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# JUVENILE FEE ABOLITION IN CALIFORNIA: EARLY LESSONS AND CHALLENGES FOR THE DEBT-FREE JUSTICE MOVEMENT\*

JEFFREY SELBIN\*\*

## INTRODUCTION

Maria Rivera was raising two boys on her own in Orange County, California, when her youngest son got into trouble.<sup>1</sup> Although court records for youth are typically sealed, we know that in 2008 Ms. Rivera's son became one of tens of thousands of young people referred annually to the state's juvenile legal system, resulting in his detention for almost two years.<sup>2</sup> *Then came the bills.*

The county charged Ms. Rivera \$23.90 for every day her son was detained and \$2200 for his court-appointed lawyer.<sup>3</sup> All told, Orange County said she owed more than \$16,000.<sup>4</sup>

Until recently, California law authorized counties to charge administrative fees to parents and guardians for their children's detention, lawyers, electronic monitoring, probation supervision, and drug testing.<sup>5</sup> By statute, the fees were supposed to help counties recoup "the reasonable costs of support of the minor,"

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\*\* Clinical Professor of Law and Faculty Director of the Policy Advocacy Clinic, UC Berkeley School of Law. Thank you to Olivia Layug Balbarin for superb editorial assistance. The work upon which this Essay is based is carried out by my exceptional colleagues and students in the Policy Advocacy Clinic alongside our steadfast clients and partners, all of whom are dedicated to fee abolition for youth and their families. I am also grateful to Arnold Ventures for its generous support of the Clinic's legal research, data collection and analysis, and nonpartisan educational and technical support to community partners.

1. See Notice of Motion and Motion for Order to Show Cause Why the Orange County Probation Department Should Not Be Held in Contempt for Violation of the Discharge Injunction; Memorandum of Points and Authorities; Declarations of Maria G. Rivera and Emma Elizabeth A. Gonzalez at 13–14, *In re Rivera*, No. 8:11-bk-22793-TA (Bankr. C.D. Cal. Nov. 29, 2017), *aff'd sub nom. Rivera v. Orange Cty. Prob. Dep't (In re Rivera)*, 511 B.R. 643 (B.A.P. 9th Cir. 2014), *rev'd*, 832 F.3d 1103 (9th Cir. 2016) [hereinafter Declaration of Maria Rivera].

2. *Id.*; Recent Case, *Rivera v. Orange County Probation Department*, 832 F.3d 1103 (9th Cir. 2016), 130 HARV. L. REV. 1504, 1505 (2017).

3. See Jordan Graham, *Mom Goes Bankrupt Paying for Son's Incarceration, Court Scolds O.C. for Pursuit of Debt*, ORANGE COUNTY REG. (Aug. 22, 2016, 10:59 AM), <https://www.ocregister.com/2016/08/22/mom-goes-bankrupt-paying-for-sons-incarceration-court-scolds-oc-for-pursuit-of-debt/> [https://perma.cc/88JW-N8F8].

4. See Recent Case, *supra* note 2.

5. See CAL. WELF. & INST. CODE § 903 (West 2016 & Supp. 2019).

but the law also required counties to determine whether families could afford to pay the fees.<sup>6</sup>

Ms. Rivera was unemployed and unable to make payments, so Orange County should have waived her fees.<sup>7</sup> But California's "ability to pay" provisions, in fact, put the burden on families to appear before a financial evaluation officer to prove their *inability* to pay.<sup>8</sup> Like many families with youth in the juvenile legal system, Ms. Rivera was unable to meet the county's demands to make such a showing.<sup>9</sup>

To deal with the mounting bills, Ms. Rivera sold her house and paid the county more than \$9500.<sup>10</sup> The county did not consider the judgment fully satisfied, so it obtained a court order against Ms. Rivera for almost \$10,000.<sup>11</sup> On top of what she had already paid and for reasons the county never explained, the court order exceeded what the county originally billed Ms. Rivera by more than \$3000.<sup>12</sup>

Once a court orders juvenile fees to be paid, the debt becomes a civil judgment enforceable against the parent or guardian.<sup>13</sup> Unlike most other civil

6. *Id.* § 903(b)–(c); *see also id.* § 903.45 (discussing the evaluation process for adjusting costs based on financial situations).

7. *See* Declaration of Maria Rivera, *supra* note 1, at 4; *see also* § 903.45(b)(2) (discussing family and economic circumstances in which financial evaluation officers should not petition the courts for an order of repayment).

8. *See* § 903.45(b)(4) (stating if a parent or guardian fails to meet with the financial evaluation officer, the officer "shall recommend to the court that the person be ordered to pay the full amount of the costs"). *But cf.* *People v. Dueñas*, 242 Cal. Rptr. 3d 268, 279–80 (Cal. Ct. App. 2019) (shifting the burden onto the state to establish a family's ability to pay in criminal court); Letter from Brent J. Schultze, Deputy Dist. Attorney, Cty. of San Bernardino, to the Honorable Tani Gorre Cantil-Sakauye, Chief Justice, and the Honorable Assoc. Justices of the Supreme Court of Cal. (Feb. 22, 2019) (on file with author) (requesting depublication of *People v. Dueñas* and expressing concern "that *Dueñas* appears to place an affirmative duty on the People to prove that a defendant has the ability to pay fines and fees before they may be imposed (for court fines and fees) or before a stay of execution is lifted (for the restitution fine). Such a duty is contrary to the plain language of the statutes at issue, as well as the rule of convenience and necessity . . . . As a practical matter, if the People have the burden to prove a defendant's ability to pay, that burden will rarely be met").

9. Orange County sets forth its ability-to-pay policies and procedures in a financial evaluation guide for collection officers. *See* COLLECTIONS DESK GUIDELINES 2 (2014) (on file with author) (providing guidance to state collection officers in their determinations of a person's ability to pay based on, for example, the person's present financial situation, reasonably discernable future financial position, likelihood that the person shall be able to obtain employment within one year from the evaluation, and other factors, but not considering expenses such as cell phones, internet, and school loans, among others).

10. *In re Rivera*, 832 F.3d 1103, 1105 (9th Cir. 2016).

11. *See id.*

12. *See id.*

13. *See* § 903.45(d) ("Execution may be issued on the order in the same manner as on a judgment in a civil action, including any balance remaining unpaid at the termination of the court's jurisdiction over the minor.").

judgments, juvenile fee debt lasts forever.<sup>14</sup> If families fail to repay the debt, counties refer their accounts to the state's Franchise Tax Board to intercept their tax refunds and garnish their wages.<sup>15</sup>

Unable to pay the civil judgment, Ms. Rivera filed for chapter 7 bankruptcy. When the bankruptcy court discharged her fee debt, Ms. Rivera may have thought the matter was resolved.<sup>16</sup> But Orange County would not relent, eventually persuading the bankruptcy court to reinstate the debt on the grounds that it was not dischargeable under chapter 7.<sup>17</sup>

## I. JUVENILE FEES IN CALIFORNIA

### A. *Sadly, Ms. Rivera Is Not Alone*

We began researching juvenile fees in 2012 after lawyers and law students at the East Bay Community Law Center said their clients with youth in the juvenile delinquency system were receiving fee bills for thousands of dollars.<sup>18</sup> According to the advocates, Alameda County charged parents and guardians \$25 for every day their child was detained, \$300 for a court-appointed public

14. Civil judgments in California are generally enforceable for ten years. CAL. CIV. PROC. CODE § 683.020 (West 2009). However, state law exempts court-ordered “fines, forfeitures, penalties, fees, or assessments” from the ten-year limit on enforcement. CAL. PENAL CODE § 1214(e) (West 2015). Judgments can be reported to credit reporting agencies for seven years or as long as the judgment is enforceable. 15 U.S.C. § 1681c(a)(2) (2012).

15. Through its Interagency Intercept Collection Program, the Franchise Tax Board (“FTB”) can intercept personal income tax refunds, lottery winnings, and unclaimed property disbursements. *Interagency Intercept Collection Program-Update: February 2019 Tax News*, ST. CAL. FRANCHISE TAX BOARD, <https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/february-2019/interagency-intercept-collection-program.html> [<https://perma.cc/VH6N-UNF8>]. Through its Court-Ordered Debt Program, the FTB can garnish wages up to twenty-five percent of disposable earnings for each pay period. *Court-Ordered Debt Collections*, ST. CAL. FRANCHISE TAX BOARD, <https://www.ftb.ca.gov/pay/collections/court-ordered-debt/index.html> [<https://perma.cc/GD9L-LYVN>]; *Wage Garnishment / Earnings Withholding for Employers*, CAL. COURTS: JUD. BRANCH CAL., <http://www.courts.ca.gov/34892.htm> [<https://perma.cc/4HPA-PM5Y>]. Once referred to the FTB, the debt can accrue interest. CAL. REV. & TAX CODE § 19280 (West 2015 & Supp. 2019).

16. *See generally* Discharge of Debtor, *In re Rivera*, No. 8:11-bk-22793-TA (Bankr. C.D. Cal. Nov. 29, 2017), *aff'd sub nom.* *Rivera v. Orange Cty. Prob. Dep't (In re Rivera)*, 511 B.R. 643 (B.A.P. 9th Cir. 2014), *rev'd*, 832 F.3d 1103 (9th Cir. 2016) (discussing what debts are typically discharged in chapter 7 bankruptcy).

17. Order on Motion for Order to Show Cause Why the Orange County Probation Department Should Not Be Held in Contempt for Violation of the Discharge Injunction, *In re Rivera*, No. 8:11-bk-22793-TA (Bankr. C.D. Cal. Nov. 29, 2017), *aff'd sub nom.* *Rivera v. Orange Cty. Prob. Dep't (In re Rivera)*, 511 B.R. 643 (B.A.P. 9th Cir. 2014), *rev'd*, 832 F.3d 1103 (9th Cir. 2016).

18. Credit for identifying this and for working closely with the clinic on local and state reform belongs to Kate Weisburd, who directed the East Bay Community Law Center's (“EBCLC”) Education, Defense & Justice for Youth program. For more on the EBCLC program, see *Education Defense & Justice for Youth Services*, E. BAY COMMUNITY L. CTR., <https://ebclc.org/need-services/education-defense-justice-for-youth-services/> [<https://perma.cc/3A5C-LWDM>].

defender, \$15 a day for electronic monitoring, \$90 a month for probation supervision, and \$30 per drug test.<sup>19</sup> We interviewed key stakeholders, including youth, families, advocates, and probation and collection officials. We surveyed the chief probation officers in every California county, and we sent California Public Records Act requests to selected others.

### B. *What We Found Shocked Us*

First, juvenile fees were pervasive. As noted above, California law permitted counties to bill parents and guardians for a range of administrative costs associated with their child's involvement in the juvenile system.<sup>20</sup> The state authorized the first juvenile fees in the 1960s for reasons that are unclear, but lawmakers approved additional fees during the 1980s and 1990s due to rising caseloads and fiscal concerns.<sup>21</sup> Some counties increased local fee amounts significantly in response to the budget crisis of the Great Recession; for example, in 2009, Alameda County increased its juvenile fees *tenfold*.<sup>22</sup> As recently as 2016, every California county except San Francisco charged one or more of these fees (see figure 1).<sup>23</sup>

19. Alameda County, Cal., Ordinance No. 2009-59 (Dec. 15, 2009); Letter from Donald H. Blevins, Chief Prob. Officer, Prob. Dep't, Alameda Cty., to Bd. of Supervisors, Alameda Cty. (Nov. 6, 2009) (on file with author) (regarding adoption of ordinance to amend probation fees).

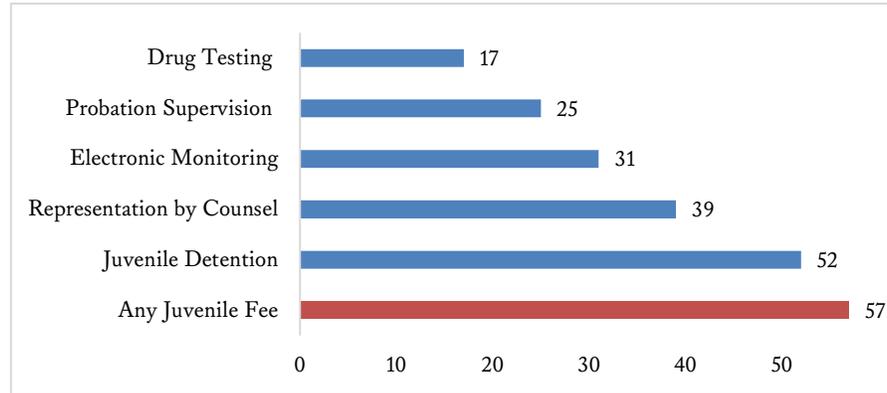
20. CAL. WELF. & INST. CODE § 903 (West 2016 & Supp. 2019).

21. Act of 17 Aug., 1996, ch. 355, § 1(a), 1996 Cal. Stat. 2453, 2453–54 (codified as amended at CAL. WELF. & INST. CODE § 903.2(a)–(b) (West 2016 & Supp. 2019)) (authorizing fees for electronic monitoring); Act of 19 Sept., 1987, ch. 879, § 1, 1987 Cal. Stat. 2778, 2778 (codified as amended at CAL. PENAL CODE § 1203.lab (West 2019)) (authorizing fees for drug testing); Act of 11 Aug., 1968, ch. 1225, §§ 1–2, 1968 Cal. Stat. 2334, 2334 (codified as amended at CAL. WELF. & INST. CODE § 903.2(a) (West 2016 & Supp. 2019)) (authorizing fees for probation supervision); Act of 17 July, 1965, ch. 2006, §§ 1–3, 1965 Cal. Stat. 4535, 4535 (codified as amended at CAL. WELF. & INST. CODE § 903.1(a)(1)(A) (West 2016 & Supp. 2019)) (authorizing fees for court-appointed public defenders and court-appointed private attorneys); Act of 14 July, 1961, ch. 1616, art. 16, § 900, 1961 Cal. Stat. 3459, 3499 (codified as amended at CAL. WELF. & INST. CODE § 900(a) (West 2016 & Supp. 2019)) (authorizing fees for detention).

22. POLICY ADVOCACY CLINIC, BERKELEY LAW, UNIV. OF CAL., HIGH PAIN, NO GAIN: HOW JUVENILE ADMINISTRATIVE FEES HARM LOW-INCOME FAMILIES IN ALAMEDA COUNTY, CALIFORNIA 8 (2016) [hereinafter HIGH PAIN, NO GAIN], [http://64.166.146.245/docs/2016/BOS/20161025\\_813/27510\\_PAC%20High%20Pain%2C%20No%20Gain.pdf](http://64.166.146.245/docs/2016/BOS/20161025_813/27510_PAC%20High%20Pain%2C%20No%20Gain.pdf) [<https://perma.cc/AR7A-WC3Q>].

23. POLICY ADVOCACY CLINIC, BERKELEY LAW, UNIV. OF CAL., MAKING FAMILIES PAY: THE HARMFUL, UNLAWFUL, AND COSTLY PRACTICE OF CHARGING JUVENILE ADMINISTRATIVE FEES IN CALIFORNIA app. A at 30–31 (2017) [hereinafter MAKING FAMILIES PAY], <https://www.law.berkeley.edu/wp-content/uploads/2015/12/Making-Families-Pay.pdf> [<https://perma.cc/CD9P-T8QW>].

Figure 1: California Counties (n=58) Charging Juvenile Fees (2016)



As depicted in figure 1, in 2016, fifty-seven of fifty-eight counties charged one or more juvenile fees, including fees for juvenile detention (52), representation by counsel (39), electronic monitoring (31), probation supervision (25), and drug testing (17).

Second, counties often imposed juvenile fees unlawfully. We found counties that assessed fees in violation of state law, including charging fees not authorized by statute (e.g., fees for disposition and investigation reports) and charging fees to families of youth who were not adjudicated delinquent (not found guilty).<sup>24</sup> Counties violated federal law by charging families for their children's meals while seeking reimbursement for those same costs from national school lunch and breakfast programs.<sup>25</sup> And we found counties engaged

24. For example, Mariposa and Solano Counties charged \$300 and \$1200 respectively per case for disposition and investigation reports, which were not authorized by California law. Mariposa Cty. Bd. of Supervisors, Agenda Action Form CH-9 (Dec. 15, 2009) (on file with author); Solano Cty. Bd. of Supervisors, Agenda Submittal, exh. XIV (Oct. 24, 2017) (on file with author). Regarding fees charged to youth not adjudicated delinquent, see CONTRA COSTA CTY., PUBLIC PROTECTION COMMITTEE REFERRAL ON JUVENILE FEES CHARGED BY THE PROBATION DEPARTMENT (2017) [hereinafter CONTRA COSTA PUBLIC COMMITTEE REFERRAL], [http://64.166.146.245/agenda\\_publish.cfm?id=&mt=ALL&get\\_month=10&get\\_year=2017&dsp=agm&tseq=31281&rev=0&ag=1035&ln=61471&nseq=&nrev=&pseq=31247&prev=0#ReturnTo61471](http://64.166.146.245/agenda_publish.cfm?id=&mt=ALL&get_month=10&get_year=2017&dsp=agm&tseq=31281&rev=0&ag=1035&ln=61471&nseq=&nrev=&pseq=31247&prev=0#ReturnTo61471) [<https://perma.cc/48ZN-6D5W>]; Letter from Danielle C. Fokkema, Chief of Admin. Servs., Contra Costa Cty., Probation Dep't, to Jane Doe (Jan. 26, 2018), <http://www.contracosta.ca.gov/DocumentCenter/View/48797/Final-PCU-Outreach-Client-Letter---English-PDF?bidId> [<https://perma.cc/M9KZ-EF86>]; Sukey Lewis, *Will California Counties Rethink Charging Parents Fees for Locked up Kids?*, KQED NEWS (Oct. 24, 2016), <https://www2.kqed.org/news/2016/10/24/many-california-counties-charge-parents-high-fees-while-kids-are-locked-up/> [<https://perma.cc/7VBQ-CZRG>].

25. We found at least seventeen counties that billed both families and the federal government for meals and meal preparation. MAKING FAMILIES PAY, *supra* note 23, at 15–16. Authorized by the Child Nutrition Act of 1966, Pub. L. No. 89-642, § 4, 80 Stat. 885, 885 (codified as amended 42 U.S.C.

in a range of other fee practices that violated constitutional guarantees of equal protection and due process by charging families for costs related to public safety, not the care of youth, and by failing to assess families' ability to pay, as in Maria Rivera's case.<sup>26</sup>

C. *Even When Counties Complied with State Law, Family and System Outcomes Were Poor*

1. Rehabilitation and Recidivism

We found that juvenile fees undermined rehabilitation by causing financial distress, disrupting family relationships, and incentivizing perverse outcomes.<sup>27</sup> For example, we interviewed a grandmother on leave from the U.S. Army who was considering relinquishing the custody of a grandchild under her care to the state in the hopes that it would relieve her of his fee bills, which she was unable to pay.<sup>28</sup> Criminologists have found that juvenile fees correlate with increased recidivism.<sup>29</sup> In other words, the best evidence we have to date suggests that juvenile fees undermine both rehabilitation and public safety, the twin purposes of the juvenile system.

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§ 1773 (2012)), the School Breakfast Program is a federally assisted meal program that provides free or reduced-price breakfasts to children through eighteen years of age. Authorized by the National School Lunch Act, ch. 281, Pub. L. No. 79-396, 60 Stat. 230 (1946) (codified as amended 42 U.S.C. § 1751 (2012)), the National School Lunch Program is a federally assisted meal program that provides low-cost or free lunches to children enrolled in participating schools. Youth who are residents of juvenile detention facilities (or residential care institutions) are categorically eligible for free breakfast and lunch as a household of one with income (if any) below 130% of the poverty level. 7 C.F.R. § 245.3 (2019) ("When a child is not a member of a family (as defined in § 245.2), the child shall be considered a family of one."); USDA FOOD & NUTRITION SERVS., CHILD NUTRITION PROGRAMS, ELIGIBILITY MANUAL FOR SCHOOL MEALS: DETERMINING AND VERIFYING ELIGIBILITY 23 (2017), [https://fns-prod.azureedge.net/sites/default/files/cn/SP36\\_CACFP15\\_SFSP11-2017a1.pdf](https://fns-prod.azureedge.net/sites/default/files/cn/SP36_CACFP15_SFSP11-2017a1.pdf) [<https://perma.cc/8NU5-ABY8>]; USDA, THE NATIONAL SCHOOL LUNCH PROGRAM (2017), <https://fns-prod.azureedge.net/sites/default/files/resource-files/NSLPFactSheet.pdf> [<https://perma.cc/L5G9-GT5D>].

26. MAKING FAMILIES PAY, *supra* note 23, at 16–17.

27. *Id.* at 10–11, 19; *see also* JESSICA FEIERMAN ET AL., JUVENILE LAW CTR., DEBTORS' PRISON FOR KIDS? THE HIGH COST OF FINES AND FEES IN THE JUVENILE JUSTICE SYSTEM 6–8 (2016), <http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf> [<https://perma.cc/9SWJ-AVEH>].

28. Interview with grandmother of a child in the Alameda County juvenile system (Apr. 13, 2015) (on file with author).

29. Tamar R. Birckhead, *The New Peonage*, 72 WASH. & LEE L. REV. 1595, 1604–05 (2015) (describing how mandatory fees for youth in the juvenile court system can create insurmountable fee burdens, increasing the likelihood of youth recidivating); Stacy Hoskins Haynes, Alison C. Cares & R. Barry Ruback, *Juvenile Economic Sanctions: An Analysis of Their Imposition, Payment, and Effect on Recidivism*, 13 CRIMINOLOGY & PUB. POL'Y 31, 37–38 (2014) (describing studies showing that the burdens of economic sanctions "might interfere with a juvenile's ability to reenter society successfully after a conviction, thereby increasing the risk of recidivism"); Alex R. Piquero & Wesley G. Jennings, *Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE & JUV. JUST. 325, 334 (2016).

## 2. Regressive and Racially Discriminatory

We found that juvenile fees disproportionately harmed low-income families of color. Because Black and Brown youth are punished more frequently and harshly in the juvenile legal system independent of their behavior relative to White youth—and most juvenile fees are assessed according to the severity and duration of sanctions—juvenile fees exacerbate racial disparities.<sup>30</sup> Even as juvenile caseloads have dropped in California and elsewhere over the last two decades, racial disparities have increased, so families of color bore an even greater share of juvenile fees.<sup>31</sup> In Alameda County, families of color were liable for significantly higher fees than White families based on average probation conditions for youth by race multiplied by fees assessed per probation condition (see table 1).

30. NAT'L COUNCIL ON CRIME & DELINQUENCY, AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF YOUTH OF COLOR IN THE JUSTICE SYSTEM 1–3 (2007), [http://www.nccglobal.org/sites/default/files/publication\\_pdf/justice-for-some.pdf](http://www.nccglobal.org/sites/default/files/publication_pdf/justice-for-some.pdf) [<https://perma.cc/366V-XNQF>] (discussing the disproportionate representation of racial and ethnic minorities in the juvenile system); OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, DISPROPORTIONATE MINORITY CONTACT 6 (2014), [https://www.ojjdp.gov/mpg/litreviews/Disproportionate\\_Minority\\_Contact.pdf](https://www.ojjdp.gov/mpg/litreviews/Disproportionate_Minority_Contact.pdf) [<https://perma.cc/SMJ6-WPJD>] (reporting that the Office of Juvenile Justice and Delinquency Prevention funded a review of disproportionate minority contact studies, which “found that while the picture that emerges collectively is complex, race effects that disadvantage minority youths were found to exist across the country at all decision points [arrest, referral, diversion, detention, petition filed, adjudication, probation supervision, secure confinement, and transfer to adult court]”); Laura Ridolfi, *Our Interactive Data Map Is Now Updated To Reflect the Latest OJJDP Youth Incarceration Data*, W. HAYWOOD BURNS INST. FOR JUST. FAIRNESS & EQUITY (Oct. 23, 2017), <https://www.burnsinstitute.org/tag/data-map/> [<https://perma.cc/Y7C2-LEW8>] (documenting state-specific racial disparities in the juvenile legal system).

31. See MAKING FAMILIES PAY, *supra* note 23, at 12 fig.2, 13 tbl.2 (showing increased racial disparities as youth move through the juvenile justice system, as well as attendant increase in fees); NAT'L COUNCIL ON CRIME & DELINQUENCY, *supra* note 30, at 37; see also JESSICA SHORT & CHRISTY SHARP, CHILD WELFARE LEAGUE OF AM., DISPROPORTIONATE MINORITY CONTACT IN THE JUVENILE JUSTICE SYSTEM 2–5 (2005), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.603.9203&rep=rep1&type=pdf> [<https://perma.cc/QTW5-HFQ7>] (discussing institutional racial bias in the juvenile system as one reason for disproportionate minority contact).

Table 1: Juvenile Fees and Race in Alameda County, California (2013)

Race and Ethnicity	Total Fee Liability	Average Probation Conditions			
		Juvenile Hall (days)	Probation Supervision (months)	Electronic Monitoring (days)	Drug Testing (tests)
		\$25.29/day	\$90.00/mo.	\$15.00/day	\$28.68/test
Black	\$3,438	25	22	34	11
Latinx	\$2,563	24	14	33	7
Asian	\$2,269	7	12	56	6
White	\$1,637	11	10	21	5
Other	\$1,192	4	6	31	3

As table 1 indicates, compared to White families (\$1637), Black families with a youth in the juvenile legal system were liable for more than double the fees (\$3438), Latinx families were liable for more than one and a half times the fees (\$2563), and Asian families were liable for almost forty percent more fees (\$2269).<sup>32</sup>

### 3. Recovery and Revenue

In our fiscal analysis of sample California counties, we found that most jurisdictions collected fees at very low rates and did not recoup significant net revenue.<sup>33</sup> In fact, because of the high cost and low return associated with trying to collect fees from low-income families, counties spent on average more than seventy cents of every dollar in fee revenue on collection activities (see table 2).<sup>34</sup>

32. MAKING FAMILIES PAY, *supra* note 23, at 12–13, 13 tbl.2.

33. *Id.* at 17–18.

34. *Id.* at 19; see also MATTHEW MENENDEZ ET AL., BRENNAN CTR. FOR JUSTICE, THE STEEP COSTS OF CRIMINAL JUSTICE FEES AND FINES 9–10, 14–18 (2019), [https://www.brennancenter.org/sites/default/files/2019-11/2019\\_10\\_Fees%26Fines\\_Final5.pdf](https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf) [<https://perma.cc/5UZW-SAWJ>].

Table 2: California Juvenile Fee Revenue and Collection Costs (2014–15)

County	Revenue	Collection Costs (% of Revenue)	Youth Support (% of Revenue)
Alameda	\$419,830	59.77%	40.23%
Contra Costa	\$430,926	67.38%	32.62%
Orange	\$2,071,347	82.07%	17.93%
Sacramento	\$682,636	32.53%	67.47%
Santa Clara	\$399,228	112.72%	-12.72%

As noted in table 2, in fiscal year 2014–15, Maria Rivera’s Orange County spent more than eighty-two cents of every dollar in fee revenue on collection activity against other families, not for services to youth.<sup>35</sup> Before it stopped charging juvenile fees in 2016, Santa Clara County lost money, spending more than \$450,000 to collect less than \$400,000 in juvenile fees.<sup>36</sup>

## II. JUVENILE FEE REFORM IN CALIFORNIA

Armed with this disturbing data about juvenile fee practices, we worked closely with advocates and policymakers to pursue reform. We published a 2016 research report about juvenile fees in Alameda County that called for an immediate fee moratorium.<sup>37</sup> In response to our findings, the Alameda County Board of Supervisors ended all juvenile fee assessment and collection, and two other large Bay Area counties (Santa Clara and Contra Costa) quickly followed suit.<sup>38</sup>

We subsequently published a 2017 research report about harmful, unlawful, and costly fee practices across California, which included a recommendation to abolish the fees statewide.<sup>39</sup> The data and local repeal victories served as the catalyst for a two-year fee abolition campaign informed by courageous youth and led by the Western Center on Law & Poverty and other co-sponsors.<sup>40</sup> In October 2017, Governor Jerry Brown signed into law

35. *Id.* at 18 tbl.3, 19.

36. *Id.* at 18 tbl.3.

37. HIGH PAIN, NO GAIN, *supra* note 22, at 17.

38. ALAMEDA COUNTY, CAL. ADMIN. CODE § 2.42.190 (2016); Bd. of Supervisors Res. No. 110 (Santa Clara County, Cal. 2016) (enacted); Bd. of Supervisors Res. No. 606 (Contra Costa County, Cal. 2016) (enacted).

39. MAKING FAMILIES PAY, *supra* note 23, at 26.

40. For more on the history of local fee reform in California and the statewide fee abolition campaign, see Stephanie Campos-Bui, *Debt-Free Justice: A Bottom-Up Approach to Ending Juvenile Fees in California*, CLEARINGHOUSE COMMUNITY (Apr. 2018), <https://www.povertylaw.org/clearinghouse/stories/campos-bui> [<https://perma.cc/KL46-MJZH>].

Senate Bill 190 (SB-190), a bipartisan fee abolition bill.<sup>41</sup> Effective January 1, 2018, SB-190 repealed county authority to assess all fees in the juvenile legal system.<sup>42</sup>

Notably, SB-190 did not discharge juvenile fees charged prior to 2018, leaving families with more than \$374 million in outstanding bills.<sup>43</sup> But based on results to date, we are cautiously optimistic that continued advocacy will root out most, if not all, of the remaining fee debt. Even without taking formal action, counties will eventually end collection as the past fees become stale and revenue drops. Once collection activity ends, however, the debt can remain in civil judgments and liens. And many families made payments on fees that were charged unlawfully.<sup>44</sup>

As a result of ongoing implementation efforts led by clinic students, thirty-six counties have voluntarily ended collection on more than \$237 million in previously assessed fees (see figure 2).<sup>45</sup>

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41. S. 190, 2017–2018 Leg., Reg. Sess. (Cal. 2017); Press Release, Policy Advocacy Clinic, Berkeley Law, Univ. of Cal., California Takes the Lead in Juvenile Justice Reform—Ends the Harmful, Unlawful, and Costly Practice of Charging Fees to Families with Youth in the System (Oct. 12, 2017), <https://www.law.berkeley.edu/wp-content/uploads/2015/12/2017.10.12-FINAL-Post-Signature-Press-Release-NATIONAL-1.pdf> [<https://perma.cc/PJ7L-QEYD>].

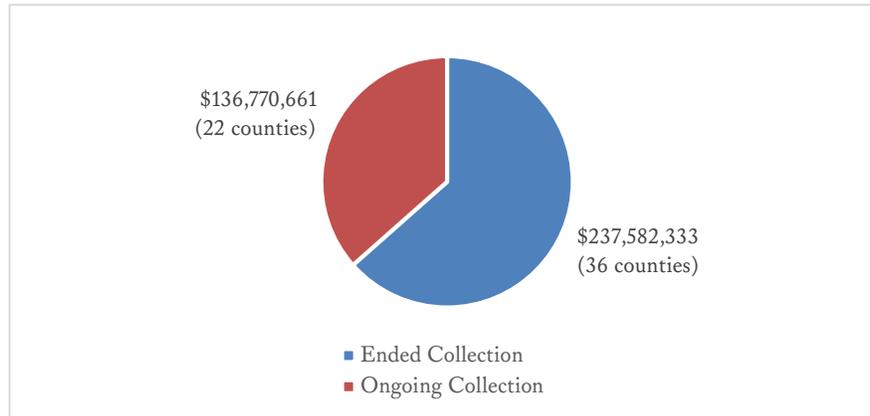
42. S. 190; Press Release, *supra* note 41.

43. POLICY ADVOCACY CLINIC, BERKELEY LAW, UNIV. OF CAL., FEE ABOLITION AND THE PROMISE OF DEBT-FREE JUSTICE FOR YOUNG PEOPLE AND THEIR FAMILIES IN CALIFORNIA: A STATUS REPORT ON THE IMPLEMENTATION OF SENATE BILL 190, at 6 (2019) [hereinafter FEE ABOLITION AND THE PROMISE OF DEBT-FREE JUSTICE], [https://www.law.berkeley.edu/wp-content/uploads/2019/10/SB-190-Implementation-Report11\\_10\\_31\\_19.pdf](https://www.law.berkeley.edu/wp-content/uploads/2019/10/SB-190-Implementation-Report11_10_31_19.pdf) [<https://perma.cc/H2DQ-WE4Z>]; Jeffrey Selbin, *California Needs To End All Collection on Juvenile Detention Fees*, L.A. TIMES (Sept. 11, 2018, 4:05 AM), <https://www.latimes.com/opinion/op-ed/la-oe-selbin-juvenile-fees-sb190-20180911-story.html> [<https://perma.cc/NXJ8-DHSR>].

44. *See supra* notes 24–26 and accompanying text.

45. FEE ABOLITION AND THE PROMISE OF DEBT-FREE JUSTICE, *supra* note 43, at 7; Jeffrey Selbin & Jessica Feierman, *States Must Abolish Juvenile Fees. They're Putting Families in Debt*, WASH. POST (July 19, 2019, 6:35 PM), [https://www.washingtonpost.com/opinions/states-must-abolish-juvenile-fees-putting-families-in-debt/2019/07/19/d5e0e2b0-a8db-11e9-a3a6-ab670962db05\\_story.html?utm\\_term=.073f15fcbd72](https://www.washingtonpost.com/opinions/states-must-abolish-juvenile-fees-putting-families-in-debt/2019/07/19/d5e0e2b0-a8db-11e9-a3a6-ab670962db05_story.html?utm_term=.073f15fcbd72) [<https://perma.cc/EE67-DPY6> (dark archive)].

Figure 2: Post-SB-190 County Juvenile Fee Collection Practices by Dollar Amount (2019)



As figure 2 depicts, more than \$136 million currently remains under active collection in twenty-two counties. Orange County alone accounts for more than \$38 million of the total still being collected.<sup>46</sup>

As noted above, counties like Orange often pursue aggressive collection tactics such as intercepting families' tax refunds, garnishing their wages, and chasing families like Maria Rivera's into bankruptcy.<sup>47</sup> In fact, after Orange County persuaded the bankruptcy court to reinstate Ms. Rivera's juvenile fee debt,<sup>48</sup> the U.S. Court of Appeals for the Ninth Circuit eventually decided that the fees were dischargeable.<sup>49</sup> Aware of the harms that can result from such practices, the appeals court panel chastised Orange County for charging Ms. Rivera fees that "compromise the goals of juvenile correction and the best interests of the child, and, ironically, impair the ability of his mother to provide him with future support."<sup>50</sup>

The Ninth Circuit relieved Ms. Rivera of the remaining debt, but she prevailed only after losing her home and spending many years fighting the county. Even after the court case—and after stating publicly that it would reform its practices—Orange County acknowledged that it was still pursuing almost \$190,000 in outstanding juvenile fees from thirty-eight families who

46. FEE ABOLITION AND THE PROMISE OF DEBT-FREE JUSTICE, *supra* note 43, at 8; Selbin & Feerman, *supra* note 45.

47. Declaration of Maria Rivera, *supra* note 1, at 13–15; FEE ABOLITION AND THE PROMISE OF DEBT-FREE JUSTICE, *supra* note 43, at 3.

48. Declaration of Maria Rivera, *supra* note 1, at 2.

49. *In re Rivera*, 832 F.3d 1103, 1104 (9th Cir. 2016).

50. *Id.* at 1111.

were in bankruptcy (\$166,923) and six families who had recently exited bankruptcy (\$22,531).<sup>51</sup>

### III. NATIONAL FEE REFORM

Unfortunately, California is not alone in charging juvenile fees. Thanks to a groundbreaking 2016 report by the Philadelphia-based Juvenile Law Center, we know that most states authorize juvenile fees.<sup>52</sup> Our best estimate is that youth and their families across the country are suffering under several billion dollars in outstanding fee assessments, with tens or hundreds of millions of dollars in new fees imposed annually.<sup>53</sup> In some states, youth can have their probation extended or even be detained for failure to pay juvenile fees, in effect creating debtors' prisons for kids.<sup>54</sup>

With support from Arnold Ventures, we are working with activists, advocates, and academics in an effort to end juvenile fees across the country. In core states, we are conducting nonpartisan legal and policy research on juvenile fines and fees, including social, racial, and economic impact analyses. For example, in Louisiana, we are partnering closely with local groups who persuaded the Orleans Parish Juvenile Court to become the first jurisdiction in the South to end discretionary fees in 2018.<sup>55</sup> We also collaborated closely on fee reform with local non-profits and other juvenile justice stakeholders in Nevada, where the legislature abolished fees statewide in 2019.<sup>56</sup> In addition to

51. Jeffrey Selbin & Abbye Atkinson, *Time To End Injustice in Juvenile Justice System*, ORANGE COUNTY REG. (Aug. 18, 2017), <https://www.ocregister.com/2017/08/18/time-to-end-injustice-in-juvenile-justice-system/> [<https://perma.cc/X2WV-87ZR>]; Letter from Steven J. Sentman, Chief Prob. Officer, Orange Cty., to Jordan Graham, Orange Cty. Register (Sept. 2, 2016) (on file with author).

52. FEIERMAN ET AL., *supra* note 27, at 6–8.

53. We estimated these figures by extrapolating from California data to the forty-seven states that authorize similar juvenile administrative fees. *Id.* at 15. The actual number may be higher or lower depending on specific fee practices in the other states.

54. *Id.* at 6–8.

55. See ORLEANS PARISH JUVENILE COURT, STANDING POLICY ON JUVENILE ADMINISTRATIVE FEES (2018); Andrew Cohen, *Music to Their Ears: Students Spur Juvenile Fees Victory in New Orleans*, BERKELEY L.: U.C. (Aug. 3, 2018), <https://www.law.berkeley.edu/article/music-to-their-ears-students-spur-juvenile-fees-victory-in-new-orleans/> [<https://perma.cc/M77P-C6D2>]; Meghan Holmes, *Orleans Parish Juvenile Court Abolishes Discretionary Fines*, L.A. WKLY. (Aug. 13, 2018), <http://www.louisianaweekly.com/orleans-parish-juvenile-court-abolishes-discretionary-fines/> [<https://perma.cc/N4Y6-BJHZ>]; Matt Sledge, *New Orleans Becomes First City in South To Axe Court Fees for Delinquent Youths*, NEW ORLEANS ADVOC. (Aug. 19, 2018, 5:46 PM), [https://www.nola.com/news/courts/article\\_b4589282-30f6-5deb-820f-90530666f22e.html](https://www.nola.com/news/courts/article_b4589282-30f6-5deb-820f-90530666f22e.html) [<https://perma.cc/L78S-2QYV>].

56. A.B. 439, 80th Reg. Sess. (Nev. 2019); Gretchen Kell, *Law Students Help End Fees in Nevada for Youth in Delinquency System*, BERKELEY NEWS (July 1, 2019), [https://news.berkeley.edu/story\\_jump/law-students-help-end-youth-delinquency-fees/](https://news.berkeley.edu/story_jump/law-students-help-end-youth-delinquency-fees/) [<https://perma.cc/Z8LH-AGVA>]; Denise Tanata & Steve Yeager, *Nevada Ends Juvenile Justice Fees*, NEV. INDEP. (June 25, 2019, 2:00 AM), <https://thenevadaindependent.com/article/nevada-ends-juvenile-justice-fees> [<https://perma.cc/7WPM-472F>].

the reforms in California, Louisiana, and Nevada, local authorities in Pennsylvania, Kansas, Wisconsin, and Tennessee have also stopped charging one or more fees in the delinquency system.<sup>57</sup>

With the Juvenile Law Center, we are providing educational and technical support on juvenile fines and fees to community partners and key stakeholders in a wider network of states. Together, we are developing an online platform of data, tools, and other educational and advocacy resources about juvenile fines and fees, and we are planning a national abolition campaign. The goal of the campaign is to reach a tipping point, after which any jurisdiction that charges juvenile fees will be the exception and not the norm.

Since we began this work in 2012, we have learned a number of lessons and faced a number of challenges that will inform the campaign.

#### IV. EARLY JUVENILE FEE REFORM LESSONS

##### A. *Fee Abolition Is Possible*

Juvenile fees are bad public policy because they harm families, undermine rehabilitation and public safety, and are costly to administer. There will be pressure to tinker with fee practices rather than abolish them, for example, by instituting or strengthening ability-to-pay mechanisms. In both California and Nevada, advocates successfully resisted efforts during the legislative process to water down repeal bills in favor of new ability-to-pay provisions. We believe that the reforms adopted in California, Nevada, Louisiana, and other local jurisdictions are proof of concept that when presented with persuasive stories and data, elected officials and courts will opt to end rather than mend juvenile fees.

##### B. *Reform Will Come in Many Shapes and Sizes*

Elected officials (county supervisors and state legislators) were at the forefront of fee reform in California, but judges have been out in front in Louisiana, and they may lead the way in other jurisdictions.<sup>58</sup> Even under the current administration, the federal government can play a role via enforcement, funding, and reporting mechanisms. For example, in 2019, Representative

57. Phila., Pa., Res. No. 161029 (2016); Johnson County, Kan., Res. No. 047-17 (2017); DANE COUNTY BOARD OF SUPERVISORS 2019 OPERATING BUDGET AMENDMENT 5 (2018) (Wisconsin), <https://dane.legistar.com/View.ashx?M=F&ID=6697774&GUID=FD523C89-C0E7-4F79-81E8-BC2168BD6F72> [<https://perma.cc/5Y4P-HXRH>]; Katherine Burgess & Sarah Macaraeg, *Shelby County To Stop Billing, Waive Debt for Families of Juvenile Detainees in Memphis*, COM. APPEAL (Aug. 26, 2019), <https://www.commercialappeal.com/story/news/2019/08/26/shelby-county-stops-billing-discretionary-fees-juvenile-detention/1718482001/> [<https://perma.cc/9RNB-B2WL>].

58. Campos-Bui, *supra* note 40; Holmes, *supra* note 55; Sledge, *supra* note 55.

Tony Cárdenas (D-Cal.) introduced the Eliminating Debtor's Prison for Kids Act, a federal bill that would earmark funds for youth mental and behavioral health services to states that prohibit the imposition of juvenile fees.<sup>59</sup>

*C. Progressive Reform Will Not Be Possible Everywhere in the Near Term*

Even where there is interest from local advocates, juvenile fees will not necessarily be a priority because of other pressing issues. Local partners also often lack resources and capacity for the sustained work that may be required to achieve success. And victory in some jurisdictions may take the form of preventing things from getting worse. For example, in 2018, we worked with local groups in Ohio who persuaded a state representative to drop proposed legislation that would have expanded juvenile fee liability beyond youth to their parents and guardians.

*D. Organizing Matters*

We have seen reform go the farthest and fastest where research is combined with active organizing campaigns involving youth and their families from impacted communities. In the most obvious example, local organizers in one California county succeeded not only in ending assessments, stopping collections, and discharging outstanding fees, they also pressured local lawmakers to identify and refund more than \$130,000 of unlawfully paid fees to hundreds of families.<sup>60</sup>

*E. Class and Race Matter*

We have seen the benefits of leading with the message that juvenile fees are regressive and racially discriminatory, which connects both with people who do not like taxes and big government and people who care about racial justice. Failing to be explicit about racial disparities, for example, might result in reforms that merely shift the locus of discrimination from one part of the process to another (e.g., from racial bias in charging fees to racial bias in assessing youth or families' ability to pay).<sup>61</sup> Race-conscious advocacy grounded in impacted communities is less likely to compromise on reforms that bake in such bias.

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59. H.R. 2300, 116th Cong. (2019).

60. CONTRA COSTA PUBLIC COMMITTEE REFERRAL, *supra* note 24; Letter from Danielle C. Fokkema, *supra* note 24.

61. See, e.g., Theresa Zhen, *(Color)Blind Reform: How Ability-To-Pay Determinations Are Inadequate To Transform a Racialized System of Penal Debt*, 43 N.Y.U. REV. L. & SOC. CHANGE 175, 188–89 (2019).

F. *Fiscal Analysis Matters*

Because our research suggests that juvenile fees undermine the rehabilitative and public safety goals of the juvenile justice system, we do not typically lead with a cost-benefit analysis, at least not in the narrow sense of whether jurisdictions generate net revenue from juvenile fees. But in some settings, the low fiscal gain has clearly mattered to policymakers. Sound fiscal analysis will also help to prevent these policies from spreading or coming back after repeal (e.g., during the inevitable economic downturn that will increase pressure to generate revenue from all sources).

G. *Juvenile Fee Reform Creates Opportunities for Other Fee Reform*

Our hope was that ending fees in the juvenile system would also make fee reform more possible in the criminal (adult) system. A little-known provision in SB-190 extended fee repeal into the adult system for eighteen- to twenty-one-year-olds, bringing relief to many thousands of young people in California.<sup>62</sup> Since SB-190 went into effect in 2018, San Francisco, Alameda, and Contra Costa counties have become the first local jurisdictions in the country to end adult probation fees, discharging more than \$75 million in previously assessed fees.<sup>63</sup> In 2019, in partnership with the California Debt Free

62. S. 190, 2017–2018 Leg., Reg. Sess. (Cal. 2017); FEE ABOLITION AND THE PROMISE OF DEBT-FREE JUSTICE, *supra* note 43, at 4.

63. See S.F. County, Cal., Ordinance No. 131-18 (June 5, 2018); ALAMEDA COUNTY, CAL., ADMIN. CODE § 2.42.190 (2018); Contra Costa County, Cal., Res. No. 2019/522 (Sept. 17, 2019). In all three instances, we worked closely with local fee reform groups that explicitly used framing from juvenile fee reform in their successful campaigns. See THE FIN. JUSTICE PROJECT, OFFICE OF THE TREASURER & TAX COLLECTOR, CITY & CTY. OF S.F., CRIMINAL JUSTICE ADMINISTRATIVE FEES: HIGH PAIN FOR PEOPLE, LOW GAIN FOR GOVERNMENT—A CALL TO ACTION FOR CALIFORNIA COUNTIES 1–3 (2018), [https://test-sfttx.pantheonsite.io/sites/default/files/2019-09/Hig%20Pain%20Low%20Gain%20FINAL\\_04-24-2019.pdf](https://test-sfttx.pantheonsite.io/sites/default/files/2019-09/Hig%20Pain%20Low%20Gain%20FINAL_04-24-2019.pdf) [<https://perma.cc/D4CY-DCAE>]; THERESA ZHEN & BRANDON GREENE, E. BAY CMTY. LAW CTR., PAY OR PREY: HOW THE ALAMEDA COUNTY CRIMINAL JUSTICE SYSTEM EXTRACTS WEALTH FROM MARGINALIZED COMMUNITIES 2 (2018), [https://ebclc.org/wp-content/uploads/2018/10/EBCLC\\_CrimeJustice\\_WP\\_Fnl.pdf](https://ebclc.org/wp-content/uploads/2018/10/EBCLC_CrimeJustice_WP_Fnl.pdf) [<https://perma.cc/DZ7V-JZB4>]. In 2019, the Los Angeles County Board of Supervisors released a report on criminal legal system fees and instructed the Probation Department to conduct a more comprehensive “feasibility study of eliminating the fees, fines and penalties the county has discretion to eliminate.” Memorandum from Terri L. McDonald, L.A. Cty. Chief Prob. Officer, to L.A. Cty. Bd. of Supervisors (Jan. 4, 2019) (on file with author) (discussing existing fees collected by county departments for probation supervision or services for adult or youth populations); see also Motion by Supervisors Hilda L. Solis and Sheila Kuehl Addressing Fines and Fees Associated with Criminal Justice System Involvement (Apr. 16, 2019), <http://file.lacounty.gov/SDSInter/bos/supdocs/134660.pdf> [<https://perma.cc/TV74-BHTF>].

Justice Coalition, the author of SB-190 introduced an analogous bill to end all fees in the adult system statewide.<sup>64</sup>

## V. EARLY JUVENILE FEE REFORM CHALLENGES

### A. *We No Longer Have the U.S. Department of Justice at Our Back*

The U.S. Department of Justice (“DOJ”) under the Obama Administration worked closely with advocates, activists, and academics on monetary sanctions in the criminal legal system, playing a convening and investigatory role that advanced reform efforts.<sup>65</sup> The Trump Administration DOJ rescinded the department’s two key guidance documents on monetary sanctions, including a specific advisory on juvenile fines and fees.<sup>66</sup> That said, we continue to bring abusive practices to the attention of the DOJ, which has the authority to investigate statutory or constitutional violations in the administration of the juvenile legal system.<sup>67</sup>

### B. *The Field Is Rapidly Expanding*

Many more actors have entered the fee reform space in the last two years. When we began this work in 2012, we were part of a very small group of researchers and advocates actively engaged on this issue.<sup>68</sup> The upside is a

64. Press Release, Debt Free Justice Cal., Families over Fees/SB 144 (Mitchell) UPDATE (July 2019), <http://ebclc.org/wp-content/uploads/2019/07/DFJC-SB-144-Update-July-2019.pdf> [<https://perma.cc/2WJT-MAX5>].

65. James Lartey, *Obama Made Progress on Criminal Justice Reform. Will It Survive the Next President?*, GUARDIAN (Nov. 14, 2016), <https://www.theguardian.com/us-news/2016/nov/14/barack-obama-criminal-justice-reform-prison-sentencing-police> [<https://perma.cc/N457-4NRT>].

66. See *Attorney General Jeff Sessions Rescinds 25 Guidance Documents*, U.S. DEP’T JUST. (Dec. 21, 2017), <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-25-guidance-documents> [<https://perma.cc/2L28-577S>] (rescinding U.S. DEP’T OF JUSTICE, OFFICE FOR CIVIL RIGHTS, ADVISORY FOR RECIPIENTS OF FINANCIAL ASSISTANCE FROM THE U.S. DEPARTMENT OF JUSTICE ON LEVYING FINES AND FEES ON JUVENILES (2017)).

67. 34 U.S.C. § 12601(a) (2012) (authorizing the U.S. Attorney General to seek equitable and declaratory relief to eliminate “a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States”).

68. See generally REBEKAH DILLER, ALICIA BANNON & MITALI NAGRECHA, N.Y.U. SCH. OF LAW, BRENNAN CTR. FOR JUSTICE, CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY (2010) (examining the consequences of imposing “user fees” on adults with criminal convictions); YOUTH JUSTICE COAL., GETTING PAID: THE BILLS COLLECTED BY THE LOS ANGELES COUNTY DEPARTMENT OF PROBATION PUT YOUTH AT RISK AND IMPOVERISH FAMILIES (2009), <http://www.youth4justice.org/wp-content/uploads/2012/12/GettingPaidReportYJC.pdf> [<https://perma.cc/H6UZ-9PLZ>] (describing Los Angeles County’s harmful practice of charging families juvenile detention fees); Alexis Harris, Heather Evans & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 AM. J. SOC. 1753 (2010) (analyzing federal and state court data on monetary sanctions and finding that legal indebtedness

wonderful infusion of new voices and resources. Important institutions have begun weighing in on the issue, such as the National Council of Juvenile and Family Court Judges, the U.S. Civil Rights Commission, and the American Bar Association, which gives our work new legitimacy and leverage.<sup>69</sup> The challenge is to coordinate efforts, support each other, and develop consistent messaging to maximize meaningful and durable reform.

*C. Fees, Fines, Restitution, and Bail Are Complex and Different*

Policymakers and the public often confuse the many iterations of criminal justice debt—even experienced advocates often use terms such as fines, fees, and bail interchangeably and imprecisely. Litigators may pursue cases based on available legal claims that apply unevenly across the issues or obtain remedies that at best curb only the worst abuses, since the constitutional restrictions on monetary sanctions are typically limited to the most egregious practices.<sup>70</sup> Advocates in state and national organizations may look for low-hanging fruit to secure policy “wins” that come at the expense of deeper, locally driven reform. We need to continue to coordinate and collaborate with the reform community to educate system actors about these regimes and available reforms.

*D. The Criminal Justice Reform Climate Could Change*

After decades of counterproductive tough-on-crime policies, we are living in an era of bipartisan criminal justice reform, especially at the state level. But the depth and durability of the reform agenda is uncertain. For now, the best check against backsliding is to continue to provide evidence-driven research for policymakers (elected officials, judges, and other system actors). Building alliances over time across the political spectrum and from the ground up can also improve the likelihood that the current reform window will remain open.

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reproduces disadvantage by reducing family income, limiting access to opportunities and resources, and increasing the likelihood of ongoing criminal justice involvement).

69. ABA PRESIDENTIAL TASK FORCE ON BLDG. PUB. TR. IN THE AM. JUSTICE SYS., *ABA TEN GUIDELINES ON COURT FINES AND FEES* (2018); NAT'L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, *RESOLUTION ADDRESSING FINES, FEES, AND COSTS IN JUVENILE COURTS* (2018); U.S. CIVIL RIGHTS COMM'N, *TARGETED FINES AND FEES AGAINST LOW-INCOME COMMUNITIES OF COLOR: CIVIL RIGHTS AND CONSTITUTIONAL IMPLICATIONS* (2017).

70. *E.g.*, *Timbs v. Indiana*, 139 S. Ct. 682, 686 (2019) (holding that the prohibition against excessive fines in the Eighth Amendment to the U.S. Constitution applies to state and local governments with respect to civil asset forfeiture but remanding the case back to the state of Indiana to determine whether the forfeiture in *Timbs'* case was excessive); *United States v. Bajakajian*, 524 U.S. 321, 339–40 (1998) (holding that a currency forfeiture of \$357,144 constituted an excessive fine because it was grossly disproportionate to the gravity of the offense, for which the maximum statutory fine was \$5000); *Bearden v. Georgia*, 461 U.S. 660, 661–62 (1983) (prohibiting government from incarcerating a person for inability to pay a fine unless the failure to pay was willful).

*E. The Economy Will Change*

When the economy falters, policymakers will be more reluctant to abolish fees even if they are dubious revenue sources. In fact, they may attempt to raise revenue by expanding fee categories, increasing fee amounts, or collecting fees more aggressively. And even in jurisdictions where stakeholders seem to agree that the fees are bad as a policy matter, some constituencies will fight to maintain pet programs and funding streams. We believe that high quality cost-benefit analyses will help to debunk (or at least problematize) the revenue myth.

*F. Success Will Have Unintended Consequences*

If we succeed in making juvenile fees the exception and not the norm in local jurisdictions across the country, cash-strapped governments and courts may find other ways to tax the same communities. Juvenile fees have expanded in part because of decades of state and federal disinvestment from the public sphere, including courts and justice systems, which have left many local entities holding the bag.<sup>71</sup> We need to work with advocates and policymakers who are thinking creatively about revenue streams that are not harmful, regressive, and racially discriminatory, including a commitment to funding the justice system—which is supposed to benefit us all—with general tax revenue.

#### CONCLUSION

Juvenile fee abolition in California has the potential to undo a key driver of racial and economic injustice in the legal system. State-imposed debt hurts vulnerable families and undermines rehabilitation and public safety. But the liberatory promise of debt-free justice is contingent only in part on ending systemic wealth extraction from low-income communities of color. In addition to abolishing fees, we will need to replace the current juvenile and criminal legal systems with publicly funded justice models that invest in the very same people who have been so unjustly targeted and disproportionately harmed by mass criminalization.

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71. ELIZABETH HINTON, FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA 3 (2016); ALEXANDRA NATAPOFF, PUNISHMENT WITHOUT CRIME: HOW OUR MASSIVE MISDEMEANOR SYSTEM TRAPS THE INNOCENT AND MAKES AMERICA MORE UNEQUAL 132–33 (2018); LOÏC WACQUANT, PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY 41 (2009).