

Unholy Alliance: California Courts' Use of Private Debt Collectors

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CALIFORNIA REINVESTMENT COALITION

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California Reinvestment Coalition
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The California Reinvestment Coalition builds an inclusive and fair economy that meets the needs of communities of color and low-income communities by ensuring that banks and other corporations invest and conduct business in our communities in a just and equitable manner.

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EXECUTIVE SUMMARY

Government-created debt through criminal fines and fees creates financial insecurity and income inequity for already overburdened communities, with a disproportionate impact on low-income communities of color. California has tried several approaches to reform the system of fines and fees, such as ceasing suspension of drivers' licenses as a method of collecting traffic court fines and fees.^{1,2} However, California counties' use of government-contracted third-party private vendor debt collectors is especially troublesome: private debt collectors are not subject to the consumer protection laws, and accumulated debt can spiral out of control for consumers who are unable to pay. A full overhaul of this system is urgently needed to protect low-income communities and communities of color.

In an effort to better understand the relationship between state and county courts and private debt collection agencies, the California Reinvestment Coalition (CRC) conducted evaluations of private debt collections agencies that contract with state and county courts to collect data on delinquent court debt. CRC reviewed Master Agreements from the California Judicial Council and Participating Agreements from counties that set the terms between the counties and contracted debt collectors. Data

was also collected to evaluate Ability-To-Pay (ATP) programs in 17 California counties. Such programs evaluate each person's ability to pay fines and fees before determining the amount to be paid.

Our research showed that the collection of fines and fees is a regressive form of income generation for municipalities. Private debt collectors profit from fines and fees assessed on poor people, facilitated by the state of California. However, the revenue to counties from collecting these fines and fees is miniscule; this system only benefits the private debt collectors.

Findings further showed that:

- Court-ordered debt collected by private agencies³ makes up an insignificant amount of a county's total revenue.⁴ It ranges from 0.001-0.46%, meaning none of the studied counties derive even half of a single percent of their revenue from the collection of court-ordered debt by debt collectors.
- No court-ordered debt, nor its collection practices, are covered under the Fair Debt Collection Practices Act (FDCPA), a federal law passed in 1977 to protect consumers from unfair debt collection practices. California has its own version

¹ Associated Press. (2017, June 29). California no longer will suspend driver's licenses for traffic fines. Retrieved from <http://www.latimes.com/local/lanow/la-me-ln-driver-license-fees-20170629-story.html>

² Lawyers' Committee for Civil Rights of the San Francisco Bay Area. (2017, May). Paying More for Being Poor: Bias and Disparity in California's Traffic Court System. Retrieved from <https://www.lccr.com/wp-content/uploads/LCCR-Report-Paying-More-for-Being-Poor-May-2017.pdf>

³ **Private Agency:** A private entity employed or contracted to collect court-ordered fines, fees, forfeitures, assessments, and penalties, Judicial Council of California. (2017, November 7). Judicial Council Report to the Legislature: Statewide Collection of Delinquent Court-Ordered Debt for Fiscal Year 2016–17. Retrieved from

<http://www.courts.ca.gov/documents/lr-2017-collections-delinquent-court-ordered-debt.pdf>; Only 15 counties use private agencies to collect debt.

⁴ **Total County Revenue/Overall Revenue:** Financial resources collected by a local government to finance operations and services including, but not limited to, revenue received from federal government, local government fines and forfeitures, intergovernmental (including state and federal sources), licenses, permits, and franchises, miscellaneous (from the sale of real or personal property), in-lieu taxes, property taxes, use of money or property, sales and use taxes, state aid, taxes, transient lodging taxes, utility user taxes, etc. Retrieved from: <https://bythenumbers.sco.ca.gov/stories/s/guqp-d3wf>

of FDCPA, called the Rosenthal Fair Debt Collection Practices Act (RFDCPA). Like the FDCPA, the RFDCPA does not cover court debt. Some of the debt types not covered by FDCPA and RFDCPA include traffic fines, fees and charges from commitment and probation orders, criminal restitution, or court fine resulting from an arrest.⁵

- The process by which debt is collected varies widely by county and by court, creating an uneven system of justice whereby the consequences of court-imposed debt, and the financial burden of repaying it, largely depend on which county court system imposed the fine or fee.
- Out of the 17 counties studied, two counties, San Bernardino and Kern, do not contract with private debt collectors. This indicates that it is possible for counties to collect debt without the use of private debt collectors.
- Private debt collections agencies make commissions off the debt they collect, ranging from 12%-18% for newly delinquent debt⁶ to 14.9-25.8% for delinquent debt over five years old.
- Of the 17 counties studied, only one private collections agency was subject to a Code of Ethics in their service agreement.
- The majority of counties have no public information available regarding their Ability-To-Pay evaluation policies and procedures, making it difficult to evaluate their programs and assess whether they are made available to debtors in an equitable way.

⁵ National Consumer Law Center. (2016, September). Confronting Criminal Justice Debt: A Guide for Litigation. Retrieved from <http://www.nclc.org/images/pdf/criminal-justice/confronting-criminal-justice-debt-2.pdf>

Based on these findings, CRC recommendations include the following:

County-Level Recommendations:

- 1) Counties should end contracts with debt collectors.
- 2) For those counties that do contract with private debt collectors, court-imposed debt collection practices should be subject to debt collection protections outlined in FDCPA and RFDCPA to ensure debt is collected fairly. This debt should not be reported to credit bureaus.
- 3) Counties should discharge debt before sending it to private debt collectors.

Statewide Recommendations:

- 4) The State of California and County Courts should increase transparency about debt collections practices, contract negotiations for Master Agreements and Participating Agreements, and Ability-to-Pay programs; and institute a public process for communities to give feedback.
- 5) Delinquent debt should not be transferred to the California Franchise Tax Board.
- 6) California should create statewide, uniform and accessible Ability-to-Pay evaluations and processes, regardless of type of court.

⁶ **Newly Delinquent**=Accounts not fully paid 30 days past its stated due date, or on which an installment payment has not been paid 30 days past its stated due date.

THE DISPROPORTIONATE IMPACT OF FINES AND FEES DEBT IN CALIFORNIA

The California Reinvestment Coalition is a statewide network of 300 community-based organizations that work together to build a more inclusive and fair economy that meets the needs of low-income communities and communities of color. For more than 30 years, CRC has helped to ensure that banks and other corporations conduct business in a just and equitable manner. CRC advocates for policies and practices that promote economic opportunity and prevent corporate practices that cause financial harm to historically marginalized communities.

For this report, we were particularly interested in learning how harmful collection practices of fines and fees perpetuate a cycle of poverty in communities of color, particularly in counties with high percentages of adults of color. This report considers the processes by which delinquent court-ordered fines and fees (focusing on criminal fines and fees) are collected by a jurisdiction and referred to private debt collection companies. It also considers the process by which someone who is unable to pay is evaluated through an Ability-To-Pay program.

In California, 64.4% of adults arrested, and therefore subject to fines and fees, are adults of color.⁷

The imposition of these criminal, municipal, and civil fines and fees disproportionately impact communities of color due to systemic race and criminal justice issues that hurt communities of color, such as higher rates of economic instability,⁸ the over-policing of neighborhoods,⁹ and higher traffic stop rates.¹⁰ For example, 67.9% of the probation caseload, and the relevant fines and fees, in the California Probation System consists of people of color, overrepresented by African Americans.¹¹

⁷ Author calculation, including ages 18 and older. Information from: Department of Justice. (n.d.). Data Portal. Retrieved March 20, 2018, from <https://openjustice.doj.ca.gov/data>

⁸ Asante-Muhammad, D., Nieves, E., Collins, C., & Hoxie, J. (2016, August). The Ever-Growing Gap Without Change, African-American and Latino Families Won't Match White Wealth for Centuries. Retrieved from https://prosperitynow.org/files/resources/The_Ever_Growing_Gap-CFED_IPS-Final.pdf

⁹ Miller, T. R., Lawrence, B. A., Carlson, N. N., Hendrie, D., Randall, S., Rockett, I. R., & Spicer, R. S. (2017, January 20).

Perils of police action: A cautionary tale from US data sets. Retrieved from <http://injuryprevention.bmj.com/content/injuryprev/23/1/27.full.pdf>

¹⁰ East Bay Community Law Center. (2016, April). Stopped, Fined, Arrested - Racial Bias in Policing and Traffic Courts in California. Retrieved from http://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_Arrested_BOTRC_A.pdf

¹¹ Nguyen, V., Grattet, R., & Bird, M. (2017, August). California Probation in the Era of Reform. Retrieved from http://www.ppic.org/wp-content/uploads/r_0817vnr.pdf

“This system perpetuates a cycle of debt and poverty that disparately affects people of color; people of color are disproportionately represented in the criminal justice system in California and this involuntary debt can affect the building of intergenerational wealth.”

Theresa Zhen, Staff Attorney, East Bay Community Law Center

This issue affects not just individuals, but families as a whole. A study on juvenile probation in Alameda County found that “a family with an African American youth serving average probation conditions is liable for more than twice the juvenile administrative fees (\$3,438) as a family with a white youth serving average

probation conditions (\$1,637)... Families are doubly harmed by current practices-their children are overrepresented within the system, and they are liable for higher fees because of longer probation conditions”.¹²

Within the civil debt world, regulators continue to receive complaints in regards to bail laws, even though California is perceived to have strong consumer protections in this area.¹³ In an analysis of 100 bail contracts, it was found that “bail bond agents profit off their poor clientele through late fees and interest payments, they charge numerous fees-some of which may not be legal, they may skirt reporting requirements when charging extra fees, and discounts were available-to wealthier people.”¹⁴ The collection of these fees and the little awareness of fee waivers and alternative payment programs further exacerbates financial instability within communities of color, which increases the inequality of wealth between communities of color and white communities.

¹² Kaplan, A., Lavalais, A., Kline, T., Le, J., Draznin-Nagy, R., Rodriguez, I., . . . Selbin, J. (2016, March 26). High Pain, No Gain: How Juvenile Administrative Fees Harm Low-Income Families in Alameda County, California. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2738710

¹³ Silver-greenberg, J., & Dewan, S. (2018, March 31). When Bail Feels Less Like Freedom, More Like Extortion. Retrieved

April, from <https://www.nytimes.com/2018/03/31/us/bail-bonds-extortion.html>

¹⁴ UCLA School of Law: Criminal Justice Reform Clinic. (2017, May). The Devil in the Details: Bail Bond Contracts in California. Retrieved from https://static.prisonpolicy.org/scans/UCLA_Devil_in_the_Details.pdf

Our research focuses on counties with higher numbers of adults¹⁵ of color¹⁶ than the state's average. The counties studied were:

Alameda, Colusa, Fresno, Imperial, Kern, Kings, Los Angeles, Madera, Merced, Monterey, Riverside, San Benito, San Bernardino, San Joaquin, Santa Clara, and Tulare. San Francisco¹⁷ was included, even though its proportion of adults of color is less than the state's proportion.

In these counties, adults of color arrested made up 55% to 83.4% of the total adults arrested.¹⁸

Table 1: Proportion of Adults of Color to Non-Hispanic White Adults in Studied Counties

<i>County</i>	Adults Total	Number of Non-Hispanic White Adults	Number of Adults of Color	Proportion
<i>Imperial</i>	117,217	17,914	99,303	84.7%
<i>Los Angeles</i>	7,071,965	2,303,159	4,768,806	67.4%
<i>Merced</i>	171,586	63,103	108,483	63.2%
<i>San Bernardino</i>	1,414,191	527,350	886,841	62.7%
<i>Tulare</i>	287,805	110,392	177,413	61.6%
<i>Fresno</i>	628,133	243,467	384,666	61.2%
<i>Alameda</i>	1,152,242	447,938	704,304	61.1%
<i>Santa Clara</i>	1,325,841	524,531	801,310	60.4%
<i>Monterey</i>	289,832	114,959	174,873	60.3%
<i>Kings</i>	102,617	40,847	61,770	60.2%
<i>San Joaquin</i>	471,143	198,264	272,879	57.9%
<i>San Benito</i>	39,524	17,229	22,295	56.4%
<i>Kern</i>	570,742	250,422	320,320	56.1%
<i>Madera</i>	101,753	45,776	55,977	55.0%
<i>Colusa</i>	14,408	6,536	7,872	54.6%
<i>Riverside</i>	1,548,431	716,542	831,889	53.7%
<i>State of CA</i>	26,856,280	12,437,054	14,419,226	53.7%
<i>San Francisco</i>	671,592	316,966	354,626	52.8%

¹⁵ Ages 18 through 85 and older are "adults." Working age adults were chosen as a proxy for the age when criminal, municipal, and civil fines and fees would be applied, not considering ability to work. According to author's calculation and information from the Department of Finance, the State of California's estimated proportion of "adults" of color is 53.7%.

¹⁶ Adults of Color includes African-Americans, Hispanics, Asians, Native Americans, and anyone who is not categorized, or has not identified themselves as non-Hispanic whites.

¹⁷ The San Francisco municipality is the City and County of San Francisco.

¹⁸ Author calculation, including ages 18 and older. Information from: Department of Justice. (n.d.). Data Portal. Retrieved March 20, 2018, from <https://openjustice.doj.ca.gov/data>

HOW DEBT COLLECTION OF FINES AND FEES WORKS IN CALIFORNIA

California ranks 8th among US states in the number of criminal fees imposed on people.¹⁹

California has a total of 684 criminal justice financial penalties,²⁰ of which 597 are fines²¹ and 58 are fees.²²

Base fines and certain surcharges are set in state law for each criminal offense. State law also gives counties and courts the authority to levy additional charges depending on the specific violation. Additionally, courts, at the discretion of judges, can reduce the total amount owed by waiving or reducing certain charges.²³ Counties can submit for the collection of debts owed for property taxes, delinquent fines, bail, vehicle parking penalties, court-ordered payments, and other permitted debts.²⁴

The process in which debt is collected by an agency before being sent to debt collection varies throughout California's counties. Courts are currently the primary administrator of collection programs in about two-thirds of the state's counties.²⁵ Collection can happen through trial courts, county agencies, the Franchise Tax Board, the Department of Motor Vehicles or Metropolitan Transportation Authority, and private debt collectors.²⁶

Counties are required to report on the collection of court-ordered debt to the Legislature through the Judicial Council of California, using the Collections Reporting Template.²⁷ This report includes an overview of money collected from delinquent court-ordered debt within county governments and their Superior Courts in California's 58 counties, and is used to determine if the counties and courts meet the Judicial Council's Best Practices for Collection, which includes 25 practices. Of greatest relevance to this research were A) the effectiveness and

¹⁹ Criminal Justice Policy Program at Harvard Law School: 50-State Criminal Justice Debt Reform Builder. (2018). Retrieved from <https://cjdebtreform.org/national-comparison>

²⁰ Criminal Justice Policy Program at Harvard Law School. (2018). Fees and Fines. Retrieved from [https://cjdebtreform.org/data-explorer/fines-and-fees?deff\[0\]=state:89](https://cjdebtreform.org/data-explorer/fines-and-fees?deff[0]=state:89)

²¹ **Fines:** Financial obligations imposed as a penalty after a criminal conviction or admission of guilt. Criminal Justice Debt Reform Builder: Definitions and Methodology. (2018). Retrieved from <https://cjdebtreform.org/sites/criminaldebt/themes/debtor/blob/Definitions-for-Web-Tool.pdf>

²² **Fees (including Surcharges and Supervisory Fees):** Financial obligations imposed as a way for jurisdictions to recoup costs of the "use" of the criminal justice system, including, but not limited to, costs associated with public defenders, GPS monitoring, court proceedings, imposed as a flat fee or percentage added to a fine to fund a particular government function or a general fund, and/or user fees that are imposed to recoup the cost of parole or probation supervision., Criminal Justice Debt Reform Builder: Definitions and Methodology. (2018). Retrieved from <https://cjdebtreform.org/sites/criminaldebt/themes/debtor/blob/Definitions-for-Web-Tool.pdf>

²³ Legislative Analyst's Office. (2017, February 22). Overview of Criminal Fine and Fee System. Retrieved from <http://www.lao.ca.gov/handouts/crimjust/2017/Fine-and-Fee-Overview-022717.pdf>

²⁴ Franchise Tax Board. (2017, May 15). Interagency Intercept Collections Program – Client Participation Basics Webinars. Retrieved from <https://www.ftb.ca.gov/aboutFTB/media/webinars/05162017-Text.pdf>

²⁵ Legislative Analyst's Office. (2014, November). Restructuring the Court-Ordered Debt Collection Process. Retrieved from <http://www.lao.ca.gov/reports/2014/criminal-justice/debt-collection/court-ordered-debt-collection-111014.pdf>

²⁶ *ibid.*

²⁷ [Insert link to Collections Reporting Template]

efficiency of external collection agencies or companies to which court-ordered debt is referred to collection, and B) the impact of financial screening to assess each individual's ability to pay prior to processing installment payment plans and account receivables.²⁸

County governments and their courts contract directly with private debt collectors through Participating Agreements. Our review of these Participating Agreements indicates several problematic aspects. For example, private debt collectors may report unpaid debt to credit bureaus, potentially affecting peoples' credit scores and future opportunities to access credit. Whether or not counties allow private debt collection agencies to report outstanding debt from fines and fees to credit bureaus varies county-by-county. One county court states: "Contractor to perform credit reporting only if/when Court asks Contractor to perform that task." Two of the country courts ensure that "contractor[s] will not report outstanding [accounts] on behalf of the Court to any credit history reporting databases (credit bureaus)."

Private debt collectors may also employ skip tracing²⁹ and other techniques to locate debtors

anywhere within the United States, and may use Spanish or other languages to do so. Private debt collectors can also provide staff at public counter areas to assist the public with accepting payments, answering questions, and setting up payment arrangements. This means they are legally using county buildings or courthouses to collect on debt, potentially using unfair practices. For example, there is a bank of telephones in a San Francisco courthouse that goes directly to Alliance One, which is contracted with the City and County of San Francisco to collect on delinquent debt.

Only one Participating Agreement provides a Code of Ethics for court employees to the private debt collector. Although private debt collectors cannot represent themselves as court employees, the Code of Ethics they shared promotes behaving "towards all persons with respect, courtesy, patience, and responsiveness, acting always to promote public esteem in the court system".

This system perpetuates a cycle of debt and poverty that disparately affects people of color; people of color are disproportionately represented in the criminal justice system in California and this involuntary debt can affect the building of intergenerational wealth.

²⁸Judicial Council of California. (2016, June 9). Judicial Council Approved Collections Best Practices. Retrieved from <http://www.courts.ca.gov/partners/documents/collectbp.pdf>

²⁹ "If a collection agency is seeking data on a debtor to collect a debt, it may first check some large data brokers for

consumer information related to the debtor, such as current address, phone or employment information to 'skip trace' the debtor." Williams, J. (2016 [Pending]). U.S. Patent No. US15085267. Washington, DC: U.S. Patent and Trademark Office.

PROFILE OF COUNTY-LEVEL DEBT COLLECTION OF FINES AND FEES

In 2016-2017, in the 17 studied counties, we found that:

- There are 15 counties that contract with private debt collectors. Only two counties, San Bernardino and Kern, do not contract with a private debt collector.

 - 13 of these 15 county governments and/or their courts contract with one private debt collector. Fresno County & Courts contracts with two private debt collectors and Riverside County & Courts contracts with three.
 - 4 of 15 county governments (those that collect on water bills, property taxes, etc.) contract with one or more private debt collectors.
 - 14 of 15 county courts contracts with one or more private debt collectors.

 - 15 of 15 counties “contract with local, regional, state, or national skip tracing or locator resources or services to locate delinquent debtors.”

 - 15 of 15 counties “attempt telephone contact with delinquent debtors for whom the program has a phone number to inform them of their delinquent status and payment options.”

 - 14 of 15 counties “notify delinquent debtors for whom the program has an address in writing of their outstanding obligation within 95 days of delinquency.”

 - 11 of 15 counties “sends monthly bills or account statements to all delinquent debtors.”

 - 10 of 15 counties “use Department of Motor Vehicles information to locate delinquent debtors.”

 - 6 of 15 counties “sends delinquent debt to the Franchise Tax Board's Court-Ordered Debt Collections Program.”

 - 5 of 15 counties report that their private debt collection agency is where their majority of their delinquent debt is initially referred.

 - 3 of 15 counties “coordinate with the probation department to locate debtors who may be on formal or informal probation.”

 - 2 of 15 counties “use Employment Development Department employment and wage information to collect delinquent debt.”

 - 2 of 15 counties “establish wage and bank account garnishments where appropriate.”

 - 1 of 15 counties “places liens on real property owned by delinquent debtors when appropriate.”
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REVENUE FROM PRIVATE DEBT COLLECTION OF FINES AND FEES IS AN INSIGNIFICANT PORTION OF COUNTIES' BUDGETS

Overall, revenue from court-ordered fines and fees does not make up a significant portion of total county revenue. In 2016-2017, the amount of all Fines, Forfeitures and Penalties (FFP) revenue either collected by private debt collectors or directly by counties, ranged from 0.297%-4.22% of overall county revenue.

Table 2: Revenue from FFP Compared to Total County Revenue

<i>County</i>	Total County Revenue (TCR)	Fines, Forfeitures, and Penalties (FFP) Revenue	FFP: TCR
<i>Alameda</i>	\$2,968,239,000	\$36,698,000	1.24%
<i>Colusa</i>	\$57,312,392	\$616,683	1.08%
<i>Fresno</i>	\$1,466,927,000	\$11,944,000	0.81%
<i>Imperial</i>	\$458,138,000	\$5,879,000	1.28%
<i>Kern</i>	\$1,688,744,000	\$21,826,000	1.29%
<i>Kings</i>	\$230,037,528	\$1,914,646	0.83%
<i>Los Angeles</i>	\$15,268,481,000	\$153,014,000	1.00%
<i>Madera</i>	\$239,860,000	\$4,865,553	2.03%
<i>Merced</i>	\$455,917,763	\$13,726,140	3.01%
<i>Monterey</i>	\$1,070,600,000	\$8,978,549	0.84%
<i>Riverside</i>	\$4,300,678,000	\$71,196,000	1.66%
<i>San Benito</i>	\$82,992,000	\$3,502,470	4.22%
<i>San Bernardino</i>	\$3,344,596,000	\$14,326,000	0.43%
<i>San Francisco</i>	\$10,357,120,000	\$30,798,000	0.30%
<i>San Joaquin</i>	\$1,475,090,000	\$12,694,533	0.86%
<i>Santa Clara</i>	\$5,398,909,000	\$55,746,000	1.03%
<i>Tulare</i>	\$758,638,000	\$7,517,000	0.99%

Court-ordered debt collected by private agencies makes up an even less significant portion of county revenue, ranging from 0.001%-0.46% of the overall revenue³⁰ collected by the counties.

Furthermore, fines and fees revenue collected from private agencies varied greatly county by county, ranging from .002% to 55.25% of counties' Fines, Forfeitures, and Penalties (FFP) revenue line item.

³⁰ **Overall Revenue:** Financial resources collected by a local government to finance operations and services including, but not limited to, revenue received from federal government, local government fines and forfeitures, intergovernmental (including state and federal sources), licenses, permits, and franchises, miscellaneous (from the sale of real or personal property), in-lieu taxes, property taxes, use of money or property, sales and use taxes, state aid, taxes, transient lodging taxes, utility user taxes, etc. Retrieved from: <https://bythenumbers.sco.ca.gov/stories/s/guqp-d3wf>

Table 3: Revenue Collected by Private Debt Collectors Compared to Total FFP Revenue and Total County Revenue

<i>County</i>	Total County Revenue (TCR)	Fines, Forfeitures, and Penalties Revenue (FFP)	Private Agency Gross Revenue Collected (PA)	PA: FFP	PA: TCR
<i>Alameda</i>	\$2,968,239,000	\$36,698,000	\$6,241,129	17.01%	0.21%
<i>Colusa</i>	\$57,312,392	\$616,683	\$9,707	1.57%	0.02%
<i>Fresno</i>	\$1,466,927,000	\$11,944,000	\$3,765,889	31.53%	0.26%
<i>Imperial</i>	\$458,138,000	\$5,879,000	\$811,762	13.81%	0.18%
<i>Kern</i>	\$1,688,744,000	\$21,826,000		0.00%	0.00%
<i>Kings</i>	\$230,037,528	\$1,914,646	\$1,057,888	55.25%	0.46%
<i>Los Angeles</i>	\$15,268,481,000	\$153,014,000	\$69,233,129	45.25%	0.45%
<i>Madera</i>	\$239,860,000	\$4,865,553	\$356,034	7.32%	0.15%
<i>Merced</i>	\$455,917,763	\$13,726,140	\$692,426	5.04%	0.15%
<i>Monterey</i>	\$1,070,600,000	\$8,978,549	\$507,598	5.65%	0.05%
<i>Riverside</i>	\$4,300,678,000	\$71,196,000	\$4,346,218	6.10%	0.10%
<i>San Benito</i>	\$82,992,000	\$3,502,470	\$755	0.02%	0.00%
<i>San Bernardino</i>	\$3,344,596,000	\$14,326,000		0.00%	0.00%
<i>San Francisco</i>	\$10,357,120,000	\$30,798,000	\$3,506,510	11.39%	0.03%
<i>San Joaquin</i>	\$1,475,090,000	\$12,694,533	\$4,987,870	39.29%	0.34%
<i>Santa Clara</i>	\$5,398,909,000	\$55,746,000	\$5,663,901	10.16%	0.10%
<i>Tulare</i>	\$758,638,000	\$7,517,000	\$1,606,052	21.37%	0.21%

The harmful, often predatory collection practices employed by private collection agencies combined with the negligible returns to counties for contracting with these private actors leads to a lose-lose scenario; vulnerable residents who often are the least able to pay court-imposed fines and fees are subjected to collection practices that trap them in a cycle of poverty and debt, while counties gain little revenue from these practices. The only winners in this scenario are the private collections agencies that profit from their contracts with county court systems.

“Both counties and state-wide governments need to take steps to ensure that revenue is not being made off the backs of those who can afford it least. It is heartening to see the progress that has been made in reforming our criminal justice system, but fines and fees must be abolished so that counties are not looking to raise revenue from those who can afford it least.”

Aila Ferguson, Legal Fellow at the ACLU of Southern California.

Recommendation #1:

Counties should end contracts with private debt collection agencies.

Municipalities can choose to end contracts with private debt collectors. Instead of using private debt collectors, existing collection programs through individual counties and courts can take on the role of collecting on delinquent debt. Revenues from increased collections from these departments can be used to improve processes such as faster payment processing, offering alternative ways to pay, and increasing awareness about Ability-To-Pay programs, discussed later. Dedicated staff should be available to help individuals throughout this process.

County governments and/or courts in Kings, Los Angeles, Riverside, and Tulare counties do not collect on debt.³¹ This does not release the debtor from responsibility. California has led efforts to no longer suspend licenses for unpaid traffic fines because it doesn't help the state collect unpaid fines and hurts low-income people as they can experience job loss or more poverty from not having a valid license.³² Additionally,

California recently ended the assessment and collection of fees charged to parents and guardians with children in the juvenile justice system, a policy which disproportionately hurt communities of color.³³ While there is a debate regarding relieving people from paying fines or fees from violent crime, discharging delinquent court-ordered debt with a history of nonpayment should be feasible.

REAL LIFE STORY: In January 2018, John Doe (pseudonym to protect privacy), a legally blind African American resident of Alameda County, got his entire bank account wiped clean by a traffic court debt that AllianceOne (the court's private debt collections agency), erroneously reported to the Franchise Tax Board. Because his income was solely based on a small amount of public assistance every month, this bank levy jeopardized his housing and food security, and caused a great deal of confusion and anxiety.

³¹ Based on Collections Reporting Templates from the "Judicial Council Report to the Legislature: Statewide Collection of Delinquent Court-Ordered Debt for Fiscal Year 2016–17" requested from Judicial Council pursuant to California Rules of Court, rule 10.500, "public access to judicial administrative records."

³² Bollag, S. (2017, June 29). California to stop suspending licenses for traffic fines. Retrieved from

<https://www.apnews.com/9723bf702b3d4fb0b11d052229b26614>

³³ California Legislative Information. (2017, October 12). Senate Bill No. 190 CHAPTER 678. Retrieved from https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB190

CALIFORNIANS WHO OWE FINES AND FEES ARE NOT PROTECTED FROM ABUSIVE, UNFAIR, OR DECEPTIVE COLLECTION PROCESSES

Under the Fair Debt Collections Practices Act (FDCPA), debt collectors are prohibited from using abusive, unfair, or deceptive practices towards debtors when collecting on a range of consumer debt such as credit card debt or student loan debt.³⁴ Often debtors are low-income and at risk for the negative effects of debt such as depression, anxiety, and stress.³⁵ Debt collection in general has the second-most number of complaints in the Consumer Financial Protection Bureau's Consumer Complaint Database.³⁶

Interestingly, none of the criminal fines and "nonconsensual" municipal fines that are sent to private debt collectors are covered by FDCPA. Traffic fines and other criminal and municipal fines and fees,³⁷ are excluded from the term "debt" within the FDCPA.³⁸ The reason for this is that these debts are "involuntary" debts arising from tickets, fines, or the nonconsensual imposition of a monetary penalty.³⁹ This includes "nonconsensual" municipal fees, fines for nonpayment for waste collection services, parking fines, private parking lot fines, fees and charges from commitment and probation orders,

towing and storage charges, homeowners' association fines, criminal restitution, and court fines from an arrest.⁴⁰ This loophole allows for private debt collectors contracted with municipalities through counties and courts to collect on debt in unfair ways, since they are not required to follow FDCPA.

REAL LIFE STORY: In March 2018, Virginia H. submitted a signed statement to the Alameda County Superior Court indicating that she is a disabled African American senior living on a fixed income without the ability to pay court fees for a traffic violation. After submitting this statement, the court forwarded her debt to AllianceOne, which immediately issued her a Demand for Payment commanding her to pay the debt in full within 10 days. The notice warns her if she does not pay in full in 10 days, that the fees "can be entered as a Judgment against you by the court" and that her "account may be referred to the Franchise Tax Board for involuntary collection." This has caused Ms. Hall anxiety and emotional distress.

³⁴ Federal Trade Commission. (2018, March 13). Debt Collection. Retrieved from <https://www.consumer.ftc.gov/articles/0149-debt-collection>

³⁵ Fitch, C., Mamo, E., & Campion, J. (2014, April). Primary Care Guidance on Debt and Mental Health. Retrieved from https://www.rcpsych.ac.uk/pdf/factsheet_debtandmentalhealth.pdf

³⁶ Consumer Complaint Database. (n.d.). Retrieved from <https://www.consumerfinance.gov/data-research/consumer-complaints/>

³⁷ Other transactions excluded from FDCPA debt protections include: Taxes, child and other family support; Shoplifting civil claims & theft; Claims related to the theft of services or goods; License fees; Car accidents; Homeowner's association non-fee obligations and fines; Employment compensation claims; Torts; & Other claims.

³⁸ National Consumer Law Center.

³⁹ *Gulley v. Markoff & Krasny*, 664 F.3d 1073, 1074 (7th Cir. 2011).

⁴⁰ National Consumer Law Center.

Recommendation #2:

For those counties that contract with private debt collectors, court-imposed debt collection practices should be subject to debt collection protections outlined in FDCPA and RFDCPA, to ensure debt is collected fairly. In addition, this debt should not be reported to credit bureaus.

There must be legislative changes to ensure that debt collectors have to comply with FDCPA so that debtors are protected against unfair, abusive, or deceptive collection. The regulations include rights such as ability to dispute a debt, harassment and call restrictions, prohibiting debt collectors from contacting employers or other people, restrictions on credit reporting, and ability to report complaints.⁴¹

Additional protections would increase accountability to correctly collect debts and could supersede items in contracts, such as in bail bond contracts. Many bail bond contracts “require the accused to give up substantial privacy rights without any ability to opt out of bail bond agents’ invasive techniques, [in addition to] sacrificing the privacy rights of friends and family of the accused.”⁴²

THE REAL WINNERS: PRIVATE DEBT COLLECTION AGENCIES

The Participating Agreements also include commission fee structures that perpetuate perverse profit incentives for collections.

Commission fees⁴³ are based on the length of time the debt has been delinquent, ranging from 12%-18% for newly delinquent debt⁴⁴ to 14.9-25.8% for delinquent debt over five years old.

Only one private debt collection agency has a protection built in for the consumer in their Master Agreement. In this agreement, “Commission fee is determined by age of account at date of referral and remains at the same rate regardless of aging after referral. This prevents a collection vendor from allowing accounts to age so that the fee rises over time.”⁴⁵ Commission fees encourage private debt collectors to collect on debt over five years old, and to allow debt to age so that they can collect on it later and receive higher commission fees.

⁴¹ Office of the Attorney General. (2018, January). Debt Collectors. Retrieved from <https://oag.ca.gov/consumers/general/debt-collectors#top>

⁴² UCLA School of Law: Criminal Justice Reform Clinic.

⁴³ With No On-Site Staff. Not including restitution-related debt.

⁴⁴ **Newly Delinquent**=Accounts not fully paid 30 days past its stated due date, or on which an installment payment has not been paid 30 days past its stated due date.

⁴⁵ Information and contracts obtained from Public Records Act requests and Judicial Council of California. (n.d.). Procurement Services: Collections LPA Master Agreements

Alarming, we found that a couple of these county courts use these private debt collectors to also collect on Non-Delinquent Accounts (or on non-delinquent criminal accounts) and even charged a 9.9% commission fee. Another startling finding from one of the county courts was that they provided a budget to the private debt collector. They shared that the maximum budget for commission fees for the collection service was about \$3.6 million for a previous

Recommendation #3:

Discharge all debt more than 5 years old.

CRC recommends discharging all court-ordered fine and fee debts more than five years delinquent. This would most benefit those who cannot afford to pay these debts, nor deal with the consequences from private debt collectors trying to collect. This would also save money for counties and their courts, who currently try to collect debt that is unlikely to be paid. Court-ordered debt collection from private agencies is

term. For February 1, 2018 through January 31, 2019, that same county court allocated \$5.3 million for commission fees. While it is unknown how much was collected in commission fees by the private debt collector, this could be a perverse incentive for private debt collectors to collect on accounts using any means necessary, in order to receive the maximum money allocated to them.

insignificant to total county revenue, as we will show in the next section of the report. Private debt collectors are incentivized (through higher commissions) to collect on debt over five years old; this creates more costs for counties and courts.

HOW COUNTY CONTRACTS WITH PRIVATE DEBT COLLECTORS ARE AWARDED

Many of the Master Agreements between the Judicial Council and the “pre-approved” private debt collectors are set to expire at the end of December 2018. These master contracts set the stage for participating agreements for counties. CRC filed an information request with the Judicial

Council to receive records on contract negotiations, but were told that they had no requirement to provide us with records, and that “all records of and related to contracts with third-party vendors are exempt until negotiations have been completed.”⁴⁶

and Amendments (including Amnesty). Retrieved from <http://www.courts.ca.gov/procurementservices.htm>

⁴⁶ Public Records Act requests and Judicial Council of California. (n.d.). Procurement Services.

Recommendation #4:

The State of California and counties should increase transparency about debt collections practices, contract negotiations with debt collectors for Master Agreements and Participating Agreements, and Ability-to-Pay programs; and institute a public process for communities to give feedback.

The details of these negotiations and their impacts on communities are of interest to the public. When asked about the Request for Proposals (RFP) process for these contracts, the Judicial Council stated, “if an RFP is issued, it will be provided.” The public has a right to know about the status of negotiations for Master Agreements and Participating Agreements, and to push for community-supported, consumer protection requirements. CRC calls for a public process in which communities can give feedback on the RFP process, details of contracts, and negotiations with debt collectors.

There is also a lack of information made publically available about Ability-to-Pay programs. Information about how many people have benefitted from ATP evaluations, fines and fees payment releases, reductions in fines and fees, alternative payments, and which communities have benefitted from these policies is important.

Overall data about who is affected by the collection of fines and fees and for which infractions, is also needed to see how different communities are affected by these policies.

Courts declined to provide researchers with data on infraction/offense type, household size, income, gender, and race/ethnicity demographics. Some information was available for ATP evaluations, however, the cost for this data was prohibitively expensive (over \$500 in one case). This data is critical in order to understand if alternative payment options are being distributed equitably. A solution to this is for the Judicial Council to add access to this information through existing reporting requirements. Making this information available will make it easier to evaluate to what extent collection practices are disproportionately impacting communities of color and low-income communities.

THE CALIFORNIA FRANCHISE TAX BOARD AS DEBT COLLECTOR

Debt accounts for the collection of fines and fees can also be transferred to other government collection programs. In most cases, this is the Franchise Tax Board (FTB) Court-Ordered Debt Collection and Interagency Intercept programs, where the private debt collector will be responsible for the associated costs. Additionally, depending on the Participating Agreement, 2-

50% of the net debt collected from FTB transfer services (or a flat fee of \$10) is provided to the private debt collector as a commission fee.

Participating Agreements between county courts and private debt collectors include the following information⁴⁷ about transferring debt to the Franchise Tax Board.

- Government Collection Programs

⁴⁷ All information in this section from a Participating Agreement obtained from Public Records Act requests.

- *Court Ordered Debt (COD) Program.* “Contractor will refer Accounts it receives to the FTB-COD Program, liaise with FTB regarding such Accounts, and administer such Accounts under the terms and conditions set forth in Exhibit A. Statement of Work, of the Master Agreement. Upon such a referral to the FTB. Contractor will cease all collection work on the account but will remain responsible for canceling and adjusting all accounts, as appropriate and answering inquiries related to the FTP from debtors.”
- *Tax Intercept Program (FTB-TIP).* “In addition to other Services provided hereunder. Contractor shall prepare an electronic file transfer for those accounts forwarded from Court that are eligible for the FTB-TIP. Contractor will forward eligible Accounts to the FTB, liaise with FTB regarding such Accounts, and perform the equivalent administrative functions regarding such Accounts as that set forth in Exhibit A, Statement of Work, of the Agreement. Upon such a referral to the FTB, Contractor will remain responsible for collecting, canceling and adjusting all-accounts, as appropriate and answering inquiries related to the FTP from debtors.”
- In addition to the commission back to private debt collectors, while “the Court will not pay Contractor any commission for these cases, the Court does agree to pay a 2% transfer fee for cases transferred and collected to FTB COD and FTB TIP.” Some county courts won’t pay commission fees for accounts transferred to FTB at all.

This transfer can be problematic. All but one of the counties studied use FTB collection programs.

According to community advocates and direct service providers, the FTB has more power to affect someone’s financial life than private agencies, since they can garnish wages and withhold tax refunds.

FTB also has a backlog of work which delays payment processing and can result in debtors being assessed late payment fees in addition to what is already owed, or being subject to a warrant for Failure to Pay.⁴⁸

⁴⁸ Rodriguez, G., California Taxpayers Association. Re: 2014 Taxpayers’ Bill of Rights Hearing [Letter written December 4,

2014 to Steve Sims, Franchise Tax Board]. Retrieved from <http://www.caltax.org/action/2014CalTaxBOR.pdf>

“The Franchise Tax Board’s ability to garnish wages, intercept taxes and levy bank accounts is extremely detrimental to individuals’ financial and emotional health. By virtue of wage garnishments, people’s privacy is impacted, notifying their jobs of their financial struggles. By virtue of tax interceptions, people are denied the ability to apply much needed predicated money towards personal needs and through bank levies individuals are held to the whims of their bank, who also becomes privy to their personal struggles but also to those of the FTB. There are very little safeguards against abuse when these systems go awry.” Brandon Greene, Staff Attorney, East Bay Community Law Center

Recommendation #5:

Delinquent debt should not be transferred to the California Franchise Tax Board.

Discharging debt should also happen for debt collection through the Franchise Tax Board’s (FTB) Court-Ordered Debt Collection and Interagency Intercept programs. FTB revenue from collecting court-ordered debt is fairly insignificant. During 2016-2017, the revenue collected from FTB collection programs made up 1.393%-61.931 of an applicable county’s Fines, Forfeitures, and Penalties (FFP) revenue line item. Again, the FFP revenue for the applicable counties do not make up a significant portion of the total county revenue, ranging from 0.297%-4.220%. Court-ordered debt collected through FTB collection programs made up an insignificant amount ranging from 0.006%-0.666% of the total county revenue⁴⁹ collected by the counties.

Table 4: Revenue Collected by FTB Programs Compared to FFP Revenue and Total County

Revenue

<i>County</i>	Total County Revenue (TCR)	Fines, Forfeitures, and Penalties Revenue (FFP)	FTB Program (FTB) Gross Revenue Collected	FTB: FFP	FTB: TCR
<i>Alameda</i>	\$2,968,239,000	\$36,698,000	\$11,016,357	30.02%	0.37%
<i>Colusa</i>	\$57,312,392	\$616,683	\$381,916	61.93%	0.67%
<i>Fresno</i>	\$1,466,927,000	\$11,944,000	\$2,404,607	20.13%	0.16%
<i>Imperial</i>	\$458,138,000	\$5,879,000	\$1,252,728	21.31%	0.27%
<i>Kern</i>	\$1,688,744,000	\$21,826,000	\$3,578,386	16.40%	0.21%

⁴⁹ **Overall Revenue:** Financial resources collected by a local government to finance operations and services including, but not limited to, revenue received from federal government, local government fines and forfeitures, intergovernmental (including state and federal sources), licenses, permits, and franchises, miscellaneous (from the sale of real or personal property), in-lieu taxes, property taxes, use of money or property, sales and use taxes, state aid, taxes, transient lodging taxes, utility user taxes, etc. Retrieved from: <https://bythenumbers.sco.ca.gov/stories/s/guqp-d3wf>

<i>Kings</i>	\$230,037,528	\$1,914,646	\$175,478	9.17%	0.08%
<i>Los Angeles</i>	\$15,268,481,000	\$153,014,000	\$2,130,915	1.39%	0.01%
<i>Madera</i>	\$239,860,000	\$4,865,553	\$398,217	8.18%	0.17%
<i>Merced</i>	\$455,917,763	\$13,726,140	\$980,311	7.14%	0.22%
<i>Monterey</i>	\$1,070,600,000	\$8,978,549	\$3,235,179	36.03%	0.30%
<i>Riverside</i>	\$4,300,678,000	\$71,196,000	\$1,876,194	2.64%	0.04%
<i>San Benito</i>	\$82,992,000	\$3,502,470	\$315,032	8.99%	0.38%
<i>San Bernardino</i>	\$3,344,596,000	\$14,326,000	\$213,290	1.49%	0.01%
<i>San Francisco</i>	\$10,357,120,000	\$30,798,000	\$4,278,410	13.89%	0.04%
<i>San Joaquin</i>	\$1,475,090,000	\$12,694,533		0.00%	0.00%
<i>Santa Clara</i>	\$5,398,909,000	\$55,746,000	\$8,730,401	15.66%	0.16%
<i>Tulare</i>	\$758,638,000	\$7,517,000	\$4,572,628	60.83%	0.60%

There is more harm done to people through FTB debt collection programs than the amount of revenue a county obtains from this collection. Discharging debt would alleviate debt-related stress for those who cannot afford to do so. This is the most favorable, and perhaps least costly option for improving California's system for the collection of fines and fees.⁵⁰

ABILITY-TO-PAY (ATP) PROGRAMS ARE A STEP FORWARD FOR CONSUMER RELIEF EFFORTS

Despite a lack of public information about ATP evaluations, such programs are a step forward in providing relief to consumers, yet further improvements are needed. The 1983 *Bearden v. Georgia* federal ruling holds that a judge must first consider whether the defendant has the ability to pay prior to incarcerating them for failure to pay, in an effort to prohibit jailing poor people who cannot pay the fines and fees assessed to them. "When possible and appropriate, base fine and fee amounts should be based on an individual's ability to pay, to ensure consequences are equitable".⁵¹

ATP evaluations should determine someone's ability to pay the fines and fees imposed on them through evaluating their income and assets. This would lead to the "establishing of payment plans, providing payment alternatives, enforcing court-ordered financial obligations, and identifying uncollectible debts".⁵² For example, the San Francisco County Superior Courts and the San Francisco Municipal Transportation Agency are implementing ATP processes that offer discounts and reductions to citations imposed on San Franciscans with incomes at or below 200% of the Federal Poverty Line (FPL) or those who receive public benefits through programs like the

⁵⁰ Legislative Analyst's Office. (2016, January 5). Improving California's Criminal Fine and Fee System. Retrieved from <http://www.lao.ca.gov/reports/2016/3322/criminal-fine-and-fee-system-010516.pdf>

⁵¹ The Financial Justice Project. (2017, May). SAN FRANCISCO FINES & FEES TASK FORCE: Initial Findings and Recommendations. Retrieved from http://sftreasurer.org/sites/default/files/SF_Fines_&_Fees_Task_Force_Initial_Findings_and_Recommendations_May_2017.pdf

⁵² Legislative Analyst's Office. (2014, November). Restructuring the Court-Ordered Debt Collection Process.

Supplemental Nutrition Assistance Program (SNAP).⁵³

Although *Bearden v. Georgia* set a precedent for the right to an assessment, ATP programs vary across states, counties, and even between courts in the same county.

While standards exist, there are no set guidelines for such evaluations. In July 2017, California established a Rule of Courts whereby courts are required to provide notice to defendants about ATP and have outlined a procedure to determine ATP for traffic violations only.⁵⁴ To be considered for an ATP evaluation, the defendant has to appear before a judge before an evaluation of their income is processed. After assessing the individual's ability to pay, the court has the option to reduce a defendant's fines or fees or

provide alternative forms of payment. These include implementing a payment plan, requiring community service in lieu of payment, or suspending the fine. However, policies, procedures, and forms vary across county courts. Only some counties have staff assigned to review ATP requests prior to a judge, which increases capacity for evaluating people's ability to pay. More importantly there are no clear guidelines for how evaluations should be conducted.

Anecdotal evidence shows that people have had to negotiate directly with county officials to establish and agree upon the terms of a payment plan. Often, such negotiations are not written down, meaning that debtors cannot hold debt collectors to the agreed-upon plan. Negotiating without legal representation can be difficult, especially considering racial⁵⁵ and gender⁵⁶ biases against communities of color and women in negotiation, as well as possible language barriers.

⁵³ The Financial Justice Project. (2017, October 10). Progress Update Memorandum. Retrieved from [http://sftreasurer.org/sites/default/files/Six month Task Force update 2017.10.11.pdf](http://sftreasurer.org/sites/default/files/Six%20month%20Task%20Force%20update%202017.10.11.pdf)

⁵⁴ Information in this paragraph from California Rules of Court. (2017, July 1). Rule 4.335. Ability-to-pay determinations for infraction offenses. Retrieved from http://www.courts.ca.gov/cms/rules/index.cfm?title=four&linkid=rule4_335

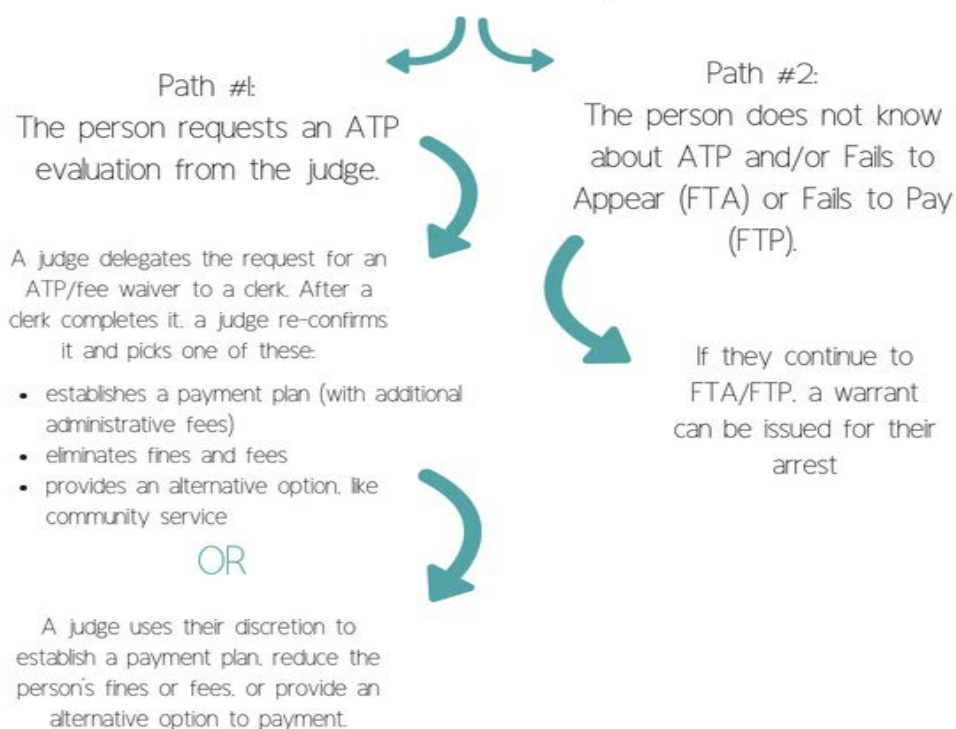
⁵⁵ Kubota, J.T., Li, J. Bar-David, E., Banaji, M.R., & Phelps, E.A. (2013). The Price of Racial Bias: Intergroup Negotiations in the Ultimatum Game. *Psychological Science*, 24 (12), 2498-2504. <http://doi.org/10.1177/0956797613496435>

⁵⁶ Busse, M., Israeli, A., & Zettelmeyer, F. (2013). Repairing the Damage: The Effect of Price Expectations on Auto-Repair Price Quotes. *Journal of Marketing Research*, 54(1), 75-95. Doi:10.3386/w19154

ATP Process Example⁵⁷

A process document in the Appendix shows the complexity of what can happen when someone requests an ATP evaluation. There are a number of outcomes from this process; the graphic below shows a simplified version:

A person receives a violation from an officer. The print-out has their name, address, and court they are to report to. This court sends them a courtesy notice about the hearing, to the address they gave the officer. If possible, in their county and if they knew beforehand, the person can request an ATP evaluation or fee waiver from the Clerk's Office prior to their hearing. When their adjudication or sentencing date comes up, they can follow one of two paths:



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At any of these stages if the person FTA/FTP, they can be sent to debt collection. Of courts in the 17 studied counties:

- All “impose a civil assessment for failure to appear on infraction cases.”
- 16 of 17 “impose a civil assessment for failure to pay on infraction cases.”

- 16 of 17 “impose a civil assessment for failure to pay on misdemeanor cases.”
- 10 of 17 “impose a civil assessment for failure to pay on felony cases.”

⁵⁷ Process according to Judicial Council of California, legal, and community organizations.

⁵⁸ A judge can also be a Judicial Officer or a Court Commissioner. A clerk can also be a Legal Clerk, Clerk Staff, Court Collector, Court Specialist, Courtroom Assistant, or Enhanced Collections Officer.

Our research revealed a number of concerns about the process of requesting an ATP evaluation:

Change of Address: Low-income communities often go through unpredictable address changes due to job loss, eviction, changes in household size, rising housing cost, or prioritization of other expenses, such as medical payments brought about by illness.⁵⁹ Sending a notice of nonpayment and stating that one can request ATP evaluations or fee waivers may not reach community members who have frequent changes of address. However, those charged with fines and fees should be given the option to request an ATP evaluation and citations should have explicit information on them about the ATP evaluation process.

Court's Limited Capacity to Conduct ATP Evaluations: Few counties and courts have dedicated staff members in roles conducting full financial capability evaluations. This means that judges, with already large caseloads, cannot dedicate enough time to comprehensively evaluate someone's inability-to-pay or even the accuracy of the amount owed. For example, in terms of bail, "instead of performing an independent analysis to determine the amount of bail required to ensure compliance, many courts simply require payment of the full judgement owed."⁶⁰

Barriers to Requesting an ATP Evaluation: Explanations have been offered about low take-up rates for ATP programs such as informational barriers like eligibility requirements, transaction

costs associated with enrollment like onerous documentation collection, and the stigma associated with participation (which could be a form of a transaction cost).⁶¹ If higher take-up of ATP programs is the goal, then removing barriers like having to appear in person before a court during the arrear process would be beneficial. For example, the San Joaquin Court has attributed their increase in collections to the "communication of outstanding fines and fees to our customers, coupled with the Court's typical installment plans, the ability for customers to reappear before the Bench to discuss reasonable methods of satisfying delinquent debt and the additional revenue collected through the Amnesty/Reinstatement programs".⁶²

Problematic Alternatives to Payment: There has been concern among stakeholders about community service as an alternative form of "payment" in lieu of monetary payment of fines or fees. Considerations include accommodations for lactating participants,⁶³ people with disabilities, people experiencing homelessness, and those with caregiving responsibilities. A potential solution proposed for the homeless community, introduced through San Diego's Homeless Court Program, gives "credit for time served for participants that accomplish shelter support activities such as life skills, chemical dependency or AA/NA meetings, computer and literacy classes, training or searching for employment, medical care (physical and mental), and counseling."⁶⁴

⁵⁹ American Civil Liberties Union. (2018, February 23). A Pound of Flesh: The Criminalization of Private Debt. Retrieved from <https://www.aclu.org/report/pound-flesh-criminalization-private-debt>

⁶⁰ *Ibid.*

⁶¹ Palfrey, Q. (2017, July 24). Getting Public Benefits to the People Who Need Them. Retrieved from <http://www.governing.com/gov-institute/voices/col->

[improving-low-take-up-rates-benefit-programs-earned-income-tax-credit.html](https://www.governing.com/gov-institute/voices/col-improving-low-take-up-rates-benefit-programs-earned-income-tax-credit.html)

⁶² Information obtained from Public Records Act requests

⁶³ Letter from ACLU of Northern California to Merced County Probation Office regarding Lactation Accommodations

⁶⁴ San Diego Homeless Court Program (HCP). (2018). Home | Homeless Court Program. Retrieved from <https://www.homelesscourtprogram.org/>

ATP Policies and Procedures⁶⁵

Judicial Council collection best practices call for the inclusion of “financial screening to assess each individual’s ability to pay prior to processing installment payment plans and account receivables” for county courts, and reports claim that all but two of the studied counties follow this practice.⁶⁶ Yet, there are county governments or county courts without responsive records regarding policies and procedures. For the 12 county courts that do have supporting documentation, processes regarding ATP evaluations seem to happen mostly through fee waiver templates provided by the Judicial Council. Furthermore, the majority of these waivers, and therefore evaluations for ATP, are only applicable for traffic infractions.⁶⁷

- Initial reviewers vary from county collections officers, legal clerks, court collectors, and judges/court commissioners.
- Letters are sent regarding the denial or approval of alternatives of full payment of fines or fees after an ATP evaluation; given that low-income individuals tend to have frequent changes of address, this method of communication can be ineffective.
- Notice times vary between five days to four weeks. Often along with the notices, requestors have only five to 10 days to go to a hearing to provide supporting documents or provide verbal explanations for the requests. The time

and date of the hearing is determined by the court and imposed on a requestor. This makes it difficult for people to take off work, arrange childcare, and find transportation.

- If someone is denied alternatives to full payment due at once, only 2 of 12 county courts make it clear on their forms that another request can be filed.
 - In some cases, full payment is due within 10 days of the denial letter. If alternatives are denied at a hearing, full payment is due 15 days from when a denial letter was mailed or 15 days from the date the judge orders the first payment paid.
- 4 of 12 county court forms make it clear on their forms that an ATP evaluation can be requested at any stage of appellate and trial proceeding. Only one county court makes it clear that this is available even if you are sent to collections.
- Fees for evaluations can include a \$40-50 payment plan set-up fee, a \$50 additional administrative fee for a subsequent financial evaluation, or a \$300 civil assessment if a person fails to pay.

It is often dangerously unclear when these debts are sent to private debt collection agencies upon failure to pay. Some county evaluation forms share a timeline but most do not.

⁶⁵ Information obtained from documents provided through Public Records Act requests for 12 county courts

⁶⁶ Judicial Council of California. (2016, June 9). Judicial Council Approved Collections Best Practices.

⁶⁷ California Rules of Court. (2017, July 1). Rule 4.335. Ability-to-pay determinations for infraction offenses. Retrieved from http://www.courts.ca.gov/cms/rules/index.cfm?title=four&lnkid=rule4_335

Recommendation #6:**California should create statewide, uniform and accessible Ability-to-Pay evaluations and processes, regardless of type of court.**

Counties vary in how they assess Ability-to-Pay and how they interpret those results. ATP evaluation forms or waivers ask for different sources of income, assets, and expense statements. Only a few counties have a space for applicants to explain emergency expenses. These variations can lead to vastly different results for the same person in assessing their economic situation.

CRC advocates for a uniform ATP evaluation for counties and courts throughout California. Such an evaluation should consider regional cost of living and all other debt the individual owes. This would allow for proper evaluation of an individual's economic situation, which would be used to provide accurate fine or fee reductions, alternative payment methods, or a payment plan. Harvard Law School's Criminal Justice Policy Program also recommends prohibiting additional interest or other costs incurred during incarceration and making hardship deferments available for times of economic hardship.⁶⁸

Ability-to-Pay hearings must be more accessible. Availing of ATP evaluations requires knowing about the opportunity and appearing at a hearing or sentencing to request it. Transportation, childcare, medical, or immigration barriers may deter people from appearing. They may opt to pay even if they cannot afford it, or not pay at all. To make ATP programs more accessible,

individuals should be able to request an ATP evaluation during fining and prior to arraignment.

Individuals may be asked to attend an eligibility hearing with only 10 days' notice or asked to gather ATP documentation that can be difficult to access, such as income verifications, public benefit verifications, paystubs, or letters from employers. Systems that require online log-ins to access these documents can also present a barrier to those without technical skills or access. Fee waiver processes need to address these barriers and make it easier for those who are eligible to access them.

One impactful way to increase enrollment in ATP programs is to provide information and assistance in applying, not just information about the program.⁶⁹ ATP evaluations should occur at the beginning of the sentencing process, even as early as the receipt of a ticket or notice of infraction. Defendants should then be able to immediately get application assistance from a clerk or financial hearing officer. It also should also be better publicized that people may request an ATP determination at any time, even after their case has been referred to collections.⁷⁰ Such publicizing should happen online, through posters in court buildings, and in other ways that are likely to reach people where they are.

Other process improvements can break down barriers within the collection system. For example, Alameda County's probation

⁶⁸ Criminal Justice Policy Program at Harvard Law School. (2016, September). *Confronting Criminal Justice Debt: A Guide for Policy Reform*. Retrieved from <http://cjpp.law.harvard.edu/assets/Confronting-Criminal-Justice-Debt-Guide-to-Policy-Reform-FINAL.pdf>

⁶⁹ Finkelstein, A., & Notowidigdo, M. (2018, February). SNAP Take-Up Evaluation. Retrieved from <https://www.povertyactionlab.org/evaluation/snap-take-up-evaluation>

⁷⁰ Judicial Branch of California. (2018). *Payment of Bail / Fines*. Retrieved from <http://www.courts.ca.gov/9581.htm>

department only has jurisdiction over fines and fees debt while probation files are active. In the case of delinquency, cases are closed and sent to collection, meaning that the court cannot conduct a new ATP assessment for someone whose financial circumstances has changed or who has only recently decided to apply for an assessment.

These recommendations are consistent with those put forth by the “Back on the Road” coalition to “create a statewide ability to pay process in traffic courts that makes fines more equitable and payable for Californians who are low income... when fines were adjusted to account for ability to pay, more people paid and the courts collected more total revenue.”⁷¹

RECOMMENDATIONS

Our research into fines and fees debt creation and collection in California has shown us the urgency of reforming the system. This debt and the means in which private debt collectors collect upon it causes financial insecurity and income inequity for low-income communities and communities of color. Such policies don’t just affect communities today; they have an effect on intergenerational wealth-building.

It is clear that these policies are low-gain for counties. In this system, the ones who benefit are the private debt collectors, who are incentivized by perverse profit incentives, and are not subject to fair debt collection practices.

California prides itself on its remarkable ability to approach long-standing problems with innovative approaches to problem-solving. This is no less true in the area of criminal justice reform.

Throughout this research process, we have seen counties and municipalities taking bold and creative steps to address some of the most egregious aspects of what’s broken with the current system of fines and fees, and the collection of court-imposed debt.

We recognize that not all of our recommendations can be implemented right away: each one is designed to address a specific problem within the system that will benefit those most at risk from the harms of court-ordered debt and its collection. For reform to be successful at both the county and statewide level, additional information should be uncovered and shared. Transparency and public negotiations are a critical piece of the democratic process.

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⁷¹ Lawyers’ Committee for Civil Rights of the San Francisco Bay Area.

APPENDIX

Contract examples for GC Services, a collections agency, can be found here:

Master Agreement between the Judicial Council and GC Services for the state: <https://bit.ly/2IJ6lio>

Participating Agreement between GC Services and Merced County: <https://bit.ly/2IY5zxD>

Ability-To-Pay Evaluation Process

