

**CONTACT**

POLICY DEPARTMENT

ELIZABETH KOCIENDA

212.382.4788 | ekocienda@nycbar.org

MARY MARGULIS-OHNUMA

212.382.6767 | mmargulis-ohnuma@nycbar.org

**REPORT ON LEGISLATION BY THE
JUVENILE JUSTICE COMMITTEE
THE CRIMINAL JUSTICE OPERATIONS COMMITTEE
AND THE MASS INCARCERATION TASK FORCE**

**A.5045
S.3457**

**M. of A. Davilla
Sen. Montgomery**

Relates to allowing a court to waive certain surcharges and fees; authorizes a court to waive certain surcharges and fees for a defendant under the age of 21 under certain circumstances.

THIS LEGISLATION IS APPROVED WITH RECOMMENDATIONS

On behalf of the New York City Bar Association, we are writing to express our support for this proposed legislation, which would permit courts to waive some of the financial costs of justice-system involvement for some defendants under age 21. The Committees view this legislation as an important first step in addressing the financial burdens placed on justice-involved youth. The Committees recommend an amendment to the proposed legislation to further strengthen these efforts.

I. THE IMPACT OF FINES AND FEES ON JUSTICE-INVOLVED YOUTH

Recently, a body of research has highlighted the serious impacts of fines and fees on justice-involved youth and their families. This financial burden of justice involvement, prevalent across the country, has a clear and documented impact for adults.¹ These mandatory court fines and fees, imposed on defendants upon conviction of a crime, push those involved with the justice system further into poverty and make it more difficult for justice-involved individuals to successfully reintegrate into society and contribute to their communities.² For youth, these impacts are even more severe, because youth lack access to resources to pay their fines and fees.³ Such fees therefore lead to profound impacts on entire families and worsen outcomes for youth who have come into contact with the system.⁴ Notably, this contributes to

¹ See, e.g., ALEXES HARRIS, A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR (2016).

² *Id.*

³ JESSICA FEIERMAN, NAOMI E. S. GOLDSTEIN, EMILY HANEY-CARON, & JAYMES FAIRFAX-COLUMBO, DEBTORS' PRISON FOR KIDS? THE HIGH COST OF FINES AND FEES IN THE JUVENILE JUSTICE SYSTEM (Juvenile Law Center, 2016), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf>; Jeffrey Selbin & Stephanie Campos, *High Pain, No Gain: How Juvenile Administrative Fees Harm Low-Income Families in Alameda County, California* 15-17 (2016), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2738710. (All websites cited in this letter were last visited on June 17, 2019.)

⁴ *Id.*

increased rates of recidivism for youth who face financial penalties.⁵ In the juvenile justice system, fines and fees further worsen already-existing racial disparities.⁶

The New York City Bar Association documented the impact of court fees on New York criminal defendants in a recent report.⁷ With respect to youthful offenders, the City Bar's Criminal Justice Operations Committee, Corrections and Community Reentry Committee, Criminal Courts Committee, and Task Force on Mass Incarceration concluded, *inter alia*, that, "[y]outhful defendants should not be saddled with excessive, long-term financial consequences when accepting responsibility for youthful mistakes. Accordingly, the statute should exempt all offenders under twenty-one years old from the imposition of a mandatory surcharge and crime victim assistance fee."⁸ New York court fees make it more difficult for defendants to succeed, and an inability to pay can result in incarceration or in civil judgments that ruin a youth's credit history from the moment they enter adulthood.⁹, ¹⁰ As a result, youth who face such costs may be unable to secure housing, employment, or the other foundations necessary to survive and to contribute to society.¹¹

II. NEW YORK'S LEADERSHIP IN PROTECTING YOUTH FROM FINANCIAL BURDENS OF JUSTICE INVOLVEMENT

New York has the potential to be a national leader in protecting youth and communities from the negative impact of excessive justice system fines and fees. A 2016 report analyzing juvenile justice fines and fees across the country found that New York was the only state to impose *no* financial burden on juvenile justice-involved youth other than restitution.¹²

⁵ See generally Alex R. Piquero & Wesley G. Jennings, *Research Note: Justice System–Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE AND JUVENILE JUST. 325 (2017), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-criminology-study-2016.pdf>.

⁶ *Id.*

⁷ See generally NEW YORK CITY BAR ASS'N, COMMITTEE REPORT: NEW YORK SHOULD RE-EXAMINE MANDATORY COURT FEES (2019) ("MANDATORY COURT FEES REPORT"), <https://s3.amazonaws.com/documents.nycbar.org/files/2018410-MandatorySurchargesCriminalCharges.pdf>.

⁸ *Id.* at 12.

⁹ *Id.* at 5.

¹⁰ The City Bar's Mandatory Court Fees Report calls for a wholesale re-examination of the practice of raising government revenue through mandatory court fees, which have been called a "regressive tax" that has been disproportionately imposed upon those least able to pay. The City Bar has called for eliminating these fees altogether or, at a minimum, restructuring them to be imposed on a sliding scale based on an individual's ability to pay. If the legislature is unwilling to make these changes, the report recommends at least eliminating such fees for youthful offenders and those convicted only of violations, allowing sentencing courts to waive fees which would result in hardship, simplifying the process by which courts can defer fees until after incarceratory terms are served, and ensuring that a person taking a plea on multiple charges does not face double or triple mandatory fees.

¹¹ Alan Rosenthal, Center for Community Alternatives, *Sentencing for Dollars: The Financial Consequences of a Criminal Conviction*, (2007), <http://www.communityalternatives.org/pdf/financial%20consequences.pdf>; Gary Rivlin, *The Long Shadow of Bad Credit in a Job Search*, New York Times (May 11, 2013), <http://www.nytimes.com/2013/05/12/business/employers-pull-applicants-credit-reports.html>.

¹² See *Debtors' Prison for Kids*, JUVENILE LAW CENTER, <https://debtorsprison.jlc.org>.

However, New York continues to impose mandatory court fees on individuals convicted of crimes in the adult criminal justice system, including adolescents and young adults who are processed in criminal court.¹³

For young defendants in New York, the financial burden of justice involvement amounts to hundreds of dollars, imposed regardless of a youth's ability to pay.¹⁴ Under current law, the judge sentencing a youth has no discretion to waive fees or surcharges.¹⁵

These fees hurt youth and impact their communities. New York has an opportunity to eliminate court mandatory fees for young people, giving youth a chance to recover from past mistakes and enter adulthood on more solid financial footing. In passing the proposed legislation, New York would take a step towards positioning itself as a leader not just in *juvenile* justice, but in improving the chances of success for *all* youth involved in the justice system.

In light of these harms to youth, the stated purpose of New York's mandatory surcharges—to raise revenue¹⁶—is profoundly unjust. Moreover, in the context of young people's vulnerability, and the disproportionate representation of low-income youth of color in our criminal justice system, the imposition of these fees and surcharges work significant hardships on historically marginalized communities with the fewest resources.

It is our view that eliminating mandatory court fees upon conviction for justice-involved youth will help such youth become more successful, contribute to reduced recidivism, and alleviate burdens on impacted communities. Making fees discretionary instead of mandatory is a first step towards an ultimate goal of eliminating all fines and fees for justice-involved youth. Because indigent youth have no means to pay imposed court fees, this legislation will not result in a meaningful loss of revenue. Additionally, because the impact of court fees falls disproportionately on youth of color, this legislation will help to address the racial disparities that permeate New York's justice system.

III. RECOMMENDATIONS

Given the foregoing, we respectfully ask the Legislature and Governor to pass and sign the proposed legislation.

¹³ *Supra* note 5.

¹⁴ *Id.*

¹⁵ C.P.L. §420.35. This is so unless the defendant is adjudicated a youthful offender (YO), in which case a financial hardship waiver is available for only the crime victim assistance fee. *See* C.P.L. § 420.35(2). Youth granted YO are still required to pay the mandatory surcharge.

¹⁶ *People v. Guerrero*, 12 N.Y.3d 45, 48-49 (2009) (quoting Legislative Mem in Support, Bill Jacket, L. 1982, ch. 55, at 6) (“Section 60.35 was originally enacted as part of a massive revenue-raising bill meant to ‘avert the loss of an estimated \$100 million in state tax revenues.’”); *id.* at 48-49 (2009) (internal quotation marks and citations omitted) (“[T]he Legislature did not intend the surcharge or fee to be an additional punishment component of a sentence”).

Although this legislation is an important first step, we would strongly support an amendment to *require* courts to waive surcharges for defendants under age 21 when a youth has no means to pay, if the fee would adversely impact the defendant's reintegration, or is contrary to the interests of justice. Such an amendment would be consistent with a large body of research showing adverse impacts for youth, families, and communities when fees are charged to youth who cannot pay. We also encourage continuing legislation in this area with an ultimate goal of full abolishment of fees for youth involved in the criminal justice system and the use of fines only when the ability to pay such fines can be shown.

Thank you for considering our position on these important proposals impacting youth in the criminal justice system.

Juvenile Justice Committee
Fredda Monn, Chair

Criminal Justice Operations Committee
Sarah J. Berger, Chair

Mass Incarceration Task Force
Sean Hecker, Chair

June 2019