contrition by defendants or acknowledgments of it by judges and attorneys. These instances took place almost exclusively in sentencing hearings. Sentencing allows judges a forum in which they can hold forth on social norms and values, as well as normative assessments of the defendant. We observed some judges making statements about defendants having learned their lesson (or not); such utterances implicitly endorsed the view that criminal sanctions are intended to change the individual into a more prosocial version of him or herself.

Although sincere contrition may evoke sympathy and even leniency, the opposite also appears to be true. That is, court actors may adopt a more hardline stance with a defendant if they perceive the individual as insufficiently remorseful. Illustrating this point were two county court cases observed in rural upstate New York. In the first, a man who the judge described as a "second violent felony offender" faced sentencing for a second-degree attempted robbery conviction. Throughout sentencing, the judge made clear his displeasure and disappointment with the defendant, whom he viewed as failing to accept responsibility for his actions and express remorse. The observing researcher noted the following comments that the judge directed at the defendant: "You are on extraordinarily thin ice at this point" (followed by a warning that his next felony conviction would result in a life sentence). "If I were to make a prediction, you're gonna be back in no time." "You are a menace to society and you're learning nothing through all this." "You took no responsibility for your actions." "That's why we have predicate offender laws." The judge then imposed a five-year minimum sentence with five years of post-release supervision, plus restitution and a collection fee. He concluded, "Good luck. I hope you make use of your time, but I don't hold out a lot of hope."

Defendants who fulfilled the court's expectations neither in terms of compliance behaviors nor in their affective performance were particularly likely targets for castigation. Take, for instance, a hearing we observed in an upstate New York court for an individual convicted of an A Misdemeanor. This defendant, who had long-standing unpaid monetary sanctions, owed restitution, and apparently demonstrated inappropriate affect, induced an outraged articulation of the court's norms around payment and behavior:

> "You've owed this money for not 1, not 2, but 3 years." "It's not fines or surcharges . . . it's money you owe the victim of your crime." "This is why it's embarrassing" "you told me you would pay $50 a month." "Show me your credibility and you completely failed." FTA [failure to appear], so issued a warrant; defendant phoned in a day late. D__ has posted money for your case. *"Now we're on the 3rd change and that's why you're smiling." "No, I'm not smiling." "Now you're showing up late." "Why shouldn't I send you to jail today?"* "Ok, I will." "You need time to bond with your attorney to look in the mirror and ask yourself what's going on with your life." "You still owe this money. You haven't paid a dime." "You admit the violation of your restitution." *Defendant explains not smiling, biting his lip because torn ACS, pulls down neck of t-shirt to show shoulder.* "How do you intend to make this right with the criminal justice system." "I want to hear a blueprint for how you are going to handle this." "It's been three years and it's embarrassing." Defendant taken to jail.

By contrast, expressions of remorse combined with demonstrated efforts to comply with court orders evoked more positive responses from judges and other court actors, both substantively and in terms of affect. A felony court

judge in the Bronx, for instance, praised a defendant for progress he had made. Reviewing the presentencing report, he remarked that the young man had engaged in programming and was currently testing negative for all drug use. "He became gainfully employed . . . engaged in attending class for his GED equivalency." "Congratulations, young man . . . you make coming here everyday worthwhile." The judge then characterized the offense as a lapse in judgment, noting that the defendant admitted guilt and expressed remorse. The young man would still be responsible for the mandatory surcharge, but having the charges reduced (and being adjudicated as a "youthful offender") such that he would end up with no criminal record, perhaps allowed the defendant to avoid a more serious conviction and the attendant monetary sanctions, along with the second-order effects of a criminal record on his long-term financial capacity. Further demonstrating the sympathetic attitude and with which the judge regarded this defendant, he wrapped up the hearing on a friendly, familiar note, making a joke about how he and the defendant rooted for rival baseball teams.

The extent to which remorse mattered hinged on whether others deemed the defendant to be genuine in their statements and affect. Scholars examining the impact of remorse on judicial decision-making indicate that apologizing can backfire on defendants if court actors perceive them as inauthentic. Moreover, judges may be apt to dismiss most apologies as driven by instrumental aims (Rachlinski, Guthrie, and Wistrich 2013). When defendants made statements of intent—for instance, saying they wanted to do better and comply with their legal obligations—the court had to then determine whether it could take them at their word. Whether the court ends up regarding remorse as a mitigating factor is contingent on whether the court viewed them as sincere. Demonstrable compliance efforts, more than just verbal statements about a defendant's intention to comply, were held up as evidence of sincerity—that they were truly doing all they could to satisfy the court's orders, even if those efforts fell short of what was required of them. For example, a judge in an upstate New York city explained that she needed documented proof of a defendant's program participation: "I'm not going to just take you at your word, no offense." Taken together, we see that defendants' role in the performance of procedural integrity involves certain behaviors and affective displays that in combination signal deference to the court's authority.

## DISCUSSION

Procedural integrity characterizes post-sentencing management of monetary sanctions in New York and Illinois, in light of the limited successful collection of these funds. Judges, in particular, required defendants to perform their compliance with the process of appearing in court even when collection of the fines and fees was likely impossible. In both places, circumstances conspire to emphasize the display of fidelity to the process in the absence of widespread ability to quickly pay monetary sanctions. Indeed, we observed the fairly universal granting of additional time for nonpayment and the avoidance of punishment for nonpayment alone.

Judges and courtroom workgroups face external constraints and pressures that shape how monetary sanctions are imposed and collected. Surcharges are mandatory even though many defendants cannot afford to pay them. Although judges lack discretion in these two states around imposing surcharges, they have nearly complete control over the collection process and the incentives or penalties for nonpayment. Jail is used as a threat to compel payment rather than as a punishment for nonpayment. As a result, demands are placed on people's time in terms of coming to court repeatedly and staying in court far longer than the duration of any given hearing. In this way, the extraction of time and the compliance performance of good faith and contrition is the punishment expected of defendants who are unable to pay.

Taken together, these factors of time, emphasizing the risk of jail, and setting expectations for behavior constitute the going rate for the adjudication of post-sentencing monetary sanctions. The external pressures to maximize efficiency are important context for understanding how courtroom workgroups navigate the space between the dominance of mandatory surcharges and the widespread difficulty

people have in paying what they owe. The courtroom workgroups we observed tend to settle into more or less a template of how payment is handled over the long term (Ulmer 2019).

Our findings reveal how factors such as the stability of courtroom workgroups couple with the familiarity of defendants coming to court to enable negotiation about payment amounts and schedules. Such negotiations reflect post-sentencing assessments of a defendant's deservingness of leniency, reframing the idea of blameworthiness. In discussions with court actors in both states, the conviction was strong that people should not be punished for their poverty. Comments about the abolishment or avoidance of debtors' prisons were common. The lack of proportionality in imposing monetary sanctions in both states inevitably leads to this dynamic. To reconcile these conflicting values of the court, we observe judges reframing what it meant to fulfill the court's demands. Instead of blameworthiness being about the type and amount of monetary sanction a person's actions warrants, it is about the extent to which someone complies with the court's demands on their time and behavior. The assessment of blameworthiness allows room for acknowledging difficult life circumstances, which in our observations makes a person less to blame for lack of compliance on either front.

The macro myth undergirding court operations in general is that everyone is equally responsible for paying what they owe despite an unequal ability to pay. April Fernandes, Brittany Friedman, and Gabriela Kirk (2022, this volume) describe how nonpayment is often construed as willful, tied to a moral and social responsibility to the state to pay for the services it provides. Particularly in considering the amount of time and flexibility given for payment, court actors feel justified in punishing defendants for noncompliance when it occurs. However, doing so ignores the enduring and insurmountable difficulty some defendants face in putting aside the amount of money needed to resolve their cases.

Our observations connect with some of Malcolm Feeley's (1979) key findings about the arduous path people take to having their cases adjudicated. Feeley focused on the punitive nature of the pretrial process. Our results illuminate the punitive aspects of the post-sentencing process related to monetary sanctions. In both phases, legal representation can be sparse. Also like Feeley, we find that cases can transpire over long periods, even though individual hearings are often brief and defendants may be confused about the process.

We add to this work and the long lineage of scholarship it spurred with an assessment of post-adjudication costs—primarily in terms of time, stress, and performativity on the part of the defendant. In addition, our findings about the going rate for time and money post-sentencing relate to Feeley's notion of case worth. Feeley observed how interactions between the defense attorney and the prosecutor produced a shared sense of how factors such as the framing of people and situations, as well as which aspects of a case were discussed or ignored, were integral to the resulting plea agreement. By comparison, we observe how courtroom workgroups (but especially judges) construe defendants' behavior in and out of court to determine acceptable parameters for payment. Consistent with the notion of the process being punitive, our findings support the conclusion that a procedurally just system does not necessarily produce substantively just outcomes. Although court actors recognize that monetary sanctions may not result in a fair punishment depending on an individual's ability to pay, they feel little responsibility for ensuring that payment systems and procedures do not lead to additional punishment. However, as this article and others in this issue have established, both the amounts imposed and the collection processes that follow lead to the perpetuation of inequality in this system (see, for example, in this volume, Sykes et al. 2022; Pattillo et al. 2022; Bing, Pettit, and Slavinsky 2022).

## CONCLUSION

In describing the equilibrium reached by the countervailing forces of case processing pressure, mandatory monetary sanctions, defendants with pronounced financial insecurity, and judicial discretion, we shed new light on the role monetary sanctions play in how courts function. The crux of this equilibrium is com-

pelling defendants to adhere to procedural integrity in the absence of monetary sanctions paid fully and quickly.

We have explored how external factors interact with courtroom decision-making in the confrontation of unpaid court-ordered debt as an individual reality. Our findings about how time is used in the adjudication of monetary sanctions suggest previously unexamined connections between the strictures of the legal-bureaucratic conditions in which courts operate and courts' demand for demonstrations of accountability on the part of defendants. Our data shed light on the realities of how workgroups constantly navigate the terrain where formal rules and laws meet informal norms and shared perceptions. We have shown how the "constitutive rules and taken-for-granted practices" that workgroups use manage the uncertainty about the likelihood of a person successfully paying their monetary sanctions and keep the machinery of the courthouse running (Ulmer 2019, 511). We also expose a gray area between procedural and substantive justice in which fidelity to a fair but prolonged process has elements of both leniency and punishment. In the process, we reveal how people with unpaid monetary sanctions demonstrate an ability to endure the tests of the process, thereby attesting to their acquiescence as an offset to their blameworthiness.

Overall, by recognizing the value of time in adjudicating money-based punishment, this analysis deepens our understanding of how court actors navigate both while enriching our knowledge about case processing more generally. An emphasis on procedural integrity emerges from the interplay of sociolegal context and interpersonal dynamics. This insight can serve as a fruitful point of departure for future work on the practicalities involved in the pursuit of justice, where money matters and time is of the essence.

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# Robbing Peter to Pay Paul: Public Assistance, Monetary Sanctions, and Financial Double-Dealing in America

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*Research on punishment and inequality finds that people with criminal records routinely avoid systems of surveillance. Yet scholarship on monetary sanctions shows that many people experiencing poverty with criminal legal system debt are also involved with the state in other domains of social life. How can these literatures be resolved? In this article, we posit that past research can be reconciled through a focus on* financial double-dealing*—disparate and contradictory economic entanglements that redistribute welfare resources from individuals to the criminal legal system and its institutional affiliates. Drawing on nationally representative survey data, as well as unique data collected on people with monetary sanctions in seven states, we find that individuals and families receiving cash and noncash public assistance are significantly more likely to owe monetary sanctions and are less likely to pay them. We discuss the implications of multiple-system involvement for ongoing surveillance.*

**Keywords:** financial double-dealing, monetary sanctions, welfare, punishment, public assistance

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The United States is one of the richest nations in the world. Yet, poverty affects more than 10 percent of households and nearly 15 percent of all minor children across the country (Fox, Glassman, and Pacas 2020; Semega et al. 2020). Nearly 30 percent of children with unemployed parents of working age live in deep poverty, that is, households with incomes below 50 percent of the poverty line (Fox et al. 2015), and nearly one in four children in deep poverty will experience eviction by the age of fifteen (Lundberg and Donnelly 2019). Public assistance, however, helps mitigate the effects of poverty, reaching more than 20 percent of the U.S. population (Census Bureau 2015), with state and local governments spending approximately $673 billion on public assistance programs in 2017 (Urban Institute 2020).

The emergence of public assistance programs in the United States dates back to the Great Depression, when the national unemployment rate peaked at 25 percent in 1934 and real wages sharply declined by as much as 60 percent (Margo 1993; Pimpare 2014; Rauschway 2008). Poverty rates soared during the 1930s, vacillating between 40 and 60 percent (Rauschway 2008; Pimpare 2014; Smolensky and Plotnick 1993). The election of Franklin D. Roosevelt to the presidency ushered in the New Deal, a series of public works projects, financial reforms, regulations, and social welfare programs aimed at getting people back to work and reducing the poverty rate (Rauschway 2008; Pimpare 2014). Although a number of social welfare programs did emerge from the New Deal, the Social Security Act of 1935 provided for unemployment insurance, old age pensions, and poor relief for the elderly, disabled, and minors (Rauschway 2008; Pimpare 2014). Since then, public assistance, as we know it today, has been reimagined and reformed, beginning with President Lyndon Johnson's 1964 declaration of the War on Poverty, and again in the mid- to late 1990s under President Bill Clinton's Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Simon 2007; Gustafson 2012; Hinton 2016).

Changes to public assistance programs during the late twentieth century occurred during a unique historical moment when the criminal legal system broadly expanded and disproportionately concentrated punishment in America. Although poverty is ubiquitous, the convergence of poverty and punishment sets the United States apart from many Western nations (Simon 2007; Hinton 2016; Harris, Evans, and Beckett 2010). Growth in mass incarceration since the 1970s (Western and Wildeman 2009; Pettit 2012; National Research Council 2014), coupled with an increase in intergenerational economic immobility (Chetty et al. 2014), has placed many Americans and their children at an elevated risk of material hardship and severe deprivation (Schwartz-Soicher, Geller, and Garfinkel 2011; Sugie 2012; Sykes and Pettit 2015). Children with a formerly or currently incarcerated parent, for instance, experience severe socioeconomic consequences that amount to generational social exclusion (Foster and Hagan 2007), necessitating increased social safety net support (Hagan, Foster, and Murphy 2020).

Despite burgeoning research on the relationship between the criminal legal system and public assistance, little work has focused on how the receipt of public assistance affects the imposition and payment of monetary sanctions. Although judges often use receipt of public assistance as an indicator of financial indigence (Harris, Evans, and Beckett 2010; Harris 2016), it is unclear whether such assessments lead to reduced or waived monetary sanctions for individuals or families receiving public assistance. The Multi-State Study of Monetary Sanctions (MSSMS) dataset (see Harris, Pattillo, and Sykes 2022) offers a unique opportunity to theorize and analyze the relationship between public assistance and monetary sanctions (Harris 2016; Martin et al. 2018), particularly for families living at the margin.

In this article, we analyze two separate data sources to investigate both the general and nuanced relationship between public assistance and monetary sanctions. We find that individuals and families receiving public assistance are significantly less likely to pay their monetary sanctions than people not receiving public assistance, despite being significantly less likely to have the same amount of monetary sanctions imposed at sentencing. This research speaks to how the state engages in what we term *financial double-dealing* (FDD)—disparate

and contradictory economic entanglements that redistribute welfare resources from individuals to the criminal legal system and its institutional affiliates. This FDD is important because fiscal allocations for criminal justice operations are currently being backfilled with resources allocated to people receiving public assistance who are also ensnared in the sprawling web of the criminal legal system. Our findings have implications for social policies aimed at limiting poverty and inequality and preventing FDD by the state in the imposition and collection of monetary sanctions for people on public assistance.

## RESEARCH ON MONETARY SANCTIONS

Labor extraction, convict leasing, monetary sanctions, and debtors' prisons are examples of historical punishment practices that shape contemporary U.S. penal laws and sentences (Adamson 1983; Blackmon 2009; Wood and Trivedi 2007; Alexander 2010; Harris 2016). Today, monetary sanctions commonly accompany or replace formal imprisonment and function as a key mechanism of social control and surveillance of low-income communities and communities of color (Harris, Evans, and Beckett 2010; Kohler-Hausmann 2018).

The use of monetary sanctions varies considerably by jurisdiction because fines and fees are assessed based on unique guidelines established by local, state, and federal authorities (Bannon, Nagrecha, and Diller 2010; Gordon and Glaser 1991; Martin et al. 2018; O'Malley 2009; Ruback, Shaffer, and Logue 2004). Proponents of monetary sanctions claim that they promote a sense of accountability among justice impacted people, and that fines and fees are a socially efficient replacement for incarceration (Becker 1968; Becker 1976; for a review, see also Martin 2020). However, courts that impose fines and fees often fail to provide defendants the full extent of these sanctions at sentencing (Anderson 2008; Beckett and Harris 2011; Harris 2016; Martin et al. 2018). Some costs are not readily apparent, such as those related to public defenders (Colgan 2014), incarceration stays (Fernandes, Friedman, and Kirk 2022, this volume) and penalties for late payment (Harris 2016; Martin et al. 2018; Friedman et al. 2022, this volume). Even when people consistently make the minimum payments, the interest accrued on the principal debt can be crippling (Harris, Evans, and Beckett 2010). Furthermore, people under correctional supervision often have to agree to pay all legal financial obligations (LFOs) as a condition of release (Huebner and Shannon 2022, this volume).

The consequences of entwining money with punishment are numerous and well known. Monetary sanctions can affect nearly every facet of an individual's economic, political, and social life (see Harris, Pattillo, and Sykes 2022, this volume). They thus often further marginalize those who are in precarious financial positions (Bing, Pettit, and Slavinski 2022, this volume; Harris 2016). Moreover, in some locales, until LFOs are paid in full, individuals' criminal records cannot be cleared or expunged, and they may be sentenced to incarceration or community service or have their driver license suspended if they are unable to make payments (Harris 2016; Martin et al. 2018). These punishments for nonpayment may prevent individuals from finding or maintaining employment. In addition to documented racial discrimination in the job market (Bayot 2004; Pager 2003; Pager, Bonikowski, and Western 2009), civil judgments from monetary sanctions can damage one's credit and is often listed on credit reports that some employers use as part of the background check process (Harris, Evans, and Beckett 2010). Thus monetary sanctions may place people and their families at increased risk of poverty if individuals are unable to secure employment.

## THEORETICAL FRAMEWORK

Loïc Wacquant (2010) contends that increasing American insecurity is the result of changing state priorities in local and national spending on social welfare and punishment (see also Beckett and Western 2001). Simply put, he argues that the neoliberal push during the late twentieth century led to major structural changes in American life at the local, state, and national level, precipitating a spending shift from the "left hand" of the state (attending to issues of social welfare and public health) to the "right hand" (attending to matters of punishment and penality, national defense, and

control over markets and the economy) (Wacquant 2010). As a result, the right hand of the state has disproportionately increased in power since the late twentieth century, and its penal arm has expanded to consume a greater proportion of public spending while also directly exacting social controls, incarceration, and violence against marginalized populations (Wacquant 2010).[1] A consequence of this expansion of power and resources is that social service systems have increasingly been underfunded, or in some cases, entirely defunded, as the criminal legal system expanded (Ingraham 2020; Saez and Zucman 2019; see Beckett and Western 2001).

The downsizing of public assistance programs and the expansion of the criminal legal system aligns with research on the neoliberalization of punishment in the United States. This scholarship explores how the negative externalities associated with economic and political changes shift ownership of social problems from the government to individuals, propagating "the neoliberal trope of personal responsibility" (Friedman and Pattillo 2019, 174). Neoliberal "responsibilization" in the criminal legal system is not merely ideological. Recent scholarship shows how local, state, and federal policies apply these logics to ensnare (Muñiz 2020), imprison (Simon 2007; Hinton 2016; Wacquant 2009), and apply monetary sanctions to individuals as revenue generation and extraction tools that ostensibly act as coercive financialization and predation of the poor (Fernandes et al. 2019; Kirk, Fernandes, and Friedman 2020; Fernandes, Friedman, and Kirk 2022, this volume; Pattillo and Kirk 2021; Friedman and Pattillo 2019; Page, Piehowski, and Soss 2019).

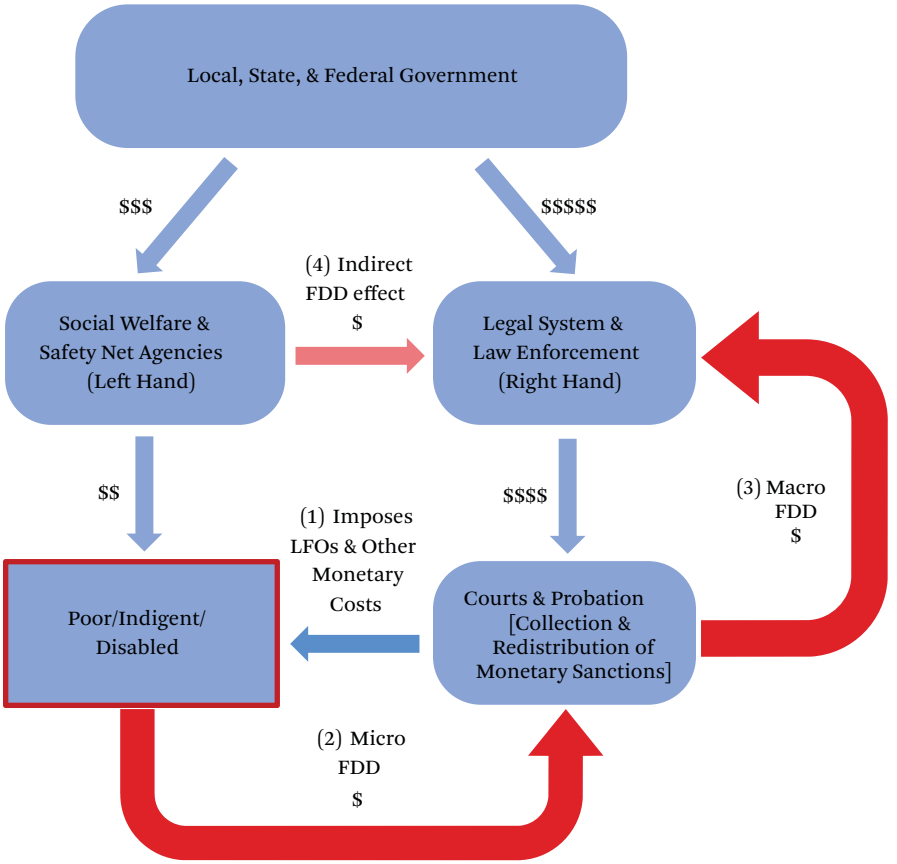
Although recent research on neoliberalism and monetary sanctions underscore the pervasiveness of state control in imposing monetary sanctions, supporting the underlying theoretical argument of Loïc Wacquant (2009), this conceptual framework is limited. Wacquant's framing does not adequately theorize the integrated effects of monetary sanctions and welfare support on individuals, families, and communities because the macro approach to shifts in funding obscures the ways in which micro-level dispersions of public aid can recirculate into the penal arm of the state via the imposition of monetary sanctions.

We argue that, in the case of punishment and welfare, an economic sleight of hand emerges as a by-product of the poverty-punishment nexus; the state structures and participates in this legerdemain through financial double-dealing—disparate and contradictory economic entanglements that redistribute welfare resources from individuals to the criminal legal system and its institutional affiliates. These FDDs allow some government agencies to issue monetary benefits that foster Bryan Sykes and Becky Pettit's (2015) findings of *system inclusion*: veterans benefits, Supplemental Nutrition Assistance Program (SNAP) benefits, Temporary Assistance for Needy Families (TANF) benefits, unemployment assistance, social security income or disability, and so on. Other state entities, however, issue monetary penalties that engender Sarah Brayne's (2014) *system avoidance*: criminal legal system debt by way of monetary sanctions, wage-tax-commissary garnishments, child-support arrears, and so on. FDD allows local, state, and federal governments to draw from the same underlying source of economic support for poor individuals and families: the social safety net and other public-private benefits.

Figure 1 displays our theoretical model of micro and macro FDD in America. Wacquant (2009) argues, and other scholars find (see Ingraham 2020; Saez and Zucman 2019; Beckett and Western 2001), that state and federal governments allocate relative and disproportionate resources to social welfare (left hand) and criminal legal system functions (right hand). However, we contend that when social safety net resources are directly distributed to the poor and indigent, who may be ensnared in criminal court proceedings or probation supervision, the imposition of monetary sanctions (process #1 in figure 1) may facilitate an additional redistribution of social welfare funds via criminal courts, representing one

1. See also the work of Bourdieu (1994) on state operations, which Wacquant (2009) attributes to this theoretical framework.

**Figure 1.** A Theoretical Model of Micro and Macro Financial Double Dealing (FDD)




*Source:* Authors' theoretical conceptualization.
*Note:* Dollar signs are not to scale of federal, state, or local fiscal apportionment, as well as individual payment amounts; instead, these dollar signs represent the disproportionate flow of financial revenue from governments to individuals to institutions (micro FDD), and the financial dynamics inherent in the collection and redistribution of monetary sanctions, inter- and intra-institutionally (macro FDD), given state statutes that govern the dispersal of collected LFOs to other agencies and institutions.

form of FDD at the micro, individual level (process #2 in figure 1). An additional form of FDD takes place at the macro level (process #3 in figure 1), given that state statutes may direct the court or probation office to collect and allocate monetary sanctions to other criminal justice affiliates and agencies via a host of other costs, fees, special funds, and penalties (such as police unions, 911 operations, and emergency medical technician funds) (Harris, Evans, and Beckett 2010; Harris 2016; Friedman and Pattillo 2019; Pattillo and Kirk 2021, 2020; Verma and Sykes 2022, this volume). Taken together, the process of FDD can be theoretically interpreted as an economic backfilling of criminal justice operations, allowing the state to create an indirect feedback loop (process #4 in figure 1) that enables the right hand of the state to usurp additional social welfare resources from the left hand via people on public assistance who are caught in the criminal justice web. Because criminal justice operations have become increasingly hybridized and have made steady advancements beyond criminal law and into administrative and civil law (Verma and Sykes 2022, this volume), resulting in a shadow carceral state (Beckett and Murakawa 2012), the collection of monetary sanc-

tions from people on public assistance is likely to result in macro-level FDD among a variety of institutions, with collected revenue going to a host of different state agencies and funds (see O'Neill, Smith, and Kennedy 2022, this volume).

Although the analyses to come will focus on the redistribution of welfare resources to the criminal legal system through the imposition of legal financial debt, this process can be understood as one of multiple manifestations of FDDs by the state. The child-support system, for instance, is another institution that relies on the imposition of monetary penalties to recover welfare expenditures (Wacquant 2010; Gustafson 2012; Edin and Lein 1997). In the mid-1970s, the child-support system was restructured to mandate families receiving public benefits participate in programs aimed at recovering child-support payments to limit the government's distribution of cash welfare (Cozzolino 2018; Farrell, Glosser, and Gardiner 2003; Turetsky and Waller 2020). The retooling of child support to collect payments often employed punitive strategies to recover remittances of these public benefits to the poor (Solomon-Fears, Smith, and Berry 2012; Turetsky 2005; Gustafson 2012; Edin and Lein 1997). Welfare and child-support reforms have been justified as an effort to refocus the financial responsibility of children toward their noncustodial fathers, who were seen as eschewing their financial obligations (Edin and Kefalas 2005; Edin et al. 2019; Edin and Nelson 2013; Haney 2018; Pleggenkuhle 2018; Turetsky and Waller 2020; Wilson 1987). Nonetheless, the use of state agencies tasked with dispersing social welfare benefits and relying on family courts to collect child support while using criminal courts to punish welfare fraud cases, represent but one form of FDD by the state.

The identification and analysis of FDD reveals how the left and right hands of the state work to magnify inequality by providing public assistance to those experiencing poverty while financially punishing people living at the economic margins. These programs are useful because they are fungible—a dollar not spent on food, health care, or other goods and services is a dollar a person at the economic margin may be able to spend elsewhere. However, the fungibility of inequality-reducing programs also constitutes a vulnerability; benefits can be offset by punishment costs and payments. FDD in turn deepens and extends the poverty and marginalization for people already living at the margins. Thus, social safety net contributions are funneled back to the state via punishment and surveillance mechanisms. In the following analyses, we demonstrate how micro-level FDD occurs for people and families receiving cash and noncash public assistance.

## DATA

To explore the relationship between public assistance and monetary sanctions, we rely on data from two sources. First, we leverage data from the 2019 Survey of Household Economics and Decisionmaking (SHED). Developed by the Federal Reserve Board and collected by the U.S. Federal Reserve, this nationwide survey investigates how receipt of cash and noncash assistance from the social safety net is associated with court-ordered debt. A private consumer research firm, Ipsos, administered the survey to a nationally representative, probability-based online panel. After selecting respondents using address-based sampling techniques, Ipsos curated a final pool of potential SHED participants. From this pool, Ipsos obtained a final-stage completion (or response) rate of 61.2 percent, resulting in a final sample of 12,173 respondents.

The SHED survey contains detailed questions about income, retirement funds, wealth accumulation, demographic background, public assistance and social safety net participation, criminal justice contact, exposure to crime, and, principally for our purposes, a measure of monetary sanctions. The survey was completed online, and adults without a computer or internet were provided these tools. The median time to complete the survey was nineteen minutes (for additional detail, see Federal Reserve 2020). The survey item about court-ordered debt is limited to a dichotomous measure of whether the respondent or their immediate family member has unpaid legal expenses, fines, fees, or court costs. Unfortunately, numerical estimates of monetary sanctions imposed and paid were not collected.

To remedy this issue, we draw on novel data

collected during the Multi-State Study of Monetary Sanctions (see Harris, Pattillo, and Sykes 2022, this volume). As a part of the study, survey data were collected from individuals for whom criminal legal system related debt was imposed. These surveys contained information on the amounts of monetary sanctions, whether a person has paid the debt, their criminal legal history, as well as whether the person receives public assistance. A total of 519 people were interviewed across our eight states, and after we removed missing data on key measures and data from Texas, due to Institutional Review Board regulations about matching these data with other sources, our analytic sample was reduced to 303 respondents.

Roughly half of the MSSMS sample is white (52.2 percent), and over a third of the sample is Black (34.7 percent). The sample is educationally advantaged, more than 83 percent having at least a high school diploma. Two-thirds of the sample is male, and the average age is approximately twenty-four. Half of the participants have never been married, and about 47 percent are parents to minor children. About 49 percent are employed, with considerable variation in their reported incomes. Approximately 95 percent report being incarcerated at some point in their lives, and have more than twice as many misdemeanor convictions (7.0), on average, than felony convictions (3.4).

We use these data, collectively, to investigate the risk of FDD among individuals and families that receive public assistance and were assessed a monetary sanction.

## MEASURES AND METHODS

Given our use of two datasets to explore the association between public assistance and criminal justice debt, we rely on several different dependent measures to demonstrate the process of micro-FDD in America.

### Main Dependent Variables

The SHED main dependent variable focuses on whether the respondent or their family has outstanding monetary sanctions. Specifically, the question is "Do you or someone in your immediate family currently have any unpaid legal expenses, fines, fees, or court costs?" Although this measure includes unpaid legal expenses, it is possible that the term includes public defender fees and costs as legal financial obligations (see Harris, Evans, and Beckett 2010). This question captures national exposure to a particular set of monetary sanctions.

The MSSMS dependent variables, on the other hand, focus on three questions that collectively establish the presence and extent of FDD. The first dependent variable is the *amount of assessed LFOs* and is constructed from answers to the survey question "About how much were you assessed in legal financial obligations?" We use this measure to estimate whether persons who receive public assistance receive lower amounts of LFOs. The second dependent variable is *ability to pay LFOs* and is constructed from answers to the survey question "Have you made any payments toward your LFOs?" We use it to capture whether any of the court-ordered debt has been paid, as a key feature of FDD is the ability of persons on public assistance that have criminal legal system debt to apportion their limited resources to the state. The third dependent variable is the *amount paid down on LFO* and is constructed from answers to the survey question "About how much have you paid of your LFOs (in dollars)?" We use it to estimate differences in amounts repaid by persons with and without public assistance.

### Main Independent Variables

The focal independent variables in the SHED analysis are whether the respondent or their partner received *any public assistance*. We disaggregated this measure into two concepts. The first entailed *any cash public assistance*—Social Security (SS), Social Security Income (SSI), TANF or welfare payments, Unemployment Income, and public pension. The second was *any noncash public assistance*—SNAP; Special Supplemental Nutrition Program for Women, Infant, and Children (WIC); Housing Assistance Subsidies (Section 8); and receipt of free lunches. We split *any public assistance* into these two distinct measures to explore whether the type of public assistance (cash or noncash) matters for the risk of FDD.

We also used two main independent variables in the MSSMS analysis. First, *receipt of any public assistance* is a binary variable that cap-

tures whether the respondent received SSI, SSDI, TANF, SNAP, WIC, Veterans Affairs (VA) benefits, or housing assistance, much like the SHED data. If the participant replied affirmatively to any of these six measures, they were coded as in receipt of public assistance. The second variable is a coder-computed and ordered *family risk score*. We used what Philipp Mayring (2001) terms *generalization* to turn qualitative interview data into categories for quantitative analysis (see also Srnka and Koeszegi 2007). This novel approach allowed us to investigate the extent to which an individual's family unit is at risk of FDD. We developed this variable in multiple coding phases through a deductive-inductive approach, and created an initial list of analytic operations and conceptions of family risk, which we refined as new categories arose inductively (Miles and Huberman 1994).

A team of three researchers analyzed the participants' interview answers to the question about receipt of public assistance. This open-ended question enabled participants to provide information about their receipt of public assistance, as well as of public assistance by members in their family unit. In combing through the in-depth interview data, the three researchers considered the ways in which family risk emerged in both presence and severity and developed thematic categories that captured the full range of data (Bradley 1993). This exercise was first performed independently by each researcher and then discussed with the entire research team for interrater reliability (Conger 1998). This process led to a robust conversation of categorical identification (Schilling 2006). Resulting from this practice was the creation of the family risk score variable. If a participant fell into multiple categories, the highest score was selected. The higher the score, the greater the risk of FDD for participants or their families. The final categorical risk categories were as follows:

0 (Reference)—participants and their families do not receive public assistance

1—participants or their families have applied for public assistance but were denied

2—participants or their families recently lost their public assistance

3—participants or their families have applied for public assistance and are still awaiting a decision

4—participants' families receive public assistance

5—participants themselves receive public assistance (TANF, SNAP/EBT, SSI, SSDI, VA-related benefits)[2]

### Control Variables

The SHED and MSSMS data contain complementary sets of demographic, economic, and criminal legal measures. For instance, both the SHED and MSSMS data contain similar criminal justice (previous incarceration) and sociodemographic (racial, educational, marital status, age, employment, and family composition) measures. Slight differences in questions about the respondent's gender (the MSSMS includes transgender), income classifications, criminal justice contact (the MSSMS contains a count of felonies and misdemeanors), and crime (the SHED data contain a measure of violent crime exposure) differentiate the two surveys. However, these differences do not undermine the empirical analyses presented.

## ANALYTIC STRATEGY

We use several statistical methods to estimate the association between receipt of public assistance and criminal legal system debt. First,

2. The coding team debated as to whether persons who stated receiving public assistance in the form of health insurance or housing assistance should be coded as Risk Category 5 because such benefits are provided in the form of goods and services. The team ultimately agreed that they should be included in this risk category, given that receipt of such provisions, theoretically, affords participants monetary resources they would not otherwise have to pay monetary sanctions. Stated another way, if individuals lost such benefits, they would have less money to pay LFOs. To code participants whose families receive public assistance, we included participants who explicitly state that their relatives share those resources with them, and those who explicitly state that their relatives have helped or plan to help them pay for their LFOs while receiving public assistance.

to assess the scope of risk nationally, we use logistic regression models to estimate the odds that receipt of any public assistance is associated with outstanding monetary sanctions owed using the SHED data (figure 2). Additionally, we use these models to assess whether the type of public assistance benefits (cash receipt or noncash program participation) matters for one's risk of owing monetary sanctions. If these two types of public assistance do not differ nationally, then collapsing these measures in the MSSMS data is valid for subsequent analyses.

Second, because our MSSMS measure of LFOs is a categorical, ordinal variable, we use ordered probit models to estimate the probability that individuals and families receiving public assistance are assessed at similar levels of LFOs (table 3). Furthermore, because we are also interested in whether any of the LFOs have been paid, we use probit models to estimate the relationship between receipt of public assistance and payment of LFOs (table 4). For both sets of models, we first run models controlling only for criminal legal measures and then additional models controlling for the suite of other criminal legal and social background measures. Last, given our interest in estimating the actual dollar values of LFO payments, we use ordinary least squares regression, where the dependent variable (LFO amount paid) adds $1 to all participants and then logs the measure (table 5) to ease interpretation of percentage differences.

## FINDINGS

Table 1 (SHED) and table 2 (MSSMS) present descriptive statistics from each data source. Table 1 shows that, nationally, a little more than 6 percent of the U.S. population had criminal justice debt in 2019. Approximately 43 percent received some form of public assistance, approximately 35.2 percent receiving cash and 13.6 percent receiving noncash.

Comparatively, table 2 shows that nearly 60 percent of participants are on public assistance. Additionally, although the MSSMS measure of monetary sanctions is different from the SHED measure, we find considerable heterogeneity in the LFO amount assessed. Although fewer than seven-tenths of 1 percent of the participants say they were not assessed any LFOs, about half reported being assessed LFOs of $5,000 or less, and approximately one-quarter reported being assessed LFOs in excess of $10,000.

Although LFO assessments represent the court's order for payment, two additional measures convey compliance with paying monetary sanctions. First, approximately 70 percent of participants indicate that they have paid something toward their LFOs. Second, the average amount paid is approximately $4,000.

To examine FDD, we rely on two measures

**Table 1.** Population Weighted Descriptive Statistics of Measures from the SHED Data

| Variables | Mean | SD | N |
|---|---|---|---|
| **Dependent variables** | | | |
| Have any criminal justice debt | 0.063 | 0.244 | 12,135 |
| **Independent variables** | | | |
| Any public assistance (PA) | 0.426 | 0.495 | 12,173 |
| Any cash public assistance | 0.352 | 0.478 | 12,173 |
| Social Security | 0.265 | 0.441 | 12,127 |
| Social Security Income, TANF, Welfare | 0.048 | 0.214 | 12,117 |
| Unemployment Income | 0.024 | 0.153 | 12,127 |
| Pension | 0.190 | 0.392 | 12,137 |
| Any noncash public assistance | 0.136 | 0.343 | 12,173 |
| SNAP | 0.096 | 0.295 | 12,139 |
| WIC | 0.096 | 0.295 | 2,838 |
| Housing assistance | 0.030 | 0.171 | 12,148 |
| Free lunch | 0.201 | 0.401 | 2,841 |

**Table 1.** (*continued*)

| Variables | Mean | SD | N |
|---|---|---|---|
| **Control variables** | | | |
| Age | 48.215 | 17.417 | 12,173 |
| Race-ethnicity | | | |
| Non-Hispanic White | 0.636 | 0.481 | 12,173 |
| Non-Hispanic Black | 0.119 | 0.324 | 12,173 |
| Hispanic | 0.163 | 0.369 | 12,173 |
| Non-Hispanic Other | 0.068 | 0.252 | 12,173 |
| Non-Hispanic multiracial | 0.014 | 0.119 | 12,173 |
| Education | | | |
| Less than high school education | 0.102 | 0.302 | 12,173 |
| High school diploma | 0.282 | 0.450 | 12,173 |
| Some college | 0.616 | 0.486 | 12,173 |
| Gender | | | |
| Male | 0.481 | 0.500 | 12,173 |
| Female | 0.519 | 0.500 | 12,173 |
| Marital status | | | |
| Married | 0.562 | 0.496 | 12,173 |
| Living with partner | 0.079 | 0.270 | 12,173 |
| Separated or divorced | 0.109 | 0.312 | 12,173 |
| Widowed | 0.041 | 0.197 | 12,173 |
| Never married, single | 0.210 | 0.407 | 12,173 |
| Household size | 2.660 | 1.490 | 12,173 |
| Unemployed | 0.353 | 0.478 | 12,173 |
| Household income | | | |
| Income: <$20,000 | 0.103 | 0.304 | 12,173 |
| Income: $20,000–29,999 | 0.069 | 0.254 | 12,173 |
| Income: $30,000–39,999 | 0.075 | 0.264 | 12,173 |
| Income: $40,000–49,999 | 0.076 | 0.265 | 12,173 |
| Income: $50,000–59,999 | 0.074 | 0.261 | 12,173 |
| Income: $60,000–74,999 | 0.095 | 0.293 | 12,173 |
| Income: $75,000–84,999 | 0.069 | 0.254 | 12,173 |
| Income: $85,000–99,999 | 0.068 | 0.251 | 12,173 |
| Income: $100,000+ | 0.371 | 0.483 | 12,173 |
| Metro | 0.867 | 0.340 | 12,173 |
| Region | | | |
| New England | 0.046 | 0.210 | 12,173 |
| Mid-Atlantic | 0.128 | 0.335 | 12,173 |
| East-North Central | 0.144 | 0.351 | 12,173 |
| West-North Central | 0.065 | 0.246 | 12,173 |
| South-Atlantic | 0.203 | 0.402 | 12,173 |
| East-South Central | 0.050 | 0.217 | 12,173 |
| West-South Central | 0.126 | 0.332 | 12,173 |
| Mountain | 0.076 | 0.265 | 12,173 |
| Pacific | 0.162 | 0.368 | 12,173 |
| Victim of violent crime | 0.087 | 0.281 | 12,150 |
| Immediate family member ever incarcerated | 0.219 | 0.414 | 12,131 |

*Source:* Authors' tabulation based on 2019 SHED data (Federal Reserve 2020).

**Table 2.** Descriptive Statistics of Measures from the MSSMS

| Variables | Mean | SD | N |
|---|---|---|---|
| **Dependent variables** | | | |
| LFO Assessed | | | |
| LFO assessed: 0 | 0.007 | 0.081 | 303 |
| LFO assessed: <$500 | 0.102 | 0.304 | 303 |
| LFO assessed: $501–1,000 | 0.079 | 0.271 | 303 |
| LFO assessed: $1,001–2,000 | 0.139 | 0.346 | 303 |
| LFO assessed: $2,001–3,000 | 0.119 | 0.324 | 303 |
| LFO assessed: $3,001–4,000 | 0.063 | 0.243 | 303 |
| LFO assessed: $4,001–5,000 | 0.059 | 0.237 | 303 |
| LFO assessed: $5,001–6,000 | 0.063 | 0.243 | 303 |
| LFO assessed: $6,001–7,000 | 0.030 | 0.170 | 303 |
| LFO assessed: $7,001–8,000 | 0.033 | 0.179 | 303 |
| LFO assessed: $8,001–9,000 | 0.023 | 0.150 | 303 |
| LFO assessed: $9,001–10,000 | 0.033 | 0.179 | 303 |
| LFO assessed: More than $10,000 | 0.251 | 0.434 | 303 |
| Ever make a payment on LFO | 0.705 | 0.457 | 298 |
| Total LFO amount paid | 4001.1 | 11075.7 | 193 |
| **Independent variables** | | | |
| Any public assistance (PA) | 0.601 | 0.491 | 303 |
| Number of public assistance programs | 1.175 | 1.182 | 303 |
| Family risk score | | | |
| Family risk 0 (no risk) | 0.416 | 0.494 | 303 |
| Family risk 1 (denied PA) | 0.017 | 0.128 | 303 |
| Family risk 2 (no longer PA recipient) | 0.036 | 0.187 | 303 |
| Family risk 3 (PA applicant) | 0.036 | 0.187 | 303 |
| Family risk 4 (family receives PA) | 0.043 | 0.203 | 303 |
| Family risk 5 (participant receives PA) | 0.452 | 0.499 | 303 |
| **Control variables** | | | |
| Age | 23.73 | 12.01 | 303 |
| Race-ethnicity | | | |
| Non-Hispanic White | 0.522 | 0.500 | 303 |
| Non-Hispanic Black | 0.347 | 0.477 | 303 |
| Hispanic | 0.040 | 0.195 | 303 |
| Non-Hispanic Other | 0.112 | 0.316 | 303 |
| Education | | | |
| Less than high school education | 0.168 | 0.375 | 303 |
| High school diploma | 0.290 | 0.455 | 303 |
| Some college | 0.541 | 0.499 | 303 |
| Gender | | | |
| Female | 0.310 | 0.463 | 303 |
| Male | 0.680 | 0.467 | 303 |
| Transgender | 0.007 | 0.081 | 303 |
| Marital status | | | |
| Married | 0.112 | 0.316 | 303 |
| Living with partner | 0.096 | 0.295 | 303 |
| Separated or divorced | 0.248 | 0.432 | 303 |
| Widowed | 0.020 | 0.140 | 303 |
| Never married, single | 0.521 | 0.500 | 303 |

**Table 2.** (*continued*)

| Variables | Mean | SD | N |
|---|---|---|---|
| Parent | 0.465 | 0.500 | 303 |
| Employed | 0.485 | 0.501 | 303 |
| Income | | | |
| Income: <$500 | 0.050 | 0.217 | 303 |
| Income: $501–750 | 0.046 | 0.210 | 303 |
| Income: $751–1,000 | 0.066 | 0.249 | 303 |
| Income: $1,001–1,250 | 0.043 | 0.203 | 303 |
| Income: $1,251–1,500 | 0.040 | 0.195 | 303 |
| Income: $1,501–2,000 | 0.063 | 0.243 | 303 |
| Income: $2,001–2,500 | 0.063 | 0.243 | 303 |
| Income: $2,501–3,000 | 0.033 | 0.179 | 303 |
| Income: $3,001–5,000 | 0.056 | 0.231 | 303 |
| Income: $5,001–7,000 | 0.017 | 0.128 | 303 |
| Income: More than $7,000 | 0.013 | 0.114 | 303 |
| Number of felony convictions | 3.386 | 4.524 | 303 |
| Number of misdemeanor convictions | 7.020 | 14.311 | 303 |
| Ever incarcerated | 0.947 | 0.224 | 303 |

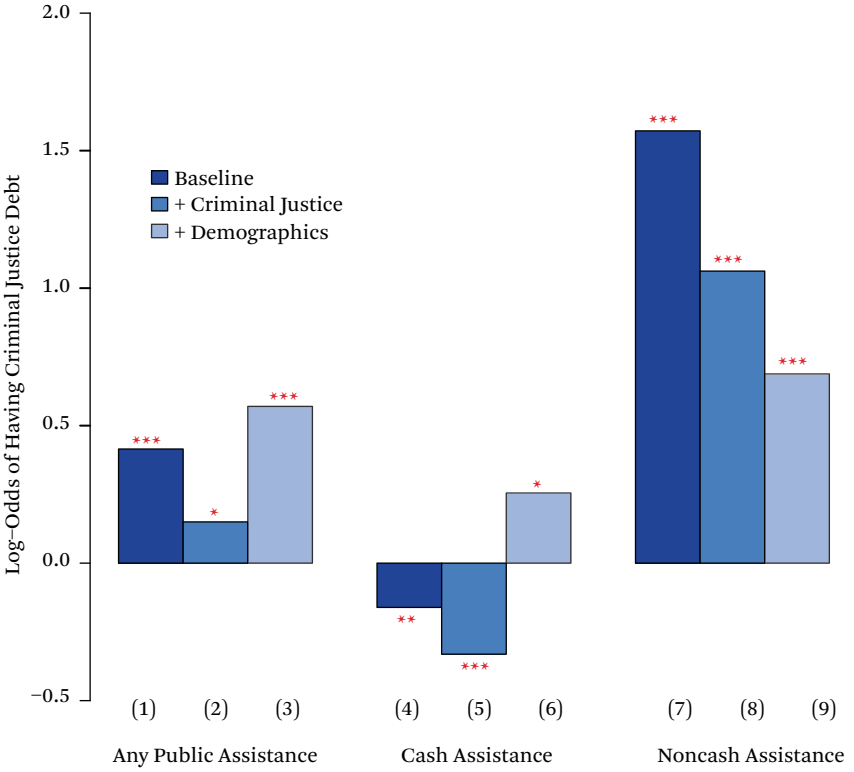
*Source:* Authors' tabulation based on MSSMS data (Harris et al. 2018).

of government assistance. First, about three in five participants in the MSSMS data reported being on public assistance with an average enrollment in at least one government program. Second, the family risk of FDD is based on the participant and family's involvement with public programs. This measure is based on the coding of in-depth interviews, which reveal the context of public support. Approximately 41 percent of families do not receive public assistance (Risk Category 0), but the risk of FDD is heterogeneous; about 2 percent of participants belong to families that have applied for public assistance but were denied (Risk Category 1), and another 4 percent had recently lost their public assistance (Risk Category 2). Additionally, 4 percent of the participants said that they or their families applied for public assistance and were awaiting a decision (Risk Category 3), whereas another 4 percent rely on other family members who receive public assistance (Risk Category 4). More than 45 percent of families are in the highest category for risk of FDD, the participant reporting that they currently received some form of public assistance (Risk Category 5).

Figure 2 presents the log-odds of having any public assistance associated with criminal justice debt, as well as distinctions between cash and noncash public assistance. The first barplot shows that the odds of having criminal justice debt are 51 percent (= $e^{(0.415)}$-1) higher for people with any public assistance than for those who are not enrolled in safety net programs. Controlling for violent crime exposure and previous incarceration history moderates this association (barplot 2); however, including measures of socioeconomic and demographic background measures (barplot 3) strengthen this association, indicating that the odds of having criminal justice debt are 78 percent (= $e^{(0.579)}$-1) higher for people on any form of public assistance.

Next, we examine whether the odds of having criminal justice debt depends on the types of public transfers a person receives (that is, cash versus noncash). Barplots 4 through 6 present estimates of the association between criminal justice debt and cash support public transfers, whereas barplots 7 through 9 assess the association between criminal justice debt and enrollment in noncash government programs. Indeed, there appears to be few distinguishing differences between types of public assistance. For instance, after controlling for criminal justice contact, crime, and social back-

**Figure 2.** Log-Odds of Having Any Public Assistance Associated with Criminal Justice Debt




*Source:* Authors' tabulation based on 2019 SHED data (Federal Reserve 2020).
*Note:* Non-Hispanic Whites, married, less than a high school education, household income below $20,000, and New England region are the reference categories. All models include state fixed effects, and standard errors are clustered on state. For full-model estimates, see online appendices 1 and 2.
N = 12,014.
***$p < .001$, **$p < .01$, *$p < .05$

ground characteristics, barplot 6 shows that the odds of having criminal justice debt are 29 percent (= $e^{(0.255)}$–1) higher for people who receive cash support from the government ($p < .05$). Comparatively, the association is much stronger ($p < .001$) among people enrolled in noncash government programs (barplot 9), with their odds of owing criminal justice debt being 99 percent (= $e^{(0.688)}$–1) higher than people not enrolled in these programs. These findings from the SHED data suggest that distinguishing between cash and noncash public assistance may not be consequential when investigating the role of FDD within the criminal legal system.

Table 3 presents estimates from the ordered probit model that estimates the association between public assistance and the amount of LFOs imposed. Models 1 through 3 pertain to participants who report receiving public assistance. Models 4 through 6 are based on the family risk score. None of the first three models provide evidence that individuals who receive public assistance have been assessed LFOs significantly different from individuals without public assistance. This holds true whether we control for criminal legal only measures (model 2), or the full set of criminal legal and social background controls (model 3).

The family risk score, however, tells a slightly different story. We do find suggestive and strong evidence that families with a higher risk of FDD have lower probabilities of having the same LFO amounts imposed on them. For instance, in model 4, without any control vari-

**Table 3.** Probability that Individuals on Public Assistance and Families at Risk of FDD Have the Same Amounts of LFOs Imposed

| | (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|---|
| Public assistance | −0.000348 | 0.00627 | −0.00463 | | | |
| | (0.295) | (0.290) | (0.186) | | | |
| Family risk 1 | | | | −0.0651 | −0.198 | −0.380 |
| | | | | (0.361) | (0.443) | (0.301) |
| Family risk 2 | | | | −0.449 | −0.555+ | −0.287 |
| | | | | (0.302) | (0.319) | (0.384) |
| Family risk 3 | | | | −0.0584 | −0.365 | −0.237+ |
| | | | | (0.224) | (0.382) | (0.143) |
| Family risk 4 | | | | −0.605+ | −0.546 | −0.285 |
| | | | | (0.345) | (0.347) | (0.361) |
| Family risk 5 | | | | −0.350 | −0.447+ | −0.443* |
| | | | | (0.236) | (0.261) | (0.182) |
| Felony | | 0.0651*** | 0.0703*** | | 0.0672** | 0.0735*** |
| | | (0.0177) | (0.0190) | | (0.0211) | (0.0195) |
| Misdemeanors | | 0.0158+ | 0.0182* | | 0.0173+ | 0.0199** |
| | | (0.00912) | (0.00759) | | (0.00945) | (0.00750) |
| Ever incarcerated | | 0.574* | 0.777** | | 0.654** | 0.780*** |
| | | (0.289) | (0.240) | | (0.239) | (0.206) |
| Male | | | −0.258* | | | −0.289** |
| | | | (0.107) | | | (0.111) |
| Employed | | | 0.182 | | | 0.164 |
| | | | (0.281) | | | (0.222) |
| Married | | | 0.0633 | | | 0.128+ |
| | | | (0.0826) | | | (0.0692) |
| Cohabiting | | | −0.230 | | | −0.187 |
| | | | (0.327) | | | (0.311) |
| Separated or divorced | | | −0.0717 | | | −0.0614 |
| | | | (0.148) | | | (0.143) |
| Widowed | | | 0.643 | | | 0.749 |
| | | | (0.519) | | | (0.503) |
| Age | | | −0.000332 | | | 0.00129 |
| | | | (0.00263) | | | (0.00307) |
| Non-Hispanic Black | | | −0.422** | | | −0.431** |
| | | | (0.129) | | | (0.133) |
| Hispanic | | | 0.684 | | | 0.785+ |
| | | | (0.433) | | | (0.440) |
| Non-Hispanic Other | | | 0.0621 | | | 0.0520 |
| | | | (0.337) | | | (0.349) |
| High school | | | 0.00809 | | | 0.00117 |
| | | | (0.0668) | | | (0.0715) |
| Some college | | | 0.306* | | | 0.321+ |
| | | | (0.145) | | | (0.173) |
| Number of children | | | −0.00994 | | | −0.0379 |
| | | | (0.228) | | | (0.244) |
| Income: <$501–750 | | | 0.310 | | | 0.319 |
| | | | (0.370) | | | (0.324) |

(*continued*)

**Table 3.** (*continued*)

| | (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|---|
| Inc.: $751–1,000 | | | −0.193 | | | −0.208 |
| | | | (0.396) | | | (0.340) |
| Inc.: $1,001–1,250 | | | 0.425 | | | 0.393 |
| | | | (0.472) | | | (0.410) |
| Inc.: $1,251–1,500 | | | 0.985+ | | | 0.876+ |
| | | | (0.511) | | | (0.495) |
| Inc.: $1,501–2,000 | | | −0.187 | | | −0.218 |
| | | | (0.334) | | | (0.319) |
| Inc.: $2,001–2,500 | | | 0.0828 | | | 0.0335 |
| | | | (0.274) | | | (0.286) |
| Inc.: $2,501–3,000 | | | 0.572 | | | 0.356 |
| | | | (0.370) | | | (0.231) |
| Inc.: $3,001–5,000 | | | 0.693** | | | 0.596* |
| | | | (0.263) | | | (0.271) |
| Inc.: $5,001–7,000 | | | 0.0701 | | | −0.0824 |
| | | | (0.628) | | | (0.509) |
| Inc.: $7,001+ | | | −0.716 | | | −0.883 |
| | | | (0.917) | | | (0.874) |
| /cut1 | −2.479*** | −1.709*** | −1.662*** | −2.731*** | −1.951*** | −1.947*** |
| | (0.302) | (0.319) | (0.250) | (0.312) | (0.227) | (0.212) |
| /cut2 | −1.233*** | −0.439 | −0.312 | −1.459*** | −0.645* | −0.558+ |
| | (0.268) | (0.381) | (0.329) | (0.228) | (0.260) | (0.299) |
| /cut3 | −0.885*** | −0.0761 | 0.0801 | −1.104*** | −0.272 | −0.158 |
| | (0.259) | (0.331) | (0.273) | (0.219) | (0.189) | (0.229) |
| /cut4 | −0.449+ | 0.380 | 0.572** | −0.659** | 0.197 | 0.343+ |
| | (0.241) | (0.274) | (0.209) | (0.203) | (0.130) | (0.182) |
| /cut5 | −0.137 | 0.707* | 0.930*** | −0.344 | 0.529*** | 0.705*** |
| | (0.314) | (0.312) | (0.212) | (0.274) | (0.144) | (0.162) |
| /cut6 | 0.0205 | 0.875** | 1.117*** | −0.184 | 0.700*** | 0.893*** |
| | (0.299) | (0.291) | (0.186) | (0.256) | (0.120) | (0.142) |
| /cut7 | 0.170 | 1.035*** | 1.294*** | −0.0318 | 0.864*** | 1.073*** |
| | (0.324) | (0.311) | (0.194) | (0.277) | (0.139) | (0.143) |
| /cut8 | 0.333 | 1.208*** | 1.485*** | 0.134 | 1.042*** | 1.268*** |
| | (0.307) | (0.312) | (0.212) | (0.256) | (0.147) | (0.169) |
| /cut9 | 0.412 | 1.294*** | 1.580*** | 0.216 | 1.131*** | 1.364*** |
| | (0.299) | (0.321) | (0.228) | (0.243) | (0.155) | (0.180) |
| /cut10 | 0.504+ | 1.394*** | 1.691*** | 0.310 | 1.234*** | 1.477*** |
| | (0.285) | (0.320) | (0.242) | (0.228) | (0.159) | (0.195) |
| /cut11 | 0.571* | 1.468*** | 1.774*** | 0.378+ | 1.309*** | 1.561*** |
| | (0.287) | (0.326) | (0.257) | (0.228) | (0.164) | (0.205) |
| /cut12 | 0.672* | 1.579*** | 1.900*** | 0.480* | 1.422*** | 1.689*** |
| | (0.299) | (0.314) | (0.247) | (0.243) | (0.153) | (0.197) |
| Observations | 303 | 303 | 303 | 303 | 303 | 303 |

*Source:* Authors' tabulation based on MSSW data (Harris et al. 2018).

*Note:* Non-Hispanic Whites, single, less than a high school education, and household income below $500 per month are the reference categories. All models include state fixed effects, and standard errors are clustered on state. Standard errors in parentheses.

***$p < .001$, **$p < .01$, *$p < .05$, +$p < .10$

ables, the negative, moderate association (B = −0.605, $p < .1$) in families where another family member receives public assistance (Risk Category 4) is associated with a lower probability of receiving the same LFO amount as someone who is not at risk of FDD. Controlling for criminal legal measures (model 5) provides moderate evidence for the risk of FDD among families that have lost public assistance (Risk Category 2) and among families where the participant is the public assistance recipient (Risk Category 5). Once criminal legal history and social background are controlled for, the strongest evidence for FDD is that in families where the participant receives public assistance, there is a strong, negative association (B = −0.443, $p < .05$). This indicates that these individuals and their family may be assessed smaller LFOs, but that reduced amount is nonzero.

Models 1 through 3 of table 4 display estimates from probit models of the association between participant receipt of public assistance and having paid any money toward one's LFOs. Although models 1 and 2 do not show any clear association, model 3 presents evidence that participant receipt of public assistance is negatively associated (B = −0.345, $p < .05$) with having made any payments on their LFO, net of criminal legal history and social background.

Models 4 through 6 present a similar story for families at risk of FDD. Across all models, families with the highest risk of FDD have a lower probability (B = -0.408, $p < .001$, model 4) of making payments on their LFOs than families where there is no risk of FDD. In fact, across all three models, controlling for criminal legal history and social background further decreases the chances (B = −0.460, $p < .001$, model 6) that these families will make any payments on their LFOs.

**Table 4.** Probability that Individuals and Families at Risk of FDD Have Paid Any of their LFOs to Courts

| | (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|---|
| Variables | | | | | | |
| Public assistance | −0.284 | −0.285 | −0.345* | | | |
| | (0.193) | (0.181) | (0.156) | | | |
| Family risk 1 | | | | −0.505 | −0.568 | −0.601 |
| | | | | (0.611) | (0.625) | (0.695) |
| Family risk 2 | | | | −0.759 | −0.778 | −0.714 |
| | | | | (0.598) | (0.592) | (0.577) |
| Family risk 3 | | | | −0.234 | −0.370 | −0.275 |
| | | | | (0.256) | (0.270) | (0.218) |
| Family risk 4 | | | | 0.667 | 0.680 | 0.841 |
| | | | | (0.433) | (0.443) | (0.531) |
| Family risk 5 | | | | −0.408*** | −0.440*** | −0.460*** |
| | | | | (0.0763) | (0.0699) | (0.104) |
| Felony | | 0.0197 | 0.0240 | | 0.0246 | 0.0282 |
| | | (0.0160) | (0.0230) | | (0.0151) | (0.0229) |
| Misdemeanors | | 0.00173 | 0.00328 | | 0.00258 | 0.00398 |
| | | (0.00708) | (0.00714) | | (0.00623) | (0.00650) |
| Ever incarcerated | | 0.323 | 0.488+ | | 0.399 | 0.522 |
| | | (0.296) | (0.283) | | (0.346) | (0.358) |
| Male | | | −0.253 | | | −0.235 |
| | | | (0.206) | | | (0.214) |
| Employed | | | 0.291 | | | 0.337 |
| | | | (0.284) | | | (0.260) |
| Married | | | 0.503 | | | 0.582+ |
| | | | (0.344) | | | (0.341) |

(*continued*)

**Table 4.** (*continued*)

| | (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|---|
| Cohabiting | | | −0.438** | | | −0.407* |
| | | | (0.165) | | | (0.176) |
| Separated or divorced | | | −0.168 | | | −0.171 |
| | | | (0.158) | | | (0.138) |
| Widowed | | | — | | | — |
| | | | — | | | — |
| Age | | | 0.00495 | | | 0.00796 |
| | | | (0.00482) | | | (0.00519) |
| Non-Hispanic Black | | | 0.0350 | | | −0.00345 |
| | | | (0.181) | | | (0.192) |
| Hispanic | | | −0.122 | | | −0.0947 |
| | | | (0.357) | | | (0.374) |
| Non-Hispanic Other | | | 0.320+ | | | 0.291 |
| | | | (0.167) | | | (0.188) |
| High school | | | 0.226** | | | 0.267* |
| | | | (0.0823) | | | (0.125) |
| Some college | | | 0.0132 | | | 0.103 |
| | | | (0.199) | | | (0.230) |
| Number of children | | | 0.148 | | | 0.159 |
| | | | (0.290) | | | (0.274) |
| Income: <$501–750 | | | −0.373 | | | −0.331 |
| | | | (0.345) | | | (0.335) |
| Income: $751–1,000 | | | −0.694+ | | | −0.727 |
| | | | (0.378) | | | (0.453) |
| Income: $1,001–1,250 | | | 0.405 | | | 0.283 |
| | | | (0.313) | | | (0.358) |
| Income: $1,251–1,500 | | | 0.328 | | | 0.259 |
| | | | (0.710) | | | (0.693) |
| Income: $1,501–2,000 | | | 0.0991 | | | 0.0847 |
| | | | (0.515) | | | (0.575) |
| Income: $2,001–2,500 | | | −0.236 | | | −0.162 |
| | | | (0.415) | | | (0.389) |
| Income: $2,501–3,000 | | | 0.161 | | | −0.185 |
| | | | (0.493) | | | (0.496) |
| Income: $3,001–5,000 | | | 0.270 | | | 0.0298 |
| | | | (0.578) | | | (0.548) |
| Income: $5,001–7,000 | | | 0.388 | | | 0.257 |
| | | | (0.780) | | | (0.626) |
| Income: $7,001+ | | | −0.0703 | | | −0.161 |
| | | | (1.138) | | | (1.120) |
| Constant | 0.715*** | 0.335 | −0.0240 | 0.759*** | 0.307 | −0.183 |
| | (0.108) | (0.216) | (0.443) | (0.100) | (0.363) | (0.553) |
| Observations | 298 | 298 | 298 | 298 | 298 | 298 |

*Source:* Authors' tabulation based on MSSW data (Harris et al. 2018).
*Note:* Non-Hispanic Whites, single, less than a high school education, and household income below $500 per month are the reference categories. All models include state fixed effects, and standard errors are clustered on state. Standard errors in parentheses.
***$p < .001$, **$p < .01$, *$p < .05$, +$p < .10$

Last, table 5 displays estimates from the ordinary least squares regression of the association between receipt of government assistance and the amount of money paid to the court. Confirming findings from table 3, models 3 and 4 of table 4 present moderate evidence ($p < .1$) that participants receiving public assistance, and families at higher risk of FDD, have paid less on their LFOs than individuals and families not receiving public assistance. Curiously, model 6 shows that, after controlling for criminal legal history and social background, families that have applications for public assistance under review have paid more (B = 1.326, $p < .05$) on their LFOs than people who do not receive public assistance. It could be that these individuals are concerned that their applications for assistance may be denied if they do not pay down their LFOs. Future research should explore this connection in more detail.

**Table 5.** OLS Regression of Logged LFO Payments to Court

| | (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|---|
| Variables | | | | | | |
| Public assistance | −0.295 | −0.355 | −0.409$^{+}$ | | | |
| | (0.335) | (0.295) | (0.180) | | | |
| Family risk 1 | | | | −1.083 | −0.944 | −0.541$^{+}$ |
| | | | | (0.821) | (0.868) | (0.259) |
| Family risk 2 | | | | −0.477 | −0.388 | 0.128 |
| | | | | (0.503) | (0.524) | (0.771) |
| Family risk 3 | | | | 0.715 | 0.724 | 1.326* |
| | | | | (0.647) | (0.598) | (0.428) |
| Family risk 4 | | | | −0.789$^{+}$ | −0.638 | 0.0621 |
| | | | | (0.385) | (0.341) | (0.480) |
| Family risk 5 | | | | 0.0690 | 0.0656 | 0.00189 |
| | | | | (0.299) | (0.324) | (0.311) |
| Felony | | 0.0172 | −0.00355 | | 0.00579 | −0.0166 |
| | | (0.0310) | (0.0252) | | (0.0297) | (0.0259) |
| Misdemeanors | | 0.0348* | 0.0421** | | 0.0337* | 0.0419** |
| | | (0.0110) | (0.00879) | | (0.0113) | (0.00897) |
| Ever incarcerated | | 0.0861 | 0.173 | | 0.178 | 0.111 |
| | | (0.227) | (0.235) | | (0.240) | (0.396) |
| Male | | | −0.404 | | | −0.381 |
| | | | (0.448) | | | (0.460) |
| Employed | | | 0.329 | | | 0.396 |
| | | | (0.257) | | | (0.283) |
| Married | | | −0.114 | | | −0.167 |
| | | | (0.122) | | | (0.116) |
| Cohabiting | | | −0.815 | | | −0.800 |
| | | | (0.661) | | | (0.671) |
| Separated, divorced | | | 0.333 | | | 0.373 |
| | | | (0.351) | | | (0.290) |
| Widowed | | | 0.933 | | | 1.093 |
| | | | (0.604) | | | (0.582) |
| Age | | | 0.0291$^{+}$ | | | 0.0294$^{+}$ |
| | | | (0.0139) | | | (0.0125) |
| Non-Hispanic Black | | | −0.489 | | | −0.548 |
| | | | (0.264) | | | (0.311) |
| Hispanic | | | −0.435$^{+}$ | | | −0.545 |
| | | | (0.216) | | | (0.281) |

(*continued*)

**Table 5.** (*continued*)

| | (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|---|
| Non-Hispanic Other | | | −0.441 | | | −0.321 |
| | | | (0.380) | | | (0.419) |
| High school | | | 0.320 | | | 0.313 |
| | | | (0.383) | | | (0.392) |
| Some college | | | 0.375 | | | 0.522* |
| | | | (0.225) | | | (0.213) |
| Number of children | | | −0.281 | | | −0.258 |
| | | | (0.147) | | | (0.136) |
| Income: <$501–750 | | | −0.0971 | | | 0.217 |
| | | | (0.486) | | | (0.398) |
| Income: $751–1,000 | | | −1.163+ | | | −1.070+ |
| | | | (0.500) | | | (0.512) |
| Income: $1,001–1,250 | | | 0.424 | | | 0.428 |
| | | | (0.353) | | | (0.370) |
| Income: $1,251–1,500 | | | 0.425 | | | 0.306 |
| | | | (0.610) | | | (0.759) |
| Income: $1,501–2,000 | | | 0.331 | | | 0.409 |
| | | | (0.516) | | | (0.594) |
| Income: $2,001–2,500 | | | −0.640 | | | −0.505 |
| | | | (0.571) | | | (0.598) |
| Income: $2,501–3,000 | | | 1.624* | | | 1.522* |
| | | | (0.543) | | | (0.539) |
| Income: $3,001–5,000 | | | 0.784 | | | 0.722 |
| | | | (0.508) | | | (0.557) |
| Income: $5,001–7,000 | | | 0.916+ | | | 0.919+ |
| | | | (0.407) | | | (0.395) |
| Income: $7,001+ | | | 0.878 | | | 1.095 |
| | | | (0.621) | | | (0.735) |
| Constant | 7.108*** | 6.749*** | 6.081*** | 6.963*** | 6.518*** | 5.738*** |
| | (0.419) | (0.425) | (0.463) | (0.391) | (0.336) | (0.507) |
| Observations | 193 | 193 | 193 | 193 | 193 | 193 |
| $R^2$ | 0.007 | 0.104 | 0.317 | 0.027 | 0.114 | 0.325 |

*Source:* Authors' tabulation based on MSSW data (Harris et al. 2018).
*Note:* Non-Hispanic Whites, single, less than a high school education, and household income less than $500 per month are the reference categories. All models include state fixed effects, and standard errors are clustered on state.
***$p < .001$, **$p < .01$, *$p < .05$, +$p < .10$

## DISCUSSION AND POLICY IMPLICATIONS

Although many scholars have discussed the regressive interaction of monetary sanctions and public assistance, the motivation of this article is to move the conversation away from recognizing monetary sanctions as a collateral consequence of the penal system, and toward the recognition that, when financial sanctions are applied to the poor, particularly those who are the recipients of public assistance, these sanctions act as an exponent of punishment by depriving individuals and communities of social safety net provisions (see also Harris 2016). Recent scholarship has helped clarify the struggles of reentry (Western 2018), echoing qualitative

(Macleod 2009) and quantitative (Pager 2003; Pager and Lincoln 2005; Petitt and Lyons 2009) findings that a criminal record is an "absorbing status" (Maroto 2015) that profoundly reduces labor access and wealth generation (Sykes and Maroto 2016; Maroto and Sykes 2020). Our work contributes to scholarship on the feedback effects of poverty and LFOs by specifying how money is, often unwittingly, transferred from assistance programs to penal institutions in the imposition of monetary sanctions.

Findings from our analysis are also relevant for other articles in this volume and have specific policy implications. First, Mary Pattillo and her colleagues (2022) examine the relationship between the criminal legal system and housing stability. Although previous research has focused on the criminalization of homelessness and the impact of incarceration on housing stability, Pattillo and her coauthors argue that financial penalties affect the affordability of life necessities, leading to poor housing outcomes (such as housing instability or homelessness), which the authors refer to as the "instability–LFO nexus" (p. 58). For example, they note that one participant, who could not afford housing, was expected to pay "7 percent of [their] net disability check, which was [their] only source of income," to their LFOs (p. 64), illustrating the cycle of the housing instability–LFO nexus among the poor. Hence the concept of micro-level FDD captures the ways in which the criminal legal system maintains these social and economic inequalities by assessing LFOs on those who are economically fragile and receiving public assistance as their primary source of income.

Similarly, April Fernandes, Brittany Friedman, and Gabriela Kirk (2022) argue that the state's arguments to recoup costs are imbued with legal moralism, which advocates that the law act as arbiter of morality. Considering the broader capitalist economic system and the state's use of legal moralism, value and performance are tied to fiscal responsibility. Therefore, anyone using state resources (those incarcerated, people on public assistance, and so on) are considered morally reprehensible and a drain on the state. In this way, incarceration and involvement in the larger criminal justice apparatus becomes a fiscal burden created and sustained by those who are affected by the system. "Willful nonpayment" is used in pay-to-stay lawsuits because "incarcerated people with any modicum of assets then become willful nonpayers" (p. 89). The possession of assets in any form, including receipt of public assistance, can then be used to substantiate willful nonpayment of monetary sanctions. By framing the use of state resources as a moral failing, and the retention of any assets as willful nonpayment, the state not only justifies lawsuits to recoup costs from incarcerated persons, but also engages in macro-level FDD by imposing and collecting monetary sanctions from people receiving public assistance, only to redistribute those safety net resources to the criminal legal system and other state institutions.

Second, significant policy implications follow from FDDs. Colloquially referred to as the "anti-attachment statute," Section 207 of the Social Security Act (42 USC §407) prevents Social Security benefits from being garnished, levied, or withheld by the federal government. Specifically, the statute makes clear that "none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or *other legal process*, or to the operation of any bankruptcy or insolvency law" (42 USC §407(a), emphasis added). A few exceptions to this anti-attachment statute bear mention: child support and alimony obligations (42 USC§659); certain civil penalties under the Mandatory Victim Restitution Act (18 USC§3613); overdue federal taxes (26 USC §6334; Public Law 105–34); or withholding and paying another federal agency a nontax debt owed according to the Debt Collection Improvement Act of 1996 (Public Law 104-134). In other words, with only a few exceptions, the purpose of the statute is to protect a minimum standard of living for individuals with low income or disabilities by safeguarding Social Security benefits from paying other debt.

The anti-attachment statute for Social Security benefits has been used to prevent FDDs in at least one state in the United States. In *State of Washington v. Catling*, 193 Wn.2d 252, 438 3d 1174 (2019), the court held that LFOs "may not be satisfied out of any funds subject to the Social Security Act's anti-attachment statute, 42 USC§407" (266). Although the defendant in this

case was required to pay the $500 victim fund assessment as dictated by Section 207 of the Social Security Act (42 USC §407) (Section 207), the court held that such debt could not be settled with Social Security disability benefits. A series of recently filed cases raise similar issues in Washington since the *State of Washington v. Catling* ruling. All citing *Catling*, the courts conclude that although the imposition of fines and fees are legal, the judgment and sentences must be amended to specify that the mandatory LFOs may not be satisfied out of funds subject to the anti-attachment statute.[3]

Additionally, in a cursory review of recent case law, two lawsuits—one decided by the Montana Supreme Court and another in the Missouri Supreme Court—question the definition of "other legal process" in Section 207. In *State of Montana v. Ingram*, 2020 Mt. 327, the Supreme Court of Montana ruled that the District Court's sentencing order—in which it imposed the statutory minimum fine of $5,000 for felony driving under the influence (DUI)—constitutes an "other legal process" and thus an improper attempt was made to attach the appellant's Social Security benefits—which was Ingram's sole source of income, $857 per month—in violation of 42 USC§ 407(a). Although the court ruled in Ingram's favor, in its decision it makes clear that, just as was held in *State v. Catling*, 193 Wn.2d 252, 438 3d 1174 (2019), Ingram's receipt of Social Security benefits does not exempt him from having to pay the mandatory fine. Instead, it prohibits the attachment of those benefits to pay off the fine.

In a second case, argued before the Supreme Court of Missouri on October 6, 2020, a similar question was raised as to whether payment of a monthly intervention fee as a condition of probation violates federal law by subjecting Mr. Graves' supplemental Social Security benefits to "other legal process," (*Graves v. Missouri Department of Corrections*, Mo. Ct. App. Mar. 31, 2020). In a 4-3 decision issued on October 5, 2021, the Missouri Supreme court decided that "Because the Division [of Probation and Parole] has not yet compelled Graves to pay monthly fees, his request for declaratory relief is not ripe for adjudication and the circuit court properly dismissed his claim," (*Graves v. Missouri Department of Corrections*, Mo: Supreme Court 2021).[4]

These recent court decisions in Montana and Missouri underscore the confusion surrounding Section 207 of the Social Security Act and its meaning in the context of LFOs. Based on decided court cases, it seems that misunderstandings about Section 207 are largely driven by the need for clarity surrounding legal exceptions to the provision, as well as a need for an operational definition of "other legal process." Although Section 207 protects financial resources from state extraction and FDD, in regard to Social Security benefits, our analysis reveals that similar laws and administrative policies are necessary to protect other forms of public benefits, cash and noncash alike, from being directly and indirectly redistributed from the social welfare to the penal hands of the state (on the payment of monetary sanctions using disability assistance, see Cadigan and Smith 2021). To do so, social policies must be carefully devised to consider whether specific types of public assistance receipt should be levied against the imposition and collection of LFOs. Noncash public assistance may pose a particular challenge for courts, as the loss of these benefits may require real economic expenditures by indigent individuals and their families. However, receipt of such noncash benefits *in-and-of itself* points to financial hardships that may well justify waived or expunged

3. *State v. Stone*, No. 52233-1-II (Wash. Ct. App. Feb. 19, 2020); *State v. Dillon*, 456 P.3d 1199, 12 Wn. App. 2d 133 (Wash. Ct. App. 2020); and *State v. Devine*, No. 81098-7-I (Wash. Ct. App. Apr. 12, 2021).

4. It is important to note, however, that in their dissenting opinion, justices argued that, "The plain language of Mr. Graves' petition shows he sought a declaration that the division's imposition of an intervention fee of $30 per month as a condition of his probation violated 42 U.S.C. section 407(a) because his only income was supplemental security income ("SSI"). When this claim is acknowledged and evaluated, the correct holding is that the petition pleads facts that state a claim for declaratory judgment" (*Graves v. Missouri Department of Corrections*, Mo: Supreme Court 2021).

LFOs in criminal sentences. Therefore, policymakers should consider preventing the imposition and collection of monetary sanctions on all persons receiving any form of public assistance, especially those that are antipoverty or a means-tested public benefit.

## CONCLUSION

The welfare reforms passed in the 1990s were an expression of the neoliberal logics of American public policy (Simon 2007; Hinton 2016; Wacquant 2009), through which the penal arm of the state became increasingly more powerful (Wacquant 2010). The efforts to dramatically tighten public assistance were framed as a way to hold individuals accountable and responsible for themselves and attend to what was perceived as the growing dependency on government resources (Edin and Lein 1997; Edin and Kefalas 2005; Edin et al. 2019; Edin and Nelson 2013; Gustafson 2012; Wilson 1987), which further marginalized people living in poverty. Our findings confirm this trend, in that individuals and families who receive public assistance are less likely to pay LFOs, even when the imposed LFOs are less than the amounts imposed on individuals and families who do not receive public assistance. Put simply, individuals and families at the highest risk of FDD are also at the highest risk of being further penalized for failing to pay LFOs. Even though people on public assistance may have lower monetary sanctions imposed, their poverty and economic hardships imply that they should not have these LFOs imposed at all, as their failure to pay even small amounts can trigger extended justice system involvement and surveillance. This finding is why some judges and probation officers rely on bench cards to assess indigence or public assistance receipt as a marker of poverty instead of relying on employment or income alone (see Harris, Pattillo, and Sykes 2022, this volume; Martin 2020).

Although we agree with Wacquant's (2010) theoretical framework, we find that the transfer of resources from the state's left to right hand (from social welfare to punishment) is a dynamic process that disproportionately harms individuals and families on public assistance who have criminal justice debt. Indeed, recent research on neoliberalism and punishment also calls into question the process that Wacquant theorizes (Lara-Millán 2021); interestingly, however, the process that Armando Lara-Millán (2021, 42) describes—where poor individuals "game the system" by committing crimes in order to receive health care in local jails because of underfunding to, and overcrowding in, public hospitals—speaks to the very mechanism of FDD at the micro and macro levels, as state resources allocated to one institution can diffuse downward through individuals and be redistributed to other state agencies. The only difference in this case of FDD, however, is that the liabilities are passed from one institution to another via individuals, as opposed to assets or resources derived from social safety net provisions, including Medicare.[5]

The neoliberal shift to decrease social safety net funding and to increase fiscal allocations for punishment and surveillance is not new. Families experiencing poverty have historically been affected by the underfunding of public assistance programs and the growing punitiveness of the criminal legal system. The restructuring of the child-support system in the 1970s mandated families receiving public benefits (cash welfare) participate in surveillance systems that impose the collection of financial resources from noncustodial parents (Cozzolino 2018; Farrell, Glosser, and Gardiner 2003; Turetsky and Waller 2020), and these child-support enforcement and collection methods have since been applied to the collection of monetary sanctions (Legler 1996). Although child-support programs have demanded large payments from fathers unable to meet these obligations (Ha, Cancian, and Meyer 2018; Sorensen and Oliver 2002), similar to criminal justice debt, child-support collections have been shown to intensify family

5. Josh Seim (2020, 6) also argues that, during an era of increasing economic and social precarity, "the neoliberal shift toward market-based policies" has led to a "'medicalization' of public aid, meaning people are turning to medical entitlements like public disability benefits and emergency care for more generalized assistance," resulting in increased ambulance usage as healthcare instead of routine primary care.

hardship and erode family ties (Bartfeld 2003; Turner and Waller 2017; on criminal justice debt and family relations, see Boches et al. 2022, this volume). Within this context, the left and right hands of the state were always embedded in poverty management and the ascension of the punitive apparatus.

In short, contemporary research on poverty, inequality, and monetary sanctions misses a key dimension of predatory extraction: public assistance and social safety net resources. This omission is deeply consequential for the measurement of poverty and poverty mitigation (see also Fox et al. 2015), as judicial decisions about the imposition of monetary sanctions often consider resources associated with public assistance programs. Implications derived from our findings suggest that state fiscal budgets, and their reallocations and redistributions over time, paint a partial picture of the resources circulating to and through the criminal legal system. To capture more fully the totality of resources appropriated by the punishment sphere of the state through financial double-dealing, research needs to qualify and quantify the micro-level and macro-level redistribution of money from individuals and families receiving public assistance while paying down monetary sanctions. Policymakers and advocates also need to devise and enact new legislation that safeguards precious social safety net resources from being funneled back into the criminal legal system via monetary sanctions. Failure to do so will undoubtedly deepen the poverty, hardship, and misery of millions of individuals and families experiencing economic precarity in an age of growing social inequality.

**Table A1.** Log-Odds of Having Any Public Assistance Associated with Criminal Justice Debt

| | (1) | (2) | (3) |
|---|---|---|---|
| Any Public Assistance | 0.415*** | 0.150* | 0.579*** |
| | (0.0608) | (0.0683) | (0.152) |
| Violent Crime Victim | | 0.794*** | 0.589*** |
| | | (0.106) | (0.106) |
| Previous Incarceration | | 2.371*** | 2.209*** |
| | | (0.118) | (0.114) |
| Age | | | −0.0285*** |
| | | | (0.00421) |
| Non-Hispanic Black | | | 0.372** |
| | | | (0.137) |
| Hispanic | | | 0.200 |
| | | | (0.184) |
| Non-Hispanic Other | | | −0.0230 |
| | | | (0.281) |
| Non-Hisp. Multiracial | | | 0.455** |
| | | | (0.170) |
| Female | | | 0.218** |
| | | | (0.0844) |
| Single | | | −0.108 |
| | | | (0.116) |
| Cohabiting | | | 0.171 |
| | | | (0.136) |
| Separated/Divorced | | | 0.423** |
| | | | (0.141) |
| Widowed | | | 0.258 |
| | | | (0.239) |
| Household Size | | | 0.0728* |
| | | | (0.0321) |

**Table A1.** (*continued*)

| | (1) | (2) | (3) |
|---|---|---|---|
| High School Diploma | | | −0.185 |
| | | | (0.191) |
| Some College or More | | | −0.318$^{+}$ |
| | | | (0.175) |
| Unemployed | | | −0.333* |
| | | | (0.136) |
| Income: $20,000-$29,999 | | | −0.102 |
| | | | (0.166) |
| Income: $30,000-$39,999 | | | −0.211 |
| | | | (0.163) |
| Income: $40,000-$49,999 | | | −0.445* |
| | | | (0.186) |
| Income: $50,000-$59,999 | | | −0.375 |
| | | | (0.249) |
| Income: $60,000-$74,999 | | | −0.180 |
| | | | (0.194) |
| Income: $75,000-$84,999 | | | −0.400$^{+}$ |
| | | | (0.241) |
| Income: $85,000-$99,999 | | | −0.257 |
| | | | (0.263) |
| Income: >=$100,000 | | | −0.501* |
| | | | (0.209) |
| Metro | | | 0.125 |
| | | | (0.147) |
| Mid-Atlantic | | | 1.197*** |
| | | | (0.0926) |
| East-North Central | | | 1.426*** |
| | | | (0.0920) |
| West-North Central | | | 0.663*** |
| | | | (0.0595) |
| South-Atlantic | | | 0.900*** |
| | | | (0.0794) |
| East-South Central | | | 1.034*** |
| | | | (0.118) |
| West-South Central | | | 0.936*** |
| | | | (0.0798) |
| Mountain | | | 0.134 |
| | | | (0.0997) |
| Pacific | | | 0.496*** |
| | | | (0.137) |
| Constant | −4.271*** | −5.350*** | −3.811*** |
| | (0.0389) | (0.0860) | (0.323) |
| Observations | 12,014 | 12,014 | 12,014 |

*Source:* Authors' tabulation based on 2019 SHED data (Federal Reserve 2020).
*Note:* Non-Hispanic Whites, married, less than a high school education, household income below $20,000, and New England region are the reference categories. All models include state fixed effects, and standard errors are clustered on state.
***$p < .001$, **$p < .01$, *$p < .05$, $^{+}p < .10$

**Table A2.** Log-Odds of Having Cash and Non-Cash Public Assistance Associated with Criminal Justice Debt

| | Cash Support | | | Non-Cash Support | | |
|---|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Any Public Assistance | −0.161** | −0.331*** | 0.255* | 1.572*** | 1.062*** | 0.688*** |
| | (0.0586) | (0.0673) | (0.112) | (0.0718) | (0.0867) | (0.142) |
| Violent Crime Victim | | 0.815*** | 0.627*** | | 0.607*** | 0.559*** |
| | | (0.105) | (0.103) | | (0.108) | (0.106) |
| Previous Incarceration | | 2.407*** | 2.232*** | | 2.265*** | 2.210*** |
| | | (0.113) | (0.111) | | (0.119) | (0.112) |
| Age | | | −0.0256*** | | | −0.0193*** |
| | | | (0.00396) | | | (0.00331) |
| Non-Hispanic Black | | | 0.401** | | | 0.330* |
| | | | (0.138) | | | (0.139) |
| Hispanic | | | 0.205 | | | 0.178 |
| | | | (0.185) | | | (0.179) |
| Non-Hispanic Other | | | −0.0385 | | | −0.0585 |
| | | | (0.277) | | | (0.279) |
| Non-Hisp. Multiracial | | | 0.457** | | | 0.444* |
| | | | (0.166) | | | (0.173) |
| Female | | | 0.230** | | | 0.212* |
| | | | (0.0844) | | | (0.0850) |
| Single | | | −0.144 | | | −0.100 |
| | | | (0.114) | | | (0.113) |
| Cohabiting | | | 0.189 | | | 0.171 |
| | | | (0.130) | | | (0.137) |
| Separated/Divorced | | | 0.386** | | | 0.344* |
| | | | (0.142) | | | (0.139) |
| Widowed | | | 0.229 | | | 0.252 |
| | | | (0.243) | | | (0.245) |
| Household Size | | | 0.0901** | | | 0.0652* |
| | | | (0.0326) | | | (0.0327) |
| High School Diploma | | | −0.185 | | | −0.125 |
| | | | (0.190) | | | (0.189) |
| Some College or More | | | −0.340+ | | | −0.251 |
| | | | (0.177) | | | (0.170) |
| Unemployed | | | −0.264* | | | −0.262* |
| | | | (0.128) | | | (0.127) |
| Income: $20,000-$29,999 | | | −0.127 | | | −0.0310 |
| | | | (0.163) | | | (0.166) |
| Income: $30,000-$39,999 | | | −0.288+ | | | −0.0855 |
| | | | (0.156) | | | (0.170) |
| Income: $40,000-$49,999 | | | −0.531** | | | −0.334+ |
| | | | (0.187) | | | (0.195) |
| Income: $50,000-$59,999 | | | −0.502* | | | −0.254 |
| | | | (0.240) | | | (0.263) |
| Income: $60,000-$74,999 | | | −0.324+ | | | −0.0670 |
| | | | (0.177) | | | (0.196) |
| Income: $75,000-$84,999 | | | −0.560* | | | −0.260 |
| | | | (0.219) | | | (0.243) |

**Table A2.** (*continued*)

| | Cash Support | | | Non-Cash Support | | |
|---|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | (5) | (6) |
| Income: $85,000-$99,999 | | | −0.422$^{+}$ | | | −0.143 |
| | | | (0.231) | | | (0.256) |
| Income: >=$100,000 | | | −0.683*** | | | −0.386$^{+}$ |
| | | | (0.174) | | | (0.214) |
| Metro | | | 0.0996 | | | 0.112 |
| | | | (0.143) | | | (0.148) |
| Mid-Atlantic | | | 1.259*** | | | 1.301*** |
| | | | (0.0718) | | | (0.0751) |
| East-North Central | | | 1.484*** | | | 1.528*** |
| | | | (0.0747) | | | (0.0782) |
| West-North Central | | | 0.651*** | | | 0.793*** |
| | | | (0.0552) | | | (0.0568) |
| South-Atlantic | | | 0.956*** | | | 1.018*** |
| | | | (0.0653) | | | (0.0689) |
| East-South Central | | | 1.093*** | | | 1.160*** |
| | | | (0.112) | | | (0.114) |
| West-South Central | | | 0.984*** | | | 1.050*** |
| | | | (0.0804) | | | (0.0786) |
| Mountain | | | 0.194* | | | 0.207* |
| | | | (0.0955) | | | (0.0991) |
| Pacific | | | 0.641*** | | | 0.525*** |
| | | | (0.122) | | | (0.145) |
| Constant | −3.946*** | −5.180*** | −3.753*** | −4.351*** | −5.513*** | −4.337*** |
| | (0.0275) | (0.101) | (0.330) | (0.0244) | (0.0968) | (0.300) |
| Observations | 12,014 | 12,014 | 12,014 | 12,014 | 12,014 | 12,014 |

*Source:* Authors' tabulation based on 2019 SHED data (Federal Reserve 2020).
*Note:* Non-Hispanic Whites, married, less than a high school education, household income below $20,000, and New England region are the reference categories. All models include state fixed effects, and standard errors are clustered on state.
***$p < .001$, **$p < .01$, *$p < .05$, $^{+}p < .10$

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# Private Probation Costs, Compliance, and the Proportionality of Punishment: Evidence from Georgia and Missouri

BETH M. HUEBNER AND SARAH K.S. SHANNON

*Probation is the most commonly imposed correctional sanction, is often accompanied by supplementary costs, and can be operated by the state or private companies. Private probation is a unique sanction used in lower courts, most often for misdemeanor offenses, and is managed by third-party actors. We focus on documenting the process and unique costs of private probation, including the rituals of compliance and proportionality of punishment. We use data from interviews with individuals on private probation and local criminal justice officials as well as evidence from court ethnographies in Georgia and Missouri. For individuals on private probation, payment of monetary sanctions is a crucial way of demonstrating compliance. Yet the financial burden of added costs for supervision and monitoring creates substantial challenges.*

**Keywords:** monetary sanctions, community corrections, municipal courts, private probation, punishment

The scope of probation is wide and deep and currently—as of the 2020 census—includes 3.5 million people, or one in every seventy-two adults in the United States (Kaeble and Alper 2020). The number of people on probation has increased fourfold in the past four decades, which has led some to term the current era as one of mass probation (Phelps 2020). Concomitant with the growth of probation has been an increase in the costs assessed by the criminal legal system overall (Martin et al. 2018; Fernandes et al. 2019) and for probation supervision more specifically (Bannon, Nagrecha, and Diller 2010; Ruhland 2019; Brett, Khoshkhoo, and Nagrecha 2020). Costs assessed to individuals on probation are commonplace and can include a monthly supervision fee, as well as expenses associated with conditions of supervi-

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sion. Evidence is emerging to suggest that compliance with these costs can pose challenges (Brett, Khoshkhoo, and Nagrecha 2020), and failure to pay fines and probation costs can lead to additional sanctions including the extension of supervision and incarceration for noncompliance, among other outcomes (Friedman et al. 2022, this volume; Ruhland 2019).

During this time, there has been a growth in the use of private probation, a practice not often captured in studies of probation or official correctional statistics (Phelps 2020). Private probation is unique and separate from state or felony probation systems and is used predominantly for individuals convicted of misdemeanor, traffic, or ordinance offenses under the purview of local courts. Private probation is also distinctive in that it is managed by third-party, for-profit entities and often accompanied by conditions of compliance including drug testing, electronic monitoring, and specialty classes (Bellacicco 2013; Albin-Lackey 2014).

Unlike traditional probation, which was designed to provide community supervision in lieu of incarceration and based on a peer support model, many argue that private probation has become instead another way in which criminal legal institutions make money (Harris, Smith, and Obara 2019), as the burden to fund the system falls on system users (Rosenthal and Weissman 2007; Appleman 2016). Although state probation systems certainly charge people on probation for supervision and additional costs of compliance, these entities are typically funded more substantially by state tax revenues. Private probation companies, however, promise local jurisdictions that they will pay nothing for these services because all costs of supervising misdemeanor probationers will be covered by fees charged to those under supervision (Schloss and Alarid 2007). This dynamic highlights the distinct profit motive underlying private probation that is less pronounced for state agencies. Moreover, these costs of private probation are often hidden from view and are assessed without traditional due process protections, making them a part of the ever-growing shadow carceral state (Beckett and Murakawa 2012; Friedman et al. 2022, this volume).

In this article, we build on existing work on monetary sanctions and mass probation by documenting the process and related costs of private probation in two states, Georgia and Missouri. Data for the study come from a series of qualitative interviews conducted with individuals with legal debt and criminal justice decision-makers as well as court observations. Three prominent themes emerge. First, the costs for private probation are often considerable, layered, and hidden. Second, the rituals of compliance are opaque and cumbersome, particularly for those without economic means. Third, given the barriers to compliance, individuals are often sentenced to disproportionate punishment relative to those on felony probation. Taken together, our findings show that the conditions of private probation are multilayered and insufficiently regulated, resulting in punishments that are disproportionate to the severity of the offense.

## COSTS OF PROBATION

More than half of people under correctional control are serving a term of probation (Maruschak and Minton 2020). Like the mass growth in prison populations over the past four decades, probation has grown to be commonplace, particularly among young Black men (Phelps 2020). Concomitantly, there has been a considerable increase in the use of private probation companies in the lower courts, which largely govern individuals charged with minor offenses such as misdemeanors and ordinance violations (Bellacicco 2013; Albin-Lackey 2014). Nationally, statistics on misdemeanor cases are lacking, but estimates show that the system is enormous, some 13.2 million misdemeanor cases are filed every year (Stevenson and Mayson 2018). Despite the long reach of misdemeanor probation generally and private probation specifically these systems are rarely studied. As a result, our review of the literature on probation costs focuses largely on state (felony) probation, except where noted.

The growth in probation has also been paralleled with an increase in the frequency of assessment and costs associated with legal financial obligations (LFOs). The use of fines associated with probation has grown, though the true scope of the phenomenon is unclear. For example, Katherine Beckett and Alexes Har-

ris (2011) find that forty-four states charge probation fees for felony supervision. Costs for probation vary widely, some probation departments charge a monthly fee for supervision that can range from $10 to $150, and others assess a one-time fee ranging from $30 to $600 (Brett, Khoshkhoo, and Nagrecha 2020).

Probation sanctions and associated costs can be a barrier to success for people under supervision for either a felony or misdemeanor conviction (Diller, Greene, and Jacobs 2009; Ruhland 2019). The emerging research suggests that many individuals on probation do not have the economic means to pay for monetary sanctions and that the costs associated with probation are stressful, given that nonpayment can be used as evidence of noncompliance (Ruhland 2019; Ruhland, Holmes, and Petkus 2020). The assessment of indigence is also not consistent and waivers do not appear to be granted routinely (Harris et al. 2017; Link, Hyatt, and Ruhland 2020). Unpaid costs can lead to incarceration or additional sanctions (Colgan 2014; Heaton, Mayson, and Stevenson 2017; Ruhland 2019). Further, time requirements are considerable because individuals must attend regular meetings with correctional staff, judges, and clerks (Evans 2014; Doherty 2016). In short, probation costs can exacerbate the harms of community supervision and are magnified for those without financial means (Brett, Khoshkhoo, and Nagrecha 2020).

These dynamics are intensified in misdemeanor courts, where private probation companies provide supervision in at least a dozen states (see table 1). Private probation departs from traditional state-run probation systems in several ways. First, individuals sentenced to private probation are responsible for all probation-related costs, including any courses or treatment services required as conditions of supervision, resulting in what some call an "offender-funded system" (Ramachandra 2018). Some state statutes explicitly mandate that the costs of probation should only be paid by the individual—without support from the state, which is different from felony probation and often leads to higher supervision costs for clients (Schloss and Alarid 2007). In Missouri, for example, state law indicates that "neither the state of Missouri nor any county of the state shall be required to pay any part of the cost of probation and rehabilitation services provided to misdemeanor offenders."[1] Scholars contend that the costs for private probation are larger than those of traditional probation, but most courts do not track the amount private probation companies collect in fees or mandate reporting by agencies (Teague 2011; Albin-Lackey 2014).

Second, although supervision costs are common to probation, evidence is emerging to suggest that individuals supervised by private probation companies are more likely to be assessed specialty fees for elements of supervision such as mandated treatment, electronic monitoring, and drug testing (Albin-Lackey 2014; Latessa and Lovins 2019). Individuals supervised by private probation departments have reported that they felt that they were being threatened with revocation and additional sanctions for the inability to pay and subject to inappropriately aggressive and hostile collection tactics (Albin-Lackey 2014; Shannon 2020).[2]

Third, individuals on private probation are not offered the same procedural protections as those under state supervision. Misdemeanor cases are typically not covered by *Bearden v. Georgia,* which prohibits probation revocation solely for failure to make payment (Williams, Schiraldi, and Bradner 2019).[3] In addition, individuals in municipal courts are rarely afforded the services of a public defender given that cases that typically do not result in incarcera-

1. Revised Statutes of Missouri (RSMo) § 559.604 (2017). In Georgia and Missouri, some municipalities have made the decision to manage their own probation services locally, but the lack of state funds for these services makes the two systems fundamentally different.

2. This focus on collections with the threat of extended sanctions and disciplinary control is not dissimilar to the nineteenth-century history of working-class industrial life insurance in Britain that involved agents of private fraternal insurance companies extracting premiums from poor families while ostensibly, though debatably, inculcating them with the value of thrift (see O'Malley 1998).

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

tion, like those on private probation, are not afforded representation (Alarid and Schloss 2009). Finally, oversight of private probation companies is far less than of traditional state-run systems (Albin-Lackey 2014; Harris, Smith, and Obara 2019; Montes and Mears 2019). Even in states with a formal state oversight system in place, such as Georgia and Tennessee, evidence suggests that further structure is needed and that the current private probation system puts individuals on probation at risk (Wilson 2018).

## RITUALS OF COMPLIANCE IN MUNICIPAL COURTS

Emerging evidence suggests unique procedural costs of punishment in municipal courts (Natapoff 2018; Mayson and Stevenson 2020). Researchers have documented an arduous process of punishment in misdemeanor courts because people must undertake a significant burden to comply with formal legal proceedings, which often includes a performance to offer evidence that they take responsibility, or display accountability for the offense (Kohler-Hausmann 2013, 2018; Martin, Spencer-Suarez, and Kirk 2022, this volume). The private probation process is particularly opaque and the rituals of compliance are more involved (Teague 2011), yet oversight of the system is scant given what many perceive as the low-stakes nature of municipal courts (Huebner and Giuffre 2022, this volume; Mayson and Stevenson 2020). Individuals also face many barriers to adherence to court mandates, such as transportation, which further complicate the process (Cadigan and Kirk 2020).

### Proportionality of Private Punishment

One key goal of an equitable and appropriate criminal justice system should be to allocate sentences and judgments that are proportional to the gravity of the offense. Legal scholars Norval Morris and Michael Tonry (1990) argue that a void separates probation and prison sentences in the United States in which individuals on the fringe of these two sentences are not appropriately considered (see also Petersilia 2003). They contend that probation in general is an attempt to use community supervision to account for individuals who occupy this disciplinary lacuna, but the result is an often misguided and poorly adjudicated series of sentences that fail to rehabilitate the individual effectively. Probation was originally designed as an alternative to prison and a way to provide rehabilitative services to people in the community (Corbett 2015). The net of probation, however, has widened bringing people under the supervision of the carceral state who would have never been subject to incarceration (Phelps 2020).

The challenge of proportionality is particularly evident in misdemeanor courts, especially those that engage private probation systems. Scholars have argued that private probation, when imposed on individuals with misdemeanor convictions, is used for the wrong group of people and implemented in such a way that predictably leads to failure (Bellacicco 2013; Klingele 2013). In addition to the disproportionate costs of private probation, individuals under this type of correctional control are not offered the same safeguards and services, including housing or employment services, something that is commonplace with traditional felony probation (Bellacicco 2013). The use of private probation is disproportionately harmful to individuals with fewer economic means in that private probation agencies often criminalize such individuals' inabilities to pay the fees associated with their probation terms (Ramachandra 2018). The profit-driven nature of this system, in which the survival of private companies depends on the ability to raise revenue, means that individuals are less likely to be given a reprieve when they cannot pay (Teague 2011). Moreover, the practices of private probation companies are subject to very little scrutiny or oversight in most states, allowing profit motive to muddle access to reprieve when individuals cannot pay (Ramachandra 2018).

One illustration of the disproportionate nature of private probation is *pay-only supervision*, wherein individuals unable to pay their fines and court costs immediately are placed on court-ordered probation solely for monitoring and collecting court debt. The longer it takes individuals to pay off their debts, the more individuals must pay in supervision fees and the more time served on supervision, which in some cases can amount to more monetary

sanctions than originally ordered, inflicting great financial hardship (Albin-Lackey 2014). In this way, the payment process puts defendants' freedom on "layaway" until they have the financial means to comply fully (Pattillo and Kirk 2021, 2). Private probation also has a burdensome performative element in that individuals are required to make multiple trips to the courtroom to comply, whereas those with more economic means can remedy debt in one trip (Bellacicco 2013).

Overall, the goal of this work is to build on emerging scholarship on mass probation to document the role of private probation in lower courts, particularly around the economic and procedural costs of compliance. Our research question asks whether and how the dynamics of probation costs and rituals of compliance impact the proportionality of private probation sentences? We draw on evidence from interviews with 130 individuals sentenced to probation, ninety court decision-makers, and more than four hundred hours of court observations across two states.

## STUDY SITES

Data for this study come from two states, Georgia and Missouri. Unlike other states in the Multi-State Study of Monetary Sanctions, both Georgia and Missouri operate private probation systems in the lower courts. Even so, the legal and procedural nature of these systems varies between these two states, which allows for a more nuanced understanding of the use of private probation in practice. Although the true scope of private probation is unknown, table 1 provides insight into the nature of private probation in the United States based on our survey of publicly available documentation of private probation systems. At the time of this analysis, only twelve states had documented private probation systems. In our review, we find that most of the systems are managed at the county or local level under little state or systematic oversight. Many private agencies simply enter into private contracts with the court and have no formal reporting requirements. In contrast, some states, including Georgia, have implemented oversight bodies. For example, Tennessee has developed a Private Probation Service Council, the stated goal of which is ensuring that uniform professional and contract standards are practiced and maintained by private corporations, which are regularly audited.

Most private probation agencies are allowed to charge, at minimum, $30 per month, although two states, Tennessee and Alabama, allow for means-tested financial assessments. The term of supervision traditionally lasts for two years, although variation is substantial. Legislation rarely addresses the costs of services and treatment required by the court, and except for Michigan, little, if any state funding is allocated to private probation services. Again, Missouri has designated in state statute that all costs of private probation should be covered by the defendant."[4] The following discussion describes how these elements manifest in the study communities.

### Missouri

Individuals placed on probation for a felony are supervised by the Missouri Department of Corrections; individuals with misdemeanor or ordinance violations are disallowed by statute to be supervised by the state probation and parole officers. In 1992, as a cost-saving measure, the state of Missouri passed legislation allowing for private entities to provide probation services in municipal courts.[5] Some municipal courts in the state have elected to partner with private probation agencies; others use local municipal or county staff. No systematic accounting of the number of private probation organizations is undertaken.

Private organizations that wish to provide probation services must make an application with circuit courts, but the law provides no guidelines for the approval of an agency, leaving each court to develop its own. Contracts can be in place for three years, and there are no statutory requirements for the qualifications of program staff. The only caveat is that the agency and a judge or elected official may not

4. For more information, see Intervention, "Criminal Justice Services," 2021, https://www.int-cjs.org (accessed August 10, 2021),

5. RSMo § 559.600.

**Table 1.** States with Authorized Private Probation Services

| State | Maximum Fee Cap | Oversight Body | Legislation on Private Probation | Maximum Supervision Length |
|---|---|---|---|---|
| Alabama | $40 per month (25 percent of gross monthly income cap). | Contract with county and courts. | None | 2 years |
| Arkansas | $35 per month | No identified regulatory agency | § 16-93-306 (8.C.2) | 2 years |
| Colorado | $50 per month | Colorado Division of Probation Services | CO Rev Stat § 18-1.3-202 (2016) | 1 year |
| Florida | No less than $40 per month | Contract with courts. Private entities must be registered with the board of county commissioners and file quarterly reports (948.15(4)) | 948.15(2) | 1 year, if alcohol-related, 6 months for other charges |
| Georgia | None | Individual contracts with county or municipality governing body at the request of a judge; oversight by the Georgia Department of Community Supervision. | HB 310<br>SB 367<br>§OCGA 42-8-6 | One year per charge |
| Idaho | $75 per month | Contract with county and local courts | 31-3201D(2) | 2 years per charge |
| Kentucky | $52 per month ($50 + 4 percent surcharge fee) | Contract with district courts. Guidelines are provided in the Private Probation Agencies Requirements and Agreements form. | KRS 533.010(12) | 2 years or until restitution is paid |
| Michigan | $135 per month | Michigan Department of Corrections; county probation offices. “Field Operations Administration (FOA)” is the branch of MDOC responsible for parole and probation supervision. Courts retain legal control over the defendant’s status | Act 232 of 1953 allows for MDOC to “allow for the operation of certain facilities by private entities” | 2 years |

| | | | | |
|---|---|---|---|---|
| Mississippi | $55 per month | Contracts with lower courts. No oversight board | None | 2 years |
| Missouri | $60 per month | Contracts with lower courts. No oversight board. | House Bill 80 559,600 2019 | 2 years |
| Montana | No less than $50 per month | Contract with courts - must follow guidelines required in 46-23-1011 of the Montana Code Annotated 2019 (46-23-1001–46-23-1041) | 46-23-1005(2) Montana Code Annotated 2019 | 24 months for high-risk offenses |
| Tennessee | $30 per month (10 percent of net income). | Private probation agencies are supervised by the Private Probation Service Council | § 16-3-901 2012<br>Tennessee code established the creation of the Private Probation Services Council §§ 16-3-901–16-3-911 | 2 years |
| Utah | $30 per month | Division of Administrative Rules | R156-50.<br>Private Probation Provider Licensing Act Rule | 1 year for most offenses, 3 years for a Class A misdemeanor |

*Source:* Authors' tabulation.

have any relationship or mutual financial interest. State statutes have changed very little since the original legislation was passed, and Missouri does not require verification of fees collected.

### Georgia

Georgia law requires that all felony-level probationers be supervised by the state Department of Community Supervision but explicitly disallows the state from supervising misdemeanor probationers, who must be supervised by local or private entities instead.[6] Since 1991, Georgia law has allowed judges of county and municipal courts to contract with private corporations to provide probation supervision and collect money for misdemeanor probationers with unpaid monetary sanctions.[7] Currently, twenty-four private probation companies provide services in Georgia counties and cities.[8] Information is not publicly available on supervision fees and other costs assessed by these companies; however, media reports from Georgia cite monthly supervision fees between $25 and $45 in addition to start-up fees ($15) and daily fees of $7 to $12 for electronic monitoring (Rappleye and Riodian-Seville 2012). According to the Council of State Government Justice Center (2016), private probation companies in Georgia collected $121 million in fines, fees, restitution, and other payments. In 2015, in response to the growing number of legal cases filed against private probation companies in the state, the Georgia legislature created the Board of Community Supervision to provide oversight to misdemeanor probation in the state.[9]

Georgia courts can sentence people convicted of misdemeanors to pay-only probation solely for the inability to pay the fines and fees owed at the time of sentencing.[10] The only service provided by probation officers, in this case, is the collection of payments toward the debt. The statute specifies that supervision fees for pay-only probation must not exceed three months of ordinary probation supervision fees and that collection of any probation supervision fee terminate as soon as all court-imposed fines and surcharges are paid in full. A probation officer must file a motion within thirty days to terminate a defendant's probation sentence early once all money owed is paid.[11]

## METHODS

Data for this study were obtained from in-depth interviews with individuals with legal debt and criminal justice decision-makers as well as court observations in Georgia and Missouri as part of a larger study of monetary sanctions (Harris, Pattillo, and Sykes 2022, this volume). In total, 130 individuals with legal debt were interviewed; seventy in Missouri and sixty in Georgia. Interviews were conducted with forty criminal justice stakeholders in Missouri and fifty in Georgia and include defense attorneys (nine in Missouri, ten in Georgia), prosecutors (four in Missouri, six in Georgia), judges (thirteen in Missouri, sixteen in Georgia), and court clerks (eight in Missouri, seven in Georgia). We also interviewed probation and parole officers (twelve in Missouri, eleven in Georgia); two of the interviews in Georgia and one in Missouri were with individuals who supervised private probation clients. More than two hundred hours of court observations were conducted at both research sites. Individuals with current legal debt were eligible for the study, and participants were recruited using several methodologies. The research teams developed flyers

6. Official Code of Georgia Annotated (O.C.G.A.) § 17-10-3 (2010). Exceptions are made if a person is under felony supervision but also has misdemeanor convictions

7. O.C.G.A. § 42-8-100.

8. See Georgia Department of Community Supervision, "Misdemeanor Probation Oversight," 2021, https://sites.google.com/a/dcs.ga.gov/department-of-community-supervision2/provider-information-list (accessed August 10, 2021).

9. State of Georgia, House Bill (HB) 310 (2015).

10. O.C.G.A. § 42-8-103.

11. O.C.G.A. § 42-8-103(b).

that were distributed to state probation offices and local service providers, and notices that were placed on Craigslist and Facebook. Interviews lasted approximately one hour and were conducted at local service agencies, probation and parole offices, libraries, and other local establishments. Criminal justice decision-makers were recruited through personal contacts and snowball sampling (Biernacki and Waldorf 1981).

Individuals with legal debt and criminal justice stakeholders were interviewed using a semi-structured interview protocol (Harris, Pattillo, and Sykes 2022, this volume). We did not query participants with legal debt or stakeholders specifically on the use of private probation, although we did ask about a range of sanctioning more broadly, including traditional felony probation. The themes described here were identified organically as part of our probing on the costs of contact with the criminal justice system.

## ANALYSIS

We analyzed all of the data using a modified grounded theory approach, relying on both deductive and inductive coding strategies (Lofland et al. 2005). We began by identifying key themes for consideration including community supervision, court-ordered programming, discretion, and consequences of nonpayment. We also did a keyword search for private probation. Following the initial round of coding, we constructed memos to identify themes and patterns (Charmaz 2006). Through this coding process, three primary themes emerged: the hidden costs of private probation, proportionality, and the rituals of compliance. We also used narrative and observational data to document the high cost and cumulative nature of probation, overall, that provides context to the two main themes. During further rounds of coding, we identified additional themes that centered on the performative nature of compliance and the collateral consequences of private probation. We achieved interrater agreement through the consensus-building approach and documented counterfactuals to dominant themes (Miles and Huberman 1993; Charmaz 2006). We assigned pseudonyms for all participants.

## COST OF PRIVATE PROBATION

Probation agencies assess two classifications of costs: supervision fees and compliance costs. For felony probation, many of these costs are set by statute or statewide policy. For example, in Georgia, the monthly supervision fee is $32.[12] In contrast, monthly costs for private probation at the misdemeanor level, vary widely, are set locally by courts and providers and do not cover the costs of treatment and related programming. Compliance costs include fees for programming, such as substance abuse treatment and rehabilitative classes and drug testing, which are assessed by the judge as a condition of supervision. In both states, variation was substantial in the frequency and the nature of programming ordered and the requisite costs assessed by the misdemeanor courts.

Compliance costs were the most noted by participants. Municipal courts contract with third-party agencies to provide court-ordered treatment classes and other mandated services, and the costs can be substantial. In the lower courts in both states, we observed individuals being sentenced for misdemeanor offenses to a host of programs and treatment modalities including anger management classes, GPS monitoring, drug treatment, safe driving classes, community service, among others. For instance, one participant in Missouri reported paying $800 for anger management classes for a misdemeanor assault conviction. In Missouri, most classes, like participation in a victim impact panel, would cost $50 per session and have no agreed-upon duration. Other costs, such as a urinalysis, vary widely; in one Missouri municipality each screening was $20 and some participants were mandated to provide a sample biweekly. In Georgia, such costs also vary substantially. In one misdemeanor court, ten days on electronic monitoring cost the defendant $10.50 per day. Driving school for traffic convictions typically costs defendants $40 or $50 for a six-hour course, depending on the jurisdiction. Anger management courses run $35 per session and total $700 for a ten-week, twice

12. O.C.G.A. § 17-15-13; O.C.G.A. § 42-8-34.

per week course, as required in one of the Georgia municipal courts we observed.

Individuals are often sentenced to multiple sanctions, all with different costs and requirements for compliance. During our observations of a Missouri municipal court, we documented the case of a forty-year-old female. She indicated to the judge that she was on disability, but a waiver of fees was not offered. The complicated nature of punishment is detailed in this court observation.

> The defendant pled guilty to trespassing and stealing, had priors, and asked the judge whether she could get on a payment plan because she was on disability. For the trespassing case, the defendant was sentenced to pay a $250.50 fine. For the stealing case, the defendant was sentenced to two years' unsupervised probation. The defendant, as a condition of probation, was ordered to pay a $350 fine plus court cost, complete forty hours of community service (which could be set up by the court, through the city or a nonprofit organization), and return to court in November, not violate probation, notify court of change of address, not to go to Walmart, attend shoplifting class, and pay $50 a month for supervision costs.

The exchange was one example of the layered nature of sentencing in municipal court. The participant will be responsible for $1,200 in supervision fees over the term of the sentence, costs associated with shoplifting classes, and fines and court costs, which altogether will likely total more than $2,000 and be paid on a disability stipend. Compliance also required a substantial time commitment, which included attendance at classes and forty hours of community service, and the failure to consider the physical needs of the participant is a common theme echoed in work of this type (Cadigan and Smith 2021).

Participants also expressed challenges complying with supervision costs. Even small fees were hard to pay when individuals were juggling multiple financial responsibilities. Compliance with these rituals compound on themselves and conflicts with other obligations. Caroline described how her experience on probation in Missouri included numerous mandated fees and was a challenge to balance everyday costs and compliance: "I mean like, the supervision fees and stuff are what, because that's $30 a month and I have it for five years, so that's $1,800 alone. So it's just, for being someone like me that can't get a job, it's really hard, especially having three kids, being a single mom."

Cade echoed Caroline's challenges in paying costs given childcare responsibilities. Cade knew that he wouldn't be discharged from private probation until he paid the full amount of his fine, but he often had to choose between making financial payments and providing for family: "Yeah, he [the judge] was just, 'Why you ain't paid?' 'Man, I got four kids. I'm paying bills and it's hard. It's rough.' He like, 'Well, try to get it something paid. Blah, blah, blah, if you want to get off probation. That the key to getting off is paying your fine.' Life is a struggle."

Even small fees were hard to pay given that participants were often juggling multiple financial responsibilities, common themes that emerge in other studies of individuals under correctional control (Pleggenkuhle 2018; Link 2019; Shannon 2020).

## HIDDEN COSTS

Individuals on supervision and decision-makers we interviewed argued that because private probation companies were profit focused, conditions of compliance were ordered to help cover the costs of operations or increase profits, or both. The costs for private programming, particularly treatment classes and services, were often not described to participants at the time of sentencing. For example, many courts had a list of go-to programs, which potentially limits competition in this space and may increase the potential for conflicts of interest.

Drug treatment was the most common sentenced sanction associated with private probation. A local attorney in Missouri discussed the frequent use of private probation for "virtually any" municipal drug case, which often involves the possession of a small amount of marijuana. He explained, "if you get locked up on a drug charge, more than likely than not you're going to have at very minimum a requirement that you sign up for the random drug screening program with private correctional services." Indi-

viduals are randomly screened and can be called six days a week and asked to provide a sample within a three-hour window. If they are not able to provide a sample or the test is positive, the infraction is reported to the judge and a violation hearing is scheduled. Further, in both states, we observed that many participants were ordered to complete regular drug testing, even if the crime was not drug related or the individual did not indicate that substance use motivated the crime.

In both states, the process of determining substance abuse treatment is outsourced to a private treatment provider who has the ultimate authority to mandate the length and nature of the treatment and requisite costs. This assessment process was unclear to litigants, and most agreed to participate without the assistance of legal counsel. A municipal court judge from a midsize community in Missouri described the process he uses to order individuals to treatment: "If they see somebody they think has an issue that needs to be addressed, then we'll send them to get an assessment. There's three or four providers around here close. Get an assessment and sometimes it says come back and just do some extra counseling. Sometimes it says, kind of like, you need to maybe have a weekend intervention or some of that. Occasionally it'll come back that this person's got issues and needs long-term treatment, so they try to find a treatment program that can do that."

This judge perceived it as his duty to address the needs of individuals who came before him, even those apart from the nature of the criminal conviction. In practice, however, regardless of potential benefit from treatment, the programs were quite coercive and come with financial and time costs (Phelps and Ruhland 2021).

The forceful nature of such "care" is even more pronounced when individuals are supervised by private agencies that may be more inclined to enforce compliance for the sake of economic gain. Private probation also creates perverse incentives for increasing total punishment through its payment structures. In Missouri, for example, private probation companies are paid for violation reports, which leads to increased scrutiny of probationers' behavior and a greater likelihood of additional punishment via incarceration if violated. A state probation officer in Missouri believed that the private probation companies used this assessment process to add conditions for supervision that came with costs. As noted, private probation companies in Missouri are limited to charging $50 per month for supervision fees; they can, however, assess additional costs for drug testing and other supervision elements that increase the cost of supervision to the individual and potential profits for the company. A local state probation officer described the process: "There is a limit, but how they get around it . . . let's say for example a guy is on probation for petty larceny. What private probations do, they say okay you're on private probation now, we're administering . . . you have to do drug screen, and you have to do drug screen through us. And they add on all these additional services that the client is responsible for. And if the client doesn't partake in that stuff then they're in violation of their probation. And the next thing you know, they're going back to court."

As the participant explained, the costs of private probation are many and involve several requisites for compliance. This theme is echoed by individuals under private control. Charles, a participant from Georgia, expressed cynicism with the process and felt that the sanctions were economically focused: "They try to make you go through a whole bunch of stuff that you don't need to be going through, like anger management, other classes . . . All that extra stuff that you don't need to do all that. It was breaking a lamp. Why do I have to do all the extra stuff? They just trying to make money off you. That's all they try to do."

One Missouri defense attorney explained how this works relative to felony probation, which is run entirely by the state:

> The private company, because they get paid for every violation report, they are completely out to get my clients. They will violate them for any little slip they find, they'll file a violation report. The felony violation is probation and parole. So, they actually lose their funding if they violate a person, that person goes to the penitentiary. Then, the state funding that was going to probation

> and parole goes to the Department of Corrections. They lose money if they violate someone. It's in their best interest to work with them and not violate them when something small, when there are small transgressions. That's one of the things that was very interesting to me was that felony probation is just a better probation to be on than misdemeanor (probation).

The attorney contended that the private probation company was incentivized to violate clients, different from state probation. Given the potential personal and financial costs of a violation report, individuals being sanctioned for misdemeanors or ordinance violations potentially face an increased likelihood of failure simply because of the nature of the supervision regime. The findings comport with others of this type that warn against the use of private correctional systems that introduce financial incentives that may undermine the primary goals of correctional and increase the potential negative outcomes for individuals under supervision (Harris, Smith, and Obara 2019; Montes and Morgan 2020).

Overall, the costs of private probation are substantial. The complete cost of probation supervision is seldom announced in court, thus the full financial burden for low-level offenses often comes as a surprise to defendants, who are afforded little due process and provided even less clarity in this opaque system of multilayered costs.

## RITUALS OF COMPLIANCE

Participants on private probation also found it difficult to comply with sanctions that were often multilayered, time-delimited, and required frequent trips to court. A clerk in a rural Missouri municipal court described the procedural hassles that come with private probation: "They can put you on supervised private probation. They can make you take drug tests every week, they can make you do 250 hours of community service, they can make you wear, maybe, electronic equipment. In other words, probation can make you do things and restrict movement and activity."

A private probation officer in Georgia described how much of this performance (compliance with reporting) relates to ensuring monetary sanctions are paid: "I don't think it's that their behavior needs to be monitored. It's just so that they're keeping in touch and they're letting us know what's going on with getting the fines paid. . . . Usually it's gonna be, 'All right, have you sent your payment? When are you gonna do that? What amount can you send? Are you having trouble with this, what do we need to do?' Just to make sure that the case gets taken care of and closed out."

However, judges often set so many parameters of the probation sentence, which can potentially increase the challenges for the defendant. Evidence from court observations in Georgia highlighted this theme.

All of the defendants were sentenced to complete module 2 (the teen driving course), "a driving improvement program." The judge noted that the program should only take three weekends, though he gave all defendants four months to complete the program. He then gave possible excuses for not completing the program ("my dog died," "I had a demanding professor," "I had fall training," "I had spring rehearsals"). He went on to say that none of those excuses are valid given the amount of time he is allowing to complete the program.

The judge in this case minimized the time it would take to complete the course, which was the equivalent of six working days, for a municipal traffic infraction. In another observed court interaction in Missouri, the judge required thirty hours of community service within sixty days, as a condition of private probation, for a probation violation. The individual had yet to meet those requirements and the judge repeated the requirement and threatened jail time for noncompliance. In Georgia, we observed two judges in different jurisdictions who indicated that the defendant should buy a toothbrush to use in jail if they did not comply.

The judge addressed one defendant, a young Black woman, saying that he had the ability to fine her up to $1,000 and twelve months in jail. He then said, "if you come back having not completed the program, you don't have to worry about the fine, but you do need to bring a toothbrush."

Dale described a similar experience that he characterized as "harassment" as part of his

regular check-in with the judge: "If you ain't complying with everything they say you had to do for the paying a lot of money or doing all your community service hours, by they standards, like in a certain time, they make it, like, they be harassing you. Threatening you going to jail and doing, they taking you to court. That's fine. Take me to court. Ain't nothing going to change. You take me to court today, I'm still in the same situation. So you feel?"

Dale was mandated to attend multiple court dates, which he found extremely stressful because he was having trouble paying the requisite supervision fees and completing the community service hours. He felt that he could not possibly comply with community service and keep his job, and the time costs of attending court further diminished his available time. As his observations suggest, the numerous, sometimes competing conditions of supervision create a "piling on" effect by which probation and LFO sentences become onerous (Bing, Pettit, and Slavinski 2022, this volume; Uggen and Stewart 2015). Although he felt that the judge was trying to use jail time to encourage payment, he felt that without a fundamental change to his current life situation that he could not meet the time-delimited request (Martin, Spencer-Suarez, and Kirk 2022, this issue).

This participant expressed a willingness to accept some punishment for their wrongdoing but felt that being under subsequent supervision and paying LFOs was "ridiculous." We have many such examples from participants who said that one form of punishment is fair (such as fines only), but once they receive more than one punishment, such as a fine plus community service or jail, their punishment is out of proportion to what they had done. Many, like a participant from Georgia, felt that it should be "one or the other." "I don't like the fact that it's community service and the fine. I think they should make it one or the other."

This "piling on" effect can become even more cumbersome when an individual is under supervision by more than one probation agency. In Georgia, this is possible because felony probation supervision is state run but misdemeanor probation is locally administered, often by private probation companies. If an individual is sentenced to both felony and misdemeanor offenses in the same jurisdiction, they are frequently supervised by the state. But if convictions occur in different jurisdictions, such coordination is less likely. Chris described how having to report to multiple supervising agencies, both public and private, creates an untenable situation:

> At one time I had state probation, misdemeanor probation running at the same time. They wanted me to make payments here and they wanted me to make payments there, and I explained it to them, "I barely have enough money to pay you but they want me to pay them too. They want me to report here and they also want me to report over there. Both of y'all want me to be working." It's impossible to actually please everybody. Even if I was just reporting to one, again it's impossible to please your employer and the probation office at the same time. It's a big strain.

They point out that some people who have an understanding employer can find ways to manage the difficult balancing act. Chris captured the feeling of being torn between myriad competing expectations not only from multiple supervising agencies but also from employers as "like a constant burning torturous feeling." Maintaining employment is often a condition of probation and necessary for having the ability to pay off LFO debt. Yet, as participants explain, these conflicting pressures create a situation in which fulfilling these sentences is out of reach because "it is impossible to actually please everybody."

The process of compliance includes performative requirements which can also be taxing to defendants (Kohler-Hausmann 2013). Judges weighed heavily compliance with LFOs as a key consideration in deciding outcomes on probation. Paying LFOs is a significant indicator of overall compliance with probation, but "just paying something" can be sufficient (see also Pattillo and Kirk 2021). An individual on probation in Georgia described their experience. "They want you to pay something no matter what. They don't care if it's $10 to $100 but as long as you put something toward your fine or restitution it shows that you're trying." A similar event was observed in court in Missouri,

where attorneys frequently use adherence to probation guidelines as a signal for compliance. In court observations, a defense attorney asked that their client be released from private probation given his compliance with electronic monitoring: "[My client] says from May to July 2009 is when all of these priors took place. He cannot explain why the defendant did these during this time, must have 'gone crazy,' but he pled guilty and went to prison for those. He has been on (electronic) monitoring for two months now with no violations and has a job working 8 hours a day. He has shown the Court he should be dismissed from probation as he "can follow rules and be a productive member of society."

Adherence to other conditions that also incur financial costs, such as electronic monitoring, is even more important for demonstrating compliance. At the same time, noncompliance with the same conditions due to high costs or other factors was rarely considered. Thus, although the official reason for noncompliance is that they did not successfully complete their class or treatment, the real reason is that they could not afford to pay the fees. An attorney in Georgia highlighted this phenomenon: "Yeah, because they were ordered to complete that, and if it comes in that those classes come with fees and charges and they can't pay that and they get kicked out of class, well they're violating probation at that point."

Overall, we observed a bifurcated system. Defendants without means are expected to display contrition and accountability for their crimes through regular court appearances (Martin, Spencer-Suarez, and Kirk 2022, this volume); we consistently observed that these procedural performances of compliance were in fact routinely waived or avoided by people with economic means or legal representation. In fact, we observed people who were willing to pay more money for fines if it meant they could avoid the procedural hassle of coming to court again. Such interactions were not universal, however. Practices vary, but we did observe judges reducing economic sanctions in response to defendants' compliance with other terms of private probation. In neither state, was it clear when and how judges make the decision to reduce final obligations.

## DISPROPORTIONALITY OF PRIVATE PROBATION

Our data reveal that the principle of proportionality in punishment is compromised by the combination of probation and LFO sentences along three dimensions, especially when private probation supervision is involved: increased sentence length for nonpayment, collateral consequences, and exploitation. In misdemeanor courts, the intersection of private probation and LFO sentences compromises proportionality when it leads to longer sentences overall, particularly for petty offenses such as traffic violations or possession of a small amount of marijuana, for example. In both states, individuals who have money and can readily pay LFOs spend less time on supervision (if any) than those who cannot pay immediately. As a result, several mechanisms enable sentence length to be extended in order to ensure payment of LFOs.

In Missouri, judges can use the length of probation to encourage full payment of monetary sanctions. As one probation officer put it, "There are some judges who are very conscious of those costs. I've even had a judge tell me before that they're not going to let anybody off probation with owed fees, and that includes intervention fees or court costs." Cassie, a participant from Missouri, describes how the threat of extended probation led to borrowing money from her mother to pay off her LFOs: "The $2,000 I had to borrow money from my mom because it was pressing for me to be able to get released early and not extend my probation. I borrowed the money from her and then whenever I got my taxes this year I paid it back."

Georgia statute prohibits "tolling" or extending probation sentences for nonpayment of fines and fees. Nonetheless, we routinely observed judges sentencing people with multiple misdemeanor charges to consecutive rather than concurrent terms of probation in order to give them more time to pay. This workaround was often posed by court decision-makers as a form of mercy, as one Georgia judge explained: "The judge indicates that she wants to make all three probation sentences consecutive rather than concurrent (for a total of thirty-six months) in order to 'spread this money out' because of the defendant's pregnancy."

In both states, people convicted of misdemeanors can be placed on pay-only probation. This type of sentence is a way of de facto extending time on probation supervision because such individuals would otherwise not be placed on probation at all if they had the means to pay. In Georgia, individuals can be sentenced to up to twelve months on pay-only probation for each offense and stay on until they pay their LFOs in full or until twelve months expire. Being placed on pay-only probation was often framed by court actors, especially judges, as setting people up to succeed by giving them more time to pay. One judge in a high-volume municipal court we observed in Georgia said he was "glad to do it" after a defendant accepted his offer to be placed on private probation supervision for twenty-four months because she could not pay her traffic fines that day. However, for many, this system only served to entangle people in the system for longer periods and often bound people to greater surveillance and legal precarity (Pattillo and Kirk 2021). Our field notes in one Georgia jurisdiction provide an example: "Defendant pleads guilty to both counts. He is charged with $256 for the speeding charge and $1,506 for the drug charge. The case was processed quickly. 'Is twelve months enough time to get that paid off?' the judge asks. 'No, because I can't work,' the defendant responds. Judge says that he does not want to set anyone up for failure and attorney and agrees to twenty-four months on probation to get the fine paid off."

In Georgia, probation agencies can charge supervision fees only for the first three months. But, if fines are converted to community service then the supervision fee is reinstated, which in practice contradicts the provision of community service for those who are indigent.

The payment process can continue indefinitely in Missouri. Individuals in some of the municipal courts we observed were regularly placed on pay-only dockets. As long as the individual appeared in court, no formal sanctioning was applied beyond the continued "process as the punishment," whereby the individual is indefinitely tied to the courthouse. Pay-only probation was not a universal feature in Missouri. Some municipal courts actors elected to monitor payment in-house. Although individuals in these courts did face the procedural hassle of regularly returning to court, the additional third-party costs associated with private probation were not assessed.

Probation sentences can also increase an individual's total punishment exposure by exacerbating collateral consequences, including difficulty securing employment or housing. Credit problems are another byproduct of the pressure to pay off LFOs to fulfill the conditions of probation. Caroline from Georgia explained:

> I went ahead and put in for a credit card and I don't want to do that. I don't. But I feel like that's my only option to kind of walk away from it. It's not fair. And now I have to go through this whole situation where in two weeks I gotta come back to her and see if I do qualify for community service and if I don't qualify for the community service, yeah I'm probably just going to have to put it all on the credit card and just let them. I'll just pay it off on the credit card that way. And I don't want to do that cause I'm like, I'm trying my best to keep it clean and keep rising the score cause I want to get a home.

In this instance, and many others, both credit and securing housing are compromised as a result of having few options to pay LFOs in order to minimize time spent on probation (Pattillo et al. 2022, this volume). Lack of transportation due to license revocation as a condition of probation is another collateral consequence that limits defendants' ability to secure and maintain employment. One judge in a Georgia court explained: "If you don't finish your probation terms, it's going to be harder to get your license back. It may be because there's something substantive you haven't done, like you haven't taken your risk reduction class. But if you don't show up for probation, and you don't pay your probation fines and fees, and you don't do what you're ordered to do, it's going to be harder to get your license back, one way or the other."

In both states, private probation is frequently viewed as a form of exploitation by participants and even by some court actors. This aspect of private probation supervision undermines proportionality because the fees they

charge are perceived as out of proportion severity of the criminal offense. Moreover, individuals on private probation are not offered the case management and services that are part of traditional felony probation, and many questioned what the fees were used for. As one judge in Missouri put it, "I'm not crazy about some of the private probation companies just because they're making money, that's what their job is to make money. Somebody owns that company and they want to do it for profit." On a similar note, a state probation officer called private probation a "scam" and part of the "good ole boy system" because "their fees are exorbitant to what their costs are." Joe in Georgia described this critique from the perspective of someone on private probation supervision, "I mean it ain't, it didn't cost them nothing to . . . for me to make a payment, you know. Plus they get paid when you go to jail, so . . . you know, like seventy-five dollars a day, so I don't see where it costs 'em."

Overall, we find a striking contrast between the power of judges and other court actors to impose arduous sentences for low-level offenses and the lack of recourse available to defendants who were unable to comply because of the financial strain. Individuals who didn't have the means to comply were returned to court frequently, subjected to more intense scrutiny by private probation companies that have a profit incentive to increase costs, and often had the span of punishment extended, sometimes indefinitely (Pattillo and Kirk 2021). As Caroline, a participant from Georgia, put it, "I don't want to have to keep paying more money for more time. That's not fair."

## DISCUSSION AND CONCLUSION

Probation is commonplace and the costs associated with this sanction have increased in recent years (Ruhland 2019; Link, Hyatt, and Ruhland 2020), but much less is known about the processes and costs of private probation. This article provides insight into private probation in Georgia and Missouri where private probation is widely used in lower courts and most often imposed for misdemeanor, traffic, and municipal ordinance offenses. Given the growth in misdemeanor violations (Mayson and Stevenson 2020), this work highlights a unique element of correctional control that has largely been hidden.

Overall, we found many similarities between the two states in policy and practice of private probation. In both states, private probation costs are routinely imposed, sometimes hidden, and vary substantially at the local level. One key difference in costs is that Missouri law limits probation fees charged by private entities to $50 per month, but Georgia does not have any statutorily imposed limits on supervision fees for misdemeanor probation. By and large, rituals of compliance across the two states are similarly burdensome and expansive. We also found several important differences in terms of proportionality, at least in state policy. Whereas the Missouri statute allows for misdemeanor probation terms to be extended if fines and fees go unpaid, Georgia law prohibits the tolling of probation sentences for unpaid monetary sanctions. Purportedly, this limits the ability of decision-makers to add time to probation sentences. Yet we also observed judges imposing consecutive sentences for multiple charges in order to circumvent this limitation. In addition, recent reforms limit the number of months that individuals sentenced to pay-only probation in Georgia can be charged probation fees, whereas Missouri has no such statutory limit. Georgia has also recently formed an oversight board for misdemeanor probation within the state Department of Community Supervision, but Missouri lacks any statewide oversight of private probation companies.

In many ways, the results from the analyses mimic that found in studies of traditional felony or state-run probation systems (Ruhland, Holmes, and Petkus 2020). Supervision fees and compliance costs are regularly assessed and many individuals face challenges paying even the smallest of sanctions (Link 2019; Pleggenkuhle 2018). Individuals supervised on private probation are routinely assessed legal and financial obligations that can include court costs, supervision fees, and treatment costs, among others. Conditions of probation are also cumbersome and for many can be coercive, making compliance difficult (Brett, Khoshkhoo, and Nagrecha 2020).

However, private probation departs from traditional probation in several ways. First, the

costs and procedural requirements for private probation are often disproportionate to the nature of the criminal behavior being sanctioned. Individuals enter the municipal court system for minor offenses, including traffic and ordinance violations. Yet the totality of costs that can be assessed is quite large and in some cases surpasses financial assessments for felony probation. As Alexes Harris and her colleagues (2019) contend, the private probation process includes several "cost points" and the layered nature of sanctioning makes compliance difficult for those without economic means. For example, participants routinely noted that they were mandated to programming, such as safe driving classes or drug treatment, as part of the criminal sanction as well as to the costs of supervision. These programming costs were often not described at the time of sentencing and could be extended for long periods, further tethering the individual to the justice system (Pattillo and Kirk 2021). It is this shadow carceral state (Beckett and Murakawa 2012) that participants found most distressing. In fact, the private probation system is legislatively designed to be predatory: in many states, such as Missouri, it is mandated to be client funded, which shifts the responsibility for punishment from the state to the individual client, a theme that emerges in studies of other municipal court functions (Huebner and Giuffre 2022, this issue). The use of private systems also incentivizes extended control.

Second, little if any assessment of the ability to pay is undertaken in lower courts, which offered participants scant reprieve from payment. In our court observations, we rarely saw judges explain the costs of private probation or inquire about the defendant's financial situation. Costs for court-mandated programming were rarely described to litigants, and the financial situation was not considered by private companies, which furthered the economic indebtedness of participants. Noncompliance leads to compounded fiscal and procedural costs as well as sentence length, all of which lead to disproportionate sentences for minor offenses.

Finally, individuals on private probation have few procedural rights, even fewer than those afforded in state supervision systems. Individuals do not have the same legal rights and access to counsel they would have in a felony court (Williams, Schiraldi, and Bradner 2019). Instead, the procedural costs for some on private probation can be higher (Latessa and Lovins 2019). One example is pay-only probation that affords additional punishment to only those who cannot pay. These sentences can undermine the principle of proportionality by elongating the period of supervision simply for the inability to pay (see also Pattillo and Kirk 2021). In other cases, individuals on private probation are required to attend court on a regular basis, which often includes substantial procedural hassles, and time was often seen as a resource that could be controlled by the court but was often in short supply given the multilayered nature of the sanctions and the limited means of participants (Martin, Spencer-Suarez, and Kirk 2022, this issue). Taken together, these factors reveal several dimensions along which the costs—financial, temporal, and procedural—add up to sentences that far outpace the seriousness of the minor offenses that land individuals on private probation.

Several policy implications follow from this research, including the elimination of the use of private agencies for surveillance altogether. As stated, the current funding models provide incentives to extend probation and increase costs to the detriment of the individual (Harris, Smith, and Obara 2019). In the case of private probation, the costs are often disproportionate to the nature of the offense and exploitative. As Brittany Friedman and her colleagues argue (2022, this volume), eliminating monetary sanctions whenever possible includes decriminalizing traffic offenses that ensnare people in some states, including Georgia and Missouri, in extended periods of onerous supervision and additional costs that generate profits for private companies.

In terms of procedural protections, public defenders, for the most part, are not used in municipal courts. In court observations, it is clear that many citizens entering the courts, often for the first time, do not full understand their legal rights. We observed clients arriving at the wrong location, many did not have the required materials for their case (proof of insurance, financial documentation), and the re-

search team was often approached for assistance (Spencer-Suarez and Martin 2021). Individuals on private probation can be punished harshly for minor crimes yet not afforded due process protections. Moreover, private probation does not offer the same types of programming offered to individuals on state probation. The inequalities in the systems and lack of data on the potential efficacy of these models call into question the need for private probation in the first place.

If states are going to maintain probation systems for individuals in lower courts, then the oversight of private probation should be the same as that afforded to individuals; comparable procedural elements should be used with both groups, a theme echoed by others doing work in this space (Latessa and Lovins 2019). In terms of oversight, the Georgia General Assembly has recently implemented reforms that empower the state Department of Community Supervision to ensure that private and governmental misdemeanor probation agencies comply with state law,[13] including creating a Misdemeanor Probation Oversight Unit, reviewing the uniform professional standards and uniform contract standards, approving orientation training and continuing education for misdemeanor probation officers, and collecting quarterly data from misdemeanor (private and public) agencies. Despite reforms, the narratives documented by participants in Georgia and Missouri, a state with little oversight, were similar, which raises concerns over the efficacy of existing regulatory models.

This study provides a unique perspective on private probation services, but it is not without limitations. It centers on decision-makers in the court and corrections systems, and we were not able to collect information on individuals and companies who provide services and treatment to those involved in the criminal legal system. Despite many attempts in both states, we were not able to speak directly to many employees who provide private services. It is important to broaden the work of this type to capture the unique voices of service providers, first, to better understand the nuances of this work and, second, to document potential best practices in both public and private systems by comparing outcomes in this sphere of institutional corrections (Duwe and Clark 2013; Wooldredge and Cochran 2019).

The results from this research suggest that private probation is a regular part of the punishment regime for misdemeanors and ordinance violations in Georgia and Missouri and has a disparate impact on people with fewer economic means. Much remains to be learned about this element of control, but the results presented here suggest that the conditions of supervision are arduous and often include layered punishments that are hidden from regulation and disproportionate to the severity of the offense. Moreover, individuals with fewer economic means are tied to the system for a longer period, which reflects larger inequalities of the carceral system. Learning more about the system of private probation would shed light on the broader system of punishment as a whole (Montes and Mears 2019).

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# Justice by Geography: The Role of Monetary Sanctions Across Communities

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*Monetary sanctions are a ubiquitous part of court systems. Previous studies have focused largely on these sanctions at the state level or solely on large urban jurisdictions. However, court systems differ considerably across communities of varying population size, composition, and density. This article examines how differences in court structure and organizational dynamics in communities across the rural-urban continuum lead to differences in how court actors consider the role of monetary sanctions. Using interviews with court actors and ethnographic observations in communities across four states, we find that the practical and symbolic nature of monetary sanctions varied by the acquaintanceship density of the court and community. These interpersonal dynamics influenced courtroom considerations, monetary sanctions' relationship to local finances, and actors' positioning toward state-level policy. These findings emphasize the importance of court and community context and structure in assessing the law-in-action both when conducting research and designing reform.*

**Keywords:** monetary sanctions, punishment, acquaintanceship density

Researchers have established that monetary sanctions are a ubiquitous and growing aspect of court systems across the United States (Harris 2016; Martin et al. 2018; Shannon, Huebner et al. 2020). Monetary sanctions, also referred to as legal financial obligations (LFOs), encompass the wide variety of fines, fees, assessments, and surcharges imposed on individuals

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in the criminal justice system. Following the fiscal pressures of protracted economic downturns, shifts in federal funding, and the high costs of mass incarceration, cities and counties have increasingly turned to monetary sanctions as a form of revenue generation, aiming to shift the burden from taxpayers to system users (Graham and Makowsky 2021; Katzenstein and Waller 2015; Martin 2020). Scholarship to date has focused largely on the consequences of the increased use of monetary sanctions for defendants (Pleggenkuhle 2018; Link 2019; Harris 2016). Less attention has been paid to the local factors that shape the meaning and application of monetary sanctions among court actors in the context of these broader shifts.

Early scholarship on monetary sanctions centered on state-level analyses because the amounts of fines and fees are often dictated by state statute (Harris et al. 2017). However, court systems are highly localized institutions and have significant discretion in how they carry out the law-on-the-books. Local court systems have some autonomy over sentencing decisions, supervision practices, and collection efforts (Olson and Ramker 2001; Shannon, Huebner et al. 2020; Pacewicz and Robinson 2020). Alexes Harris (2016) finds that courts in Washington varied considerably in their use of monetary sanctions in ways that were not explained by the nature of the offense, statute, or defendant characteristics, but rather reflected different localized "punishment cultures." In addition to local norms and cultures, structural variations of communities and court systems result in distinct constraints in fiscal resources, time, and personnel that impact how justice is performed and enacted (Cebulak 2004; Pruitt et al. 2018; Statz 2021). For example, relative to court systems in large cities, courts in rural and suburban areas tend to have fewer employees, more limited resources, such as fewer public defenders, probation and supervision services, and less programming such as diversion or specialty courts (Huebner, Kras, and Pleggenkuhle 2019; McDonald, Wood, and Pflüg 1996; Pruitt and Colgan 2010; Weisheit, Falcone, and Wells 1999; Statz 2021). We add to this growing scholarship by exploring the influence of these structural and organizational features on monetary sanctions.

Although courts across the United States share some basic features, it is well recognized that local community contexts shape many of the interpersonal dynamics relevant to case outcomes (Ulmer 2019; Ulmer and Kramer 1998; Statz 2021). Communities vary greatly in ways that are difficult to classify. One key axis of variation is acquaintanceship density, which can be used to understand differences across rural, suburban, and urban communities. Acquaintanceship density is defined as the proportion of community residents known to individuals or the degree of familiarity between residents (Weber 1958; Freudenberg 1986). Although it is not the only difference between these types of communities in terms of how the law is carried out, existing legal research, as well as research on monetary sanctions, has highlighted the importance of interpersonal dynamics in court systems through the conceptualization of courts as "inhabited institutions"—which are driven by both the motivations of individuals (Ulmer 2019; Martin, Spencer-Suarez, and Kirk 2022, this volume; Smith, Thompson, and Cadigan 2022, this volume) and the shared goals and norms of courtroom "workgroups"—or members of the court tasked with carrying out the court process (Eisenstein and Jacob 1977; Haynes, Ruback, and Cusick 2010). We extend these two complementary lines of research on acquaintanceship density and courtroom workgroups to understand courts as both inhabited by actors with particular sets of norms, practices, and expectations and as nested within communities that impose external constraints and structures that impact justice processes.

In this article, we explore the relationship between monetary sanctions and interpersonal and structural dynamics of courts and their respective locales, comparing across a spectrum of community population size and density. Court actors in these different community types varied in their conceptualizations of both the practical and symbolic nature of monetary sanctions. Using acquaintanceship density as a lens to view community and structural differences reveals that community context matters in courtroom interactions surrounding monetary sanctions, considerations of local finances, and court actors' perceived agency and discretion. These differences in LFO regimes

have consequences both to defendants and to local actors' support for reform efforts. Our findings draw on courtroom ethnographies and qualitative interviews with courtroom actors across four states: Georgia, Illinois, Minnesota, and Missouri.

We add to the existing literature in several ways. First, much of what is known about American courts is confined to urban jurisdictions. This research explores further the role of community size and relations in court proceedings. Second, exploring how court actors understand the role of monetary sanctions outside of imposing punishment has serious implications for the success and well-being of defendants. Monetary sanctions reproduce inequality both through the financial burden they impose (Harris 2016; Bing, Pettit, and Slavinski 2022, this volume; Boches et al. 2022, this volume; Harris and Smith 2022, this volume) and through the court's efforts to collect and manage this debt (Cadigan and Kirk 2020; Martin, Spencer-Suarez, and Kirk 2022, this volume). Our findings speak to the importance of considering organizational structure and context when assessing the law-in-action, particularly in examining sanctions that are motivated by multiple incentives, both punishment and funding, as is the case with monetary sanctions.

## COURTS, COMMUNITIES, AND ACQUAINTANCESHIP DENSITY

Courtrooms and courthouses are at their core professional organizations, with groups of actors who more often work in cooperation than in conflict (Eisenstein and Jacob 1977). Researchers have found that organizational dynamics at the county or jurisdiction level, such as the relationships and power dynamics between court actors, are particularly important in translating policies and statutes into individual case outcomes (Ulmer 2019). In viewing the courts as organizations, the criminologist Jeffery Ulmer draws on the concept of "inhabited institutions" to detail "how organizational participants constantly interpret and make sense of rules and structures" (2019, 484). Ulmer's research emphasizes the need to examine interpretation, culture, and court processes to understand sentencing outcomes. Several scholars have begun to turn toward the inhabited institutions perspective when examining differences in the imposition of monetary sanctions (Martin, Spencer-Suarez, and Kirk 2022, this volume; Shannon, Harris, et al. 2020; Smith, Thompson, and Cadigan 2022, this volume).

In a similar vein, scholars have conceptualized groups of court actors as workgroups who share similar goals of doing justice, managing cases, and processing defendants and therefore develop routines and norms to accomplish these goals quickly and efficiently (Eisenstein and Jacob 1977; Eisenstein, Fleming, and Nardulli 1988; Galanter 1974; Metcalfe 2016; Haynes, Ruback, and Cusick 2010). These workgroups result in the maintenance of micro-level norms and legal interpretations over time and across cases (Eisenstein, Fleming, and Nardulli 1988; Smith, Thompson, and Cadigan 2022, this volume; Ulmer 2019). They also differ across courts that vary in their social, political, and organizational contexts (Dixon 1995; Ulmer 2019). Significantly, they are influential in determining the sum of monetary sanctions imposed, the amount of time allowed for repayment, and the norms surrounding collection strategies (Martin, Spencer-Suarez, and Kirk 2022, this volume).

Prior work has established that broader community contexts influence interpersonal dynamics within the courtroom, but less attention has been paid to the relevant dimensions and distinguishing features that shape courtroom processes and outcomes. Differences in population size and density—which roughly correspond to differences in rural, urban, and suburban designations (Butler and Beale 1993; Isserman 2005; Tickameyer 2000)—shape the salient concerns and priorities of the court. Thus, even if cultural orientations toward criminal justice and punishment are similar, variation across communities in their structure, size, and resources can affect organizational dynamics and punishment outcomes (Lichter and Brown 2011; Beckett and Beach 2021; Eason, Zucker, and Wildeman 2017). Larger court systems have been found to bring greater opportunities for bureaucratization (Feld 1991; Hagan 1977). Smaller ones often have more stable workgroups made up of more "regular, repeat players" (Eisenstein, Fleming, and Nardulli

1988; Galanter 1974; Metcalfe 2016; Strauss 1993). Policing, prosecutorial, and defense resources may be limited in smaller communities, as is the ability to impose alternative sentences such as community service and drug treatment (Pruitt et al. 2018). Taken together, these differences in structure and resources alter how justice is enacted.

One distinction between communities of different population sizes and densities is the concept of density of acquaintanceship, which refers to the proportion of community residents known to individuals (Weber 1958). Early work on acquaintanceship ratios theorized links to individual-level outcomes (such as psychosocial isolation). William Freudenberg (1986) was among the first to consider the importance of density of acquaintanceship at the community-level. He argues that antecedent characteristics such as population size and density, as well as population dynamics such as residential stability and ethnic homogeneity, could alter the extent of anonymity and acquaintanceship among residents. Subsequently, the density of acquaintanceship shapes how communities cooperatively address community problems, secure public resources, and impose social norms (Flora et al. 1997; Sampson and Groves 1989).

Research generally suggests that despite substantial economic and demographic transformations, residential mobility is lower in rural communities (Fitchen 1994; Foulkes and Newbold 2008; Thiede, Kim, and Valasik 2018). Where populations are smaller, they are more likely to have higher kinship ties and acquaintanceships (Flaherty and Brown 2010; Freudenberg 1986; Weisheit, Falcone, and Wells 1999). Small populations also increase the likelihood of "role homogeneity," defined as the extent to which community members interact with each other across a number of identities and roles (Flora et al. 1997). In other words, the linkages between persons are reinforced across several daily interactions. Finally, stability contributes to the networks of all communities. Thus, although urban residents report less intimate networks, residents in stable communities also indicate that their acquaintanceships are more expansive (Beggs, Haines, and Hurlburt 1996; Wilkinson 1984; Wirth 1938).

Acquaintanceship density is a useful lens through which to view differences in interactive court processes on several fronts. First, acquaintanceship densities operate as a pathway for both establishing social norms and resolving violations of those norms, often without the formal intervention of the criminal justice system. According to Donald Black (1976, 47), the degree to which people participate in each other's lives, also termed *relational distance*, shapes whether individuals activate the law, and more important, if such enactments are stylized as adversarial and punitive or remedial and conciliatory. Communities with more dense community ties may choose to resolve disputes (such as loud music, unleashed dogs, and so on) informally, shaping the likelihood that violating behavior enters the court system at all (Leverentz and Williams 2017; Singer 2014; Payne, Berg, and Sun 2005).

Second, acquaintanceship densities contribute to the organizational practices and cultures of the court (Black 1976). Kathryn Fahnestock and Maurice Geiger (1993) note that the interpersonal distances between court actors, as well as between court actors and defendants, generated greater informality in proceedings and, perhaps more consequentially, a longer time for case resolution. Courtroom workgroups in urban environments are relatively stable, often in response to a shared bureaucratic goal of efficient case processing (Ulmer 1995). In rural communities, court actors are more likely to know personally, not only the other court actors, but also the defendant and the victim (Cebulak 2004; Statz 2021). Thus, although anonymity combined with cohesive work groups leads to efficiency in the urban context, the literature suggests that dense and personal acquaintanceships between the courtroom workgroup and the community, when combined with cohesive court actors, also encourages negotiation and informality to resolve cases (Fahnestock and Geiger 1993; Worden and Clark 2019; Statz 2021).

Third, when faced with budgetary constraints, acquaintanceship density can also be a lens through which to examine how communities respond. From the broader frame of entrepreneurial innovation, Jan Flora and her colleagues (1997) argue that the ability of communities to become solvent in the wake of bud-

get shortfalls is dependent on the density of homogeneity of interpersonal networks, which they term *social infrastructure*. Small population communities often have a smaller tax base but need to provide and maintain the same essential buildings and services as larger communities (Tickamyer and Duncan 1990). Often, American municipalities seek to derive revenue primarily from nonresidents by attracting outside investment and sales taxes rather than through property or local income taxes, but communities do not have equal opportunities to shift this burden (Harvey 1989). In the context of neoliberal policy, the decision-sets available to community members depend on the historical and sociostructural features of the community (Brenner and Theodore 2005). For example, Josh Pacewicz and John Robinson (2020) point to decades of racial isolation in Black suburbs of Chicago as a limiting factor for developing new commercial activities. Thus social infrastructures may allow communities to mount a response, but the nature of this response is likely to vary across communities.

In the absence of fiscal opportunities, revenue generation through fines and fees has increasingly become the alternative source of sustaining revenue for local governments (Martin 2020; Fernandes et al. 2019). The precarity of funding streams, particularly as it relates to the judicial branch, results in a monetary myopia, where revenue takes priority over other community needs and goals (Martin 2018). The increased use of monetary sanctions as local revenue generators often tilts the costs of the court system toward marginalized communities that are least able to pay (DOJ 2015; Henricks and Harvey 2017; Brenner and Theodore 2005; Page and Soss 2017; Rios 2019).

Certainly, acquaintanceship is not the only dimension along which communities of different size categorizations may differ. For instance, sociologists have identified differences in community characteristics that range from socioeconomic and demographic patterns to social attitudes and behaviors (Beggs, Haines, and Hurlbert 1996; Glenn and Hill 1977). Although differences across community types may be vast, and though they can also contribute to differential court outcomes across place, prior work argues that acquaintanceship density is an important contributor to variation in court processing and outcomes (Beggs, Haines, and Hurlbert 1996; Glenn and Hill 1977). The nature and functionality of a community's acquaintanceship density—characterized here across rural, urban, and in some cases, suburban distinctions—shape the entrance of cases into the system (normative expectations), the handling of cases within the system (courtroom workgroups), and the governmental adaptations to increasingly stringent budgetary concerns (monetary myopia). The role of acquaintanceship across a variety of community structures provides a more holistic understanding of the use of fines and fees as both punishment and revenue generation.

## DATA AND METHODS

This analysis draws on a subset of data from the Multi-State Study of Monetary Sanctions (Harris, Pattillo, and Sykes 2022, this volume). We include four states in our analysis: Georgia, Illinois, Minnesota, and Missouri. Following initial conversations among the research collaborators of the larger eight state study, we identified similar dynamics and differences between the communities studied in these four states that we wanted to explore further. In particular, these four states share the general trait of having a politically powerful major city (Atlanta, Chicago, Minneapolis, and St. Louis, respectively) and an associated metro area of more than a million residents, as well as a sizable rural area. These traits provide important analytical leverage in contrasting urban and rural experiences. These states also vary by region, court organization, and historical background. In greater Minnesota, for example, tribal lands span many rural counties (Stewart et al. 2022, this volume) and, as in Illinois, the courts are organized under a unified state court system. Georgia and Missouri, by contrast, are characterized by decentralized court systems (Huebner and Giuffre 2022, this volume).

In the original study design, we purposefully sampled court systems in a variety of communities across these states with the explicit purpose of including areas with different population sizes and that varied across political, social, and economic characteristics (for additional information on study design, see Harris, Pattillo, and

Sykes 2022, this volume). Leveraging this variation, we began with a broad research question: how do monetary sanctions operate differently across communities of varying population density and size? After examining the data within our states and discussing similarities and differences across the states, we sharpened our focus to the core question of how court structure and organizational dynamics in these differing communities affect how monetary sanctions are imposed and monitored.

Because of the variation in courts' jurisdictions across these different states, attempting to categorize the communities included in this analysis was particularly difficult. Within county boundaries, populations are distributed unevenly and scholars have documented the challenges in classifying urban and rural spaces, given that broad measures fail to capture its heterogeneity (Ellsworth and Weisheit 1997; Osgood and Chambers, 2000). The dynamics within courtrooms that we explore were most apparent at the two ends of this continuum, rural and urban, and so we discuss these communities at length.

The nature of the suburban communities across and between these states varied greatly, making it more difficult to draw comparisons. In some cases, we studied courtrooms in suburban areas of large urban counties and in others we included suburban counties that included small cities or towns.[1] We focus primarily on the urban-rural dichotomy in the following analysis. Although there are limitations with any geographic coding scheme, the use of qualitative data provides unique insight into the lived experience of courtroom actors and allows us to unpack some of the nuances of court operations that are not possible in a quantitative analysis of this type. We use the general terms *rural*, *urban*, and *suburban* to describe the communities studied. The communities we studied are quite heterogeneous; details on their characteristics are presented in table 1 (see also Harris et al. 2017). One limitation of this analysis is that additional community differences, other than acquaintanceship, may affect these courtroom dynamics. Such considerations, however, are beyond the scope of this article.

The specific sampling strategy varied across these four states due to differences in how the courts operate (Harris, Pattillo, and Sykes 2022, this volume). Illinois and Minnesota have a single unified court system organized by district and then county. Thus Illinois and Minnesota sample from a greater number of counties but a similar number of court systems as Missouri and Georgia. Courts in Georgia and Missouri are decentralized, with several levels of courts operating independently in counties and cities. In each community sampled in those states, we observed courts at each of the levels. Georgia's court system is organized by three levels—limited jurisdiction, general jurisdiction, and appellate, with five classes of trial-level courts that operate at the county or circuit level. In Missouri, we observed circuit courts, which primarily adjudicate felonies, and municipal courts, which hear cases involving misdemeanor, ordinance, and traffic offenses. We selected the metropolitan region of St. Louis for our study given the attention received by this community after the killing of Michael Brown and the subsequent investigations of the criminal legal system (DOJ 2015).

For this study, we used data from courtroom ethnographic observations and qualitative interviews with court actors including judges, attorneys, probation officers, and clerks. Across the four states, we conducted 910 hours of observations and 248 interviews. Both sets of data were coded using the master codebooks for the overall project (Harris, Pattillo, and Sykes 2022, this volume). We closely examined the following codes in the interview data: normative culture of the court, purpose of LFOs, system strain or efficiency, fiscal politics, defendant characteristics, and decision-maker personal networks, and types and amounts of LFOs. Similarly, we examined the following codes in the observation data: personal networks, neighborhood or community, types and amounts of monetary sanctions, ability to pay, compliance or noncompliance, descriptions of the courtroom, and familiarity among court actors. We

1. Such communities are akin to medium metro and small metro categories as defined by the 2013 NCHS urban-rural classification scheme for counties (Ingram and Franco 2014).

**Table 1.** County and Community Characteristics

| | Population Category | % Poverty | % Black | % Latino |
|---|---|---|---|---|
| **Georgia** | | | | |
| Urban county | >1,000,000 | 18 | 44 | 8 |
| Urban city | 200,000–499,999 | 25 | 52 | 6 |
| Suburban county | 100,000–249,999 | 20 | 4 | 33 |
| Suburban-urban city | 25,000–49,999 | 27 | 8 | 46 |
| Rural county | 10,000–24,999 | 28 | 50 | 7 |
| Rural small town | <10,000 | 36 | 36 | 9 |
| **Illinois** | | | | |
| Urban city | >1,000,000 | 23 | 32 | 29 |
| Urban-suburban county | 500,000–999,999 | 17 | 24 | 25 |
| Urban-suburban county | 100,000–249,999 | 5 | 7 | 17 |
| Rural-suburban county | 100,000–249,999 | 15 | 19 | 5 |
| Urban-suburban city | 50,000–99,999 | 12 | 6 | 11 |
| Rural county | 10,000–24,999 | 6 | <1 | 2 |
| Rural county | 10,000–24,999 | 21 | 6 | 3 |
| Rural county | <10,000 | 36 | 37 | 2 |
| Rural county | <10,000 | 23 | 32 | 2 |
| **Minnesota** | | | | |
| Urban county | >1,000,000 | 13 | 13 | 7 |
| Urban county | 500,000–999,999 | 17 | 12 | 7 |
| Suburban county | 100,000–249,999 | 7 | 5 | 4 |
| Suburban county | 100,000–249,999 | 8 | 6 | 7 |
| Rural county | 25,000–49,999 | 22 | 1 | 2 |
| Rural county | 25,000–49,999 | 10 | 3 | 8 |
| **Missouri** | | | | |
| Urban-suburban county | 500,000–999,999 | 9 | 25 | 3 |
| Urban city | 250,000–499,999 | 25 | 50 | 4 |
| Suburban-rural county | 50,000–99,999 | 17 | 8 | 2 |
| Rural small town | 25,000–49,999 | 19 | 4 | 8 |
| Suburban-rural community | 25,000–49,999 | 25 | 14 | 2 |
| Rural small town | 10,000–24,999 | 25 | 6 | 11 |

*Source:* U.S. Census Bureau 2014.
*Note:* 2014 American Community Survey five-year averages.

then contrasted findings and considered themes across the different community categories using memos we developed for each state. We have not included the names of these communities to ensure the anonymity of the interview respondents.

## FINDINGS

In the analysis, we use acquaintanceship density as a frame to understand how monetary sanctions are used and understood among court actors across community contexts and within courtroom workgroups. First, we describe how acquaintanceship density influences the organizational dynamics in the day-to-day management of the court and assessment of monetary sanctions. We then consider how local court contexts—conceptualized along lines of acquaintanceship density—influence court actors' perceptions of local funding mechanisms and their role and representation in state policymaking.

## Acquaintanceship Within the Courtroom

Consistent with research on courts as permeable institutions (Fahnestock and Geiger 1993), courtroom interactions were influenced by the nature of social relationships outside the courtroom. Acquaintanceship density, whether personal familiarity or lack of it, affected how amounts of monetary sanctions were determined, how defendants' ability to pay were considered, and how unpaid sanctions were managed.

### *Routinization and Courtroom Workgroups*

In urban jurisdictions, court actors cited typical courtroom workgroup routines and familiarity with each other's going rates for offenses when considering monetary sanctions (Eisenstein, Fleming, and Nardulli 1988). Rather than tailoring amounts based on individual circumstances or ability to pay, court actors fell back on broader routines and norms. Although these going rates were broadly observed in the case of monetary sanctions in both amounts and payment schedules in all jurisdictions (see Martin, Spencer-Suarez, and Kirk 2022, this volume), we observed them more frequently in urban jurisdictions. The sheer number of cases processed in larger courts and the limited time available to negotiate each case often resulted in little variation across defendants. Court actors in urban jurisdictions described being too busy to concern themselves with the specifics of monetary sanctions. A prosecutor in an urban Illinois court remarked, "We are so busy and overwhelmed here. The fines and fees is like the absolute least of our concern. I mean it really is." A public defender in an urban Missouri court described the sentencing process. "They read it [the financial sanction] off like it's matter of fact so I don't see any type of thought going into it. That's the same with the prosecutor's recommendation too. There's just a standard number that they shoot out."

Court actors were less likely to be personally familiar with defendants and often relied on broader and less individualized understandings of defendants' economic positions. Court actors expressed awareness that defendants were likely to be indigent and were less likely to impose discretionary fines. In Georgia, a judge in an urban jurisdiction described being creative in sentencing to avoid imposing an additional fine: "Most of our defendants are indigent. What's the point of assessing a fine? Some crimes statutorily have fines and it is so ingrained in this jurisdiction that we really just don't fine folks because they can't afford it that we tend to pronounce technically illegal sentences because for a drug trafficking offense we say it's 10 years to serve because that's the mandatory minimum and we forget to say it's also $100,000 fine."

Although some court costs, fees, and assessments were outside the discretion of the court, the presumption of indigency in urban jurisdictions often led court actors to more readily offer payment plans or community service as an alternative to payment to soften the impact of financial penalties. In urban state courts in Missouri, we observed judges regularly waiving fines if the defendant was sentenced to prison or had spent a period in jail. In one urban felony court, we observed a case in which the individual had spent 177 days in jail for a probation violation that was issued because of a new arrest for a drug crime. The judge agreed to time served and waived all costs except for mandatory court costs.

Similarly in Minnesota, urban court actors frequently waived portions of financial penalties, resulting in lower mean amounts of monetary sanctions in larger metro areas than in smaller rural communities or suburban areas. In our ethnographic observations, these interactions were often depersonalized. For example, a judge in a large urban Minnesota courtroom greeted a defendant by saying, "You are the first of many who I will see today, I know that you're taking this seriously. You know it is very dangerous when you drink and drive." In suburban courtrooms in the same county, however, judges sometimes showed more personal familiarity with particular defendants. In another drunk driving case, a suburban court judge asked, "Have we met before?" The answer was yes, on the defendant's previous driving under the influence conviction. "You know, I'm going to bug you because you were here last year and I told you not to do it again and you did it again."

In urban and larger suburban counties, each city may have its own prosecuting entity for misdemeanors and gross misdemeanors. In

contrast, the county prosecutor performs the city prosecutions in many smaller counties. For clients, this means that their cases must often be considered individually and are less likely to be considered jointly, as would often occur in larger jurisdictions. As one public defender told us,

> I'm talking about misdemeanors or gross misdemeanors, not felonies. Felonies are handled by the county. If you commit a misdemeanor or gross misdemeanor crime in [Suburb A], you will have court on Monday. No ifs, ands, or buts about it because that's the day that they have court. Let's say you committed a crime there. You drove without a license in [Suburb A]. Then, couple weeks later, you drove without a license in [Suburb B]. Well, then you're going to have court on Wednesday. They can't combine them, because it's two different prosecutors, two different days. Now, you have to come to court two separate times. Well, then you drove without a license again in [Suburb C]. Now, you're coming to court on Tuesday. You know what I mean? . . . They miss court because they were supposed [to] be in three different [places].

Overall, the urban courts had greater capacity to combine such cases but were more likely to be characterized by routinization, anonymity, and less individualization in the sentencing of monetary sanctions.

## Acquaintanceship Density as a Double-Edged Sword

In smaller communities, personal relationships were important in garnering flexibility and generating variation in assessing monetary sanctions relative to the going rates of larger jurisdictions. Court staff was pulled from a smaller pool of residents in rural communities and the social ties between legal actors were often stronger. In both our observations and conversations with court actors, we found that personal familiarity mattered in court decision-making. As a defense attorney in Georgia remarked, "I feel like when you're in smaller jurisdictions like that, your relationships are very important. I think it makes you have more options. I know lady justice is blind, but we all know that who you know sometimes helps your clients. I do think that, from what I hear from many other people, attorneys don't like taking cases here because they feel like their options are limited. I've not really had that experience there. I think I've been treated very fairly, and maybe it is because I was in that community for so long."

In this case, the attorney felt that she was given a better outcome because of her familiarity with the local workgroup, but was concerned that outsiders might not be received as favorably. Similarly, a public defender in Minnesota explained that though judges are inclined to be flexible when it comes to monetary sanctions, they are careful not to request leniency in every case to maintain the strength of the workgroup norms.

The smaller number of court actors and their strong ties to each other also led to a "stickiness" to cultures surrounding monetary sanctions because the very small number of decision-makers have a large influence on amounts and collection practices. Court actors typically held these positions for long periods. For example, in Illinois and Missouri court actors often cycled through the different positions, the public defender becoming the prosecutor and then later the judge within the same court or jurisdiction. In a rural Georgia jurisdiction, the public defender in one traffic court was the judge in a neighboring municipal court. Court actors were described as "related to everybody" and "born here and raised here," and the workplace as one where everyone "knows each other on a first-name basis." We also observed how routinization could be disrupted via personnel change in these counties. In Missouri, one long-standing municipal judge retired during the observation period. Court sessions that followed the retirement were noticeably more chaotic, defendants were generally more confused about procedures, and instances when the new presiding judge would depart from the city attorney's original recommendation, something rare under the former judge, were more frequent.

Although court actors across the rural-urban continuum were familiar with the economic health of their defendants in a broad

sense, in rural courts judges and attorneys were more likely to have personal financial knowledge about the defendant or their family. We observed that this acquaintanceship led to assumptions about ability to pay based on familiarity rather than on a consistent or standardized process. Community stability, and at times, intergenerational involvement in the criminal justice system led to both assumptions surrounding the case itself as well as financial capability. As a court actor in Minnesota remarked, "Oh, yeah. Yeah, I've had three generations, in some cases. I had the grandfather, I had the son, and I've got the daughter." Although this greater familiarity between court actors and defendants led to often a more personalized understanding of financial situations, it did not always result in lower financial penalties. Some judges had higher expectations of defendants they knew personally, and at times took a more patronizing approach. One rural judge in Illinois said, "Strictly based on his parents, he could probably get jobs working for about three or four different lucid senior citizens, mowing their grass and stuff, where he could have easily made more than that on a regular basis and still supported his meth habit. Why did he want to go to all that trouble? I don't get it. It's a culture that I don't think we understand or can't understand."

This familiarity sometimes led court actors to be less empathetic to the financial struggles of defendants. A Minnesota clerk observed that the culture in some of the rural districts tended to be "a little harder on people than in the metro area" as court actors in smaller communities were more likely to follow the letter of the law than was observed in urban communities. Alternatives to monetary sanctions, such as community service, were more scarce in rural areas. In one small court in Missouri, we observed that litigants were only given one option for community service if they could not pay. Individuals had to work at the county-run recycling center, but the facility was only open during traditional business hours and the nature of the physical work made it untenable for some individuals. This situation often left defendants in more rural communities with fines and fees beyond their reasonable ability to pay, with few options to escape the debt.

Anonymity did not necessarily lead to lenience in rural jurisdictions, particularly for nonresidents, who can be viewed as potential sources of revenue. Rural counties were often explicit in their desire to collect LFOs from nonresidents to shift the burden of revenue generation away from members of their communities, consistent with emerging research in this area (Pacewicz and Robinson 2020). These policies were most evident in counties that were home to major interstate highways or large events such as music festivals. A rural prosecutor in Illinois described taking advantage of truckers driving through, "some of these counties when they get a trucker on a construction zone ticket, they will just gouge them and get all the money that they can out of them." In Georgia, judges, particularly in traffic court, would assess fines and pay-only probation for drivers passing through but would not offer conversion to community service until the defendant had been on probation for several months. Conversely, in a municipal court within that county, the judge preferred to give local residents several months to attempt to pay off legal debt before placing them on probation. With local residents, court actors in this jurisdiction spent more time discussing the ability to pay and employment situations. Differential treatment in the LFO amounts imposed, collection practices, and consequences for nonpayment within this rural jurisdiction appeared to be related to differences in acquaintanceship between court actors and defendants.

Although acquaintanceship density aligned traditionally along the rural and urban continuum, we did observe one deviant case in the analysis. The municipal courts in the St. Louis suburbs share some of these traits in that the municipalities are tight knit and draw from a small number of court actors (see also Huebner and Giuffre 2022, this volume). Court actors often had a long tenure in the court, were pillars of the community, and had a wariness about outside control, which is consistent with work on acquaintanceship density (Fahnestock and Geiger 1993; Singer 2014). These small municipal courts had similar dynamics of court actors swapping positions. A judge in another part of the state described the court structure: "I heard

that you have a prosecutor in one county and I'm the judge in that county and then you're the judge in one county and I'm the prosecutor, well the city really, the municipality." This familiarity led to a distinct lack of any adversarial atmosphere in the courtrooms and routinization of decision-making, consistent with the urban courts. At the same time, the court actors took more time to hear the perspective of the litigant and, as in Georgia and Illinois, were often lenient with known members of the community while levying higher fines and costs on those who simply traveled through the community or attended a concert or other local event.

Overall, acquaintanceship mattered for how court actors thought about and enacted monetary sanctions in their courtrooms. In urban courts, mechanization of cases and relative anonymity of defendants led to going rates. Defendants were often presumed to be indigent, but few counties had the time for more formal determinations of ability to pay. Familiarity among court actors and between court actors and defendants in smaller courts did lead to more variation in the sentencing process, but personal assumptions and community ties led to sometimes uneven application.

## Economic Sanctions as Revenue Generation

Recent research suggests an increasing reliance on economic sanctions to fund local criminal legal systems (Page and Soss 2017; Rios 2019). Our findings indicate that this type of financial extraction is more common in lower courts and rural communities. Across the communities we studied, court actors' perceptions of the importance of monetary sanctions as a tool for funding local courts and governments varied. Whereas urban court actors felt disconnected from the finances of the county, the tight acquaintanceship density between court actors and local budget officials in smaller, rural communities contributed to the perception that court-imposed monetary sanctions were a critical source of court funding. In smaller counties, some court actors mentioned hearing directly from county board officials regarding revenue and community finances. This pressure affected how monetary sanctions were imposed and collected. Although we did find some variations in the aggregate amounts imposed across rural, suburban, and urban communities, differences more often resulted from actors' willingness to waive certain fines or fees and the degree to which actors pursued the collection of unpaid debt. This pressure was more often perception than a true balancing of the books, which is consistent with prior theoretical work (Tickamyer and Duncan 1990) and recent work by Kate O'Neil, Tyler Smith, and Ian Kennedy (2022, this volume), who found little county-level difference in the portion of budgets gained from monetary sanctions. Research indicates that judges in rural counties are more likely to sentence individuals to higher LFO amounts and punish nonpayment more harshly, but that increased poverty in these areas may not lead to greater collection (O'Neil, Smith, and Kennedy 2022, this volume; Stewart et al. 2022, this volume).

Monetary sanctions were conceptualized as having a clear dual purpose in the court system among rural court actors, both as a punitive sanction and as essential to local government functioning. A rural prosecutor in Illinois emphasized that though he did not consider the revenue when imposing the amount, he did acknowledge the necessity of financially supporting the court: "Well, we do have to assess fines and court costs in order for the system to function. I mean, there has to be an inflow of money in order to fund the court system too. I don't feel any pressure. I don't think that it's really appropriate to say, 'Well, how much money can we collect in this case? How much money can we make, in a sense, in this case?' I don't think that's appropriate. I think it should be what's the appropriate sanction or penalty for the crime that was committed."

A clerk in a rural jurisdiction in Illinois said, "The purpose of it [monetary sanctions] is to help the government function. County as well as state, how do I feel about it? I feel about that like I feel about everything else in the United States, it's the best we got right now, and until somebody comes by with a better improvement on it, it's the best show in town." Even if this pressure did not always translate to the amount imposed, it often did have an impact on both the strategies and alternatives to payment. In Missouri, nonpayment of economic sanctions was seen as a larger concern in rural areas. A

probation officer remarked, "If the judge is very strict on that, you know they use those funds to pay salaries for the county or whatever, I mean, they want that money paid because that's how the county operates. So some areas are different. Kansas City, I don't think that you're probably going to get anybody revoked up there for court costs." Court actors in rural jurisdictions more often equated unpaid court debt with issues of funding, both to their salaries and to the system. One superior court judge in a suburban Georgia community explained it this way: "I've always felt sorry for the judges in municipal courts. And some state courts, I guess. Maybe magistrate courts. Because the governing body keeps a close watch on how much money comes in." Court actors across communities were aware of these differences and there was a sense among these court actors that urban jurisdictions were less likely to pursue nonpayment and that there was not the same fiscal pressure from local officials.

Court actors in rural communities were often unaware of either the extent to which monetary sanctions actually were collected or the true impact on the county's finances, despite the consistent, perceived pressure to contribute to the system's funding. Nonetheless, regular efforts were made to try to collect money. A defense attorney in a rural Illinois community who was previously a state's attorney explained: "There were, I don't remember, let's say there's $200,000 of uncollected fine and costs. Yeah, I made an effort to try and collect those things. Most state's attorneys make an effort. It's difficult. That's why they entered into an agreement with this collection agency. How much revenue that's generating, I don't know. I never have seen the statistics for that. I think most state's attorneys because in the smaller poorer counties, yeah, they need the money and that money comes from criminal fines and costs."

Data were often poor or unavailable to courtroom actors as to how much courts collected through monetary sanctions. However, particularly in counties where budgets were tight, the general perception was that this revenue was locally significant and affected how court actors considered, imposed, and collected monetary sanctions.

Because fines and fees are often statutorily dictated, court actors used other avenues to try to buoy the finances of local courts. At times, they considered the financial incentives attached to different charges, particularly traffic charges, which led them to downgrade or upgrade charges to direct funds locally rather than to the state. In Georgia, a rural county traffic judge would routinely downgrade speeding tickets to avoid the imposition of a state-based "super speeder" fee that went to the Department of Driver Services. The judge would instead assess a fine that would be retained by the county. This decision also results in saving points on defendants' licenses that would otherwise jeopardize their insurance rates and potentially professional driving privileges. As one defense attorney explained, "Somebody can either pay the state super speeder or they can pay more locally, which generates revenue for them, and they'll reduce the ticket. That's typically where I see the local . . . mainly in probate courts, where they see it as an opportunity to generate revenue for them, rather than the state. Because they've reduced the tickets, so the super speeder, they pay the local folks what they would have paid in super speeder."

In this way, the court was responsive to the needs of the community and the client. Similarly, a rural prosecutor in Illinois related how counties will negotiate the downgrading of tickets for speeding in a construction zone ticket for higher fines: "So we try to be reasonable but we gotta pay bills too, so we try to make our money that we've got to make, but so it's like a fine balance between the two." In these examples, court actors express how they attempt to balance financing the country and enacting justice and punishment.

In Missouri, the structure of local monetary sanctions incentivized the use of pretrial detention in local jails using what are called "board bills." This is one of the key differences in urban and rural communities and has been the topic of substantial policy discussion in the state (Council of State Governments Justice Center 2018). These fees allow the county to charge for the cost per day for room and board in the jail. Court actors indicated that the cost varied greatly depending on the jurisdiction and could quickly become very expensive when coupled with other fines and fees defendants

owed. All jails can charge individuals for jail costs and there is a state reimbursement program as well. Rural jails double dip, and this is a substantial source of income for some rural sheriffs. A Missouri probation officer in an urban jurisdiction explained: "Some of the rural jurisdictions also put board bills in there. So if they're confined pretrial all their confining costs are rolled up in it, and those can go into the thousands of dollars, which is probably some of the costs that I have the biggest amount of heartburn for. Just because every time they go back for a revocation hearing they get locked up, that bill just gets ratcheted up . . . And it's just like a never ending . . . for some of our clients who can barely make ends meet, that's like debtor's prison."

Court actors understood that some rural jurisdictions had limited financial means and needed to recoup the costs of local incarceration. However, the sense among court actors was that perhaps these fees also incentivized these communities to revoke individuals on probation and incarcerate more frequently. These practices were not observed in Missouri's urban courts.

In contrast, court actors in urban jurisdictions did not see themselves as directly responsible for funding the system or their communities. They in fact felt further removed from the revenue-raising arm of local government, and this theme rarely emerged in conversations. Instead, some were skeptical of the destination of this money and less likely to see monetary sanctions as important to the sentence. A prosecutor in an urban court in Illinois remarked, "I don't know if it's helping with the budget or not. I don't know if it's hurting the people. If it's supposed to be some sort of deterrent, I highly doubt that it's the deterrent people think it is. I have no idea if that's in any way helped with the budget, with the automation, because we're so automated, all of that. I don't know." When asked whether they had a sense of where the money does go, the judge said, "No idea." Similarly, a defense attorney in the same jurisdiction said that it was not their role to help fund the government: "the money is for the government. Whatever crime was committed against society, there's no relationship between that and the money. You know the money goes into the government's coffers." In Minnesota, a prosecutor expressed dissatisfaction that rural counties paid close attention: "I guess out in some of the rural counties they actually count the money, so they put it on people, I don't know. I'm all for high taxes, myself. These people have a hard enough time to go. Wondering where you're going to sleep the next night, where your next meal's going to come from. That's enough to just drive anybody off their rocker." Urban court actors saw their jobs as separate from the revenue-raising county governments, were more detached from the economic workings of the community, and felt less pressure to support local finances. Viewing this dynamic through the lens of acquaintanceship, the social distance between urban court actors and local governments led to less pressure to consider the dual role of monetary sanctions in their day-to-day imposition and collection of these fines and fees.

Incentives both real and perceived to fund portions of the local court system led court actors to treat the role of monetary sanctions differently in the courts, affecting the charge, amounts imposed, alternatives to payment, and collection attempts. In communities where court actors felt less pressure to fund their local courthouses, monetary sanctions were often lower and consequences for nonpayment less severe.

## The Legislature and Policy Change

The legislative landscape around monetary sanctions is constantly changing. Court actors, particularly in rural and suburban areas, frequently meet these reforms with skepticism and frustration. Statutory changes often resulted in adjustments to the amounts of nondiscretionary and required fees, costs, and assessments, which court actors interpreted as limiting their discretion and funneling resources from their communities to state coffers. Like Tyler Smith, Christina Thompson, and Michele Cadigan (2022, this volume), we find that legislative changes to monetary sanctions are not implemented uniformly across jurisdictions. Instead, local court actors respond to this legislative coercion by developing localized norms that guide court behavior, interpreting and negotiating the laws' meaning

among themselves. Court actors across the rural-urban continuum differed in their perceptions and interpretations of these changes. Like the dynamics outlined thus far, the acquaintanceship density of communities influenced how court actors saw themselves situated against the state legislature and how they interacted with each other, which in turn affected their support for legislative changes and their perceptions of their agency to work around these changes.

Court actors in rural and suburban communities often expressed feeling detached or ignored from the legislature and perceived that policy changes were dictated by the needs and whims of the criminal justice systems of the big cities. For example, recent legislative reforms in Missouri capped the amounts of fines that could be assessed for minor traffic violations and precluded imprisonment for failure to pay fines. Several rural judges felt that this limited their discretion. One judge commented, "I think discretion is a really good thing. I think judges need to have discretion. And I think the prosecutors need to have discretion as well, and I think the legislature needs to stick its nose out of it. But that's about where I think we are right now." Some research describes this as the "urbanormativity" of policymakers and the law, which privileges cities and urban issues (Fulkerson and Thomas 2019; Statz 2021). Court actors in more rural areas felt that these mandatory fees put undue burdens on residents and did not allow them the flexibility to assess what they deemed appropriate financial sanctions for residents with limited means. The familiarity and tightness of social ties within the community discussed previously led to this greater desire for localized discretion and flexibility. These court actors often felt a greater responsibility to balance community needs and unique community circumstances when considering monetary sanctions.

Legislatively imposed sanctions are often designated for the state's general fund, rather than for financing local systems. In the states examined, these statutorily imposed fees or costs sometimes funded programs that are farflung from criminal justice (Harris et al. 2017). For court actors in rural and suburban communities, changes to mandatory fees were often seen as unfair to the defendant and the county given that these changes frequently resulted in more money being diverted out of the community. In contrast, fines were often discretionary and viewed as the punitive part of the financial sentence. A judge in a suburban jurisdiction in Georgia expressed frustration in his ability to impose a financial penalty he felt was proportional to the crime because of the increased statutory fees and surcharges:

> Now, if I didn't have the surcharges and the more appropriate sentence would have been the $200 fine, I would give the $200 fine. But I'm not going to do the $200 fine because I know the $100 fine is really a $200. . . . You know, you have these games going on that I have no control over, and so I'm back to the financial ability of the person to pay. So, you know, I have to be sensitive to that. But I can't address the proportionality of it because they're not . . . Because I don't control that proportionality. That's added to the fine that I thought was appropriate.

Court actors in smaller communities were well aware of the economic struggles of their clients and the community broadly and thought that they should have the autonomy to levy monetary sanctions that reflected community norms and economic abilities. Mandatory fines and surcharges, though, impinged on the discretion they did have to impose an appropriate sentence.

Court actors also felt that the state was enriching itself through these changes. Court actors in more rural jurisdictions complained that the portion of the mandatory charges that remained locally was shrinking, while the state was profiting off these fees or redirecting funds to address the needs of urban court systems. A rural prosecutor in Illinois commented,

> I think that hurts the local government a lot more because where you could expect somebody to pay x amount on all their fines and costs . . . well you're taking a bigger chunk of that out and sending it to the state, so less of that's coming to the county. So on the county business side of it, it's hurting the bottom line, and we're also hurting because Spring-

> field's so screwed up we're hemorrhaging residents so we have less of a tax base, but I don't know maybe we'll fix those things so that people have the ability to pay, I don't know.

Court actors in Minnesota expressed similar themes, suggesting that the state distributed funds unequally, redirecting resources toward big cities. One Minnesota respondent explained: "What happens when we collect supervision fees that go into the general state fund but we don't see the benefits in rural Minnesota of that general state fund. They go to Hennepin and Ramsey [two large urban counties]." Another respondent echoed this theme: "Yeah, they go and pay for roads and freeways downtown." As noted, individuals in smaller communities were keenly aware of the fiscal needs of their communities.

Although recent changes to monetary sanction policy in the study states were often passed in the name of progressive reform, court actors were skeptical as to the local impact of these reforms and felt that their own fiscal needs and discretion in determining sentences were lessened by these efforts. Court actors in rural communities felt that they were being punished for the poor choices made by urban judges and municipalities. This was particularly the case in Missouri where changes had been substantial following the Department of Justice Investigation into Ferguson and the resulting legal changes (see Huebner and Giuffre 2022, this volume). Decision-makers in rural locations often remarked that Ferguson and the state legislative changes directed toward the problems in St. Louis inadvertently and negatively affected well-functioning rural jurisdictions. Specifically, several judges argued blanket reform policies were burdensome and ineffective because judges lost discretion over cases and defense attorneys had fewer negotiating options during plea bargaining. One rural municipal court judge contended, "I'm not saying there weren't any problems in municipal courts because I knew two or three problem courts down here that had problems that were found in the Ferguson investigations, but you used to didn't see that stuff down state like you did out of St. Louis and Jackson county. There were a few, everywhere you've got a few rotten apples in there." Although Missouri is an exemplary case, court actors in rural communities across these states felt that they were being punished for the poor management of the overstretched courts of the big cities and the resulting reforms that often moved toward greater standardization. Because of the local importance of county finances, court actors saw themselves as being restricted in their ability to be responsive both to the needs of their residents and that the state was siphoning off local funds.

Urban court actors felt similarly, that the legislature was out of touch with court processes but interpreted the day-to-day impact of these changes differently in ways that reflect the differing role monetary sanctions played in their courtrooms. A clerk in Illinois said, "If it was legislatures that made those decisions and it's a statute did they actually ever go into a courtroom or did they have any concept of what they were legislating before it happened?" A judge in an urban Georgia superior court bemoaned the opacity of the system of surcharges and add-ons required by statute as he described the standard sentencing form used in superior courts. "I don't know what all fine surcharges or add-ons are required by the laws, but that suggests that there is a universe of fines that are required and are applicable to the offenses . . . but you can see there's not a discussion of what they are. This form is standard around the state." Another judge in the same jurisdiction described surcharges as "imposed by the legislature" and not something that their county "has just cooked up." This judge further says, "I've never, in the six years of the continuing judicial legal education that we've had, no one's ever explained what all those different fees are." Like the rural court actors, these individuals did not feel that the legislature had their communities' best interests in mind.

However, when changes were made to statutorily imposed monetary sanctions, urban court actors were slower to implement these changes and felt that they had more autonomy. Urban actors often prioritized the going rates of their jurisdiction over the often-changing specialized fees imposed by the legislature or offered more accommodations for those unable to pay. Familiarity among the court actors

and a desire for court efficiency motivated their decision-making, and not necessarily commitments to the community or local budget officials. These court actors were often critical of the idea that they had no autonomy or discretion over even these mandatory charges and felt less responsible to mandate fees exactly as the statute dictated. A defense attorney in an urban jurisdiction in Illinois commented on the variability among judges in his court: "There was one judge who retired who didn't care about it, and would tell them very bluntly when he gave them whatever the sentence was that he didn't care about fees and fines, and he would always terminate their probation satisfactorily no matter what they owed, or how much they owed. . . . They always say that they're not allowed to reduce the fines and costs." The attorney touches on the fact that despite the belief that little discretion is possible with these mandated costs, judges do have the power to exercise discretion in regard to collection, if they so choose. The need to process cases efficiently and coordinate the large number of actors involved in the process often took priority to policy changes.

Overall, the actors in all communities were wary of legislative changes and mandates, both feeling as though ongoing changes ignored the realities of their courtrooms and communities. Individuals in smaller communities thought that legal changes, particularly mandatory fees and surcharges, limited their ability to respond to the specialized needs of their communities, reflecting the importance of close acquaintanceship ties. In contrast, actors in bigger communities lacked intimate knowledge of their defendants but believed that legislation should allow for efficient and less burdensome imposition of monetary sanctions.

## DISCUSSION

In the wake of protracted economic decline and increased fiscal pressures on local governments, a growing body of scholarship has established the pervasiveness of monetary sanctions across U.S. communities (Fernandes et al. 2019; Harris 2016; Huebner and Giuffre 2022, this issue; Martin et al. 2018). As inhabited institutions (Ulmer 2019), courts are shaped in meaningful ways by the local structures in which they are embedded. Thus the application and meaning of monetary sanctions likely varies by characteristics of the community context. Building on Harris's (2016) work on the punishment continuum, we highlight local variation in monetary sanctions, focusing on how structural and organizational characteristics impact the local cultures and meaning of this sanction. Drawing on qualitative interviews across communities of different sizes, our study explores the role of acquaintanceship density patterning—one way to conceptualize broad interpersonal differences in community size—in how court actors thought about monetary sanctions and the place of these sanctions in enacting justice.

We find that larger, urban courts are more likely to develop going rates among court actors in efforts to process cases quickly. Relying on shorthand to determine factors such as indigency led to efficient case processing and often lower fines for those who were able to pay quickly. However, individuals who were not able to pay were rarely given much time to describe their needs to the judge or to request special consideration from the court, which could result in protracted court involvement, particularly if they were unable to immediately comply with the conditions of the sentence. In contrast, high acquaintanceship density was more common in more rural locations, characterized by familiarity and personal relationships both between court actors and community members, which allowed for greater flexibility and individualization, although this did not automatically translate to more leniency. Indeed, individuals in rural areas known to the court may be less likely to have fines reduced or fees waived; however, acquaintanceship density could also promote harsher punishment if individuals were viewed as outsiders. Acquaintanceship density does not exist in a vacuum and is conditioned by the nature of the court and the structure of the broader community. These findings also align with other works that note the importance of monetary sanctions as revenue, and the perceived extra benefit of collecting fines from nonresidents (Martin 2020; Pacewicz and Robinson 2020).

More generally, acquaintanceship density shaped the view of court actors around monetary sanctions as a funding source. Actors more

closely linked to municipal and county-level governance bodies were more likely to view finance as a special consideration in how sanctions were applied and used. In contrast, actors operating in more urban areas were less likely to link monetary sanctions decision-making to the economic livelihoods of their communities. These views are also reflected in the broader orientation of local governance toward the legislative policies that guide decision-making. Court actors outside urban areas viewed reform policies with hostility and suggested that they were oriented around the needs and concerns of major metropolitan areas. Moreover, their close relationships to local power structures furthered their feelings that statutes allowed for few instances of discretion without negative consequences for their communities. It is not clear from this work how these translate into legal decision-making. However, given the discretion afforded to actors in this realm, this is an important avenue of inquiry.

Differences between communities were less pronounced in Minnesota, in both the amounts imposed and the perceptions of court actors. This case provides potential insight as to how to mitigate these local pressures. Amounts of monetary sanctions assessed and collected were much lower in Minnesota than in other states because the state legislature has scaled back its reliance on LFOs in recent years. Moreover, individual courts and court actors have comparatively little financial incentive to impose heavy legal financial obligations because the lion's share of the proceeds returns to the state general fund rather than to individual counties or courts. This helps account for the concern some court actors express that imposing heavy fines and fees in greater Minnesota will simply "pay for roads and freeways downtown." Overall, reducing the pressure counties feel to fund themselves through fines and fees would likely result in reduced pressure to impose and collect monetary sanctions. Decreasing these financial penalties is likely beneficial both to defendants in their chances of success in completing their sentences and to counties that often spend more in attempting to collect monetary sanctions than they can recoup (Crowley, Menendez, and Eisen 2020).

Overall, these findings advance the literature in several ways. First, the expansion of observations beyond urban courts allows for a more nuanced assessment of how courts are inhabited institutions, influenced both by the individuals within the institution and by the broader context. Second, we tie together established characteristics of courtrooms, such as routinization and discretion, to the structural realities that vary immensely across place. Our finding that acquaintanceship density influences both the role and nature of monetary sanctions provides a fuller picture of the factors that lead to varying local legal cultures surrounding monetary sanctions (Harris 2016). Features such as acquaintanceship density and fiscal constraints, which are structural and relational, play a critical part in the assessment, monitoring, and collection of fines and fees across communities. Further work is needed to understand how such factors evolve to establish processual norms. Moreover, future work in this area must grapple with the racialized patterns that often overlay acquaintanceship density patterns, resource constraints, and monetary sanctions. In the context of perpetual policy adjustments, our study suggests that blanket policies, enacted to obtain more equal outcomes across place, may not be nimble enough to meet the varied needs of communities with different resources and acquaintanceship densities.

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# What Is Wrong with Monetary Sanctions? Directions for Policy, Practice, and Research

BRITTANY FRIEDMAN, ALEXES HARRIS, BETH M. HUEBNER, KARIN D. MARTIN, BECKY PETTIT, SARAH K.S. SHANNON, AND BRYAN L. SYKES

*Monetary sanctions are an integral and increasingly debated feature of the American criminal legal system. Emerging research, including that featured in this volume, offers important insight into the law governing monetary sanctions, how they are levied, and how their imposition affects inequality. Monetary sanctions are assessed for a wide range of contacts with the criminal legal system ranging from felony convictions to alleged traffic violations with important variability in law and practice across states. These differences allow for the identification of features of law, policy, and practice that differentially shape access to justice and equality before the law. Common practices undermine individuals' rights and fuel inequality in the effects of unpaid monetary sanctions. These observations lead us to offer a number of specific recommendations to improve the administration of justice, mitigate some of the most harmful effects of monetary sanctions, and advance future research.*

**Keywords:** monetary sanctions, LFOs, policy, abolition, data, fines and fees

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> "[T]he moderate reform would be make it fair. The better reform would be get rid of it."
>
> —California Attorney

Monetary sanctions are an integral and increasingly debated feature of the American criminal legal system. Tens of millions of people each year are assessed fines, fees, and other costs stemming from legal involvement triggered by traffic stops to felony convictions. Policing agencies, criminal courts, and probation and parole agencies often assess monetary sanctions and, along with private collection agencies in some states, collect them. The widespread use of monetary sanctions as a form of punishment for criminal offenses has generated billions of dollars in revenue while generating a massive amount of debt among those unable to pay.

Monetary sanctions are often characterized as a less punitive sanction than other forms of punishment, such as incarceration (Greene 1988; Morris and Tonry 1991; Petersilia 1999; Tonry and Lynch 1996). Nora Demleitner (2005) argues that monetary sanctions are an integral part of community reintegration for people involved in the criminal legal system, writing that they: "allow—and even require—individuals to be employed, pay fines and make restitution, pay taxes, and assist their families. Such demands are crucial to allowing them to regain their place in society" (Demleitner 2005, 346). Jurisdictions across the United States rely on revenue from monetary sanctions to fund a wide variety of justice and non–justice related purposes, including courts and other government operations (Sances and You 2017; Martin 2018; Pacewicz and Robinson 2020).

Research shows, however, that large numbers of people are unable to pay their fines and fees, and courts may be paying more in attempts to collect or sanction nonpayment than they will ever generate as revenue (Menendez et al. 2019). Some 6 percent of adults in the United States report debt from court costs or legal fees, and that number rises to 20 percent of people with an immediate family member in jail or prison (Federal Reserve 2020). At the state level, a recent analysis finds that total court debt is at least $27.6 billion. Importantly, this analysis draws on data only from the twenty-five states that could provide at least partial data about the amounts owed (Hammons 2021). In just three states, the amount of outstanding debt increased by $1.9 billion between 2012 and 2018 (Menendez et al. 2019). At the federal level, $100 billion of unpaid restitution has been deemed uncollectible due to defendants' inability to pay (GAO 2018).

Monetary sanctions centralize money as a key determinant of just outcomes, including proportionality, finality, and specificity in punishment. Existing patterns of economic inequality in the United States, including racial disparities in income and wealth, draw attention to how monetary sanctions undermine the premise of equality before the law. Monetary sanctions allow people with financial means to resolve debts, fulfill sentences, and thereby absolve themselves of criminal wrongdoing. At the same time, unpaid monetary sanctions contribute to extended system involvement and legal entanglements (Martin, Spencer-Suarez, and Kirk 2022, this volume) that uniquely disadvantage certain subgroups of the population on the basis of ability to pay (Bing, Pettit, and Slavinski 2022, this volume; Sanchez et al. 2022, this volume; Stewart et al. 2022, this volume; Sykes et al. 2022, this volume; Harris 2016; DOJ 2015). The Ferguson Commission report concluded that legal financial obligations were exploitative and "disproportionately harmed defendants with low incomes" (Ferguson Commission 2015, 93).

In this article, we consider how features of law, policy, and practice across states, and within them, shape just outcomes and equality before the law. Emerging research, including that featured in this double issue, offers important insight into the law governing monetary sanctions, how monetary sanctions are levied, and how their imposition concentrates their negative impacts especially among low-income individuals and people of color. We compare the policies and practices across and within eight states, drawing attention to variability in monetary sanctions. This variability helps illustrate how monetary sanctions shape legal outcomes and their consequences. The design of monetary sanctions and common practices undermine individuals' rights and fuel inequality in the effects of penal debt. These observa-

**Table 1.** Number and Rate of Adults Under Correctional Supervision, Study States, 2014

| State | Adults on Probation or Parole | Community Supervision Rate | Adults in Prison or Local Jail | Incarceration Rate |
|---|---|---|---|---|
| California | 382,600 | 1,280 | 207,100 | 690 |
| Georgia | 491,800 | 6,430 | 91,000 | 1,190 |
| Illinois | 151,800 | 1,530 | 67,200 | 680 |
| Minnesota | 104,300 | 2,490 | 16,200 | 390 |
| Missouri | 65,800 | 1,400 | 43,700 | 930 |
| New York | 149,100 | 960 | 77,500 | 500 |
| Texas | 496,900 | 2,480 | 219,100 | 1,090 |
| Washington | 104,000 | 1,890 | 30,900 | 560 |
| Sampled states total/average | 1,946,300 | 2,308 | 752,700 | 754 |
| U.S. total/average | 4,708,100 | 1,910 | 2,188,000 | 890 |

*Source:* Authors' tabulation based on Kaeble et al. 2016.
*Note:* Rates per hundred thousand adult residents.

tions lead us to offer a number of specific recommendations to mitigate some of the most harmful effects of monetary sanctions and advance future research.

## HOW MONETARY SANCTIONS THWART JUST OUTCOMES

Equality under the law is axiomatic to the U.S. criminal legal system. Although social and economic characteristics should not determine justice outcomes, ample evidence reveals how factors such as race, gender, and wealth can substantially affect whether and how people come into contact with the criminal legal system and the impact of that contact on people's lives (Miethe and Moore 1985; Shannon et al. 2017). In the United States, the connections between race, poverty, criminalized behavior, and punishment are intractable (Wacquant 2009) just as the connections between race, poverty, and policing are well established (Miller 2008; Stuart 2016). Because they directly bear on wealth, monetary sanctions reify and exacerbate racial inequalities in the criminal legal system while undermining equality before the law and fairness in outcomes.

### Unequal Exposure

Exactly how and how many people are brought into the criminal legal system varies dramatically across states and provides leverage to understand how monetary sanctions influence fairness in case outcomes. Throughout this article, we summarize and consider implications from an eight-state study of monetary sanctions (for methods and aims, see Harris, Pattillo, and Sykes 2022, this volume). Table 1 shows that fully one-third (34 percent) of adults incarcerated in prisons and jails and more than two-fifths (41 percent) of adults under community-based supervision in the United States were in these eight states in 2014. California, Illinois, Minnesota, New York, and Washington had incarceration rates below the U.S. average; Georgia, Missouri, and Texas had rates above it. Whereas roughly one in 256 adults in Minnesota was incarcerated in 2014, Georgia incarcerated roughly one in eighty-four.

Table 1 further shows variability in exposure to probation and parole. In Missouri, 65,800 adults were under the supervision of probation and parole agencies, also termed community supervision, relative to nearly a half a million in both Georgia and Texas. The rate of community supervision was lowest in New York, where 960 per hundred thousand were on probation or parole, and highest in Georgia, where 6,430 per hundred thousand—more than 6 percent of the adult population—were under the surveillance of probation and parole agencies. Three of the states (Georgia, Minnesota, and Texas) had parole and probation rates above the U.S. average. Five had rates below the average.

Traffic stops and other misdemeanors that do not involve jail time are the modal form of criminal legal contact (Natapoff 2018). Annually, tens of millions of people are pulled over by police in traffic stops; approximately half of them receive a citation (Langton and Durose 2013). Those citations commonly involve fines, fees, and other monetary sanctions (see also Huebner and Giuffre 2022, this volume). In states where traffic tickets are classified as criminal offenses, such as Georgia, Missouri, and Texas, an unpaid ticket can further expose people to additional criminal legal sanctions. Even in states where traffic violations are not classified in criminal law, unpaid tickets can incur a wide range of civil penalties. Unpaid criminal legal debt can precipitate police contact because courts issue warrants for failure to pay or issue capias pro fine warrants for failure to appear in court to address outstanding obligations (Natapoff 2018).

Although the number of people entering America's prisons and jails has declined in recent years (Carson 2020), the number of people subject to legal fines and fees has grown. Estimates suggest that 66 percent of incarcerated people have been sentenced to pay some amount of money to the courts or other criminal legal agencies, up from 25 percent in 1991 (Harris, Evans, and Beckett 2010, 1769). Millions more people are assessed fines and fees for traffic tickets and other misdemeanors that do not involve jail time (Mayson and Stevenson 2020; Natapoff 2018), though these penalties may lead to further entanglements in the criminal legal system (Huebner and Shannon 2022, this volume). The revenue incentive of monetary sanctions plays a role in some traffic stops (Brett 2020). The Department of Justice investigation of the Ferguson (Missouri) Police Department provides a poignant example, finding that the city finance director wrote to both the police chief and the city manager explicitly urging more ticket writing for city income (DOJ 2015).[1]

## Uneven Assessment

The United States has no single coherent set of laws, policies, or practices guiding the imposition and enforcement of legal financial obligations. Thus legal fines and fees, much like other forms of surveillance and punishment, differ in important ways across and within states (Harris, Evans, and Beckett 2010; Harris 2016; Martin et al. 2018). Sarah Shannon and her colleagues (2020) find that across the eight states in this project, the process of punishment is highly varied across and within jurisdictions, the process is not transparent, and that noncompliance can precipitate significant debt and extralegal consequences. Karin Martin and her colleagues (2018) show the ubiquity of statutes governing legal fines and fees across states but also draw attention to differences in the extent to which state statutes mandate their imposition for felony and misdemeanor cases, provide opportunities for waivers, and offer alternative mechanisms of compliance.

Differences in key legal provisions governing monetary sanctions across states can help explain variability in assessment and impact. Table 2 shows that all states, for example, require judges or other court personnel to assess ability to pay before making a determination of willful noncompliance, enhancing monetary sanctions with additional penalties, or revoking probation. Despite all states' explicit recognition of differential ability to pay, variability in when ability to pay is determined is significant. For example, only in Washington must ability-to-pay legal financial obligations be considered at the time of sentencing. In other states, such as Texas and Missouri, the burden rests on the person sentenced to request a hearing regarding their ability to pay, which in Texas they may only do thirty days after sentencing. In still other states, the ability to pay may only become relevant after people default on their legal financial obligations, at which time the court may need to determine whether nonpay-

1. Police chief: "unless ticket writing ramps up significantly before the end of the year, it will be hard to significantly raise collections next year. . . . Given that we are looking at a substantial sales tax short fall, it's not an insignificant volume." City manager: "Court fees are anticipated to rise about 7.5%. I did ask the Chief if he thought the PD could deliver 10% increase. He indicated they could try."

**Table 2.** Key Legal Provisions Governing Monetary Sanctions, by State

| State | Ability to Pay Hearings | Waivers | Open Records | Gold Standard for Automated Court Data |
|---|---|---|---|---|
| California | No, but the presentencing report lists income/assets | Depends on the offense statute | No | No |
| Georgia | No | At judge's discretion except for mandatory fines, fees, surcharges | Yes | No |
| Illinois | No, mandatory post-conviction hearings to explain nonpayment, cover balances, and requests for payment | Full waivers for "assessments" only and must apply within thirty days of sentencing | Yes | No |
| Minnesota | No | Fines can be reduced to $50 and judges can allow community service in lieu of the fine. Surcharges and law library fees are not waivable | Yes | Yes |
| Missouri | Must be granted if requested | Allowed at judges' discretion | Yes | No |
| New York | Financial Hardship Hearings after failure to pay on time | No | Yes | No |
| Texas | After thirty days | Allowed at judges' discretion | Yes | No |
| Washington | At sentencing | At judge's discretion except for mandatory fines and fees | Yes | Yes |

*Source:* Authors' tabulation.

ment was "willful" and thus subject to additional sanctions, as in Illinois (see Fernandes, Friedman, and Kirk 2022, this volume).

How ability to pay is determined also diverges across states. Missouri state statutes instruct courts to consider the financial resources of a defendant when making judgments but a formal assessment or documentation is not required.[2] Judges in Washington have the discretion to assess whether people with legal financial obligations are capable of making minimum monthly payments, but are still required to impose the mandatory minimum assessment of $500 per felony conviction. Texas has a clearly articulated standard for the determination of indigence for court-appointed counsel, but judges retain discretion in determining eligibility to pay legal financial obligations (see also Harris et al. 2017).

Statutory allowances for waiving monetary sanctions also vary widely by state. In California, the ability to waive monetary sanctions depends on the offense statute. In three states—Illinois, New York, and Washington—the law does not allow for the waiver of mandatory surcharges, which are those states' dominant form of monetary sanctions (see Martin, Spencer-Suarez, and Kirk 2022, this volume; Harris 2016). In other states, judicial discretion is paramount, including Georgia, Minnesota, Missouri, and Texas. Nevertheless, some statutory limits on such waivers are in place, with some statutes disallowing the waiver of some or all fees (Georgia, Minnesota) and surcharges or

2. Revised Statutes of Missouri (RSMo), § 514.040.

only allowing reduction of the fine to a certain amount (Minnesota).

## Disparate Impact

Variability in the design of monetary sanctions across states contributes to disparate experiences with and effects of monetary sanctions. Although legal financial obligations are routinely imposed for misdemeanor and felony criminal legal involvement, important differences in how they are assessed, whether and to what extent they are waived, and how collections are handled can lead to differential impact and trigger a wide range of additional sanctions. Common practices undermine individuals' rights and fuel inequality in the effects of unpaid monetary sanctions. Differences in the design and implementation of monetary sanctions across states and within them help reveal how the negative impact of monetary sanctions, and thus disproportionate punishment, is concentrated among people with low incomes and, by extension, people of color (Bing, Pettit, and Slavinski 2022, this volume) and people receiving public assistance (Sykes et al. 2022, this volume). Recent work further illustrates how the negative impacts of legal financial obligations are concentrated among immigrants (Sanchez et al. 2022, this volume) and Native Americans (Stewart et al. 2022, this volume).

Unpaid monetary sanctions can prompt additional criminal legal sanctions, incur added financial penalties and surcharges, result in the extension or revocation of probation, and lead to the issuance of arrest warrants which can result in jail time (Harris 2016; Harris et al. 2017; Huebner and Shannon 2022, this volume; Ruhland, Homes, and Petkus 2020). In some states, unpaid legal fines and fees can also set in motion civil penalties including the revocation of drivers' licenses, wage or asset garnishment, and even civil lawsuits (see Fernandes, Friedman, and Kirk 2022, this volume). Katherine Beckett and Naomi Murakawa (2012) highlight how legal fines and fees are found in civil and criminal systems, and Alexes Harris (2016) illustrates the powerful role court clerks, or other administrative personnel, play in the collection and enforcement of monetary sanctions. As a result, as Beckett and Murakawa (2012) suggest, legal fines and fees constitute a "shadow carceral state," obscured in studies of conventional sentencing and sanctioning processes yet with wide-ranging and enduring effects.

Table 3 displays how driving on a suspended license can produce a disparate impact for people of varying economic means within each state. Specifically, the amount due at sentencing can vary from a low of $62 in Texas to a high of $3,480 in California. In Minnesota, a state with a low incarceration rate (see table 1), has financial penalties for traffic offenses that can cost several hundreds of dollars. Variation also exists across states in the length of time it would take to pay off fines and fees for the same charge. Assuming a payment plan of $50 per month, it would take considerable time to pay off debt associated with driving on a suspended license in some states. For instance, in only four—Minnesota, Missouri, New York, and Texas—would it take fewer than eighteen months to pay off associated fines and fees.

Table 3 also reveals how fees, surcharges, and other additional costs, including interest, penalties, and administrative costs, can dramatically increase the total monetary sanctions owed. In California and Washington, the maximum fine is less than half of the maximum total assessment for driving on a suspended license. In only two states, Missouri and New York, do fines constitute more than three-quarters of the maximum allowed assessment. People with financial means may pay off monetary sanctions on time and without penalty; yet people without such means face additional costs that may extend criminal legal system involvement as well as force hard decisions on whether to pay.

Monetary sanctions amplify the disparities in criminal legal system contact along the lines of race and wealth. Recent estimates show that the median wealth of white families is around $190,000, of African American families slightly more than $24,000, and of Latinx families about $36,100 (Federal Reserve 2020). The amount available in liquid savings also differs significantly by race. Whereas the typical Black or Latinx family has less than $2,000, the typical white family has more than $8,000 (Federal Reserve 2020). At the same time, African Americans are more likely than white Americans to

**Table 3.** Legal Financial Obligations and Time to Full Payment for Driving with a Suspended License

| State | Fine | Fees | Surcharges | Added Charges | Amount due at Sentencing | Total Paid, $50 Monthly, On-Time Payments | Months Until Paid | Percentage of Fine to Total Bill (Maximums) |
|---|---|---|---|---|---|---|---|---|
| California | $300–$1,000 | $4, incarceration costs | $60–200 | 12% interest, $946–$2,276 | $1,310–$3,480 | $1,310–$5,983 | 31–120 | 16.7% |
| Georgia | $500–$1,000 | $0 | $405–$805 | NA | $905–$1,805 | $905–$1,805 | 19–37 | 55.4% |
| Illinois | $0–$2,500 | $310, incarceration costs | $85–$1,022.50 | NA | $395–$3,832.50 | $395–$3,832.50 | 8–77 | 65.2% |
| Minnesota | $200 | $3–$13 | $75 | $0 | $279.50–$289.50 | $279.50–$289.50 | 6 | 69.0% |
| Missouri | $150–$500 | $12, incarceration costs | $19.50–$44.50 | $25 | $206.50–$582.50 | $206.50–$582.50 | 5–12 | 85.8% |
| New York | $200–$500 | $50 | $83 | NA | $333–$633 | $333–$633 | 7–13 | 79.0% |
| Texas | $0–$500 | $62.10 | $0–$300 | $25 | $62.10–$862.10 | $87.10–$887.10 | 2–18 | 56.4% |
| Washington | $0–$1,000 | $200 | $250 | $100 annual | $450–$1,450 | $686.85–$2,222.88 | 14–45 | 45.0% |

*Source*: Authors' tabulation based on Harris et al. 2017.
*Note*: NA, not available.

be arrested and convicted and African American adults are 5.9 times as likely and Latinx adults are 3.1 times as likely to be incarcerated than white adults (Carson 2020). Considering these factors together, along with the ubiquity of monetary sanctions for every offense and at every level of government, reveals the significant potential of criminal legal debt to worsen problematic disparities.

## LIVED EXPERIENCES WITH MONETARY SANCTIONS

How the design and practice of monetary sanctions shape fairness in outcomes and equality before the law is further evident in ethnographic observations in courtrooms and interviews with people assessed monetary sanctions, attorneys, judges, and other people tasked with enforcing them. Our research shows how the lack of a single coherent set of laws, policies, or practices guiding the imposition and enforcement of monetary sanctions generates significant variability in experiences with and effects of monetary sanctions across states and within them. Legal financial obligations are routinely imposed for misdemeanor and felony criminal legal involvement across all eight states, yet important variations are evident in exposure to monetary sanctions and states' reliance on revenue generated from monetary sanctions.[3]

How monetary sanctions are assessed, whether and to what extent they are waived, and how collections are handled have important consequences for people's experiences with the criminal legal system. People who are assessed monetary sanctions and cannot pay them often experience the penal debt harshly, undermining conceptualizations of monetary sanctions as humanizing or an intermediate sanction (Greene 1988; Morris and Tonry 1991; Petersilia 1999; Tonry and Lynch 1996). In the following section, we highlight several dimensions along which fairness in outcomes and equality before the law are compromised in practice, as shown through the lived experiences of the people we interviewed and courtrooms we observed.

### Unequal Punishment

Individuals who have the means to comply with monetary sanctions are, for many offenses, able to pay fines, fees, and other monetary sanctions with the court clerk in person, online, or by mail and therefore have no further involvement with the court (see Bing, Pettit, and Slavinski 2022, this volume). If someone is unable to pay, or needs accommodations, the process can become complicated and lead to additional sanctions. Failure to pay, comply with the payment schedule, or to attend court dates can lead to additional legal, financial, and civil consequences. For those who are not able to pay, the process of compliance with the law is difficult (Martin, Spencer-Suarez, and Kirk 2022, this volume). The sheer variability in processes across states and within them is remarkable. Several study participants reported that they were issued a warrant for failure to appear at a court date when they had not received documentation of the court date.

Being unable to pay monetary sanctions can incur a wide range of "poverty penalties," which add costs, measured in time or money, simply as a consequence of needing more money or additional time to pay. For example, in Missouri, individuals who do not have the means to comply with a financial sanction or who would like to contest the associated charge are required to attend court for a hearing. Several study participants reported negotiating payment plans with the court so that they could spread the payment out over time. Some courts allowed individuals to make their scheduled payment online with a fee or with the clerk, if the payment was made in advance of the next payment. One study participant reported that she had to pay to get a payment plan developed and then had to pay an additional fee for the show cause hearing: "Just to get any of the judge's time, for whatever it might be, you have to pay them $22.50. If you can't pay, then you have to go in front of the judge, where you have to pay anyway." Several participants reported having to make multiple trips to the courthouse to set up a payment plan and to submit payment, and some courts levied fees for each

3. For details on revenues generated by fines, fees, and forfeitures, see table A1.

hearing (see Huebner and Giuffre 2022, this volume).

In other courts, individuals were required to attend a payment docket to check in with the judge and submit payment. A similar process is used in New York, where all courts have a regularly scheduled financial hardship hearing or full-time courtrooms dedicated to hearing payment issues. Illinois described this process as pay or appear, judges using discretion during the hearing to decide whether the person's nonpayment is willful. The challenges of staying up to date with payment becomes even more difficult the longer a person is on a payment plan or if they move.

Court observations reveal that individuals were rarely put on warrant status because of failure to pay, but if individuals did not attend court they were at risk of a warrant for failure to appear. In Texas courtrooms, we observed judges routinely issuing capias pro fine warrants for failure to appear without any determination of ability to pay or willfulness. Field notes from one municipal court document the determinations: "The judge . . . begins going down the list [of cases on the docket] rapid fire. . . . everyone who showed up to see the clerk [has] their charges dismissed and everyone who didn't [show up] gets issued a warrant for failure to appear. 'You gotta be here to win,' [the judge] jokes as he stamps and signs the papers." Another set of field notes documents a judge issuing thirteen capias pro fine warrants for failure to appear in less than half an hour.[4]

We observed similar processes in California, Missouri, and New York. In California, for example, the court presumes that people have adequate transportation to the court, a key barrier for many study participants; however, these assumptions matter for whether someone misses court and has a failure to appear warrant issued. Warrants were regularly ordered for people who missed court in California, and many study participants had to travel over an hour in heavy traffic using public transportation to attend. In Missouri, if individuals were unable to attend court because they were incarcerated, a warrant was still issued because no central data system tracks incarceration.

Many study participants reported that they did not have the information they needed to successfully navigate the criminal legal system and manage their monetary sanctions. This lack of information and related lack of transparency of criminal legal processes is aggravated by poor, or proprietary, data management systems. For example, in Missouri the state maintains one data system for state courts that includes information on sentencing but often little information on the nature of the outstanding debt. In addition, most costs are assessed at the municipal court level and each court maintains its own system. During court observations, we rarely observed people reminded of the requirement to opt-in to the state court reminder system, and even more rarely observed people opting in. Thus individuals sentenced to debt often relied on contacting the courts directly to get information, but the court was rarely open, an issue of particular concern for smaller municipal courts.

The challenge of compliance with payment requirements was even more difficult for people who owed money in multiple jurisdictions. A participant in Missouri owed money in several courts. When asked whether he knew how to find out how much he owed, he said, "No. I don't know. I know if you probably just call down there and they tell you what all you owe or whatever. If you got a lot of different municipalities, you gonna have to call a lot of different places, and you might call down to up there, up the street to the court building and somebody might hang up on you, have you on hold for twenty minutes, and then they answer the

4. Data from court records in Texas show that these are not isolated cases and indigency waivers are rarely granted for minor misdemeanors (Class C) and that arrest warrants and satisfying fines and fees through time served is common. At the county level, fewer than 1 percent of misdemeanor cases are granted an indigency waiver, a particularly surprising finding in a state with a poverty rate well above the national average. An equally small proportion of cases have collections waived. At the same time, on average across counties 8.8 percent of cases are satisfied by jail credit and nearly half (47.2 percent) of cases in one county are satisfied by spending time in jail (see also Pattillo and Kirk 2021).

phone and hang up. So you gotta call back and do it all over again."

Even people who are trying to satisfy monetary sanctions often encounter unarticulated and unanticipated costs associated with compliance. Online payment vendors across Illinois include an undisclosed vendor fee. These include but are not limited to convenience fees charged by Judici E-pay. Illinois state law allows counties to charge up to a $5 fee for payments made by credit card or through a third-party vendor.[5] After the Ferguson Commission hearings and report, municipalities in Missouri were required to develop websites that allow for online payment. However, like in other states, the online payment systems come with an additional service fee, further adding to the cost of compliance.

The wide range of civil and criminal penalties triggered by failure to pay monetary sanctions can also result in a cascade of additional costs. Driver's license suspension, revocation, or denial of renewal can be costly. Across the states, the cost for applications to reinstate driver's licenses ranged from $30 (Minnesota) to $150 (Washington), many requiring full payment of outstanding fines and fees before reinstatement (Illinois).[6] In Missouri, the state allows additional fees ranging from $20 to $150. In Texas, people are required to pay a $30 fee before reinstatement. In New York, "termination of suspension" fees range from $50 to $100. Although the law on the relationship between unpaid monetary sanctions and the Department of Motor Vehicles (DMV) or DMV equivalent is rapidly changing in response to legal challenges,[7] many people we interviewed detailed the hardships they experienced when outstanding legal debt prohibited them from having, or renewing, a driver's license.

Multiple system involvement—such as having child-support obligations in addition to criminal legal debt—can further complicate system involvement and incur additional costs. Several people we spoke with were jailed for failure to pay either child support or criminal monetary sanctions. The degree to which criminal courts and child welfare agencies prioritize who should be paid first is a thorny issue, but the consequences for nonpayment in either system may compound legal entanglements. In one notable exchange from a Georgia, a participant summarized their experience that led to losing their driver's license because they owed child support:

> I mean they just send you a letter saying that. . . . Well one thing I didn't know was that, I thought it was something they would automatically take care of with me being incarcerated, my child support was still going. Of course, I'm falling behind and I'm not knowing it. Honestly, I'm thinking if I'm locked up it would stop because you know I can't pay if I'm locked up. But I didn't know this about two or three different times and I fell so far behind. I get a letter your license is suspended for child support.

The participant thought that he would have the costs covered or paused while in prison and went on to say that it took twenty years to eventually get his license reinstated.

Garnishment of commissary accounts in prison and wages from work release also emerged as a concern. Study participants from California, New York, and Missouri, states notable for their generous allowances for garnishing commissary accounts, experienced significant material hardship—going without food or

5. Illinois Clerks of Courts Act, 705 ILCS 105/27.3 (2019), https://www.ilga.gov/legislation/ilcs/documents/070501050K27.3.htm (accessed August 12, 2021).

6. Minnesota, "Resolve Canceled License," https://dps.mn.gov/divisions/dvs/Pages/search-dvs.aspx?filter1=Driver%27s%20License&filter2=Class%20A%20-%20Commercial%20Driver&filter3=Resolve%20Canceled%20License (accessed August 12, 2021); Washington, "Types of Suspensions," https://www.dol.wa.gov/driverslicense/suspensions.html (accessed August 12, 2021); and Illinois, "Driver's License Reinstatement Fees," https://www.cyberdriveillinois.com/departments/drivers/drivers_license/dlreinstatement.html (accessed August 12, 2021).

7. On debt-based driver's license suspensions, see Free to Drive, "Resources," https://www.freetodrive.org/resources/#page-content (accessed August 12, 2021).

personal hygiene products—because their commissary accounts were drained to satisfy outstanding legal debt. In Washington, study participants were concerned about the garnishment of wages earned during work release when they also reported having to pay fees well in excess of their earned income in order to participate in work release. A participant from Minnesota cited their experience with the garnishing of already low wages as a reason to be cynical about the system: "When I went to prison, I'm making twenty-five cents an hour, and they took half. So, you're only making twelve and a half cents an hour, because they took half. Half for gate fee, for restitution, what else was in there, I forgot. DOC imposed some kind of fine, some kind of surcharge, back then. On money that was sent in, they were taxing it 10 percent or something. So, if my grandma sent me $100 bucks, I only got $90 of it, because they took $10."

People unable to pay legal debt experience an abundance of legal, social, and financial consequences until they are able to pay in full (see also Huebner and Shannon 2022, this volume, Harris and Smith 2022, this volume, Pattillo et al. 2022, this volume, Sanchez et al. 2022, this volume, Boches et al. 2022, this volume; Sykes et al. 2022, this volume). Extended legal entanglements, including long-term supervision, was common for people we interviewed who were assessed monetary sanctions in addition to a prison or jail term. Our research clearly illustrates how the system of monetary sanctions serves as an unequal and indeterminate punishment for people who are too poor to pay in full.

## Arbitrary and Excessive

The sheer variability in monetary sanctions across states for a given violation highlights their arbitrary nature (see table 3). Research has also drawn attention to the excessive nature of some monetary sanctions (see, for example, Harris 2016; Pattillo and Kirk 2021). Recent court rulings have concurred. *Timbs v. Indiana* found that asset forfeiture may contradict the excessive fines clause of the Eighth Amendment.[8] In the majority opinion, Justice Ginsburg wrote that monetary sanctions should "be proportioned to the wrong" and financial penalties should "not be so large as to deprive [a person] of his livelihood,"[9] making explicit reference to Black Codes used disproportionately to convict, fine, and "subjugate newly freed slaves and maintain the prewar racial hierarchy" (5–6).

The arbitrariness of monetary sanctions is exemplified by practices around ability-to-pay hearings. Although most state statutes allow for the waiver of at least some monetary sanctions in cases when a defendant is unable to pay, individuals who lacked legal counsel were often ill equipped to assert their indigence and were rarely granted waivers. In fact, some participants reported that they were discouraged from seeking an ability-to-pay hearing and sometimes provided misinformation from court personnel. When we asked James, a veteran living with physical disabilities who owed more than $1,500 for five tickets he received in one traffic stop, whether he has tried to get an indigence hearing to get the fees waived, he replied, "[The clerk] told me that if I wanted to do that, I'd have to hire my own private lawyer, which also I don't have enough money for. I don't think Legal Aid takes these cases. . . . I'm pretty sure they don't take traffic ticket cases. They'd be overwhelmed if they did."

How judges determine indigence or willful nonpayment varies across jurisdictions. In Missouri, this discretion is commonly based on questions about the person's lifestyle to determine whether they are spending funds on "leisure," such as buying cigarettes rather than paying the court. Moreover, field notes indicate that even defendants who clearly met the state standard for indigence by relying on Social Security Income (SSI) were routinely denied indigence waivers. Instead, they were commonly offered a monthly payment plan ($25 per month was standard) or the opportunity to satisfy fines and fees through community service. In Texas, one judge claimed that even though a defen-

8. *Timbs v. Indiana*, 139 S. Ct. 682 (2019).

9. Quoting Justice Ginsburg in reference to *Browning-Ferris Industries v. Kelco Disposal*, 492 U.S. 257 (1989), at 271 (*Timbs v. Indiana*).

dant was receiving SSI and food stamps, she could have used her tax refund to pay her outstanding legal debt. Field notes record the exchange: "The judge asks why she didn't pay. She says 'you had 30 days to pay and you didn't pay it.' The judge asks the defendant again, 'When did you get your tax refund?' The judge orders [the defendant] to pay $25 every 30 days. She tells [the defendant] that 'you had the ability to pay.' 'I'm not going to find you indigent even though you're on the SNAP [Supplemental Nutrition Assistance Program] program and the CHIP [Children's Health Insurance Program] program.'"

How monetary sanctions were collected and to whom payments were made varied greatly across the study sites and highlight how differential access to information and technology by which to pay can lead to disparate impacts. In some jurisdictions, people can pay their monetary sanctions online. In others, they must pay in person. Being able to pay monetary sanctions online can save people significant money, time, and hassle. However, many jurisdictions with online court payment systems charge people additional costs to use their credit cards and per-payment convenience fees.[10] In Illinois, only some counties allow online payment. Cook County—the largest county by population in Illinois and the second largest by population in the United States—mandates that payments are made in person. Differences in how payments are managed have important consequences for amounts owed as well as the amount of time and resources people have to devote to satisfying their monetary sanctions (for a related discussion of procedural hassle in misdemeanor courts, see Kohler-Hausmann 2018).

A fundamental challenge to compliance is not having information about how much and how to pay. Many people we interviewed who owed legal debt reported that they have trouble finding information about their cases and determining how much they owe. Defense attorneys and people who owed debt suggested that the lack of information stems from archaic methods courts use, such as paper records (see also Huebner and Giuffre 2022, this volume). New York State and several communities in Illinois did not maintain online information portals that provide information on payment, amount due, and compliance requirements. In New York, people are expected to keep track of what they owe and when; no payment notifications are sent after sentencing although warrants are regularly issued for nonpayment.

In many jurisdictions, clerk's offices handled payments whether delivered in person or online. Yet in others, collections were handled by probation offices or private collection agencies. Payments managed by probation set in motion additional forms of criminal legal surveillance and the involvement of private agencies introduced profit motives for enhancing collections (Huebner and Shannon 2022, this volume). In all Georgia courts, the primary mode of legal debt collection is probation or parole supervision. Collections at the felony level in Georgia occur through a centralized, statewide system for collections managed by a private company that charges a fee per transaction.

Variation was significant across states and jurisdictions on the usage of private collections agencies. The city of Seattle has a no-cost contract with a private collections agency. According to California and Missouri law, counties are responsible for the collection of monetary sanctions, though they may delegate some or all of the collection back to the courts and counties, and courts are allowed discretion in their collection practices, particularly when people are more than ten days late on a payment. In Texas, courts can use private collections agencies after sixty days of nonpayment. At the misdemeanor level, individuals on probation in Georgia and Missouri are often subject to collections through private probation companies that charge not only monthly supervision fees but possibly also extra fees for payments (Huebner and Shannon 2022, this volume).

## Expanded System Involvement

Monetary sanctions expand system involvement for people who cannot pay them com-

10. See, for example, Seattle Municipal Court's payment portal (https://secure8.i-doxs.net/SeattleSMC, accessed August 12, 2021).

pletely and quickly in several ways. First, monetary sanctions are levied in a wide range of situations from felony convictions to misdemeanor citations. In some states, they are levied in courts in addition to incarcerative sentences mandating jail or prison time, often extending system involvement after the completion of time served (Harris 2016). Legal fines and fees also accompany supervisory sentences requiring community service, probation, victim panel classes, drug and alcohol assessment and treatment, and anger management courses (Huebner and Shannon 2022, this volume; Harris, Smith, and Obara 2019; Pattillo and Kirk 2021). The assessment of monetary sanctions for low-level misdemeanors, including traffic citations, also widens the scope of criminal legal contact, involving tens of millions of people each year (Bing, Pettit, and Slavinski 2022, this volume; Needham et al. 2020).

The assessment of monetary sanctions in addition to prison and jail time, probation, or other sanctions can extend surveillance. Even after a term of supervision is completed, people unable to pay legal debt experience an abundance of legal, social, emotional, and financial consequences until they are able to pay in full (Harris and Smith 2022, this volume; Huebner and Shannon 2022, this volume). Extended legal entanglements, including long-term supervision, were common for people we interviewed who were assessed monetary sanctions in addition to a prison or jail term. At the same time, the costs associated with probation and other court-mandated programs could lead to indeterminate periods of surveillance.

At the time of sentencing, judges customarily impose the completion of programs and routine monitoring. The costs for courses for driving under the influence, anger management, drug and alcohol treatment, domestic violence, parenting, and antitheft classes are not systematically assessed or described at the time of sentencing. Similarly, the costs of surveillance and routine monitoring also remain unarticulated during the sentencing process. Many of these services leverage private companies to collect and to report compliance with program requirements ordered by the state, and their costs are fully revealed to individuals only when they seek to enroll and to complete the programs. Worse, some participants reported having to restart their courses because of missed payments or unattended classes, increasing the total amount. The hidden costs of probation and program participation can dwarf the monetary sanctions associated with fines and fees for the offense and, unpaid, can prolong supervision (Huebner and Shannon 2022, this volume).

The criminalization of traffic violations in some states, including speeding tickets, has dramatically widened the scope and impact of monetary sanctions (Baumgartner et al. 2018; Bing, Pettit, and Slavinski 2022, this volume; Huebner and Giuffre 2022, this volume). In such states, a minor infraction can lead to insurmountable debt for those who cannot pay. In Georgia, Missouri, and Texas, getting pulled over for speeding is considered a criminal offense and subjects millions of people each year to extended legal entanglements if they are unable to pay (Huebner and Giuffre 2022, this volume). Even in states where minor traffic infractions are considered civil offenses, unpaid monetary sanctions can trigger a range of civil penalties.

One participant recalled how one traffic ticket triggered a cascade of others: "The first one was from failure to control speed. Then, after that one I had a failure to appear in court. Then, after that it was a failure to wear a seat belt. Then, a failure to appear to court . . . I can't remember each one." Legal fines and fees can be exceptionally difficult to resolve for people who are working poor. Deferred car repairs, such as a broken headlight, can trigger or exacerbate legal involvement. This participant, a middle-aged mother of two, went on to describe how all of the moving violations were issued in the same neighborhood while she was driving to work. On one occasion, she was pulled over because she had a headlight out. She explained that at first the officer told her it would just be a warning but after he ran her license and saw that she had a pending ticket, he issued her another: "Once he saw that I had prior tickets, he just gave me another, which made it kind of extremely difficult for me to even start a payment plan because now I have like three $500 tickets. Mind you, I still have to take care of my kids, I still have to pay on my car note, I still have to do my everyday living on

top of now having to pay like $1,500 within three days for tickets."

## KEY POLICY RECOMMENDATIONS

As our research shows, the design and practice guiding monetary sanctions widen the scope of criminal legal involvement, are experienced differently based on capacity to pay rather than evidence of wrongdoing or determination of culpability, and further contribute to inequality by amplifying punishment among those least able to pay. These observations lead us to offer specific recommendations to improve the administration of justice. They also raise important questions about whether it is an opportune time to consider abolishing monetary sanctions in the criminal legal system altogether.

Table 4 presents a summary of recommendations in relation to how they reduce the scope of monetary sanctions, eliminate practices that are arbitrary or result in excessive punishment, enhance equity, and advance research and policymaking. We draw on insights from recent work to consider how these recommended innovations in policy and practice can address goals of power shifting, defunding and reinvesting, and transformation to ultimately "dismantle the uniquely oppressive components of the law" (Clair and Woog 2022, 18–22). The table provides an intervention or recommendation, indicates key stakeholders, and offers examples. The table also makes note of trade-offs, or limitations, that may be associated with a given intervention or recommendation.

### Reduce the Scope of Monetary Sanctions

Our first set of recommendations centers on reducing the scope of monetary sanctions. Over the past fifty years, the criminal legal system has adopted an outsized role. The United States continues to criminalize more infractions than ever, many of which involve monetary sanctions (Mayson and Stevenson 2020). A first, and very important, step in reducing the harms associated with monetary sanctions is to reduce or eliminate monetary sanctions whenever possible. Two strategies would go a long way to reducing such harms: decriminalizing traffic offenses in those states where a simple traffic ticket can entrap people in the criminal legal system; and ceasing the practice of assessing monetary sanctions in addition to custodial sentences that require spending time in prison or jail or supervisory sentences that mandate supervision by parole or probation agencies.

The abolition or substantial reduction in the use of monetary sanctions system must follow from a fundamental change in the way in which local courts and public services are funded. A true abolition of monetary sanctions would require a reduction or elimination of jurisdictional reliance on funding from monetary sanctions (Pacewicz and Robinson 2020). At the same time, we call for the elimination of the use of private agencies for debt collection and surveillance, an often-used tactic to minimize costs to state and local governments. Private companies have a perverse incentive to increase total punishment through its payment structures, because most contracts and funding depends on long terms of supervision and frequent violation reports (Huebner and Shannon 2022, this volume).

### Eliminate Arbitrary Practices and Excessive Monetary Sanctions

To the extent that monetary sanctions remain a feature of the criminal legal system, our second set of recommendations targets arbitrary practices and excessive monetary sanctions that can be particularly harmful for people who do not have the economic means to pay. Specific strategies include mandating evaluations of ability to pay for all defendants at the time of sentencing, granting waivers of all costs (even those identified as mandatory) for people deemed unable to pay, and eliminating garnishment processes.

Ability-to-pay determinations should be based on a person's current income and expenses and no mandatory fines and fees should be levied against people without adequate or stable income to make regular payments. Furthermore, people living solely on federal means-based income or supplements should not be assessed any form of monetary sanctions (see Sykes et al. 2022, this volume). The excerpts from our field notes and interviews highlight the lack of ability-to-pay hearings held by judges both at the sentencing of fines and fees and at the assessment of nonpayment compliance hearings. Further, our research

**Table 4.** Policy Innovations

| Intervention/ Recommendations | Key Stakeholders | Models/Resources | Limitations |
|---|---|---|---|
| **Reduce the scope of monetary sanctions** | | | |
| Reduce or eliminate jurisdictional reliance on funding from monetary sanctions. | legislators | MO SB5 | Constrained political feasibility of pursuing tax-based revenue. |
| Eliminate the use of private agencies for debt collection, surveillance, and data management. | legislators | The privatization of debt collection creates an array of "cost points" with significant penalties for nonpayment. | Public jurisdictions have been found to engage in practices that mirror those of private agencies, reproducing similar inequalities. |
| **Eliminate arbitrary and excessive monetary sanctions** | | | |
| Evaluate current and future ability to pay at sentencing with clear guidelines outlined on bench cards. | judiciary legislators | WA RCW 10.101.010; "Lawful Collection of Legal Financial Obligations: A Bench Ca rd for Judges" by the National Center for State Courts | Current and future ability to pay only applies to court-imposed costs and people may still be sentenced to fines and mandatory costs. |
| Evaluate the definition and guidelines used to assess behavior constituting "willful nonpayment." Add evaluations to bench card guidelines. | judiciary legislators | Legislative and judiciary determinations of what constitutes "willful nonpayment" are influenced by scripts about individual responsibility and deservingness that criminalize poverty. | Ongoing potential for judges to not consider the ability to pay. |

(*continued*)

**Table 4.** (*continued*)

| Intervention/ Recommendations | Key Stakeholders | Models/Resources | Limitations |
|---|---|---|---|
| Grant waivers for people who are unable to pay at sentencing rather than postconviction. | judiciary legislators | 2018 Criminal and Traffic Assessments Act (CCTA), which provided waivers for court costs for people with incomes up to 400 percent of the poverty line (IL HB 4594) | CCTA waivers are a postconviction remedy; CCTA is not retroactive; CCTA does not cover probation fees or mandated program fees. |
| Remission of monetary sanctions due to hardship. | judiciary legislators | WA SB 1783 allows incarcerated individuals to petition the court to waive interest postrelease; WA RCW 10.101.01 defines manifest hardship where the person is indigent. | A judge could convert monetary sanctions to community services hours, but community service has been shown to cause life disruptions. |
| **Decouple monetary sanctions from other institutions** | | | |
| Eliminate the suspension of driver's licenses for unpaid costs. | judiciary legislators | Free to Drive Campaign<br>IL HB3653 | Potential to reduce the deterrent effect of monetary sanctions. |
| **Enhance data transparency and access** | | | |
| Make data accessible and transparent on monetary sanctions to the public, defendants, and policymakers. | legislators judiciary | Unified Judicial System of Pennsylvania; Measures for Justice | Reform requires substantial data infrastructure and manpower to develop, maintain, and share data. |

*Source:* Authors' tabulation.

highlights the stress and strain individuals and their families experience as a result of their inability to pay their court debt and by the related court surveillance and collateral consequences such as the loss of drivers' licenses (Harris and Smith 2022, this volume).

States such as Illinois have recently overhauled their system of court costs by recognizing fees as user costs, explicitly identifying them as harmful to people who are indigent, acknowledging the lack of transparency in their imposition, and implementing reforms accordingly. In part to address the rise in appellate cases in which defendants challenge the fairness of specific legal fines and fees, the Access to Justice Act created the bipartisan Statutory Court Fee Task Force, which in 2016 released its findings and policy recommendations to the Illinois General Assembly and Illinois Supreme Court (Statutory Court Fee Task Force 2016). The candid report exposed the unfair, "byzantine" nature of fees as user costs, prompting the Illinois legislature to pass the 2018 Criminal and Traffic Assessment Act, which, among other things, provided waivers for court costs for people with incomes up to 400 percent of the poverty line (see Friedman and Pattillo 2019).[11] Furthermore, the availability of waivers must be clearly articulated; additionally, courtroom personnel should receive bench cards and mandated training on how to implement new policies (see also Colgan 2019).

Garnishment of inmate accounts, prison wages, and other wages is unnecessarily and excessively punitive and can result in significant hardship for people assessed monetary sanctions as well as their families. Our interview data show that people experience garnishment as gratuitous and harmful and report that it undermines family relationships and motivation to work (Boches et al. 2022, this volume). Having the support of family members and friends is important, materially and symbolically, for people trying to survive while incarcerated and trying to reenter society after a period of incarceration. Garnishing commissary accounts and wages from work undermines family support and work effort and can have particularly acute consequences for people who are most disadvantaged.

### Enhance Equity by Revealing All Monetary Sanctions and Inter-Institutional Involvement

Our third set of recommendations is designed to enhance equity to ensure that the negative effects of monetary sanctions are not concentrated on those unable to pay. Specifically, these include clearly articulating the full extent of monetary sanctions at the time of sentencing and decoupling monetary sanctions imposed by the criminal legal system from other institutions.

Costs of surveillance, routine monitoring, and court-mandated classes and program participation often are not articulated during the sentencing process. Many of these services leverage private companies to collect and to report defendant compliance with program requirements ordered by the state. Their costs are only fully revealed when people seek to enroll and complete these programs. The costs associated with court-ordered rehabilitation programs, courses, and surveillance should be clearly articulated at the time of sentencing. Moreover, whether charged by public or private entities, costs should be recorded in data collection systems. Articulating the full cost of sanctions at the time of sentencing and the collection of more comprehensive data on these costs have the potential to reveal disparities in both the assessment of monetary sanctions and assignment to diversionary programming.

Driving privileges must be decoupled from the repayment of monetary sanctions because the suspension and revocation of licenses for unpaid monetary sanctions incur disproportionate punishment to those who are unable to pay. Moreover, criminal courts should adjust payment expectations to accommodate legal financial obligations to noncustodial children or mandated child-support payments. If states prioritize and penalize legal financial obligations incurred through the criminal system

11. Illinois House Bill 4594, "Criminal and Traffic Assessment Act," 100th General Assembly (2018), https://www.ilga.gov/legislation/BillStatus.asp?DocNum=4594&GAID=14&DocTypeID=HB&SessionID=91&GA=100 (accessed August 12, 2021).

over those of the family, children are unduly punished.

### Make De-Identified Data Publicly Available

Our final recommendation is to make de-identified data about criminal legal involvement and associated monetary sanctions publicly available. Across and within states, there is wide variability in the type, amount, and quality of data about the imposition and collection of monetary sanctions available. Courts and the criminal legal system operate in the public interest. Yet the lack of data availability, and thus the lack of transparency, about what they do and how they do it raises pressing issues of equity and accountability. Inaccessible data shroud the mechanics of a public institution with which millions of people interact daily, reducing our ability to evaluate the system of monetary sanctions, including the inequities it generates, and limiting capacity for effective change. In California, for instance, Mikaela Rabinowitz, Robert Weisberg, and Lauren Pearce report that the data gap is so extensive that these "failings affect researchers' and practitioners' work in criminal justice systems in the state and inhibit critical transparency in the largest criminal justice system in America" (2019, 2).[12]

Among the many structural constraints on data availability is whether the state has an open records policy. The last two columns of table 3, for example, show that almost all of the states in our study have an open records policy; however, in practice, these open record policies do not ensure access to gold standard data, namely administrative court data on monetary sanctions that contain detailed sentencing information including financial amounts separated by fine, fee, surcharge, interest, payment penalties, and payment amounts along with defendant characteristics, case characteristics, and court characteristics. Only Minnesota and Washington—states with comparatively small populations and low incarceration rates—provide data that contain this level of detailed information about monetary sanctions. Other states' data include varying levels of information about monetary sanctions.[13] California—the state with the largest correctional population (Maruschak and Minton 2020, 11) and number of court cases (Judicial Council of California 2020)—limits data availability to researchers, the public, and even lawmakers, who must be granted "special data-gathering powers" by the legislature to access data in order to make very basic policy recommendations to the governor and legislature on criminal legal reforms (see Committee on Revision of the Penal Code 2021, 3; for details, see Rabinowitz, Weisberg, and Pearce 2019).[14]

These information and data gaps are exacerbated when data collection and management systems are outsourced to private entities, as in several states in this study. In Georgia, for example, misdemeanor probation is largely

12. Federally collected data also have limitations in their coverage and level of detail on monetary sanctions. In many court data systems, for example, details about monetary sanctions were often secondary to recording the final dispositions and information about prison time or court-ordered program participation (for more detail, see Martin et al. 2018, 478).

13. For example, data in some jurisdictions in Georgia are available one case at a time. The California Judicial Council's Rules of Court prohibit the bulk distribution of automated, electronic court data. The current data infrastructure is inadequate, and the procedures for requesting access to case and inmate data can be opaque or prohibitive (Rabinowitz, Weisberg, and Pearce 2019). In New York, two entities collect and maintain criminal justice data: the Office of Court Administration and the Division of Criminal Justice Services. Each purportedly keeps monetary sanction data, but neither is able to provide comprehensive, reliable data.

14. California's criminal justice data are compartmentalized across three agencies that shield access: the California Department of Justice, which has data on arrest records and offense disposition from the courts; the Judicial Council of California, which has detailed court data on case processing and adjudication for all fifty-eight counties, including fines and fees; and the California Department of Corrections and Rehabilitation, which has data on inmates in custody and their reentry process, including supervisory costs and the terms of their probation or parole (on probation costs, see Huebner and Shannon 2022, this volume). Each of these agencies has different rules and regulations that limit open access to researchers, practitioners, and the public.

performed by twenty-four private companies, each of which maintains its own data collection system (Huebner and Shannon 2022, this volume). Similarly, Texas has at least four private companies that provide data management systems and staff often have limited capacity to fulfill any request for data outside legislative mandates (Harris et al. 2017).

Access to high-quality data is essential to making informed decisions about the effectiveness of and inequalities generated by monetary sanctions. For example, evaluations of who can pay, and what amounts, depend on detailed and publicly available records of each case that is heard and adjudicated before a judge. In the absence of these data, researchers and policymakers do not have enough information to create and evaluate different scenarios for payment plans tailored to people of varying economic means. We thus argue that all states should make available de-identified, individual-level case data, including demographic information about defendants, charges, monetary and nonmonetary sanctions, and detailed amounts of fines and fees sentenced, paid, and outstanding.

## CONCLUSION

What is wrong with monetary sanctions? The system of monetary sanctions is a vast and piecemeal system of laws, policies, and practices that monetize access to just outcomes and undermine equality before the law. People are assessed fines, fees, and other costs on conviction in some states and at the time of a citation in others. Viewed as punishment for wrongdoing, a source of revenue (Pacewicz and Robinson 2020), and an opportunity to demonstrate personal responsibility and accountability (Harris 2016, 137), monetary sanctions have a wide range of supporters and stakeholders. At the same time, they have faced an increasing amount of scrutiny and have been characterized as contributing to a "two-tiered system of justice" (Harris 2016). People who can afford to pay their legal debts can absolve themselves of criminal wrongdoing, whereas those who cannot suffer additional penalties, extended legal involvements, and dehumanization. Problems in the design of monetary sanctions are aggravated by problems of practice at every stage of the criminal legal system.

Ostensibly, fines could function as an efficient and low-cost form of punishment relative to incarceration. Similarly, fees have the potential to generate revenue to offset the costs of the criminal legal system. A subset of those convicted of a criminal offense have the means to pay what they owe. In our observations, however, monetary sanctions inflict disproportionate harm and prolonged entanglement on those least able to do so. Some minimal or superficial benefit of monetary sanctions aside, on the whole, our findings reveal far more harm than good for those of limited means.

Our recommendations are aimed at reducing the scope of monetary sanctions, equalizing access to justice, and ensuring equality under the law. However, the system continues to fall short and have disproportionate impacts. Just one example is that existing law prohibits jailing someone solely on the basis of inability to pay legal debt, and ability-to-pay hearings are a key feature of the system of monetary sanctions in all of the states in our study (see *Bearden v. Georgia*).[15] Nonetheless, our observational and interview data show that people are routinely jailed as a consequence of their inability to resolve outstanding legal debt. Many of those jail stays are triggered by capias pro fine warrants issued when defendants fail to appear for a status hearing regarding unpaid fines and fees or for failure to report to a probation officer out of fear of inability to pay (Shannon 2020). Absent a formal ability-to-pay hearing, or determination of willful nonpayment, such incapacitations are likely unconstitutional (Hecht 2017). Thus, although it is essential to revisit the mandate that courts consistently assess ability to pay before making any determinations of willful nonpayment or levying additional sanctions, such gross disregard for the legal intent of *Bearden* and subsequent legal decisions suggests that more careful consideration needs to be given to how to address the problems related to monetary sanctions.

Drawing on recent work on courts and abo-

15. *Bearden v. Georgia*, 461 U.S. 660, 103 S. Ct. 2064 (1983).

litionist principles (Clair and Woog 2022), we conclude by suggesting that any reforms to the system of monetary sanctions should seek to shift material power from the criminal legal system toward affected populations, to reduce harm caused, and to reimagine ways to account for crimes outside the criminal legal system. Many people who have been assessed legal debt expressed the desire to have their monetary sanctions based on their ability to pay and suggested future policy should permit judges to inquire about an individual's ability to pay before sentencing fines and fees. Study participants said they wanted to pay their monetary sanctions but were often simply unable to manage them. A participant in Illinois described it this way: "It depends on what was more important at the time—if I needed to keep the lights on or if I believed it was to pay the fine. I don't want to go to jail; that scares me."

It was therefore not surprising that when asked for suggestions for reforms, study participants suggested that reforms introduce greater flexibility in payment options and related accommodations. Study participants suggested offering the option of delaying payments for a period of time after incarceration in order to gain their footing, for the provision of legal support, and for help with underlying substance use and mental health issues that inhibited their ability to secure employment or hold down a steady job. In our interviews, more than one person who owed legal debt asked simply that they be treated with respect. A participant who owed fines and fees in Georgia put it this way: "I went in there trying to do right, pay these people. . . . I don't see why somebody will belittle you."

Existing laws, policies, and practices governing monetary sanctions create and perpetuate long-term unequal outcomes particularly for economically marginalized and racialized communities. Conceptualizing our recommendations in relation to how they restore equity, address harm, and empower economically marginalized and racialized communities could guide the development of additional legal templates. Such interventions and recommendations, given that they allow policymakers to identify key stakeholders and carefully recognize the trade-offs associated with immediate and incremental changes to the criminal legal system, can help further advance access to justice and equality before the law. However, questions still remain whether a system based on monetary sanctions can ever be just in a society with so much racial and economic inequality. These questions force us to continue to theorize a legal system that abolishes fiscal penalties.

**Table A1.** Revenue Generated by Fines and Forfeits, State Plus Local Government Revenues 2013

| State | Total Fines and Forfeits Revenue (in Thousands) | Fines and Forfeits Revenue Per Capita | Fines and Forfeits as Percentage of Own-Source Revenue |
|---|---|---|---|
| California | $2,605,676 | $67.98 | 0.89 |
| Georgia | $578,236 | $57.87 | 1.17 |
| Illinois | $773,943 | $60.08 | 0.86 |
| Minnesota | $110,629 | $20.41 | 0.27 |
| Missouri | $230,089 | $38.07 | 0.72 |
| New York | $2,158,268 | $109.83 | 1.05 |
| Texas | $1,596,861 | $60.38 | 1.06 |
| Washington | $294,056 | $42.18 | 0.62 |

*Source:* Authors' tabulation based on Census Bureau 2013.

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