

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 46 MAP 2018

COMMONWEALTH OF PENNSYLVANIA,

Appellant,

v.

Christian Lee Ford,

Appellee.

**BRIEF OF AMICI CURIAE
AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA,
THE PUBLIC DEFENDER ASSOCIATION OF PENNSYLVANIA,
THE LANCASTER COUNTY PUBLIC DEFENDER'S OFFICE, AND
THE MONTGOMERY COUNTY PUBLIC DEFENDER'S OFFICE
IN SUPPORT OF APPELLEE CHRISTIAN FORD**

Appeal from the Order of the Superior Court, 620 MDA 2017, dated November 30, 2017, reversing the PCRA order of the Lancaster County Court of Common Pleas, Nos. CP-36-CR-1443-2016, CP-36-CR-1496-2016, and CP-36-CR-2530-2016

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Statement of Interest of Amici Curiae

The **American Civil Liberties Union of Pennsylvania** (“ACLU”) is an affiliate of the American Civil Liberties Union, a nationwide, nonprofit, nonpartisan organization of over 1.5 million members. The ACLU has particular expertise with respect to the assessment and collection of fines, costs, and restitution in criminal cases. Defendants who cannot afford these financial assessments are routinely penalized through arrest, incarceration, probation extensions, and/or driver’s license suspensions. We submit this Brief in the hope of providing the Court with a more complete picture of how issues related to fines and costs affect indigent and low-income Pennsylvanians across the state.

The **Public Defender Association of Pennsylvania** is a Pennsylvania nonprofit corporation whose membership is comprised of the Chief Public Defender, or his or her designee, in each of the 67 counties of this Commonwealth. The Executive Committee of the Board of Directors of the Public Defenders Association of Pennsylvania has discussed this case and determined the issue is of such importance to the indigent criminal defense community, the clients we represent, and the public at large throughout the Commonwealth of Pennsylvania, that it should offer its views to the Court for consideration. Fines and costs disproportionately affect our clients and add an additional burden to the people who can least afford them. The imposition of fines and costs often leads to a cycle

of repeated court appearances, additional costs, and incarceration. While defendants with financial means are able to pay their fines and costs and move forward with their lives, indigent persons often struggle for years, under mountains of debt, in an attempt to pay not only the originally imposed fines and costs but also the added costs imposed from additional court appearances and incarcerations.

The **Lancaster County Public Defender's Office** and the **Montgomery County Public Defender's Office** represent adult and juvenile indigent individuals facing criminal charges at all stages of criminal proceedings. The onerous fines and costs that are routinely attached to our clients' criminal charges perpetuate poverty and chronic involvement in the justice system. The effects of costs and fines can and do last years beyond conviction. They create barriers to successful reentry after incarceration. In addition to causing more financial strain on indigent individuals—who are simultaneously faced with challenges of housing, transportation costs, and criminal records that negatively affect job prospects—fines and costs can result in extended terms of probation and even incarceration. Our offices have a substantial interest in this matter because the law concerning the imposition and collection of fines and costs directly affects the vast majority of our clients, their families, and our community.¹

¹ No other person or entity paid for or authored this Brief.

Summary of the Argument

In 1973, this Court invalidated a Lancaster County practice of jailing defendants who could not afford to pay fines and costs in light of the “desire to eliminate inequities in the criminal process caused by indigency.” *Commonwealth ex rel. Parrish v. Cliff*, 304 A.2d 158, 161 (Pa. 1973). Two months later, the Court promulgated Pennsylvania Rule of Criminal Procedure 706(C), which instructed that sentencing courts “in determining the amount and method of payment of a fine or costs shall . . . consider the burden upon the defendant by reason of the defendant’s financial means, including the defendant’s ability to make restitution or reparations.”

The next year, the Legislature incorporated an even more explicit requirement into the statutory authorization for imposing fines: “The court shall not sentence a defendant to pay a fine unless it appears of record that . . . the defendant is or will be able to pay the fine.” 42 Pa.C.S. § 9726(c). Section 9726 imposes two key requirements on sentencing courts: 1) subsection (c) prohibits imposing *any* fine on a defendant who cannot afford one; and 2) subsection (d) limits the amount of a fine to that which the record shows the defendant can afford. These are not mere procedural requirements—instead, they are substantive statutory maximums that the legislature has placed on the sentence. A fine that is beyond the defendant’s means is an illegal fine.

For 45 years, therefore, our trial courts have had both the authority and the obligation to shape a sentence in each case that will further the goals of deterrence and rehabilitation without overly burdening indigent defendants. Most of Pennsylvania's trial courts comply with § 9726 and avoid imposing fines in cases with indigent defendants. In the past decade, fines have been imposed in only 30% of cases in which a defendant is represented by a public defender, compared to 42% of cases in which a defendant is represented by private counsel.

The Commonwealth, however, believes that *it* should be able to determine the sentence that a defendant will receive, and preempt the trial court's authority and obligation to evaluate the defendant's means. As a direct result of the Superior Court's decision in this case, in 2018 the District Attorney of Lancaster County began requiring as a condition of every plea that the defendant represent that: **"The defendant acknowledges and agrees that he has the ability to pay all fines and costs, and waives any further pre-sentencing determination of ability to pay."** No pleas are accepted unless the defendant agrees to those terms.

This Court should reject the Commonwealth's effort to upend a fundamental aspect of the sentencing structure that has been in place for 45 years, which protects indigent defendants from unaffordable fines and from then being punished because they cannot afford to pay. The requirement that a sentencing court consider ability to pay is both the law and common sense. As the Superior Court

has observed, “rather than waiting until the defendant is brought before the court for not paying a fine, it is far more rational to determine the defendant’s ability to pay at the time the fine is imposed.” *Commonwealth v. Schwartz*, 418 A.2d 637, 639-640 (Pa. Super. Ct. 1980).

To hold, as the Commonwealth suggests, that this statutory obligation should not apply when the defendant pleads guilty would defeat both the benefit and the intent of § 9726 and Rule 706(c). In 2017, approximately 96% of criminal cases with a conviction were resolved by guilty pleas.² If the District Attorney of Lancaster County can eliminate one of the statutory requirements for sentencing, other counties will follow suit, and defendants in over 100,000 cases who plead guilty each year (a significant proportion of whom are indigent) would have fines imposed by sentencing courts without regard for the statutory mandate in § 9726.

When courts sentence defendants without proper consideration of their ability to pay, both defendants and the court system suffer. Every year, thousands of Pennsylvanians are jailed, have their supervision revoked or extended, or lose their driver’s licenses because they cannot afford to pay their fines and costs. As several recent appeals brought by the ACLU of Pennsylvania demonstrate, debtors’

² “2017 Caseload Statistics of the Unified Judicial System of Pennsylvania,” AOPC at 10, <http://www.pacourts.us/assets/files/setting-768/file-7040.pdf?cb=0f0e4c> (“AOPC Caseload Statistics”). Amici calculated this figure by determining the percentage of guilty pleas out of all cases with a guilty plea, non-jury trial, or jury trial.

prisons are alive and well in Pennsylvania. *See Commonwealth v. Mauk*, 185 A.3d 406 (Pa. Super. Ct. 2018), *Commonwealth v. Diaz*, 191 A.3d 850 (Pa. Super. Ct. 2018), and *Commonwealth v. Smetana*, 191 A.3d 867 (Pa. Super. Ct. 2018).

And the courts lose, as well, because they are burdened with literally endless and futile collection proceedings. Data from the Administrative Office of Pennsylvania Courts (“AOPC”) shows that only 45% of the fines and 62% of the court costs assessed in 2008—more than a decade ago—have been collected. Most defendants with means pay their court costs promptly. But AOPC data shows that more than half of the fines and costs owed by defendants represented by the public defender remain outstanding a decade later. Most indigent defendants owe more money than they can possibly hope to pay.

The Commonwealth’s position is not about the freedom to bargain. It is about removing a fundamental protection for defendants that Pennsylvania’s appellate courts have stood by for 45 years. Amici urge this Court to affirm the Superior Court’s unremarkable decision that a fine imposed without consideration of the defendant’s ability to pay is an illegal fine, regardless whether it was entered after a trial or after a plea.

Argument

A. Despite the requirements of 42 Pa.C.S. § 9726 and Rule 706(C), many defendants are unable to pay fines and costs, which burdens defendants for decades and serves no deterrent or rehabilitative purpose.

While this case concerns the imposition of fines, it is not possible to adequately discuss this issue and the problems associated with the Commonwealth's position without also including a discussion about costs. Each type of financial assessment serves a different purpose. Fines are “direct consequences, and therefore, punishment.” *Commonwealth v. Rivera*, 95 A.3d 913, 916 (Pa. Super. Ct. 2014). Costs are “a reimbursement to the government for the expenses associated with the criminal prosecution” and are “akin to collateral consequences”; they are “not part of the criminal’s sentence but are merely incident to judgment.” *Id.* at 916-17. In other words, costs are not punishment. Restitution “compensates the victim for his loss and rehabilitates the defendant by impressing upon him that his criminal conduct caused the victim’s loss and he is responsible to repair that loss.” *Id.* at 916.

But in imposing these obligations—and especially in contemplating punishment when a defendant has failed to make payment—courts must also grapple with the reality that many defendants are poor. None of the objectives of fines, costs, or restitution are furthered when the court punishes a defendant for failing to pay money that he just does not have. As the Superior Court has

observed in the context of conditions of probation, “conditioning probation on the satisfaction of requirements which are beyond the probationer’s control undermines the probationer’s sense of responsibility.” *Commonwealth v. Melnyk*, 548 A.2d 266, 271 n.4 (Pa. Super. Ct. 1988) (quoting *Commonwealth v. Fuqua*, 407 A.2d 24, 26 (Pa. Super. Ct. 1979)).

Because Rule 706(C) requires that courts consider the defendant’s ability to pay fines *and* costs, the decision in this case will affect both classes of financial obligations. Despite the acknowledged futility of imposing fines and costs that a defendant cannot hope to pay, AOPC data shows that Pennsylvania courts regularly impose amounts that defendants cannot meet, as data from two years highlights:³

| Year | Fines Imposed | Percent Collected | Costs Imposed | Costs Collected | Restitution Imposed | Restitution Collected |
|------|---------------|-------------------|---------------|-----------------|---------------------|-----------------------|
| 2008 | \$59 million | 45% | \$191 million | 62% | \$107 million | 27% |
| 2013 | \$50 million | 40% | \$254 million | 51% | \$130 million | 21% |

As this shows, collection rates—even ten years after sentencing—are poor at best, something reflected in Mr. Ford’s case: although his docket sheet reflects that he

³ “Collection Rates Over Time,” AOPC, <http://www.pacourts.us/news-and-statistics/research-and-statistics/dashboard-table-of-contents/collection-rate-of-payments-ordered-by-common-pleas-courts> (select criminal cases from the drop-down menu). As of the time of filing this Brief, AOPC—for reasons that are unclear—has removed all 2008 data from the data dashboards. The ACLU of Pennsylvania recorded these figures before the data was removed.

has paid some money since his conviction in 2016, he still owes a total of \$200 in fines and nearly \$2,000 in costs in these two cases.⁴

1. The ACLU of Pennsylvania’s analyses show that indigent defendants cannot afford court fines and costs unless they are significantly reduced.

The ACLU of Pennsylvania recently purchased ten years of common pleas court financial data from AOPC. Analyses of almost 2 million cases show that indigent defendants cannot afford to pay anything other than nominal fines and costs. But they also show that at least some courts and individual judges are doing what they are supposed to do and are tailoring fines and costs based on defendants’ limited financial resources.

Courts impose fines in just 30% of cases in which the public defender provides representation, compared to 42% of cases in which private counsel presents the defendant.⁵ *See* Fines Report at 3. By contrast, court costs are assessed in 89% of public defender cases.⁶ *See* Costs Report at 3. In addition, when defendants are assessed fines and/or costs, the amounts are lower for public

⁴ These figures come from the docket sheets. *See* R.R. 11-12a and 23-24a. Elsewhere, the record suggests a larger figure. *See* R.R. 62a-65a.

⁵ *See* Colin Sharpe, et al., “Imposition and Collection of Court Fines in Pennsylvania Criminal Cases: Preliminary Results from an Analysis of 10 Years of Court Data,” ACLU of Pennsylvania, at 3 (Feb. 28, 2019) www.aclupa.org/finesandcosts/research (“Fines Report”). A copy is attached as Appendix A.

⁶ *See* Colin Sharpe, et al., “Imposition and Collection of Court Costs in Pennsylvania Criminal Cases: Preliminary Results from an Analysis of 10 Years of Court Data,” ACLU of Pennsylvania, at 3 (Nov. 13, 2018), www.aclupa.org/finesandcosts/research (“Costs Report”). A copy is attached as Appendix B.

defender clients: the median amounts are \$300 in fines and \$1,072 for costs in public defender cases, compared with \$500 in fines and \$1,306 for cases with private counsel. *See* Fines Report at 3; Costs Report at 3-4.

These figures demonstrate that many courts consider defendants' ability to pay when imposing financial obligations. There is, however, a significant distinction between fines and costs. Although courts *can* impose fines in almost every case, they are generally imposing no or comparatively small fines in public defender cases. The same is not true for court costs. The likely reason that fines are treated differently from costs is that there are decades of consistent case law interpreting 42 Pa.C.S. § 9726, but by contrast the case law on Rule 706(C)—which unlike § 9726, addresses costs—has been inconsistent and contradictory.⁷ If courts were free to disregard § 9726, the amount and frequency of fines would likely increase.

The data also shows that when fines and costs are imposed, hundreds of thousands of indigent defendants struggle—and fail—to pay. Defendants in public defender cases from 2013 have paid a median of \$150 in fines and \$418 in costs in five years, with only 27% of fines having been paid in full. *See* Fines Report at 4;

⁷ The Defender Association of Philadelphia discusses this issue in depth in its Amicus Curiae Brief. Courts appear to be unaware of the 2010 legislative directive in 42 Pa.C.S. § 9728(b.2), which imposes costs on defendants “unless the court determines otherwise pursuant to Pa.R.Crim.P. No. 706(C).”

Costs Report at 5.⁸ The picture is not much better after ten years. In cases from 2008, public defender clients have paid a median of only \$200 in fines and \$744 in costs—only 40% of fines have been paid. *See* Fines Report at 5; Costs Report at 6. Thus, *more than half* of public defender clients enter the second decade after their conviction still owing fines and costs.

That is not to say that defendants are ignoring their obligations. When they owe smaller amounts of money, they are far more likely to pay in full. Public defender clients have fully paid off their costs in 83% of cases where the total costs assessed were \$100 or less. *See* Costs Report at 5. However, owing even a few hundred dollars can make that goal out of reach for most public defender clients: among cases from 2013, only about half of defendants who were assessed costs between \$200-400 had paid them off by 2018 (defendants who were assessed *more* than \$400 were substantially less likely to pay). *Id.* at 5.

In other words, defendants represented by the public defender are not paying and cannot afford to pay the fines and costs that are being assessed. The data shows that for every extra \$100 assessed against a defendant represented by the public defender, \$47 goes unpaid. *See* Costs Report at 4. And as that report

⁸ Defendants cannot choose whether to pay fines, costs or restitution. *See* 204 Pa. Code. § 29.405. Certain costs must be paid first, and then a minimum of 50% of any payment goes to restitution. Then, payments are distributed in a prorated fashion among the remaining costs and fines, with each separate cost taking a separate share. Fines are among the last amount paid.

concludes, “the average [public defender] client could have his costs reduced by more than 50% without any impact on overall revenue collection” by the court. *Id.* at 5. The status quo is unduly punishing indigent defendants.

2. Defendants who are assessed unaffordable amounts of court fines and costs face severe collateral consequences for as long as they owe fines and costs.

While much of this money is uncollectible because the defendants lack the ability to pay, that does not stop courts from trying. Pennsylvania has long had a problem with so-called modern debtors’ prisons: court practices that lead to the unconstitutional incarceration of indigent defendants due solely to their nonpayment of fines and costs. This problem is what drove this Court to issue a landmark decision in *Commonwealth ex rel. Parrish v. Cliff*, 304 A.2d 158 (Pa. 1973), ruling unconstitutional a Lancaster County practice of jailing defendants because they were unable to pay fines and costs. That decision presaged the immediate adoption of Rule 706(C) and, a year later, 42 PaC.S. § 9726, which together flatly prohibit the incarceration of indigent defendants for nonpayment and require that the fines and costs imposed at sentencing be tailored to their ability to pay.⁹

⁹ Like 42 Pa.C.S. § 9726, Rule 706(C) was derived from Section 7.02 of the 1962 Model Penal Code from the American Law Institute. The Commentary to that section notes that “that fines should not be imposed on those who are or will be unable to pay them.” Model Penal Code and Commentaries, American Law Institute (1985) at 242.

Unfortunately, this problem persists. Last year, the Superior Court issued published opinions in three appeals brought by the ACLU of Pennsylvania, invalidating trial court practices in Cambria and Lebanon Counties that led to the incarceration of more than 50 defendants *each month* in those counties, solely for failure to pay court debt. See *Commonwealth v. Mauk*, 185 A.3d 406, (Pa. Super. Ct. 2018), *Commonwealth v. Diaz*, 191 A.3d 850 (Pa. Super. Ct. 2018), and *Commonwealth v. Smetana*, 191 A.3d 867 (Pa. Super. Ct. 2018). The defendants in each of those cases owed thousands of dollars in court fines and costs that continued to linger. For example, Mr. Smetana was assessed a \$600 fine and \$1,129 in costs from his 2014 convictions for loitering, drunkenness, trespass, and disorderly conduct. *Smetana*, 191 A.3d at 868. Three years later, he had managed to pay \$56 in fines and \$743 in costs while he was working—but he was jailed for “contempt” in Lebanon County after he lost his job and was penniless, unable to afford the remaining \$928.50. *Id.* Thus, years after their sentencings—seven years for Mr. Mauk, four years for Mr. Diaz, and three years for Mr. Smetana—these defendants found themselves unlawfully and unconstitutionally incarcerated by courts that aggressively attempted to collect uncollectible funds.

In 2017, the Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness reported that individuals who owe court debt in Pennsylvania are incarcerated, prevented from being eligible for probation or parole, denied access

to Accelerated Rehabilitative Disposition,¹⁰ or kept on probation until they pay all of their court costs.¹¹ *See* Interbranch Report at 15. One Cumberland County judge described in the report “prefer[ed]” that defendants with outstanding fines, costs, and restitution “appear in court before their probation expires so he can extend their probation,” despite such a practice being unlawful under precedent from the United States Supreme Court and the Superior Court since the 1980s.¹² *Id.*

Defendants can also be denied access to public assistance if a court issues a warrant for nonpayment, and defendants who owe fines and costs from traffic cases risk having their driver’s licenses suspended. *See* Interbranch Report at 16.

There is a real risk of increased recidivism, as well, as defendants find it more difficult to successfully reenter society if they face barriers to work and housing because they cannot receive pardons or expungements of their records if they owe costs. *Id.* The Brennan Center for Justice has reported that, from “seeking and maintaining employment and housing, to obtaining public benefits, to meeting

¹⁰ Despite the Superior Court’s 30-year-old decision in *Melnyk*, 548 A.2d at 271-72, defendants across the state are routinely and unconstitutionally denied access to ARD solely because of their inability to pay the costs associated with the program.

¹¹ “Ending Debtors’ Prisons in Pennsylvania: Current Issues in Bail and Legal Financial Obligations: A Practical Guide for Reform,” Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness (July 10, 2017), http://www.pa-interbranchcommission.com/commit_criminal-justice.php (“Interbranch Report”).

¹² In the same way that defendants are routinely denied access to ARD because of their indigence, in some courts they are also routinely subject to probation extensions solely because they are too poor to pay fines, costs, and restitution—despite the Superior Court’s clear and repeated instruction that a violation for nonpayment occurs only if a defendant “willfully” fails to pay. *See, e.g., Commonwealth v. Dorsey*, 476 A.2d 1308 (Pa. Super. Ct. 1984).

financial obligations such as child support, to exercising the right to vote, criminal justice debt is a barrier to individuals seeking to rebuild their lives after a criminal conviction.”¹³

All of these downstream, collateral consequences can be avoided if courts consider the defendant’s ability to pay fines and costs at sentencing. As the Superior Court has recognized, “rather than waiting until the defendant is brought before the court for not paying a fine, it is far more rational to determine the defendant’s ability to pay at the time the fine is imposed.” *Schwartz*, 418 A.2d at 639 (referencing then-18 Pa.C.S. § 1326, which today is 42 Pa.C.S. § 9726). That reasoning applies equally today, and it undergirds the importance of holding ability-to-pay hearings at sentencing. It is also the same reasoning that drove the legislature to adopt § 9726 and this Court to adopt Rule 706(C).

B. Public policy and common sense support preserving the sentencing court’s mandatory role under 42 Pa.C.S. § 9726 and Rule 706(C).

Amici agree with Mr. Ford that the Commonwealth cannot subvert the requirements of § 9726 and Rule 706(C) by way of plea agreement. This is not a question of allowing defendants to make their best “bargain.” When faced with the prospect of a shorter prison sentence or shorter probationary period, any rational

¹³ Rebekah Diller, et al., “Criminal Justice Debt: A Barrier to Reentry,” Brennan Center for Justice (Oct. 4, 2010) at 27, <https://www.brennancenter.org/publication/criminal-justice-debt-barrier-reentry>.

defendant will of course view the financial consequences of a plea as secondary. Even if § 9726 and Rule 706(C) were not mandatory parts of the sentencing scheme, the overwhelming policy considerations would favor preserving—and as discussed below, emphasizing—these essential protections.

1. Imposing unaffordable fines and costs on indigent defendants serves no legitimate public policy goal.

What public policy goal is served by imposing unaffordable fines and costs on defendants who cannot afford them? There simply is not one. The Commonwealth identifies two policy goals, but both fall apart under scrutiny.

The Commonwealth’s first policy argument regards the importance of plea bargains and consistent outcomes. The state’s interest, however, is in ensuring that *the particular* defendant is punished in a way that will deter *him* and impress upon *him* the severity of the crime he has committed—not in ensuring the same outcome for different defendants. *See* 42 Pa.C.S. § 9726(b) (“The court may sentence the defendant to pay a fine in addition to another sentence [when] ... the court is of the opinion that a fine is specially adapted to deterrence of the crime involved or to the correction of the defendant.”).

Furthermore, there is no objective standard when it comes to financial penalties. The proportional punishment inflicted by a \$1,000 fine imposed on a Justice of the Supreme Court (or even a non-profit civil rights attorney) is simply not the same as the punishment that fine would impose on a defendant who earns

minimum wage, or is homeless, or who receives food stamps, or Supplemental Security Income. Thus, a plea agreement imposing \$1,000 worth of punishment on a defendant who has financial resources may serve the same deterrent or rehabilitative purpose as a \$100 fine on a low-income defendant. When the District Attorney determines that a \$1,000 fine “objectively” inflicts sufficient punishment for the offense, he does so assuming that the defendant can afford to pay it. But if the defendant cannot afford to pay it, then the fine imposes even *more* punishment than is required by the plea agreement.

The General Assembly and this Court have long understood this issue. As a result, it is up to the trial court—not the District Attorney—to determine which financial sanction inflicts sufficient punishment, whether \$1,000, \$100, or \$1. Section 9726 *requires* that the trial court make that calculation because the state has no interest in an objective dollar figure—just a dollar figure that meets the state’s punishment goals. No policy goal is satisfied by burdening a defendant and his family with a debt that cannot be paid.

Second, the Commonwealth expresses a concern that determining whether defendants will be able to pay a fine will consume too many judicial resources. The opposite is true. When courts fail to consider ability to pay at sentencing, Defendants inevitably default. Defendants who are on probation or parole may be arrested, detained, and subjected to *Gagnon I* and *II* hearings—a great waste not

only of judicial resources, but also those of law enforcement and the county jail. Defendants who are not on probation or parole will be scheduled for a contempt hearing, which is again a tremendous drain on judicial and law enforcement resources. The magisterial district courts alone issue 600,000 bench warrants each year for defendants who have defaulted on their payments for fines, costs, and restitution.¹⁴ Tremendous resources are wasted trying to collect this money.

Either way, the court will have to determine the defendant's ability to pay at one of *those* hearings—sometimes multiple times. The defendants in *Diaz*, *Smetana*, and *Mauk* all had multiple contempt hearings before spending weeks in jail despite their indigence. Those are not isolated incidents. In January 2019, the Lancaster County Court of Common Pleas held contempt hearings for 32 individual defendants due to nonpayment of fines, costs, and restitution. *See* Appendix C, Calendar of contempt hearings. Neighboring counties held even more: according to the Unified Judicial System's online calendar, the York County Court of Common Pleas had 41 fines and costs contempt cases scheduled for February 15, 2019. The Lebanon County Court of Common Pleas had 110

¹⁴ AOPC Caseload Statistics at 195 and 241. This figure comes from adding the total post-disposition warrants issued in traffic and non-traffic cases by the magisterial district courts with those issued by the Philadelphia Municipal Court Traffic Division. The experience of Amici is that nearly all of those post-dispositional warrants are issued for failure to pay. At the end of 2017, approximately 1.5 million were pending unserved.

scheduled for February 11, 2019. *Those* hearings are a major drag on judicial resources.

Once again, the words of the Superior Court in *Schwartz* was prescient. By addressing a defendant's finances on the front end, courts would actually *save* significant resources by avoiding future hearings. Collections staff would not have to send out dozens of notices every month after defendants had defaulted. And, of course, the lives of defendants and their families would be immeasurably improved by not having these unaffordable debts—coupled by the constant risk of arrest and incarceration—hanging over their heads. It would be a win-win for the courts and defendants, while still appropriately punishing defendants for their crimes.

2. Public policy concerns overwhelmingly favor strict adherence to 42 Pa.C.S. § 9726 and Rule 706(C).

This brief has so far addressed four public policy concerns that weigh strongly in favor of strictly adhering to § 9726 and Rule 706(C): 1) avoiding the risk of unconstitutional jailing or extension of probation; 2) not saddling defendants with unaffordable debt that follows them for more than a decade; 3) not saddling courts, law enforcement, and jails with the costs of hauling defendants in for potentially repeated ability-to-pay hearings following default; and 4) dispensing proportionally equal punishment in light of financial means.

The same concerns expressed in the Commentary to the Model Penal Code and Pennsylvania law ring true today. In 2017, the American Bar Association

(“ABA”) updated its Criminal Justice Section Standards for Sentencing, affirming that there should be no “minimum fine for any offense,” and that “sentencing courts, in imposing fines, are required to take into account the documented financial circumstances and responsibilities of an offender.”¹⁵ Last year, the ABA adopted Resolution 114, “Ten Guidelines on Court Fines and Fees”—which, incidentally, highlights a docket sheet from Cambria County as the primary exhibit of excessive assessments.¹⁶ As the ABA explains, “consideration of a person’s ability to pay at each stage of proceedings is critical to avoiding what are effectively ‘poverty penalties’” in the form of additional fees or jailing. ABA Guidelines at PDF page 4. As a result, the ABA cautions that “Fines should be calibrated to reflect the financial circumstances of the individual ordered to pay, so that the fines do not result in substantial and undue hardship to the individual or his/her dependents.” *Id.* at 3. These statements reflect the fact that imposing unaffordable financial obligations on defendants harms us all:

The effect is that poor people are punished because of their poverty . . . This harms us all. When people are jailed, or their driver’s licenses are suspended, because they cannot afford to pay court fines or fees, they face heightened barriers to employment and education, disrupting families and undermining community stability. Similarly, requiring

¹⁵ Standard 18-3.16 Fines, ABA Criminal Justice Section Standards for Sentencing, (July 19, 2017), https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_sentencing_blk/#3.16.

¹⁶ ABA Resolution 114 Adopting Ten Guidelines on Court Fines and Fees (2018) at PDF page 3 n.2, <https://www.americanbar.org/content/dam/aba/images/abanews/2018-AM-Resolutions/114.pdf> (“ABA Guidelines”).

fees to access diversion or treatment programs, such as “drug courts,” creates a two-tiered system of justice—one for the rich and one for the poor. These effects detract from public trust in our justice system, including our law enforcement officials and our courts.

Id. at 22 (PDF pagination).

These types of outcomes are referred to as “poverty traps,” as they “not only punish[] the poor more severely, but keep[] a person in poverty by inhibiting his or her ability to make a living or meet basic needs and obligations.”¹⁷ Beyond the—literally—thousands of defendants who are jailed each year in Pennsylvania for nonpayment of fines and costs by courts of common pleas and magisterial district courts, there are several other poverty traps in Pennsylvania. For example, indigent defendants across the state have their probation extended due to nonpayment. It is impossible to quantify the prevalence of this problem because court dockets do not reflect the necessary information. In Montgomery County, the Public Defender has recently tackled a longstanding problem where thousands of defendants repeatedly had their probation extended solely because they had not paid fines, costs, and restitution in full, regardless of their financial circumstances and without consideration of their ability to pay.¹⁸ See Appendix D, Joint Letter from the Public

¹⁷ “Confronting Criminal Justice Debt: A Guide for Policy Reform,” Harvard Law School Criminal Justice Policy Program (Sept. 2016) at 15, <http://cjpp.law.harvard.edu/assets/Confronting-Crim-Justice-Debt-Guide-to-Policy-Reform-FINAL.pdf>.

¹⁸ This is illegal. See *Commonwealth ex rel. Powell v. Rosenberry*, 645 A.2d 1328, 1331 (Pa. Super. Ct. 1994) (nonpayment is a technical violation only if the defendant has willfully failed to

Defender and Clerk of Courts to the Court of Common Pleas. This problem is not unique to Montgomery County. For example, Amici are aware that defendants in Lancaster County have their probation extended for nonpayment of fines, costs, and restitution, and are *then* forced to pay an additional \$25 per month in supervision fees, further financially burdening them and perpetuating the cycle.

The latest poverty trap that unaffordable fines and costs inflicts on defendants is that they are unable to receive the benefits of the state's new Clean Slate legislation unless they have completed "each court-ordered financial obligation of the sentence." 18 Pa.C.S. § 9122.2(a)(3). Clean Slate automatically seals certain misdemeanor convictions after ten years, which can make a dramatic difference in a person's ability to find work. Being unable to take advantage of this benefit due to a defendant's poverty has the twisted effect of making it *harder* for the defendant to get a job necessary to earn the resources to try to pay off the court debt. It defeats the goals of the legislature and perpetuates cycles of poverty.¹⁹

pay); *Dorsey*, 476 A.2d at 1312 (Fourteenth Amendment requires that courts affirmatively inquire into the reasons for nonpayment).

¹⁹ Another significant poverty trap in Pennsylvania is the automatic suspension of driver's licenses for nonpayment of fines and costs in traffic cases. The Pennsylvania Department of Transportation has reported to the ACLU of Pennsylvania through a public records request that over 70,000 individuals have their driver's licenses suspended each year under 75 Pa.C.S. § 1533(a) for either failure to pay or failure to respond to a citation within 10 days. In 2017, the minor judiciary alone issued over 500,000 warrants for nonpayment in traffic cases. *See* AOPC Caseload Statistics at 195 and 241 (calculated by adding the total post-disposition warrants issued in traffic cases by the magisterial district courts with those issued by the Philadelphia Municipal Court Traffic Division).

* * *

Defendants considering a plea agreement are not thinking about these consequences. Instead, they and their lawyers are thinking about jail and probation. Any reasonable defendant and defense lawyer is going to pursue the shortest period of confinement and supervision possible. The fines come second—and the costs are almost always *completely unknown* until the Clerk of Courts calculates the costs after sentencing (in fact, it is the repeated experience of Amici that even the judge is often unaware of what the costs will be until after sentencing).

The public policy concerns outlined above should not be taken lightly. Beyond § 9726 and Rule 706(C) being clear about sentencing courts' obligations, any ruling by this Court that defendants can bargain away affordable fines and costs would have real and detrimental impacts on defendants and Pennsylvania writ large.

C. This Court should reiterate the importance of carefully evaluating a defendant's ability to pay at sentencing and direct trial courts to the existing precedent.

1. The Court's ruling must put an end to the new practice in Lancaster County that prevents defendants from entering into plea agreements unless they agree that they can pay all fines and costs.

If this Court permits courts to ignore the requirements of § 9726 in cases where a defendant has entered into a plea agreement to pay a specific fine and/or costs, every defendant could be forced to enter into such an agreement. This is

already happening in Lancaster County. Before the Superior Court’s ruling in this matter, the plea agreement entered into by Mr. Ford was typical of pleas in Lancaster County: it referenced a specific dollar amount for fines (although not costs), and it otherwise contained no language addressing financial obligations. *See* Appendix E (examples of older Lancaster County plea agreements).

But since the Superior Court’s opinion in this case, the Lancaster County District Attorney’s Office now requires each plea agreement—including agreements by indigent defendants—to state: “**The defendant acknowledges and agrees that he has the ability to pay all fines and costs, and waives any further pre-sentencing determination of ability to pay.**” *See* Appendix F (recent Lancaster County plea agreements). All parties involved—the District Attorney, defense counsel, defendant, and court—view this language as preventing any inquiry from the court about the defendant’s financial status.

This practice must end, and instead, this Court should use this case to reaffirm and underscore the importance of the protections of § 9726 and Rule 706(C). As is detailed in Mr. Ford’s brief, this is not a new concept, as the Superior Court has reaffirmed this requirement in at least 20 published opinions in the past four decades.

Plainly put, defense counsel and defendants are often scared to ask the court to waive or reduce fines or costs for fear that their client will be given a longer

term of incarceration or probation. That is why § 9726 and Rule 706(C) put the burden on the court, not on defense counsel: “The *court* shall not” impose a fine “unless it appears of record” that the defendant is able to pay it; “the *court* shall” consider the defendant’s ability to pay a fine and costs. (emphasis added). The sentencing court must ask defendants whether they can afford the fines and costs associated with the sentence. If the sentencing court determines that the defendant is unable to afford to pay those financial obligations, it must reduce them accordingly—as in *Commonwealth v. Mead*, 446 A.2d 971, 973 (Pa. Super. Ct. 1982) (per curiam) and *Commonwealth v. Dorsey*, 421 A.2d 777, 778 (Pa. Super. Ct. 1980)—without modifying the other parts of the plea agreement. That approach, which is explained in more detail in Mr. Ford’s brief, meets the penological interest of the state, while complying with the requirements of § 9726 and the intent of both the legislature and this Court.

2. An established body of case law already explains how sentencing courts can determine whether a defendant is able to pay.

Amici agree with the Commonwealth that the Court should also instruct sentencing courts how to determine what—if anything—a defendant is able to pay. *See* Commonwealth’s Brief at 8 (noting the lack of guidance to sentencing courts when determining what a defendant is able to pay). While it would be best for such instruction to appear in the Rules themselves, the guidance that sentencing courts

need can also be provided directly in this case, based on the existing and well-developed law of our appellate courts. The Court need not reinvent the wheel.

There is an established body of case law that addresses whether a defendant is able to pay: the Superior Court has repeatedly explained in a series of criminal cases that “trial courts must look to the ‘established processes for assessing indigency’” through the *in forma pauperis* (“IFP”) standards when assessing a defendant’s financial status. *Commonwealth v. Cannon*, 954 A.2d 1222, 1226 (Pa. Super. Ct. 2008). This is because of the “dearth of case law” in criminal cases, compared with the “well-established principles governing indigency in civil cases.” *Commonwealth v. Lepre*, 18 A.3d 1225, 1226-27 (Pa. Super. Ct. 2011) (applying IFP standards to waive appeal costs).²⁰ See, e.g., *Stein Enterprises, Inc. v. Golla*, 426 A.2d 1129, 1132 (individual who cannot afford to meet his basic life needs is unable to afford to pay and entitled to proceed IFP).²¹

These cases also dovetail with the criminal case law, such as *Commonwealth v. Gaskin*, 472 A.2d 1154, 1157-58 (Pa. Super. Ct. 1984) (when a defendant has no “financial assets [or] liabilities” and has been “living from hand to mouth,” the

²⁰ Other states have also linked civil IFP standards and criteria to criminal fines and costs. For example, in *City of Richland v. Wakefield*, 380 P.3d 459, 464 (Wash. 2016) (en banc), the Supreme Court of Washington “reiterate[d]” that “courts can and should use [the civil rule governing IFP eligibility] as a guide for determining whether someone has an ability to pay costs,” and “courts should seriously question that person’s ability to pay” fines and costs if they meet those standards, both at “imposition and enforcement” for nonpayment.

²¹ The ACLU of Pennsylvania has compiled all of the relevant case law into a “Legal Guide: Determining Ability to Pay” that is available at www.aclupa.org/finesandcosts.

defendant cannot be assessed a fine); *Commonwealth v. Eggers*, 742 A.2d 174, 176 n.1 (Pa. Super. Ct. 1999) (receiving public assistance and the services of the public defender’s office “invite the presumption of indigence”); and *Smetana*, 191 A.3d at 873 (court cannot require that defendant borrow money from friends or family to pay fines and costs).²²

Using a presentence investigation and asking the defendant to complete a basic financial information sheet listing his income, expenses, and relevant work history, should provide the sentencing court with the necessary information to determine the defendant’s ability to pay fines and costs. This need not be functionally different than the information most defendants provide when applying for a public defender. While the sentencing court is tasked with predicting the defendant’s reasonable *future* ability to pay, it is easily foreseeable that a defendant who has historically been unable to afford basic life needs for himself and his family is unlikely to develop greater financial security after incarceration and the added burden of a criminal conviction. *See Commonwealth v. Martin*, 335 A.2d 424, 426 n.3 (Pa. Super. Ct. 1976) (en banc) (noting that “even if appellant’s assets did increase during the brief time between payment of bail and trial, clearly his

²² These bodies of law find common ground with this Court’s excessive fines jurisprudence, which requires that courts determine whether a “forfeiture would deprive the property owner of his or her livelihood.” *Commonwealth v. 1997 Chevrolet and Contents Seized from Young*, 160 A.3d 153, 189 (Pa. 2017). This analysis requires “both a pecuniary objective valuation as well as a non-pecuniary subjective valuation.” *Id.*

ability to pay a fine in the immediate future was seriously curtailed by the imposition of a prison term”).

There is no practical problem with sentencing courts doing what is required by the legislature and this Court: appropriately consider the defendant’s ability to pay fines and costs at sentencing and reduce the amount for indigent defendants.

Conclusion

For the foregoing reasons, this Court should affirm the decision of the Superior Court and instruct the trial court to consider Mr. Ford’s ability to pay the fine assessed in this matter.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I certify pursuant to Pa.R.A.Ps. 531 and 2135 that this brief does not exceed 7,000 words.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the parties at the addresses and in the manner listed below:

Via USPS and PACFile

Travis Anderson
Office of the Lancaster County District Attorney
50 North Duke Street
Lancaster, PA 17608

Dated: March 4, 2019

/s/ Andrew Christy
Andrew Christy

Imposition and Collection of Fines in Pennsylvania Criminal Cases: Preliminary Results from an Analysis of 10 Years of Court Data

By: Colin Sharpe, Andrew Christy, and Jeffrey T. Ward, Ph.D.¹
ACLU of Pennsylvania, February 28, 2019

There has not been an empirical study of the fines, costs, and restitution imposed by Pennsylvania courts in criminal cases. Last fall, the ACLU of Pennsylvania released a preliminary analysis of data concerning the imposition and collection of court costs in criminal cases.² We now take the same approach with fines. Among the seemingly basic questions that have remained unstudied and unanswered in Pennsylvania are the amounts imposed in cases, how long it takes defendants to pay that money, and how long court debt remains uncollected.³ This paper is a first attempt to address these questions by looking at ten years of court data from the Common Pleas Case Management System (“CPCMS”) used by Pennsylvania’s courts of common pleas and the Philadelphia Municipal Court.⁴

I. Data Overview and Methodology

The ACLU of Pennsylvania obtained a table of data from all criminal misdemeanor and felony cases in Pennsylvania courts of common pleas and the Philadelphia Municipal Court between August 17, 2008 and August 16, 2018. The table included the following data from each case:

- Disposition year
- Docket number
- Case Caption
- Representation Type for Defendant (public defender, private, other)
- Race
- Gender
- Amount of outstanding fines (if any)
- Amount of fines assessed (if any)
- Amount of outstanding costs (if any)

¹ Colin Sharpe is an Economics PhD candidate at Vanderbilt University. Andrew Christy is an attorney at the ACLU of Pennsylvania whose practice focuses on fines, costs, and restitution. Jeffrey T. Ward is an Associate Professor at Temple University whose research areas include developmental and life-course criminology, measurement, and quantitative methods.

² The study on costs, *Imposition and Collection of Court Costs in Pennsylvania Criminal Cases: Preliminary Results from an Analysis of 10 Years of Court Data*, is available at www.aclupa.org/finesandcosts/research.

³ Out of the 34,902 public defender cases in our dataset from 2013 that had fines imposed, 70% still had fines outstanding as of 2018. Out of the 24,684 cases with private representation from 2013, only 39% still had fines outstanding as of 2018. Of the 25,262 public defender cases from 2008 with fines assessed, 56% still had fines outstanding as of 2018, while of the 21,596 private cases from 2008 with fines assessed, only 28% had fines outstanding as of 2018.

⁴ Fines are part of a criminal sentence and are intended as punishment. See *Commonwealth v. Rivera*, 95 A.3d 913, 916 (Pa. Super. Ct. 2014) (describing the difference between fines, costs, and restitution). However, a sentencing court cannot impose a fine without making findings on the record that the defendant is or will be able to pay the fine, and tailoring the amount of the fine based on the defendant’s means. See 42 Pa.C.S. § 9726(c) and (d); Pa.R.Crim.P. 706(C).

- Amount of costs assessed (if any)
- Amount of outstanding restitution (if any)
- Amount of restitution assessed (if any)

Our analysis in this report is focused on the different financial impact of fines on defendants with means versus those who are indigent. We used type of counsel—public defender or court appointed equivalent versus private counsel—as a rough proxy for defendants’ financial status.⁵ The dataset included a total of 2,339,847 cases. We excluded cases that lacked vital information from that dataset before running our analysis.⁶ We also excluded 66,197 cases that had docket numbers from before 2008, on the theory that whatever circumstances may have caused those cases to linger means that they are not representative, and another 1,779 cases in which the current fine owed is *larger* than the fine originally assessed—something that should not be possible.

This left us with 1,719,368 cases representing \$418,314,533 in total assessed fines. We do not know the number of individual defendants, as one person may have multiple criminal cases. Of these cases, the public defender or other court appointed counsel provided representation in 1,133,440 cases, and private counsel provided representation in 585,928 cases.⁷

There is an important caveat to note with respect to the data. The data only tells us the amount of fines assessed at sentencing and how much money is currently owed. That certainly captures money that has been paid. However, it *also* captures debt that is forgiven. For example, some judges will waive fines post-sentencing if the defendant is later unable to pay them. Waiving \$500 in such a manner would show up in our data as if the defendant had *paid* that money. In a future analysis, with additional CPCMS data, we will be able to account for this. We expect that those results will show that public defender clients are paying even less than our current analysis suggests.

The data analysis presented here was conducted in Stata, which was used to sort and clean the data, generate summary statistics, and examine relationships between variables through regression analysis. For the sake of clarity, additional detail is provided in Appendix A.

Performing these analyses showed that the median—rather than average—reflects a more accurate picture of what most defendants experience. The reason for this is that although 99% of the assessed fines in our dataset are less than \$2,500, there are a small number of extremely large fines (including 54 cases with fines greater than \$100,000) that have a disproportionate influence

⁵ We hope that in a future analysis, we will be able to cross-reference with defendants’ zip code information to further categorize defendants based on their likely income level.

⁶ There were 4,603 cases with a representation type that made no sense, such as “CYS attorney” or “legal aid”—types of attorneys that do not represent criminal defendants. 547,894 cases lacked any information about type of representation, so we also omitted those cases from our analysis. Six cases had missing year information and were dropped.

⁷ We included the following types of representation in the “public defender” category: Conflict Counsel, Court Appointed, Court Appointed - Co-Counsel, Court Appointed - Conflicts Counsel, Court Appointed – Pending, Court Appointed – Private, Court Appointed – Public, Court Appointed - Public Defender, Court Appointed – Vendor, Court Appointed/Public Defender, and Public Defender. The CPCMS category “private” was the only category we included for private counsel.

on comparisons between public and private defendants. While the presence of these extreme cases is not an issue in and of itself, in the present study we are primarily interested in how fines affect the typical defendant, and we lack sufficient information to properly contextualize extreme outlying observations. For this reason, we have based our primary analysis on median fines, which are much less sensitive to outliers and more representative of what a typical defendant could expect. We report averages in Appendix B, which also support the conclusions discussed herein.

Appendix A contains details on the construction and results of the linear regression. Appendix B contains the complete analysis of data used in this report. Appendix C contains a breakdown per county.

II. Results and Discussion

A. Complete Results from 2008 – 2018

Courts imposed fines in only 34% of the cases that we analyzed. Breaking it down further, 30% of PD cases and 42% of private counsel cases have fines—PD cases are far less likely to have a fine imposed. In cases where fines were imposed, the median amount assessed is \$300 for PD cases versus \$500 for private counsel cases. Defendants with private counsel are assessed a median fine that is 66% higher than those imposed in PD cases. These figures suggest that many courts are declining to impose fines, particularly against PD clients, and when they do, they may base their decision at least in part on defendants' financial means.

For fines that are imposed, our analysis shows that defendants in PD cases are paying significantly less than defendants with private counsel. For all cases over the ten-year span, the median paid among PD clients is \$150 and the median owed is \$150, whereas the median paid among defendants with private counsel is \$500 and the median owed is \$0 (having completely paid their balances). This is a significant distinction—if PD clients could afford to pay even \$300, then they would also have completely paid their fines.

A linear regression, a statistical technique designed to quantify relationships between variables, provides more evidence for the extra burden that higher costs impose on PD clients. On average, a \$100 dollar increase in fines assessed yields an increase in \$74 in fines outstanding for defendants with private representation and \$87 for PD clients, holding constant the race and gender of the defendant, and court type, county, and year of the case. This difference is statistically significant, and shows that higher fines translate into higher levels of debt for PD clients.⁸

During this ten-year time period, PD clients paid a total of \$55,685,515 in fines, compared to \$107,236,187 by private counsel. Thus, defendants with private counsel paid almost *twice* as many dollars in fines overall despite there being twice as many PD cases as private counsel cases in our data (approximately 1.1 million PD cases versus 585,000 private counsel cases). Also, when compared against the total amount of money that was assessed at sentencing—

⁸ The results presented here are from a regression that excludes outlying observations. For further discussion of this issue and the methodology of the linear regression, see Appendix A.

\$211,742,950 for PD cases and \$206,571,583 for private cases—it is clear that the average PD client could have his fine reduced significantly without any impact on overall revenue collection.

B. Results from 2013

While the above figures are all aggregates from 2008 – 2018, drilling down on 2013 data (which gives five years of collections) is illuminating. According to AOPC, in 2013 courts of common pleas imposed approximately \$56 million in fines, and they have collected only 38% of those fines.⁹ Our data analyzed 34,902 PD cases and 24,684 cases with private counsel in which fines were imposed that year:

| Median Amounts | | |
|--------------------|----------|---------------|
| | PD Cases | Private Cases |
| Median assessed | \$300 | \$510 |
| Median paid | \$150 | \$510 |
| Median outstanding | \$150 | \$0 |

PD clients in only 27% of the cases we examined were able to pay off their fines in full in five years. By contrast, 58% of private clients were able to pay their fines off in full in five years, even when typical fines assessed in private cases are notably higher. There is a clear disparity between their financial means.

The data also suggests that PD clients could have their fines significantly reduced without any impact on revenue. As with our findings on court costs, a reduction of 50% on the fines imposed against PD clients would in theory have no impact on the amount actually collected by courts.

C. Results from 2008

An analysis of data from 2008—which allows us to check on defendants’ progress now that 10 years have passed—presents a similar picture. According to AOPC, in 2008 courts of common pleas imposed approximately \$59 million in fines, and they have collected only 45% of those fines.¹⁰ Our data analyzed 25,262 PD cases and 21,596 cases with private counsel in which fines were imposed that year:

| Median Amounts | | |
|--------------------|----------|---------------|
| | PD Cases | Private Cases |
| Median assessed | \$300 | \$500 |
| Median paid | \$200 | \$500 |
| Median outstanding | \$100 | \$0 |

⁹ “Collection Rates Over Time,” Administrative Office of Pennsylvania Courts, available at <http://www.pacourts.us/news-and-statistics/research-and-statistics/dashboard-table-of-contents/collection-rate-of-payments-ordered-by-common-pleas-courts>.

¹⁰ “Collection Rates Over Time,” Administrative Office of Pennsylvania Courts, available at <http://www.pacourts.us/news-and-statistics/research-and-statistics/dashboard-table-of-contents/collection-rate-of-payments-ordered-by-common-pleas-courts>. As of the time of publication of this report, AOPC—for reasons that are unclear—has removed all 2008 data from the data dashboards. However, the ACLU of Pennsylvania recorded these figures before the data was removed.

Echoing results from the 2013 data, even after *ten years*, PD clients continue to struggle to pay their fines in full. If after five years, PD clients have paid \$150, by year ten they have paid only \$200—\$50 worth of additional payments over five years. Indeed, after ten years only 41% of PD clients have paid their fines in full, compared to 69% of defendants represented by private counsel. More than half of PD clients have even modest fines follow them into the next decade.

III. Conclusion

As we have found, only 34% of felony and misdemeanor cases have fines imposed. The difference between indigent defendants and those with means is stark: 30% of PD cases have fines, compared with 42% of cases with private counsel. Compare that with court costs, which we know from our previous research are assessed in 89% of PD cases. This is a large disparity, which is likely driven in part by clearer guidance from case law and statutes that prohibit courts from imposing fines without finding that defendants are able to pay. *See* 42 Pa.C.S. § 9726(c) and (d). While such guidance has not entirely eliminated unaffordable fines, it has at least significantly reduced the use thereof, and courts are largely following their statutory obligation to not impose fines on indigent defendants.

Nevertheless, when indigent defendants are given a fine, they struggle to pay. Most defendants who are assessed a fine and are represented by the PD are assessed fines of about \$300. This is in addition to over \$1,000 in court costs per case, as described in our separate report on court costs. Given that the Federal Reserve estimates that 40% of Americans have insufficient savings to cover a \$400 emergency, it is no surprise that defendants struggle to pay their fines and costs.¹¹

Thus, the fines that this report analyzed show that more than half of PD cases have defendants who continue to owe some combination of fines and costs more than ten years after sentencing. By contrast, nearly three-quarters of cases with private counsel have completely paid their financial obligations. PD clients are disproportionately burdened by fines and costs that they simply cannot afford.¹²

Do courts and the legislature intend for defendants to pay fines for 5, 10, 20+ years? The answer is likely no: no actor has thought about the burden that these fines impose and the length of time that they will follow defendants. Nor have the courts or legislature considered the burden imposed on judicial resources attempting to collect this money into perpetuity. The better approach is to tailor fines and costs to the defendant's financial ability at sentencing. Particularly for defendants who are represented by the PD, the court should either substantially reduce fines and costs, or identify an amount that the defendant can reasonably pay in the near future.

¹¹ Michelle Singletary, "Does America have a savings crisis?" *The Washington Post* (February 21, 2019), available at https://www.washingtonpost.com/business/2019/02/21/does-america-have-savings-crisis/?utm_term=.55f8246e14d1.

¹² The results in this study make sense in the broader context of the total amount of court debt that defendants owe. The Supreme Court of Pennsylvania has set forth regulations on how defendants' payments should be credited. *See* 204 Pa. Code. § 29.405. In short, if a defendant has fully paid his fine, he has already paid his costs.

As our analysis shows, this tailored approach is unlikely to have any impact on courts' fiscal bottom line. PD clients could have their fines and costs reduced by 50%, and courts will still bring in about as much money as they have been for the past decade. The consistent experience of lawyers serving low-income clients, including attorneys at the ACLU, is that individuals who balk at large amounts of money that they cannot hope to afford to pay are nevertheless perfectly able and willing to pay down smaller amounts of debt. Thus, reducing fines from \$300 to \$150 and court costs from over \$1,000 to \$500 (or less, in individual cases) may actually encourage more defendants to pay, without any appreciable drop in revenue. This would have the added benefit of reducing the resources that courts must put into collecting unpaid fines and costs.

In the coming months, as we obtain new data from CPCMS that can address some of the problems with the dataset, as described in the methodology section of this report, we will update and revise the report accordingly. We will also look more closely at the total amounts of money that defendants owe, rather than looking at fines and costs in isolation. All findings will be posted on www.aclupa.org/finesandcosts/research.

Appendix A: Linear Regression Model

The purpose of the linear regression estimated below is to assess the effect of changes in assessed fines on fines outstanding, and to describe any differences in this effect between public defender cases and cases where the defendant has private representation. Formally, we estimate the following equation by ordinary least squares (OLS):

$$1. \quad F_i = \alpha + \delta P_i + \beta_1 A_i + \beta_2 P_i A_i + X_i \beta_3 + e_i$$

Where F_i is the fine outstanding in case i , A_i is the fine assessed in case i , P_i is an indicator for whether case i has a public defender (i.e., $P_i=1$ if the case has a public defender and 0 otherwise), X_i is a set of controls and e_i is a random error term.

The advantage to this construction is it allows for fines assessed to have a different effect depending on whether a case has public or private representation. To see this, note that if the case has private representation, then $P_i=0$, and the equation is reduced to:

$$2. \quad F_i = \alpha + \beta_1 A_i + X_i \beta_3 + e_i$$

Here, an increase of fines assessed increases fines outstanding by β_1 . If the case has private representation, then $P_i=1$, and the equation is reduced to:

$$3. \quad F_i = (\alpha + \delta) + (\beta_1 + \beta_2) A_i + X_i \beta_3 + e_i$$

Here, an increase of fines assessed increases fines outstanding by $\beta_1 + \beta_2$. By estimating Equation 1, we can get approximations of β_1 and β_2 , and thus reconstruct the effect that fines assessed has on fines outstanding, conditional on the control variables. Note that additional assumptions are required for these approximations to have a causal interpretation. Instead the results presented should be considered evidence of a correlation.

To estimate Equation 1 in two ways, we run an OLS regression of fines outstanding on fines assessed, an indicator of whether the case had public representation, and the interaction between these terms, as well as controls for the race and gender of the defendant, whether the case took place in a court of common pleas or not, and variables indicating the county and year in which the case took place. The results of this regression are presented in Table 1.

Table 1

| VARIABLES | Fine Outstanding |
|------------------------|-------------------------|
| Fine Assessed | 0.7398*** (.0008) |
| Public | 116.1572*** (1.8879) |
| Public*(Fine Assessed) | 0.1304*** |

| | |
|--------------|-----------|
| | (0.0011) |
| Constant | -526.9574 |
| | (11.6762) |
| Observations | 556,190 |
| R-squared | 0.7971 |

Estimation includes county and year fixed effects.
Standard errors clustered at the county level in parentheses.
*** p<0.01, ** p<0.05, * p<0.1

Based on the results of this regression, our estimate for β_1 is 0.7398, while our estimate for β_2 is 0.1304. This indicates that the estimated effect of an increase of \$1 in the fine assessed is correlated with an increase of \$0.74 in cases with private representation, and with an increase of \$0.87 ($0.7398+0.1304=0.8702$) in cases with public representation. Therefore, a \$100 dollar increase in fines assessed yields on average an increase in \$74 in fines outstanding for defendants with private representation and \$87 for defendants with public representation, among holding constant the race and gender of the defendant, and court type, county, and year of the case.

One caveat to this interpretation is that the results presented above exclude the 54 cases with fines assessed over \$100,000. The reason for this is that the raw data have a problem with influential observations - including these 54 cases eliminates the estimated effect of public representation. Since the fines involved are so much larger than the average, these observations have a disproportionate effect on the estimates, and they are disproportionately cases with private representation and unpaid fines. The effect is to mask the systematic differences in how public and private cases respond to increased fines in more typical cases. The rationale for exclusion is that we expect cases with very large fines to be different from other cases in many ways, and do not believe they are representative of how most defendants experience the justice system.

An issue with excluding these outlying cases is that the choice of cutoff is arbitrary. Removing the 7 largest observations is sufficient to generate a significant, positive signed difference in how an increase in fines assessed affects fines outstanding for public and private cases, which is reassuring that the above results hold for most reasonable fines. However, these are ad hoc adjustments.

Appendix B: Raw Data

Starting Number of Cases: 2,339,847

There are a negligible number of records (263) for which there is no data for Year or Docket Number. Without the Docket information, county is undefined. These records are excluded from all analysis.

The data regarding Representation Type is inconsistent. 547894 specify no form of representation at all. Of the remaining 1791953, some of the categories appear to be garbage data; we are omitting others (“CYS Attorney,” “Legal Aide” and so on) because they do not appear relevant. There are 1787350 records with relevant Type specified.

6 of those records have no Year or Docket Number specified, leaving 1787344 records. Of these, 66,197 have docket numbers from before 2008. Since we only observe cases adjudicated between 2008 and 2018, we only observe those pre-2008 cases that took sufficiently long to adjudicate to fall within this window. We do not consider these to be representative, and do not consider them in our analysis. Finally, there are an additional 1,779 cases in which the fine outstanding was larger than the fine assessed. This appeared to indicate transcription problems in the data, and thus these cases were excluded from the main analysis as well¹³. This leaves us with a final sample of 1,719,368 cases.

We are considering the following Representation Type categories to constitute instances of defense by Public Defenders:

- Conflict Counsel
- Court Appointed
- Court Appointed - Co-Counsel
- Court Appointed - Conflicts Counsel
- Court Appointed - Pending
- Court Appointed - Private
- Court Appointed - Public
- Court Appointed - Public Defender
- Court Appointed - Vendor
- Court Appointed/Public Defender
- Public Defender

We are considering the Representation Type “Private” to be the one and only category that denotes private defense.

¹³The final results are robust to including this last category, which only changes the averages/medians by a few dollars in most cases.

Summary Statistics, All Cases, 2008 – 2018

| | Number of Cases | Total Assessed Amount | Total Outstanding Amount | Avg Assessed Amount | Avg Outstanding Amount |
|---------|-----------------|-----------------------|--------------------------|---------------------|------------------------|
| Total | 1719368 | \$418,314,533.00 | \$255,392,831.00 | \$243.00 | \$149.00 |
| Public | 1133440 | \$211,742,950.00 | \$156,057,435.00 | \$187.00 | \$138.00 |
| Private | 585928 | \$206,571,583.00 | \$99,335,396.00 | \$353.00 | \$170.00 |

Summary Statistics, Cases with Assessed Fines > \$0, 2008 – 2018

| | | Fines Assessed | | Fines Outstanding | | Percent Paid |
|---------|--------|----------------|----------|-------------------|----------|--------------|
| | Count | Mean | Median | Mean | Median | Mean |
| Total | 582172 | \$719.00 | \$350.00 | \$439.00 | \$100.00 | 42% |
| Public | 336706 | \$629.00 | \$300.00 | \$463.00 | \$150.00 | 29% |
| Private | 245466 | \$842.00 | \$500.00 | \$405.00 | \$0.00 | 59% |

| | Count | Percent Cases Paid in Full | Percent Cases Partially Paid | Percent Cases Paid Nothing |
|---------|--------|----------------------------|------------------------------|----------------------------|
| Total | 582172 | 38.60% | 7.38% | 54.02% |
| Public | 336706 | 26.42% | 6.90% | 66.68% |
| Private | 245466 | 55.30% | 8.04% | 36.66% |

Summary Statistics, Cases with Assessed Fines > \$0, 2008 Only

| | | Fines Assessed | | Fines Outstanding | | Percent Paid |
|---------|-------|----------------|----------|-------------------|----------|--------------|
| | Count | Mean | Median | Mean | Median | Mean |
| Total | 46858 | \$834.00 | \$500.00 | \$417.00 | \$0.00 | 57% |
| Public | 25262 | \$775.00 | \$300.00 | \$499.00 | \$100.00 | 44% |
| Private | 21596 | \$902.00 | \$500.00 | \$321.00 | \$0.00 | 72% |

| | Count | Percent Cases Paid in Full | Percent Cases Partially Paid | Percent Cases Paid Nothing |
|---------|-------|----------------------------|------------------------------|----------------------------|
| Total | 46858 | 53.60% | 8.29% | 38.11% |
| Public | 25262 | 40.43% | 8.92% | 50.45% |
| Private | 21596 | 68.78% | 7.55% | 23.67% |

Summary Statistics, Cases with Assessed Fines > \$0, 2013 Only

| | | Fines Assessed | | Fines Outstanding | | Percent Paid |
|---------|-------|----------------|----------|-------------------|----------|--------------|
| | Count | Mean | Median | Mean | Median | Mean |
| Total | 59586 | \$726.00 | \$400.00 | \$421.00 | \$100.00 | 43% |
| Public | 34902 | \$605.00 | \$300.00 | \$430.00 | \$150.00 | 30% |
| Private | 24684 | \$896.00 | \$510.00 | \$409.00 | \$0.00 | 61% |

| | Count | Percent Cases Paid in Full | Percent Cases Partially Paid | Percent Cases Paid Nothing |
|---------|-------|----------------------------|------------------------------|----------------------------|
| Total | 59586 | 39.96% | 7.80% | 52.25% |
| Public | 34902 | 27.34% | 7.37% | 65.29% |
| Private | 24684 | 57.79% | 8.41% | 33.80% |

Appendix C: County Level Fines Data

| County level | Number of Cases | | | Number of Cases w/ Fine Assessed > \$0 | | |
|--------------|-----------------|--------|---------|--|--------|---------|
| County Name | Total | Public | Private | Total | Public | Private |
| Adams | 9714 | 5810 | 3904 | 8297 | 5018 | 3279 |
| Allegheny | 121504 | 75085 | 46419 | 28234 | 11973 | 16261 |
| Armstrong | 5178 | 2854 | 2324 | 3400 | 1857 | 1543 |
| Beaver | 21844 | 14311 | 7533 | 14596 | 10002 | 4594 |
| Bedford | 5595 | 3674 | 1921 | 4611 | 3148 | 1463 |
| Berks | 42118 | 29324 | 12794 | 30213 | 20637 | 9576 |
| Blair | 21493 | 15461 | 6032 | 16473 | 12381 | 4092 |
| Bradford | 6982 | 3958 | 3024 | 4588 | 2712 | 1876 |
| Bucks | 59804 | 30027 | 29777 | 18963 | 5732 | 13231 |
| Butler | 17904 | 12622 | 5282 | 10078 | 6961 | 3117 |
| Cambria | 20150 | 14855 | 5295 | 13172 | 9530 | 3642 |
| Cameron | 597 | 456 | 141 | 344 | 274 | 70 |
| Carbon | 6375 | 4052 | 2323 | 1942 | 966 | 976 |
| Centre | 14191 | 7827 | 6364 | 8112 | 4323 | 3789 |
| Chester | 41095 | 22199 | 18896 | 28719 | 15531 | 13188 |
| Clarion | 4816 | 3117 | 1699 | 869 | 439 | 430 |
| Clearfield | 7258 | 4681 | 2577 | 6830 | 4489 | 2341 |
| Clinton | 4597 | 3412 | 1185 | 3190 | 2334 | 856 |
| Columbia | 7177 | 4757 | 2420 | 5506 | 3718 | 1788 |
| Crawford | 8647 | 5674 | 2973 | 7896 | 5149 | 2747 |
| Cumberland | 24655 | 17272 | 7383 | 15057 | 9757 | 5300 |
| Dauphin | 48091 | 33773 | 14318 | 36537 | 26116 | 10421 |
| Delaware | 71763 | 37563 | 34200 | 18205 | 7238 | 10967 |
| Elk | 3471 | 2558 | 913 | 2229 | 1745 | 484 |
| Erie | 26842 | 17950 | 8892 | 10254 | 5767 | 4487 |
| Fayette | 19171 | 12380 | 6791 | 14097 | 8971 | 5126 |
| Forest | 534 | 336 | 198 | 354 | 225 | 129 |
| Franklin | 19896 | 14730 | 5166 | 12919 | 9328 | 3591 |
| Fulton | 1854 | 1272 | 582 | 1427 | 967 | 460 |
| Greene | 3819 | 2542 | 1277 | 2883 | 1814 | 1069 |
| Huntingdon | 6295 | 4492 | 1803 | 4319 | 3303 | 1016 |
| Indiana | 9784 | 6769 | 3015 | 7100 | 5000 | 2100 |
| Jefferson | 3004 | 1544 | 1460 | 2435 | 1303 | 1132 |
| Juniata | 2105 | 1470 | 635 | 920 | 566 | 354 |
| Lackawanna | 19386 | 11133 | 8253 | 4257 | 1829 | 2428 |
| Lancaster | 46550 | 25956 | 20594 | 30781 | 17738 | 13043 |

| | | | | | | |
|----------------|--------|--------|--------|-------|-------|-------|
| Lawrence | 10688 | 7683 | 3005 | 2492 | 1505 | 987 |
| Lebanon | 16050 | 10545 | 5505 | 14082 | 9378 | 4704 |
| Lehigh | 33268 | 17481 | 15787 | 12278 | 4988 | 7290 |
| Luzerne | 30944 | 16946 | 13998 | 8402 | 3200 | 5202 |
| Lycoming | 17134 | 12008 | 5126 | 6094 | 3548 | 2546 |
| McKean | 3266 | 2193 | 1073 | 1198 | 620 | 578 |
| Mercer | 11981 | 7853 | 4128 | 2760 | 1335 | 1425 |
| Mifflin | 6271 | 4782 | 1489 | 4729 | 3767 | 962 |
| Monroe | 18922 | 10754 | 8168 | 4815 | 2322 | 2493 |
| Montgomery | 77797 | 38853 | 38944 | 31128 | 13665 | 17463 |
| Montour | 1039 | 710 | 329 | 841 | 586 | 255 |
| Northampton | 19286 | 10624 | 8662 | 9370 | 4200 | 5170 |
| Northumberland | 9493 | 6670 | 2823 | 7504 | 5427 | 2077 |
| Perry | 4839 | 3203 | 1636 | 1965 | 1071 | 894 |
| Philadelphia | 544382 | 414963 | 129419 | 25382 | 14653 | 10729 |
| Pike | 5006 | 2689 | 2317 | 3959 | 2256 | 1703 |
| Potter | 2087 | 1402 | 685 | 1290 | 802 | 488 |
| Schuylkill | 18169 | 13398 | 4771 | 6061 | 3715 | 2346 |
| Snyder | 3469 | 2006 | 1463 | 1429 | 699 | 730 |
| Somerset | 7219 | 4673 | 2546 | 4840 | 3147 | 1693 |
| Sullivan | 579 | 331 | 248 | 345 | 202 | 143 |
| Susquehanna | 3453 | 2007 | 1446 | 2628 | 1626 | 1002 |
| Tioga | 3587 | 1918 | 1669 | 2041 | 1014 | 1027 |
| Union | 2974 | 1951 | 1023 | 1048 | 563 | 485 |
| Venango | 4375 | 2227 | 2148 | 3255 | 1591 | 1664 |
| Warren | 3976 | 2971 | 1005 | 2931 | 2267 | 664 |
| Washington | 20547 | 11457 | 9090 | 5094 | 2113 | 2981 |
| Wayne | 3977 | 2459 | 1518 | 2251 | 1182 | 1069 |
| Westmoreland | 34263 | 20199 | 14064 | 7846 | 3197 | 4649 |
| Wyoming | 3811 | 2294 | 1517 | 2450 | 1469 | 981 |
| York | 62257 | 40294 | 21963 | 21857 | 11757 | 10100 |

| County level | Avg Fine Assessed (where Assessed > \$0) | | | Avg Fine Outstanding (where Assessed > \$0) | | |
|--------------|--|------------|------------|---|----------|----------|
| County Name | All | Public | Private | All | Public | Private |
| Adams | \$687.37 | \$646.43 | \$750.02 | \$377.70 | \$432.41 | \$293.98 |
| Allegheny | \$1,051.87 | \$937.68 | \$1,135.94 | \$632.37 | \$727.41 | \$562.40 |
| Armstrong | \$596.05 | \$550.88 | \$650.41 | \$382.68 | \$403.08 | \$358.13 |
| Beaver | \$433.16 | \$358.41 | \$595.90 | \$322.44 | \$311.98 | \$345.23 |
| Bedford | \$856.42 | \$812.99 | \$949.87 | \$514.57 | \$544.67 | \$449.79 |
| Berks | \$449.41 | \$341.14 | \$682.74 | \$321.45 | \$285.68 | \$398.55 |
| Blair | \$630.39 | \$562.64 | \$835.36 | \$429.57 | \$438.60 | \$402.22 |
| Bradford | \$836.47 | \$811.50 | \$872.55 | \$605.78 | \$689.06 | \$485.39 |
| Bucks | \$1,157.93 | \$1,114.71 | \$1,176.65 | \$647.43 | \$840.35 | \$563.85 |
| Butler | \$562.65 | \$438.05 | \$840.93 | \$226.17 | \$223.45 | \$232.26 |
| Cambria | \$342.86 | \$326.24 | \$386.34 | \$169.01 | \$188.94 | \$116.84 |
| Cameron | \$483.36 | \$473.81 | \$520.73 | \$327.93 | \$341.92 | \$273.15 |
| Carbon | \$790.71 | \$802.53 | \$779.01 | \$439.15 | \$616.08 | \$264.03 |
| Centre | \$578.14 | \$556.48 | \$602.84 | \$286.75 | \$364.24 | \$198.33 |
| Chester | \$672.56 | \$618.41 | \$736.33 | \$379.93 | \$452.60 | \$294.36 |
| Clarion | \$1,303.90 | \$1,047.68 | \$1,565.49 | \$471.56 | \$552.85 | \$388.57 |
| Clearfield | \$494.63 | \$445.00 | \$589.79 | \$263.68 | \$272.58 | \$246.62 |
| Clinton | \$758.64 | \$706.35 | \$901.21 | \$333.91 | \$370.31 | \$234.66 |
| Columbia | \$495.78 | \$464.88 | \$560.05 | \$295.29 | \$334.74 | \$213.26 |
| Crawford | \$508.55 | \$481.68 | \$558.91 | \$178.97 | \$201.92 | \$135.95 |
| Cumberland | \$659.76 | \$579.38 | \$807.74 | \$391.68 | \$407.32 | \$362.88 |
| Dauphin | \$472.42 | \$397.22 | \$660.89 | \$274.23 | \$272.61 | \$278.30 |
| Delaware | \$938.17 | \$924.61 | \$947.11 | \$749.98 | \$837.17 | \$692.44 |
| Elk | \$531.81 | \$488.41 | \$688.26 | \$325.84 | \$358.93 | \$206.54 |
| Erie | \$906.62 | \$872.02 | \$951.08 | \$650.59 | \$732.05 | \$545.88 |
| Fayette | \$628.48 | \$574.32 | \$723.27 | \$502.68 | \$513.09 | \$484.46 |
| Forest | \$930.44 | \$956.01 | \$885.83 | \$595.13 | \$723.04 | \$372.02 |
| Franklin | \$573.06 | \$546.28 | \$642.64 | \$312.55 | \$346.69 | \$223.89 |
| Fulton | \$545.22 | \$498.30 | \$643.85 | \$292.66 | \$314.21 | \$247.38 |
| Greene | \$815.42 | \$799.03 | \$843.22 | \$460.44 | \$555.02 | \$299.94 |
| Huntingdon | \$586.64 | \$532.10 | \$763.93 | \$309.46 | \$344.98 | \$193.97 |
| Indiana | \$577.51 | \$560.70 | \$617.53 | \$348.75 | \$405.12 | \$214.52 |
| Jefferson | \$917.59 | \$726.44 | \$1,137.61 | \$500.79 | \$620.75 | \$362.70 |
| Juniata | \$790.08 | \$792.20 | \$786.70 | \$424.94 | \$514.31 | \$282.06 |
| Lackawanna | \$1,044.46 | \$1,089.66 | \$1,010.41 | \$691.62 | \$849.95 | \$572.36 |
| Lancaster | \$584.48 | \$486.09 | \$718.28 | \$413.23 | \$416.00 | \$409.46 |
| Lawrence | \$1,046.11 | \$822.00 | \$1,387.84 | \$702.46 | \$604.47 | \$851.87 |
| Lebanon | \$600.36 | \$558.65 | \$683.53 | \$322.28 | \$354.37 | \$258.31 |

| | | | | | | |
|----------------|------------|------------|------------|----------|----------|----------|
| Lehigh | \$884.39 | \$806.21 | \$937.88 | \$541.90 | \$651.32 | \$467.03 |
| Luzerne | \$884.68 | \$765.46 | \$958.01 | \$572.71 | \$639.42 | \$531.67 |
| Lycoming | \$877.58 | \$887.61 | \$863.59 | \$494.90 | \$595.95 | \$354.08 |
| McKean | \$849.29 | \$817.37 | \$883.53 | \$378.15 | \$510.61 | \$236.06 |
| Mercer | \$862.73 | \$837.15 | \$886.70 | \$469.94 | \$570.70 | \$375.55 |
| Mifflin | \$535.50 | \$474.50 | \$774.38 | \$346.67 | \$332.15 | \$403.55 |
| Monroe | \$936.80 | \$885.30 | \$984.76 | \$481.48 | \$562.70 | \$405.82 |
| Montgomery | \$701.44 | \$652.67 | \$739.60 | \$399.87 | \$499.40 | \$321.99 |
| Montour | \$809.27 | \$862.03 | \$688.03 | \$439.20 | \$545.67 | \$194.53 |
| Northampton | \$749.44 | \$668.00 | \$815.60 | \$394.32 | \$507.32 | \$302.53 |
| Northumberland | \$396.44 | \$336.93 | \$551.92 | \$241.33 | \$251.78 | \$214.00 |
| Perry | \$657.93 | \$663.34 | \$651.45 | \$253.27 | \$339.36 | \$150.13 |
| Philadelphia | \$1,028.98 | \$1,019.43 | \$1,042.02 | \$806.86 | \$883.63 | \$702.02 |
| Pike | \$997.24 | \$1,085.05 | \$880.91 | \$548.09 | \$748.49 | \$282.61 |
| Potter | \$1,042.50 | \$1,259.13 | \$686.47 | \$358.81 | \$444.48 | \$218.01 |
| Schuylkill | \$598.45 | \$606.16 | \$586.22 | \$379.80 | \$454.83 | \$260.98 |
| Snyder | \$698.80 | \$656.93 | \$738.89 | \$244.18 | \$318.91 | \$172.62 |
| Somerset | \$499.59 | \$468.74 | \$556.95 | \$268.55 | \$302.54 | \$205.38 |
| Sullivan | \$625.58 | \$579.95 | \$690.04 | \$232.75 | \$313.17 | \$119.15 |
| Susquehanna | \$450.49 | \$380.38 | \$564.26 | \$232.76 | \$253.95 | \$198.38 |
| Tioga | \$539.82 | \$485.55 | \$593.41 | \$174.83 | \$201.68 | \$148.31 |
| Union | \$838.50 | \$811.82 | \$869.48 | \$343.42 | \$451.30 | \$218.20 |
| Venango | \$707.39 | \$620.25 | \$790.71 | \$275.73 | \$272.40 | \$278.92 |
| Warren | \$1,014.57 | \$999.03 | \$1,067.64 | \$610.77 | \$664.92 | \$425.89 |
| Washington | \$951.60 | \$874.34 | \$1,006.36 | \$584.39 | \$669.22 | \$524.27 |
| Wayne | \$738.96 | \$654.77 | \$832.05 | \$327.31 | \$368.56 | \$281.69 |
| Westmoreland | \$1,061.42 | \$994.07 | \$1,107.73 | \$723.39 | \$854.43 | \$633.28 |
| Wyoming | \$792.10 | \$701.25 | \$928.14 | \$364.62 | \$410.63 | \$295.73 |
| York | \$1,003.79 | \$1,009.99 | \$996.58 | \$516.15 | \$647.17 | \$363.64 |

| County level | Median Fine Assessed (where Assessed > \$0) | | Median Fine Outstanding (where Assessed > \$0) | |
|--------------|---|------------|--|----------|
| County Name | Public | Private | Public | Private |
| Adams | \$300.00 | \$500.00 | \$200.00 | \$0.00 |
| Allegheny | \$1,000.00 | \$1,000.00 | \$400.00 | \$25.00 |
| Armstrong | \$300.00 | \$400.00 | \$200.00 | \$100.00 |
| Beaver | \$300.00 | \$300.00 | \$250.00 | \$150.00 |
| Bedford | \$500.00 | \$500.00 | \$250.00 | \$0.00 |
| Berks | \$100.00 | \$150.00 | \$100.00 | \$100.00 |
| Blair | \$250.00 | \$400.00 | \$200.00 | \$100.00 |
| Bradford | \$500.00 | \$600.00 | \$350.00 | \$194.99 |
| Bucks | \$1,000.00 | \$1,000.00 | \$500.00 | \$0.00 |
| Butler | \$100.00 | \$400.00 | \$50.00 | \$0.00 |
| Cambria | \$200.00 | \$300.00 | \$100.00 | \$0.00 |
| Cameron | \$300.00 | \$325.00 | \$300.00 | \$100.00 |
| Carbon | \$500.00 | \$500.00 | \$300.00 | \$0.00 |
| Centre | \$138.00 | \$300.00 | \$50.00 | \$0.00 |
| Chester | \$30.00 | \$300.00 | \$10.00 | \$0.00 |
| Clarion | \$1,000.00 | \$950.00 | \$5.00 | \$0.00 |
| Clearfield | \$200.00 | \$300.00 | \$50.00 | \$0.00 |
| Clinton | \$500.00 | \$600.00 | \$100.00 | \$0.00 |
| Columbia | \$300.00 | \$300.00 | \$271.05 | \$0.00 |
| Crawford | \$250.00 | \$250.00 | \$0.00 | \$0.00 |
| Cumberland | \$300.00 | \$500.00 | \$100.00 | \$0.00 |
| Dauphin | \$200.00 | \$400.00 | \$75.00 | \$0.00 |
| Delaware | \$700.00 | \$1,000.00 | \$500.00 | \$476.96 |
| Elk | \$300.00 | \$300.00 | \$300.00 | \$0.00 |
| Erie | \$300.00 | \$750.00 | \$200.00 | \$50.00 |
| Fayette | \$400.00 | \$400.00 | \$300.00 | \$300.00 |
| Forest | \$700.00 | \$750.00 | \$500.00 | \$0.00 |
| Franklin | \$300.00 | \$300.00 | \$150.00 | \$0.00 |
| Fulton | \$300.00 | \$300.00 | \$130.56 | \$0.00 |
| Greene | \$500.00 | \$560.00 | \$300.00 | \$0.00 |
| Huntingdon | \$400.00 | \$500.00 | \$200.00 | \$0.00 |
| Indiana | \$500.00 | \$500.00 | \$400.00 | \$0.00 |
| Jefferson | \$500.00 | \$500.00 | \$400.00 | \$0.00 |
| Juniata | \$500.00 | \$500.00 | \$60.70 | \$0.00 |
| Lackawanna | \$750.00 | \$750.00 | \$300.00 | \$0.00 |
| Lancaster | \$100.00 | \$300.00 | \$100.00 | \$100.00 |
| Lawrence | \$500.00 | \$750.00 | \$200.00 | \$0.00 |

| | | | | |
|----------------|------------|------------|------------|----------|
| Lebanon | \$300.00 | \$400.00 | \$150.00 | \$0.00 |
| Lehigh | \$500.00 | \$500.00 | \$300.00 | \$0.00 |
| Luzerne | \$500.00 | \$1,000.00 | \$402.67 | \$58.26 |
| Lycoming | \$600.00 | \$600.00 | \$250.00 | \$0.00 |
| McKean | \$500.00 | \$600.00 | \$100.00 | \$0.00 |
| Mercer | \$750.00 | \$750.00 | \$300.00 | \$0.00 |
| Mifflin | \$300.00 | \$350.00 | \$200.00 | \$0.00 |
| Monroe | \$750.00 | \$750.00 | \$300.00 | \$0.00 |
| Montgomery | \$300.00 | \$500.00 | \$100.00 | \$0.00 |
| Montour | \$500.00 | \$500.00 | \$300.00 | \$0.00 |
| Northampton | \$300.00 | \$500.00 | \$200.00 | \$0.00 |
| Northumberland | \$150.00 | \$300.00 | \$100.00 | \$0.00 |
| Perry | \$300.00 | \$300.00 | \$0.00 | \$0.00 |
| Philadelphia | \$1,000.00 | \$1,000.00 | \$1,000.00 | \$300.00 |
| Pike | \$500.00 | \$500.00 | \$170.68 | \$0.00 |
| Potter | \$400.00 | \$500.00 | \$0.00 | \$0.00 |
| Schuylkill | \$300.00 | \$300.00 | \$150.00 | \$0.00 |
| Snyder | \$300.00 | \$500.00 | \$0.00 | \$0.00 |
| Somerset | \$300.00 | \$325.00 | \$200.00 | \$0.00 |
| Sullivan | \$500.00 | \$500.00 | \$176.30 | \$0.00 |
| Susquehanna | \$300.00 | \$300.00 | \$194.08 | \$0.00 |
| Tioga | \$200.00 | \$300.00 | \$0.00 | \$0.00 |
| Union | \$500.00 | \$750.00 | \$100.00 | \$0.00 |
| Venango | \$300.00 | \$500.00 | \$0.00 | \$0.00 |
| Warren | \$800.00 | \$1,000.00 | \$436.13 | \$0.00 |
| Washington | \$593.00 | \$750.00 | \$300.00 | \$0.00 |
| Wayne | \$500.00 | \$500.00 | \$216.79 | \$0.00 |
| Westmoreland | \$925.00 | \$1,000.00 | \$500.00 | \$163.57 |
| Wyoming | \$500.00 | \$750.00 | \$416.46 | \$0.00 |
| York | \$1,000.00 | \$1,000.00 | \$200.00 | \$0.00 |

Imposition and Collection of Court Costs in Pennsylvania Criminal Cases: Preliminary Results from an Analysis of 10 Years of Court Data

By: Colin Sharpe, Jon Dilks, and Andrew Christy¹
ACLU of Pennsylvania, November 13, 2018²

There has not been an empirical study of the fines, costs, and restitution imposed by Pennsylvania courts in criminal cases. Among the seemingly basic questions that have remained unanswered are the average amounts imposed in cases, how long it takes defendants to pay that money, and how long court debt remains uncollected.³ This paper is a first attempt to address these questions with respect to court costs, specifically, by looking at ten years of court data from the Common Pleas Case Management System (“CPCMS”) used by Pennsylvania’s courts of common pleas and the Philadelphia Municipal Court.⁴

I. Data Overview and Methodology

The ACLU of Pennsylvania obtained a table of data from all criminal misdemeanor and felony cases in Pennsylvania courts of common pleas and the Philadelphia Municipal Court between August 17, 2008 and August 16, 2018. The table included the following data from each case:

- Disposition year
- Docket number
- Case Caption
- Representation Type for Defendant (public defender, private, other)
- Race
- Gender
- Amount of outstanding fines (if any)
- Amount of fines assessed (if any)
- Amount of outstanding costs (if any)
- Amount of costs assessed (if any)

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² Please note that the tables in Appendix C were updated on March 1, 2019 to reflect *both* the average and median costs imposed and collected per county. Otherwise, no figures have changed.

³ Out of the 98,713 public defender cases in our dataset from 2013 that had costs assessed, 70,908 (71.83%) still have costs outstanding as of 2018. Out of 54,647 cases from that year with private representation, 24,701 (45.20%) have costs outstanding as of 2018. Of the 49,602 public defender cases from 2008 with costs assessed, 29,872 (60.22%) still have costs outstanding as of 2018, while of 35,781 private cases from 2008 with costs assessed, 12,256 (34.25%) have costs outstanding as of 2018.

⁴ Unlike a fine, costs are not intended to be punishment—they are not part of the sentence, and are automatically imposed by statutes unless the court determines otherwise. *Commonwealth v. Rivera*, 95 A.3d 913, 916 (Pa. Super. Ct. 2014) (describing the difference between fines, costs, and restitution); 42 Pa. Cons. Stat. § 9728(b.2). Court costs refer to the costs and fees that are assessed against a defendant. They appear in an itemized list on the last page of the docket sheet with names such as “County Court Cost,” “Commonwealth Cost,” “Judicial Computer Project,” “Substance Abuse Education,” and “Sheriff’s Fee,” among others. A list of common court costs and their statutory authorization is available at www.aclupa.org/finesandcosts under the “Court Costs Statutes” link.

- Amount of outstanding restitution (if any)
- Amount of restitution assessed (if any)

Our analysis was focused on the different financial impact of court costs on defendants with means versus those who are indigent. We used type of counsel—public defender or court appointed equivalent versus private counsel—as a rough proxy for defendants’ financial status.⁵ The dataset included a total of 2,339,847 cases. We excluded cases that lacked vital information from that dataset before running our analysis.⁶ We also excluded 66,197 cases with docket numbers from before 2008 that were unlikely to be comparable to more recent cases,⁷ and 291,877 cases from Philadelphia prior to 2013 that were potentially affected by the city’s write off of outstanding bail judgments.⁸

That left us with 1,429,270 cases, representing \$1,889,517,917 in total assessed costs. We do not know the number of individual defendants, as one person may have multiple criminal cases. Of these cases, the public defender or other court appointed counsel provided representation in 906,952 cases, and private counsel provided representation in 522,318 cases.⁹

There are two caveats with respect to the data. First, because we eliminated certain categories of cases (as described above), cases with private counsel are over-represented.¹⁰ The overall data set now reflects that 63% of cases were represented by the public defender, even though the reality was likely closer to 80%.¹¹ This does not impact our analysis, however, because this

⁵ We hope that in a future analysis, we will be able to cross-reference with defendants’ zip code information to further categorize defendants based on their likely income level.

⁶ 263 cases lacked a disposition year or docket number, and another 4,603 cases had a representation type that made no sense, such as “CYS attorney” or “legal aid”—types of attorneys that do not represent criminal defendants. In addition, 547,894 cases lacked any information about type of representation, so we also omitted those cases from our analysis.

⁷ We excluded these cases from this analysis in part because it was not clear why some cases dating back to as far as the 1950s were adjudicated post-2008, and it was not clear from the data that some of these were not errors. In addition, a random review of six of these cases showed that some cases included the assessment of costs against the defendant even though the charges were dismissed, suggesting a larger problem with this cohort.

⁸ In the available data, it is impossible to distinguish between defendants in Philadelphia during this time period who paid their court costs and defendants whose outstanding bail judgment was written off, as the bail judgments appeared as “costs” on the docket sheet and the CPCMS data. Inclusion of these cases would potentially overstate the extent to which court costs were actually paid, as opposed to forgiven. *See* Dylan Purcell, “Nearly \$1 billion owed by bail jumpers wiped off books,” *Philadelphia Inquirer* (Oct. 11, 2014), http://www.philly.com/philly/news/20141011_Nearly__1billion_owed_by_thousands_of_bail_jumpers_wiped_off_the_books.html. We believe we will be able to accurately account for this problem in the future, but it will require additional information from CPCMS that was unfortunately not part of our data request.

⁹ We included the following types of representation in the “public defender” category: Conflict Counsel, Court Appointed, Court Appointed - Co-Counsel, Court Appointed - Conflicts Counsel, Court Appointed – Pending, Court Appointed – Private, Court Appointed – Public, Court Appointed - Public Defender, Court Appointed – Vendor, Court Appointed/Public Defender, and Public Defender. The CPCMS category “private” was the only category we included for private counsel.

¹⁰ The main reason for this is that we have excluded a significant number of cases from Philadelphia, and because of the concentrated poverty in Philadelphia, many more defendants in that city are represented by the public defender.

¹¹ Two studies by the United States Department of Justice suggest that 60-90% of defendants nationwide are represented by public defenders. *See* “Contracting for Indigent Defense Services: A Special Report,” U.S. Dep’t. of Justice Bureau of Justice Assistance (April 2000) at 3, available at <https://www.ncjrs.gov/pdffiles1/bja/181160.pdf>;

paper separately analyzes public defender cases and cases with private counsel; one category of analysis does not depend on the other. By contrast, had we not eliminated those cases from our dataset, we would have significantly overestimated the amount of money that public defender clients had paid.

Second, in reviewing and thinking through the figures from CPCMS, we realized that the data only tells us the amount of costs assessed at sentencing and how much money is currently owed. That certainly captures money that has been paid. However, it *also* captures debt that is forgiven. For example, some judges will waive court costs after sentencing if the defendant has been unable to afford to pay them off. Waiving \$500 in such a manner would show up in our data as if the defendant had *paid* that money. In a future analysis, with additional CPCMS data, we will be able to account for this. We expect that those results will show that public defender clients are paying even less than our current analysis suggests.

We initially analyzed the data in Microsoft Access by writing a series of queries. We then verified the results in Stata and used that program to examine relationships in the data through linear regression analyses. For the sake of clarity, additional detail is provided in Appendix A.

Performing these analyses showed that the median—rather than average—reflects a more accurate picture of what most defendants experience. The reason for this is that more than 15% of cases have exceedingly high costs assessed: 166,658 cases have costs over \$25,000; 3,059 cases have costs over \$100,000; and 195 cases have costs over \$500,000, including some over \$1 million. We are unsure why some cases have exceptionally high costs assessed. The median costs, which are much less sensitive to outliers, are more representative of what a typical defendant could expect, and so we have based our primary analysis on median figures.¹² All averages are reported in Appendix B.

Appendix A contains details on the construction and results of the linear regression. Appendix B contains the complete analysis of data used in this report. Appendix C contains a breakdown per county that shows the percentage of costs paid by public defender clients and defendants with private counsel.

II. Results and Discussion

A. Complete Results from 2008 – 2018

The courts in our survey assessed costs in 89% of cases with public defender (“PD”) representation, compared to 93% of cases with private counsel. Costs assessed against PD clients also tend to be lower. In cases where costs were assessed, the median amount assessed is \$1,072

“Defense Counsel in Criminal Cases,” U.S. Dep’t of Justice Bureau of Justice Statistics (Nov. 2000), available at <https://www.bjs.gov/content/pub/ascii/dccc.txt>.

¹² The skewness of the observed distribution of assessed costs for public defender cases is 103. For reference, if costs were distributed evenly around the average the skewness would be 0, and a skewness of 1 is often sufficiently high to reject the assumption the data are normally distributed. What this means in practice is that the average will incorporate more information from outlying cases and less from more common cases. While not a problem in and of itself, in the present study we are primarily interested in how costs affect the typical defendant, and lack sufficient information to properly contextualize extreme outlying observations.

for PD cases versus \$1,306 for private counsel cases. These figures suggest that some judges are considering defendants' ability to pay at sentencing and are either reducing or eliminating court costs for poorer defendants.¹³

Our analysis shows that defendants in PD cases are paying significantly less toward the costs they owe than defendants with private counsel. For all cases over the ten-year span, the median PD client has paid only \$441 and still owes \$631, whereas the median defendant with private counsel has paid \$1,306 and owes \$0, having completely paid their balances. This is a significant distinction.

Across the state, collections rates for court costs are rather low. According to AOPC, in 2008 the courts of common pleas¹⁴ in criminal cases assessed \$191,047,186 in court costs alone. Ten years later, they have collected only 62% of that money.¹⁵ That is not to say that defendants are not making an effort to pay their court costs. Our analysis shows that across our ten-year data set, 24% of PD cases are paid in full, as are 54% of cases with private counsel. How does that square with the data above? Almost all defendants who receive smaller amounts of court costs pay them in full. As the table below shows, the percentage of defendants—particularly PD clients—who have paid their court costs drops dramatically as the amount of the costs increases:

| Costs imposed ¹⁶ | \$0-99.99 | \$100-199.99 | \$200-299.99 | \$300-399.99 | \$400-499.99 | \$500-599.99 | \$600-699.99 | \$700-799.99 | \$800-899.99 | \$900-999.99 | \$1000-1099.99 |
|-----------------------------|-----------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|----------------|
| PD cases paid in full | 83.51% | 73.00% | 70.51% | 53.62% | 50.56% | 32.77% | 33.30% | 36.53% | 33.74% | 37.07% | 37.90% |
| Private cases paid in full | 90.41% | 83.65% | 80.83% | 73.37% | 68.20% | 60.24% | 60.09% | 62.87% | 59.43% | 64.35% | 65.74% |

What these figures suggest is that defendants of all types are far more likely to pay off their court costs if the amounts are tailored to their financial ability to pay. PD clients in particular face significant hurdles to pay if the amount they owe exceeds \$300. A linear regression, a statistical technique designed to quantify relationships between variables, provides more evidence for the extra burden that higher costs impose on PD clients. On average, a \$100 increase in costs imposed is associated with a \$28 increase in unpaid costs for defendants with private counsel, and a \$47 increase in unpaid costs for PD clients. In other words, nearly 50% of every dollar in costs assessed on a PD client has not been paid.

¹³ For example, in Philadelphia it is routine for judges to waive supervision fees at sentencing for PD clients because of their poverty.

¹⁴ AOPC includes Philadelphia Municipal Court non-summary cases in this tabulation, as does our data.

¹⁵ The \$191 million figure and the 62% collections rate is reported by AOPC. "Collection Rates Over Time," Administrative Office of Pennsylvania Courts, available at <http://www.pacourts.us/news-and-statistics/research-and-statistics/dashboard-table-of-contents/collection-rate-of-payments-ordered-by-common-pleas-courts> (select criminal cases from the drop-down menu). Because we have removed what appears to be unreliable data, the total 2008 assessment figure for our data set is only \$118,217,724.

¹⁶ Note that this group does not include cases in which no costs were assessed.

During this ten-year time period, PD clients paid a total of \$419,782,733 in court costs, compared to \$494,629,922 by private counsel. Thus, defendants with private counsel paid more overall despite there being twice as many PD cases as private counsel cases in our data (approximately 900,000 PD cases versus 500,000 private counsel cases). Also, when compared against the total amount of money that was assessed at sentencing—\$1,109,292,186 for PD cases and \$780,225,731 for private cases—it is clear that the average PD client could have his costs reduced by more than 50% without any impact on overall revenue collection.

B. Results from 2013

While the above figures are all aggregates from 2008 – 2018, drilling down on 2013 data (which gives five years of collections) is illuminating. In 2013, courts of common pleas imposed \$250,680,544 in court costs, and they have collected only 49% of those costs.¹⁷ Our data analyzed 98,713 PD cases and 54,647 cases with private counsel that year:

| Median Amounts | | |
|--------------------|----------|---------------|
| | PD Cases | Private Cases |
| Median assessed | \$1,013 | \$1,273 |
| Median paid | \$418 | \$1,273 |
| Median outstanding | \$595 | \$0 |

The typical PD client is paying a significantly smaller portion of their assessed costs than those who are represented by private counsel, and are left with much higher outstanding costs after five years. Once again, defendants represented by private counsel are more likely than not to have paid off all of their court costs.

| Costs imposed ¹⁸ | \$0-99.99 | \$100-199.99 | \$200-299.99 | \$300-399.99 | \$400-499.99 | \$500-599.99 | \$600-699.99 | \$700-799.99 | \$800-899.99 | \$900-999.99 | \$1000-1099.99 |
|-----------------------------|-----------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|----------------|
| PD cases paid in full | 92.14% | 79.02% | 55.42% | 55.33% | 45.82% | 27.10% | 25.42% | 36.87% | 28.81% | 35.12% | 40.33% |
| Private cases paid in full | 94.52% | 85.55% | 83.43% | 77.40% | 70.33% | 54.06% | 53.60% | 65.27% | 50.51% | 58.62% | 66.33% |

Defendants represented by the PD who owe only a small amount of court costs are far more likely to pay it off than those who owe a large amount, over \$200. What this shows is that, by imposing large amounts of court costs, courts make it unlikely that an indigent defendant will be

¹⁷ “Collection Rates Over Time,” Administrative Office of Pennsylvania Courts, available at <http://www.pacourts.us/news-and-statistics/research-and-statistics/dashboard-table-of-contents/collection-rate-of-payments-ordered-by-common-pleas-courts>.

¹⁸ Note that this group does not include cases in which no costs were assessed.

able to pay that amount off within five years. Indeed, keeping the figure to under \$200 will allow three out of four defendants to pay in full and satisfy their obligations to the court.

Here, too, we see that PD clients could have their costs reduced by over 50% without any impact on the overall revenue brought in by courts. PD clients were assessed \$134,790,816 yet only paid 40%, compared with \$87,692,981 assessed against clients with private counsel, who have paid 65%. Significantly reducing the amount defendants owe should not have any impact on the amount actually collected by courts.

C. Results from 2008

Analysis of data from 2008—which allows us to check on defendants’ progress now that 10 years have passed—presents a similar picture. The total amount of costs imposed by courts of common pleas in the 88,606 cases we analyzed for that year was \$118,217,715. These cases comprise 51,659 PD cases and 36,947 private cases. As was noted above, AOPC reports that the overall collection rate for costs imposed in 2008 is 62%.

Median Amounts

| | PD Cases | Private Cases |
|--------------------|----------|---------------|
| Median assessed | \$960 | \$1,123 |
| Median paid | \$744 | \$1,123 |
| Median outstanding | \$216 | \$0 |

Both types of defendants are more likely to have paid off more of their court costs over a 10-year period than the 5-year period reflected by the 2013 data. But more than half of PD clients still owe court costs 10 years later. While the median amount they owe has dropped from \$595 to \$216, it is evident that their situation has not significantly changed.

In total, 2008 private cases have paid 75.12% of their \$53,504,044 in total costs, while 2008 PD cases have paid only 52.31% of their \$64,713,695 in total costs assessed. This debt continues to follow PD clients into at least a second decade.

| Costs imposed ¹⁹ | \$0-99.99 | \$100-199.99 | \$200-299.99 | \$300-399.99 | \$400-499.99 | \$500-599.99 | \$600-699.99 | \$700-799.99 | \$800-899.99 | \$900-999.99 | \$1000-1099.99 |
|-----------------------------|-----------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|----------------|
| PD cases paid in full | 74.27% | 59.38% | 56.37% | 44.54% | 47.45% | 42.40% | 37.23% | 41.66% | 38.07% | 39.22% | 36.42% |
| Private cases paid in full | 80.83% | 76.44% | 72.63% | 67.21% | 62.80% | 61.09% | 60.79% | 63.75% | 63.93% | 68.40% | 67.58% |

As with data for other date ranges, the gap between payment rates in private and PD cases rises with the amount owed; fewer than half of PD defendants were able to pay off costs higher than

¹⁹ Note that this group does not include cases in which no costs were assessed.

\$300, even after 10 years. This is additional evidence that even over the span of a decade, indigent defendants do not have the resources to pay significant court costs.

III. Conclusion

As we have found, over 90% of individuals convicted of felonies and misdemeanors are assessed some amount of court costs, yet court costs—and court debt more broadly—remains an understudied aspect of our criminal justice system. Most defendants represented by the PD, who are by definition indigent, are assessed over \$1,000 in court costs alone. Given that the Federal Reserve estimates that 40% of Americans have insufficient savings to cover a \$400 emergency, it is no surprise that defendants struggle to pay court costs that routinely exceed that amount.²⁰

However, the data also shows that defendants can and will pay off smaller amounts of money: nearly 90% of defendants pay off \$100 or less, and 75% pay off \$200 or less. The consequence of higher amounts is that indigent defendants lack the ability to pay it, and it follows them for years or decades. We know from looking at other data from the court system that courts are still trying to collect debt that is decades old. Even in summary cases handled by the magisterial district courts, data we received from a separate AOPC dataset shows that there are outstanding fines and costs dating back to the 1970s in more than 1 million cases. The data analyzed for this report shows that 38% of the costs assessed in 2008 remains unpaid a decade later.

Do courts and the legislature intend for defendants to pay court costs for 5, 10, 20+ years? The answer is likely no: no actor has thought about the burden that these costs impose and the length of time that they will follow defendants. Nor have the courts or legislature considered the burden imposed on judicial resources attempting to collect this money into perpetuity. The better approach is to tailor costs to the defendant's financial ability at sentencing. Particularly for defendants who are represented by the PD, the court should either eliminate the costs altogether or identify the amount of costs that the defendant can reasonably pay in the near future.

As our analysis shows, this tailored approach is unlikely to have any impact on courts' fiscal bottom line. PD clients could have their costs reduced by 50% and courts will still bring in as much money as they have been for the past decade. The consistent experience of lawyers serving low-income clients, including attorneys at the ACLU, is that individuals who balk at large amounts of money that they cannot hope to afford to pay are nevertheless perfectly able and willing to pay down smaller amounts of debt. Thus, reducing court costs from over \$1,000 to \$500 (or less, in individual cases) may actually encourage more defendants to pay, without any risk of a drop in revenue.

In the coming months, as we obtain new data from CPCMS that can address some of the problems with the dataset, as described in the methodology section of this report, we will update

²⁰ Nicole Pesce, "Why 4 in 10 adults can't cover a \$400 emergency expense," MarketWatch (May 22, 2018), available at <https://www.marketwatch.com/story/why-4-in-10-adults-cant-cover-a-400-emergency-expense-2018-05-22>.

and revise the report accordingly. All findings will be posted on www.aclupa.org/finesandcosts/research.

Appendix A: Linear Regression Model

The purpose of the linear regression discussed in the paper is to assess the effect of changes in assessed costs on costs outstanding, and to describe any differences in this effect between public defender cases and cases where the defendant has private representation. Formally, we estimate the following equation by ordinary least squares (OLS):

$$1. \quad C_i = \alpha + \delta P_i + \beta_1 A_i + \beta_2 P_i A_i + e_i$$

Where C_i is the cost outstanding in case i , A_i is the cost assessed in case i , P_i is an indicator for whether case i has a public defender (i.e., $P_i=1$ if the case has a public defender and 0 otherwise), and e_i is a random error term.

The advantage to this construction is it allows for cost assessed to have a different effect depending on whether a case has public or private representation. To see this, note that if the case has private representation, then $P_i=0$, and the equation is reduced to:

$$2. \quad C_i = \alpha + \beta_1 A_i + e_i$$

Here, an increase of cost assessed increases cost outstanding by β_1 . If the case has private representation, then $P_i=1$, and the equation is reduced to:

$$3. \quad C_i = (\alpha + \delta) + (\beta_1 + \beta_2) A_i + e_i$$

Here, an increase of cost assessed increases cost outstanding by $\beta_1 + \beta_2$. By estimating Equation 1, we can get approximations of β_1 and β_2 , and thus reconstruct the effect that cost assessed has on cost outstanding. Note that additional assumptions are required for these approximations to have a causal interpretation. Instead the results presented should be considered evidence of a correlation.

We estimate Equation 1 in two ways. First, our preferred specification, presented in the primary text, adds to Equation 1 variables indicating the county and year in which the case took place. This lessens the possibility that any correlation documented between costs outstanding and costs assessed is the spurious result of other unobserved demographic trends. The results of this estimation are presented in Table A1.

| Table A1 | |
|---------------------|-------------------------------|
| VARIABLES | (1) amountcostsoutstanding |
| amountcostsassessed | 0.281*** (0.0458) |
| public | 66.27 (63.46) |

| | |
|-------------------|----------------------|
| Public*costassess | 0.193*** (0.0493) |
| Constant | -91.45 (61.29) |
| Observations | 1,429,270 |
| R-squared | 0.408 |

Estimation includes county and year fixed effects.
Standard errors clustered at the county level in parentheses.
*** p<0.01, ** p<0.05, * p<0.1

Based on the results of this regression, our estimate for β_1 is 0.281, while our estimate for β_2 is 0.193. This indicates that the estimated effect of an increase of \$1 in the cost assessed is correlated with an increase of \$0.28 in cases with private representation, and with an increase of \$0.47 (0.281+0.193=0.474) in cases with public representation. Multiplying these numbers by 100 to estimate the effect of a \$100 increase in costs assessed yield the numbers reported in the paper.

Our second approach was to estimate Equation 1 directly, without accounting for county and year effects. This specification is potentially less robust, but in this instance the results are remarkably similar, and yield virtually identical interpretations, suggesting that the relationship is not especially sensitive to particular modeling choices. These results are presented in Table A2.

| Table A2 | |
|---------------------|-------------------------------|
| VARIABLES | (1) amountcostsoutstanding |
| amountcostsassessed | 0.287*** (0.000564) |
| public | 46.64*** (2.025) |
| Public*costassess | 0.200*** (0.000849) |
| Constant | 118.7*** (1.574) |
| Observations | 1,429,270 |
| R-squared | 0.376 |

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Appendix B: Raw Data

There are a negligible number of records (263) for which there is no data for Year or Docket Number. Without the Docket information, county is undefined. These records are excluded from all analysis.

The data regarding Representation Type is inconsistent. 547,894 specify no form of representation at all. Of the remaining 1,791,953, some of the categories appear to be garbage data; we are omitting others (“CYS Attorney,” “Legal Aide” and so on) because they do not appear relevant. There are 1787350 records with relevant Type specified, 6 of which have no Year or Docket Number specified.

Of the remaining 1,787,344 records, 66,197 have docket numbers dated from before 2008. An additional 291,877 records are from Philadelphia between the years 2008 and 2012. Each of these groups is omitted, due to our concern that these records are not comparable to the rest of the data without further information. This leaves 1,429,270 records analyzed.

We considering the following Representation Type categories to constitute the public defender:

- Conflict Counsel
- Court Appointed
- Court Appointed - Co-Counsel
- Court Appointed - Conflicts Counsel
- Court Appointed - Pending
- Court Appointed - Private
- Court Appointed - Public
- Court Appointed - Public Defender
- Court Appointed - Vendor
- Court Appointed/Public Defender
- Public Defender

We consider Representation Type “Private” to be the only category that denotes private counsel.

Analysis of full data set (1,429,270 records):

906,952 Public Defender cases
522,318 Private Defender cases

1,242,062 CP cases
 764,332 Public
 477,730 Private
187,208 MC cases
 142,620 Public
 44,588 Private

COSTS ANALYSIS

1293641 instances of costs assessed
807398 Public
486243 Private

\$1460.62 average costs assessed / \$1156.68 median
\$1373.91 average for Public / \$1072.44 median
\$1604.60 average for Private / \$1305.50 median

\$753.76 average costs still owed (\$706.86 paid) / \$445.50 median
\$853.99 average for Public (\$519.92 paid) / \$630.99 median
\$587.35 average for Private (\$1017.25 paid) / \$0 median

\$1,889,517,917.42 total costs assessed (\$975,094,840.16 outstanding: 48.39% paid)
\$1,109,292,186.18 total for Public: 58.71% (\$689,509,818.02 outstanding: 37.84% paid)
\$780,225,731.24 total for Private: 41.29% (\$285,585,022.14 outstanding: 64.40% paid)

Analysis of 2013 data set (153360 records):

98713 Public Defender cases
54647 Private Defender cases

129619 CP cases
81247 Public
48372 Private

23741 MC cases
17466 Public
6275 Private

2013 COSTS

153360 instances of costs assessed (95609 outstanding: 62.34%)
98713 Public (70908 outstanding: 71.83%)
54647 Private (24701 outstanding: 45.20%)

\$1450.72 costs assessed / \$1095.05 median
\$1365.48 average for Public / \$1013.23 median
\$1604.72 average for Private / \$1273.50 median

\$723.20 average costs still owed (\$727.52 paid) / \$433.50 median (\$842 where > \$0)
\$817.64 average for Public (\$547.84 paid) / \$595.37 median (\$834 where > \$0)
\$552.60 average for Private (\$1052.12 paid) / \$0 median (\$859.94 where > \$0)

\$222,483,798.36 total costs assessed (110,910,667.79 outstanding: 50.15% paid)
\$134,790,816.67 total for Public: 60.58% (\$80,712,223.74 outstanding: 40.12% paid)

\$87,692,981.69 total for Private: 39.42% (\$30,198,444.05 outstanding: 65.56% paid)

Analysis of 2008 data set (88,606 records):

51,659 Public Defender cases

36,947 Private Defender cases

Note – as explained in the Methodology section, data from this year excludes cases from Philadelphia.

2008 COSTS

85,383 instances of costs assessed (42,128 outstanding: 49.34%)

49,602 Public (29,872 outstanding: 60.22%)

35,781 Private (12,256 outstanding: 34.25%)

\$1334.20 costs assessed / \$1095.05 median

\$1252.71 average for Public / \$960.10 median

\$1448.13 average for Private / \$1123 median

\$498.51 average costs still owed (\$835.69 paid) / \$433.50 median

\$597.38 average for Public (\$655.33 paid) / \$215.99 median

\$360.26 average for Private (\$1087.87 paid) / \$0 median

\$118,217,715.71 total costs assessed (44,170,709.25 outstanding: 62.64% paid)

\$64,713,695.72 total for Public: 54.74% (\$30,860,152.15 outstanding: 52.31% paid)

\$53,504,044.92 total for Private: 45.26% (\$13,310,560.62 outstanding: 75.12% paid)

Appendix C: County Level Cost Data

| County | Number of Records | | | Number of Records (Cost > \$0) | | |
|------------|-------------------|--------|---------|--------------------------------|--------|---------|
| | Total | Public | Private | Total | Public | Private |
| Adams | 9724 | 5818 | 3906 | 9631 | 5764 | 3867 |
| Allegheny | 121525 | 75098 | 46427 | 119230 | 73693 | 45537 |
| Armstrong | 5184 | 2326 | 2858 | 4214 | 2349 | 1865 |
| Beaver | 21853 | 14317 | 7536 | 21273 | 13906 | 7367 |
| Bedford | 5595 | 3674 | 1921 | 5455 | 3581 | 1874 |
| Berks | 42810 | 29906 | 12904 | 42795 | 29895 | 12900 |
| Blair | 21551 | 15512 | 6039 | 21009 | 15143 | 5866 |
| Bradford | 7110 | 4055 | 3055 | 6706 | 3774 | 2932 |
| Bucks | 59816 | 30034 | 29782 | 58258 | 29067 | 29191 |
| Butler | 17905 | 12623 | 5282 | 17699 | 12494 | 5205 |
| Cambria | 20152 | 14856 | 5296 | 20139 | 14852 | 5287 |
| Cameron | 599 | 458 | 141 | 525 | 408 | 117 |
| Carbon | 6376 | 4052 | 2324 | 5206 | 3388 | 1818 |
| Centre | 14209 | 7842 | 6367 | 13677 | 7467 | 6210 |
| Chester | 41116 | 22212 | 18904 | 39704 | 21348 | 18356 |
| Clarion | 4816 | 3117 | 1699 | 4469 | 2868 | 1601 |
| Clearfield | 7276 | 4695 | 2581 | 7065 | 4586 | 2479 |
| Clinton | 4610 | 3424 | 1186 | 4426 | 3264 | 1162 |
| Columbia | 7182 | 4761 | 2421 | 6382 | 4167 | 2215 |
| Crawford | 8666 | 5691 | 2975 | 8439 | 5525 | 2914 |
| Cumberland | 24676 | 17291 | 7385 | 23939 | 16706 | 7233 |
| Dauphin | 48138 | 33812 | 14326 | 45481 | 31791 | 13690 |
| Delaware | 71765 | 37564 | 34201 | 70861 | 37120 | 33741 |
| Elk | 3471 | 2558 | 913 | 3182 | 2347 | 835 |
| Erie | 26849 | 17956 | 8893 | 25357 | 16933 | 8424 |
| Fayette | 19367 | 12505 | 6862 | 18348 | 11920 | 6428 |
| Forest | 534 | 336 | 198 | 488 | 301 | 187 |
| Franklin | 19989 | 14808 | 5181 | 19417 | 14389 | 5028 |
| Fulton | 1865 | 1282 | 583 | 1805 | 1241 | 564 |
| Greene | 3825 | 2547 | 1278 | 3730 | 2472 | 1258 |
| Huntingdon | 6326 | 4523 | 1803 | 5904 | 4206 | 1698 |
| Indiana | 9789 | 6773 | 3016 | 9661 | 6687 | 2974 |
| Jefferson | 3006 | 1544 | 1462 | 2872 | 1479 | 1393 |
| Juniata | 2107 | 1471 | 636 | 2066 | 1440 | 626 |
| Lackawanna | 19387 | 11133 | 8254 | 17984 | 10245 | 7739 |
| Lancaster | 46583 | 25977 | 20606 | 45136 | 25065 | 20071 |
| Lawrence | 10692 | 7686 | 3006 | 9742 | 6949 | 2793 |
| Lebanon | 16083 | 10569 | 5514 | 15509 | 10147 | 5362 |
| Lehigh | 33273 | 17485 | 15788 | 32775 | 17183 | 15592 |

| | | | | | | |
|----------------|--------|--------|-------|--------|--------|-------|
| Luzerne | 30950 | 16948 | 14002 | 29380 | 15990 | 13390 |
| Lycoming | 17141 | 12013 | 5128 | 16732 | 11759 | 4973 |
| McKean | 3276 | 2199 | 1077 | 2997 | 2009 | 988 |
| Mercer | 11983 | 7854 | 4129 | 10822 | 6808 | 4014 |
| Mifflin | 6294 | 4801 | 1493 | 6115 | 4676 | 1439 |
| Monroe | 18930 | 10759 | 8171 | 18144 | 10243 | 7901 |
| Montgomery | 77829 | 38868 | 38961 | 74661 | 36787 | 37874 |
| Montour | 1041 | 712 | 329 | 968 | 662 | 306 |
| Northampton | 19297 | 10633 | 8664 | 18478 | 10204 | 8274 |
| Northumberland | 9498 | 6675 | 2823 | 9194 | 6525 | 2669 |
| Perry | 4849 | 3212 | 1637 | 4753 | 3142 | 1611 |
| Philadelphia | 252527 | 187115 | 65412 | 158407 | 114847 | 43560 |
| Pike | 5007 | 2690 | 2317 | 4720 | 2493 | 2227 |
| Potter | 2088 | 1403 | 685 | 1954 | 1304 | 650 |
| Schuylkill | 18177 | 13406 | 4771 | 17914 | 13162 | 4752 |
| Snyder | 3496 | 2020 | 1476 | 3365 | 1939 | 1426 |
| Somerset | 7229 | 4677 | 2552 | 6639 | 4241 | 2398 |
| Sullivan | 579 | 331 | 248 | 550 | 310 | 240 |
| Susquehanna | 3453 | 2007 | 1446 | 3364 | 1954 | 1410 |
| Tioga | 3589 | 1920 | 1669 | 3165 | 1681 | 1484 |
| Union | 2975 | 1952 | 1023 | 2819 | 1839 | 980 |
| Venango | 4380 | 2231 | 2149 | 4267 | 2170 | 2097 |
| Warren | 3983 | 2976 | 1007 | 3782 | 2836 | 946 |
| Washington | 20555 | 11461 | 9094 | 20125 | 11262 | 8863 |
| Wayne | 3980 | 2461 | 1519 | 3648 | 2237 | 1411 |
| Westmoreland | 34291 | 20215 | 14076 | 31614 | 18540 | 13074 |
| Wyoming | 3811 | 2294 | 1517 | 3657 | 2198 | 1459 |
| York | 62262 | 40296 | 21966 | 60484 | 39420 | 21064 |

| County | Average Cost Assessed (When >\$0) | | | Average Cost Outstanding (When Assessed >\$0) | | |
|------------|-----------------------------------|------------|------------|---|------------|----------|
| | Total | Public | Private | Total | Public | Private |
| Adams | \$1,904.90 | \$1,925.06 | \$1,874.85 | \$822.77 | \$969.11 | \$604.64 |
| Allegheny | \$1,555.75 | \$1,480.35 | \$1,677.78 | \$1,043.11 | \$1,097.73 | \$954.72 |
| Armstrong | \$936.86 | \$892.35 | \$992.93 | \$521.27 | \$573.68 | \$455.26 |
| Beaver | \$2,036.56 | \$1,926.50 | \$2,244.30 | \$1,105.19 | \$1,216.15 | \$895.74 |
| Bedford | \$1,488.27 | \$1,470.68 | \$1,521.87 | \$649.68 | \$768.01 | \$423.55 |
| Berks | \$1,939.50 | \$1,855.06 | \$2,135.19 | \$1,244.11 | \$1,352.00 | \$994.09 |
| Blair | \$1,240.65 | \$1,218.59 | \$1,297.61 | \$665.35 | \$749.93 | \$447.00 |
| Bradford | \$1,658.02 | \$1,686.06 | \$1,621.93 | \$924.37 | \$1,171.35 | \$606.47 |
| Bucks | \$1,250.16 | \$1,283.07 | \$1,217.38 | \$668.84 | \$935.31 | \$403.51 |
| Butler | \$1,024.38 | \$910.87 | \$1,296.87 | \$294.62 | \$324.76 | \$222.26 |
| Cambria | \$1,763.41 | \$1,678.44 | \$2,002.10 | \$737.50 | \$851.85 | \$416.28 |
| Cameron | \$1,023.60 | \$1,020.27 | \$1,035.20 | \$545.54 | \$596.57 | \$367.61 |
| Carbon | \$1,324.45 | \$1,284.85 | \$1,398.26 | \$677.95 | \$834.43 | \$386.36 |
| Centre | \$1,617.17 | \$1,483.94 | \$1,777.37 | \$543.97 | \$694.57 | \$362.89 |
| Chester | \$1,471.22 | \$1,525.89 | \$1,407.64 | \$608.03 | \$855.04 | \$320.76 |
| Clarion | \$1,166.68 | \$1,162.19 | \$1,174.73 | \$417.75 | \$499.57 | \$271.16 |
| Clearfield | \$1,196.99 | \$1,074.46 | \$1,423.65 | \$536.49 | \$599.41 | \$420.11 |
| Clinton | \$1,735.23 | \$1,697.67 | \$1,840.73 | \$547.26 | \$625.99 | \$326.10 |
| Columbia | \$842.96 | \$838.04 | \$852.21 | \$366.41 | \$456.89 | \$196.18 |
| Crawford | \$1,343.28 | \$1,297.22 | \$1,430.60 | \$381.75 | \$466.90 | \$220.29 |
| Cumberland | \$1,374.69 | \$1,258.61 | \$1,642.82 | \$594.34 | \$657.23 | \$449.08 |
| Dauphin | \$1,268.07 | \$1,156.03 | \$1,528.26 | \$574.01 | \$646.21 | \$406.35 |
| Delaware | \$1,874.55 | \$1,856.80 | \$1,894.07 | \$1,254.48 | \$1,494.21 | \$990.75 |
| Elk | \$1,059.98 | \$1,013.41 | \$1,190.87 | \$419.38 | \$485.75 | \$232.81 |
| Erie | \$1,391.77 | \$1,284.99 | \$1,606.43 | \$726.41 | \$778.74 | \$621.23 |
| Fayette | \$1,511.57 | \$1,450.51 | \$1,624.79 | \$996.30 | \$1,093.73 | \$815.64 |
| Forest | \$1,372.91 | \$1,292.82 | \$1,501.82 | \$590.78 | \$670.86 | \$461.88 |
| Franklin | \$1,228.67 | \$1,193.56 | \$1,329.15 | \$507.11 | \$577.05 | \$306.96 |
| Fulton | \$911.38 | \$879.33 | \$981.90 | \$362.47 | \$421.70 | \$232.14 |
| Greene | \$1,581.99 | \$1,484.80 | \$1,772.99 | \$613.18 | \$744.98 | \$354.19 |
| Huntingdon | \$1,201.97 | \$1,205.07 | \$1,194.29 | \$472.86 | \$593.23 | \$174.71 |
| Indiana | \$759.12 | \$738.33 | \$805.84 | \$388.37 | \$463.49 | \$219.44 |
| Jefferson | \$1,549.56 | \$1,573.68 | \$1,523.96 | \$729.78 | \$1,019.68 | \$421.98 |
| Juniata | \$1,150.37 | \$1,121.76 | \$1,216.20 | \$395.33 | \$433.31 | \$307.98 |
| Lackawanna | \$1,603.46 | \$1,505.56 | \$1,733.06 | \$693.93 | \$811.54 | \$538.23 |
| Lancaster | \$1,994.72 | \$1,847.46 | \$2,178.61 | \$1,062.78 | \$1,257.21 | \$819.98 |
| Lawrence | \$1,601.90 | \$1,557.95 | \$1,711.25 | \$737.46 | \$843.83 | \$472.80 |
| Lebanon | \$1,861.62 | \$1,701.62 | \$2,164.41 | \$649.71 | \$746.80 | \$465.98 |
| Lehigh | \$2,041.87 | \$1,937.77 | \$2,156.58 | \$851.42 | \$1,096.04 | \$581.83 |
| Luzerne | \$1,087.92 | \$1,030.06 | \$1,157.01 | \$590.23 | \$717.74 | \$437.96 |

| | | | | | | |
|----------------|------------|------------|------------|----------|------------|----------|
| Lycoming | \$1,395.83 | \$1,352.59 | \$1,498.08 | \$681.99 | \$759.25 | \$499.30 |
| McKean | \$965.19 | \$907.81 | \$1,081.86 | \$355.02 | \$434.89 | \$192.62 |
| Mercer | \$970.02 | \$882.75 | \$1,118.04 | \$346.38 | \$403.32 | \$249.80 |
| Mifflin | \$1,266.75 | \$1,208.62 | \$1,455.63 | \$504.29 | \$547.60 | \$363.54 |
| Monroe | \$1,038.35 | \$994.94 | \$1,094.62 | \$386.39 | \$463.36 | \$286.60 |
| Montgomery | \$1,982.01 | \$1,831.56 | \$2,128.15 | \$812.17 | \$989.09 | \$640.32 |
| Montour | \$1,147.28 | \$1,044.63 | \$1,369.35 | \$358.27 | \$418.04 | \$228.97 |
| Northampton | \$1,367.79 | \$1,233.73 | \$1,533.11 | \$653.90 | \$800.16 | \$473.52 |
| Northumberland | \$1,320.71 | \$1,244.12 | \$1,507.94 | \$611.44 | \$700.19 | \$394.47 |
| Perry | \$938.15 | \$900.68 | \$1,011.23 | \$276.61 | \$337.56 | \$157.73 |
| Philadelphia | \$1,270.61 | \$1,252.17 | \$1,319.22 | \$479.65 | \$506.49 | \$408.89 |
| Pike | \$1,555.50 | \$1,552.09 | \$1,559.31 | \$477.92 | \$657.44 | \$276.97 |
| Potter | \$1,102.54 | \$1,062.58 | \$1,182.70 | \$357.16 | \$401.26 | \$268.69 |
| Schuylkill | \$1,127.46 | \$1,083.42 | \$1,249.47 | \$575.88 | \$646.46 | \$380.41 |
| Snyder | \$1,761.39 | \$1,789.04 | \$1,723.80 | \$519.68 | \$681.98 | \$298.99 |
| Somerset | \$995.52 | \$923.19 | \$1,123.46 | \$355.12 | \$428.64 | \$225.11 |
| Sullivan | \$953.41 | \$816.40 | \$1,130.38 | \$198.01 | \$257.37 | \$121.33 |
| Susquehanna | \$1,072.20 | \$1,032.70 | \$1,126.94 | \$404.65 | \$513.91 | \$253.24 |
| Tioga | \$1,642.87 | \$1,577.95 | \$1,716.39 | \$503.50 | \$571.50 | \$426.47 |
| Union | \$1,722.60 | \$1,642.27 | \$1,873.36 | \$619.03 | \$763.11 | \$348.65 |
| Venango | \$1,335.90 | \$1,383.46 | \$1,286.69 | \$557.11 | \$654.94 | \$455.88 |
| Warren | \$1,913.35 | \$1,882.92 | \$2,004.57 | \$582.54 | \$666.98 | \$329.39 |
| Washington | \$1,653.69 | \$1,592.96 | \$1,730.87 | \$839.19 | \$1,019.00 | \$610.72 |
| Wayne | \$1,145.38 | \$1,092.05 | \$1,229.93 | \$347.92 | \$415.14 | \$241.35 |
| Westmoreland | \$1,466.27 | \$1,260.65 | \$1,757.87 | \$844.79 | \$908.16 | \$754.92 |
| Wyoming | \$1,332.78 | \$1,140.93 | \$1,621.79 | \$360.20 | \$393.10 | \$310.64 |
| York | \$1,620.30 | \$1,635.65 | \$1,591.57 | \$816.08 | \$945.44 | \$573.99 |

| County | Median Cost Assessed (When >\$0) | | Median Cost Outstanding (When Assessed >\$0) | |
|------------|-------------------------------------|------------|---|----------|
| | Public | Private | Public | Private |
| Adams | \$1,621.99 | \$1,649.40 | \$672.75 | \$0.00 |
| Allegheny | \$1,203.00 | \$1,422.28 | \$803.70 | \$278.82 |
| Armstrong | \$684.00 | \$787.00 | \$413.00 | \$132.00 |
| Beaver | \$1,692.00 | \$1,921.50 | \$918.83 | \$29.00 |
| Bedford | \$1,126.50 | \$1,192.58 | \$300.00 | \$0.00 |
| Berks | \$1,525.10 | \$1,756.56 | \$1,143.75 | \$492.79 |
| Blair | \$1,023.00 | \$1,182.25 | \$628.50 | \$12.24 |
| Bradford | \$1,293.12 | \$1,407.02 | \$629.00 | \$12.40 |
| Bucks | \$1,196.62 | \$1,168.46 | \$917.76 | \$0.00 |
| Butler | \$695.00 | \$918.75 | \$80.38 | \$0.00 |
| Cambria | \$1,445.10 | \$2,004.37 | \$395.66 | \$0.00 |
| Cameron | \$858.53 | \$1,172.50 | \$504.00 | \$0.00 |
| Carbon | \$1,106.81 | \$1,233.55 | \$721.21 | \$0.00 |
| Centre | \$1,207.50 | \$1,402.43 | \$518.00 | \$0.00 |
| Chester | \$1,163.00 | \$1,173.00 | \$509.63 | \$0.00 |
| Clarion | \$1,039.87 | \$1,109.65 | \$36.63 | \$0.00 |
| Clearfield | \$863.00 | \$1,289.00 | \$440.58 | \$0.00 |
| Clinton | \$1,428.99 | \$1,586.50 | \$0.00 | \$0.00 |
| Columbia | \$732.50 | \$862.50 | \$372.50 | \$0.00 |
| Crawford | \$923.48 | \$1,217.00 | \$45.04 | \$0.00 |
| Cumberland | \$1,073.27 | \$1,408.15 | \$542.65 | \$0.00 |
| Dauphin | \$969.55 | \$1,315.75 | \$445.50 | \$0.00 |
| Delaware | \$1,652.00 | \$1,649.05 | \$1,329.03 | \$645.00 |
| Elk | \$844.25 | \$1,213.25 | \$348.75 | \$0.00 |
| Erie | \$996.50 | \$1,379.00 | \$528.50 | \$226.22 |
| Fayette | \$1,339.85 | \$1,462.25 | \$1,011.50 | \$662.97 |
| Forest | \$1,095.79 | \$1,327.00 | \$465.66 | \$0.00 |
| Franklin | \$973.00 | \$1,071.75 | \$307.00 | \$0.00 |
| Fulton | \$771.60 | \$890.74 | \$264.46 | \$0.00 |
| Greene | \$1,216.00 | \$1,549.71 | \$347.54 | \$0.00 |
| Huntingdon | \$1,009.38 | \$1,075.75 | \$237.18 | \$0.00 |
| Indiana | \$607.17 | \$730.25 | \$303.50 | \$0.00 |
| Jefferson | \$1,200.48 | \$1,206.00 | \$718.75 | \$0.00 |
| Juniata | \$921.06 | \$1,085.57 | \$118.72 | \$0.00 |
| Lackawanna | \$1,283.50 | \$1,523.50 | \$572.00 | \$0.00 |
| Lancaster | \$1,320.29 | \$1,946.70 | \$899.43 | \$0.00 |
| Lawrence | \$953.98 | \$1,093.00 | \$562.00 | \$0.00 |
| Lebanon | \$1,488.00 | \$1,881.50 | \$557.00 | \$0.00 |
| Lehigh | \$1,381.20 | \$1,703.23 | \$851.60 | \$0.00 |
| Luzerne | \$852.00 | \$1,058.00 | \$593.22 | \$162.14 |

| | | | | |
|----------------|------------|------------|----------|----------|
| Lycoming | \$1,061.75 | \$1,214.78 | \$594.50 | \$0.00 |
| McKean | \$697.75 | \$887.75 | \$215.41 | \$0.00 |
| Mercer | \$725.50 | \$1,040.00 | \$126.04 | \$0.00 |
| Mifflin | \$1,090.00 | \$1,306.00 | \$380.00 | \$0.00 |
| Monroe | \$956.00 | \$1,029.50 | \$210.00 | \$0.00 |
| Montgomery | \$1,390.50 | \$1,727.50 | \$775.94 | \$0.00 |
| Montour | \$916.27 | \$1,103.25 | \$358.83 | \$0.00 |
| Northampton | \$1,069.39 | \$1,224.90 | \$674.98 | \$0.00 |
| Northumberland | \$921.22 | \$1,219.50 | \$412.00 | \$0.00 |
| Perry | \$763.80 | \$877.30 | \$20.00 | \$0.00 |
| Philadelphia | \$536.94 | \$610.00 | \$328.50 | \$0.00 |
| Pike | \$1,243.50 | \$1,339.50 | \$258.62 | \$0.00 |
| Potter | \$805.10 | \$950.52 | \$54.36 | \$0.00 |
| Schuylkill | \$927.01 | \$1,061.75 | \$495.75 | \$38.00 |
| Snyder | \$1,386.14 | \$1,446.62 | \$461.87 | \$0.00 |
| Somerset | \$748.00 | \$1,030.50 | \$224.50 | \$0.00 |
| Sullivan | \$682.00 | \$1,076.00 | \$15.25 | \$0.00 |
| Susquehanna | \$957.50 | \$1,053.25 | \$348.00 | \$0.00 |
| Tioga | \$1,233.50 | \$1,438.25 | \$237.78 | \$0.00 |
| Union | \$1,228.64 | \$1,522.25 | \$432.00 | \$0.00 |
| Venango | \$919.27 | \$1,015.22 | \$144.88 | \$0.00 |
| Warren | \$1,622.75 | \$1,862.54 | \$145.50 | \$0.00 |
| Washington | \$1,454.45 | \$1,578.45 | \$949.00 | \$37.10 |
| Wayne | \$914.50 | \$884.50 | \$201.50 | \$0.00 |
| Westmoreland | \$945.75 | \$1,250.33 | \$696.80 | \$305.63 |
| Wyoming | \$926.75 | \$1,447.50 | \$53.22 | \$0.00 |
| York | \$1,399.00 | \$1,374.00 | \$776.94 | \$0.00 |

**Adult Probation and Parole Services
Collections Enforcement Unit**

Appendix C

**Fines and Costs List: January 4, 2019 9:00AM
Judge Howard F Knisely Court Room # 3**

Show Cause

| | |
|---------------------------|--|
| 01. Pamela Arez | CR-3128-2012 |
| 02. Stephanie Bender | CR-3665-2007 CR-3375-2012 CR-2042-2013 |
| 03. Cody Broyles | CR-5434-2014 CR-4522-2010 CR-1934-2013 |
| 04. Paige Carlson | CR-6081-2015 CR-2871-2016 CR-6340-2016 CR-2867-2016 CR-4353-2018 |
| 05. Diane Carver | CR-3569-2008 CR-2443-2011 |
| 06. Richard Groff | CR-5168-2016 CR-5885-2009 CR-3362-2016 |
| 07. Darrin Hammond Sr | CR-3188-2016 |
| 08. Gretchen Heim | CR-0772-2009 |
| 09. Ray Hendon | CR-0564-2005 |
| 10. Jose Mercado-Casillas | CR-1161-2015 CR-4309-2014 |
| 11. Joshua Morales | CR-4743-2017 |
| 12. Peter Paniagua | CR-0606-2014 CR-5644-2013 |
| 13. Walter Swinehart | CR-4356-2014 CR-3479-2002 CR-1661-2000 |
| 14. Brian Turner | CR-5142-2017 |

15. Ernest Vazquez

CR-5418-2015

CR-4458-2009

CR-1965-2004

16. Karen Yox

CR-1406-2015

**Adult Probation and Parole Services
Collections Enforcement Unit**

**Fines and Costs List: January 16, 2019 9:00AM
Judge Howard F Knisely Court Room #3**

Bench Warrant

| | |
|------------------|------------------------------|
| 01. Devon Carter | CR-4529-2016 CR-0078-2018 |
|------------------|------------------------------|

Show Cause

| | |
|------------------|--------------|
| 02. Shawn Carper | CR-2190-2017 |
|------------------|--------------|

| | |
|-------------------|--|
| 03. Benjamin Duke | CR-4478-2004 CR-4479-2004 CR-4394-2005 CR-2361-2011 |
|-------------------|--|

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|-------------------|--|
| 04. Joshua Fisher | CR-0952-2016 CR-1451-2016 CR-3809-2016 |
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| 05. Alicia Kelly | CR-3918-2014 |
|------------------|--------------|

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| 06. Neil Lloyd | CR-0397-2015 |
|----------------|--------------|

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|---------------------------|--------------|
| 07. Victor Marquez-Alonso | CR-2551-2013 |
|---------------------------|--------------|

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| 08. Terence McCracken | CR-0429-2005 |
|-----------------------|--------------|

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| 09. Quynhhoa Muise | CR-4624-2008 CR-0143-1998 CR-0039-1999 CR-0350-1999 |
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| 10. Tony Mullins | CR-2457-2017 CR-1118-2000 CR-2436-2002 CR-1934-2004 CR-2023-2004 CR-1056-2007 |
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| 11. Nicole Ottaway | CR-1216-2009 |
|--------------------|--------------|

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|------------------------|--------------|
| 12. Christopher Rivera | CR-5470-2017 |
|------------------------|--------------|

| | |
|--------------------|--------------|
| 13. Charles Thomas | CR-3952-2016 |
|--------------------|--------------|

14. Leon Walker

CR-0084-2008

15. Patrick Wiker

CR-2654-2014

16. Tyler Wiker

CR-2519-2012

CR-2094-2011

CR-0727-2011

**MONTGOMERY COUNTY
BOARD OF COMMISSIONERS**

VALERIE A. ARKOOSH, M.D., MPH, CHAIR
KENNETH E. LAWRENCE, JR., VICE CHAIR
JOSEPH C. GALE, COMMISSIONER



OFFICE OF THE PUBLIC DEFENDER

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WWW.MONTCOPA.ORG/PUBLICDEFENDER

WWW.FACEBOOK.COM/MONTCOPAPD

DEAN M. BEER, ESQ., CHIEF DEFENDER

January 30, 2019

To The Honorable Thomas C. Branca
Montgomery County Court House
2 East Airy Street
P.O. Box 311
Norristown, PA 19404-0311

RE: Transferring cases to the Clerk of Courts for Collection

Your Honor,

In recent months the Office of the Public Defender has been working closely with the Courts, the Clerk of Courts, and the Department of Probation to address those situations in which the sentence of a convicted individual has run but where the individual still owes fines, costs, and/or restitution. Below is a detailed recommendation on how the Courts may responsibly ensure that the county continues to collect owed fines, costs, and restitution after terminating criminal supervision. In short, the Office of the Public Defender and the Clerk of Courts are recommending that such cases be transferred to the Clerk of Courts for ongoing collection pursuant to the established and proven practices of that office. The procedure for referral that is detailed below permits the Courts to retain sufficient jurisdiction to review non-payment for contempt, if necessary, while minimizing the role of judges and attorneys in the day-to-day oversight of the collection process.

I. Background

As a result of conviction, nearly every defendant owes some combination of fines, costs, and restitution. Defendants should, and typically do, try to make payments towards that total while on supervision. But many defendants, particularly those represented by the Public Defender, cannot possibly hope to pay their entire balance by the time their probationary period ends.

For some time, the practice in Montgomery County has been that the Montgomery County Adult Probation and Parole Department ("Adult Probation") files petitions with the Court to extend supervision where monies are still owed at the end of the probation term. In recent years, Adult Probation has generally filed these petitions only if there is outstanding restitution (as opposed to fines or costs). Under those practices, thousands of Montgomery County defendants had their supervision extended solely due to nonpayment.

We now know that, unfortunately, many of these supervision extensions were unlawful because courts did not make requisite findings regarding whether the defendant was able

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to pay and yet willfully refused to do so. Without a finding of willfulness, there can be no finding that the defendant committed a violation of the terms of supervision and therefore the defendant cannot be punished in any way (including through an extension of the period of supervision). As Judge Rothstein noted in August, “willfulness does not simply implicate the question of his sentencing for a parole violation, but instead is the critical question as to whether a violation occurred in the first place.” Commonwealth v. Smalls, CP-46-CR-0005242-2013, 2018 WL 4112648 (Pa. Com. Pl. Aug. 7, 2018) (Rothstein, J.) (citing Commonwealth v. Dorsey, 476 A.2d 1308 (Pa. Super. Ct. 1984)). The amicus brief that the ACLU of Pennsylvania filed in the Smalls case is attached to this memorandum, as it walks through the case law governing nonpayment of fines, costs, and restitution as is relevant to a Gagnon hearing.

II. When Adult Probation submits these cases as violations, the Court should end supervision and refer cases to the Clerk of Courts for collection

Some individual judges on the Court—recognizing the problem with existing practices—appear to be exploring different ways to approach these cases. At this time, however, there is not an agreed-upon uniform practice. In conjunction with the Clerk of Courts, the Office of the Public Defender proposes the following uniform practice that takes advantage of the Clerk of Courts’ existing, effective collections mechanism.

In 2012, the Clerk of Courts created the Administrative Cost Hearings program (“ACH”). The basic structure of ACH is that dedicated staff in the Clerk of Courts office contact defendants with outstanding balances through the mail and by phone. They work with those defendants to put them on realistic payment plans, and they monitor consistency in payments. Some people can pay \$50 or \$100, but others can only pay \$5 or \$10 per month. There are approximately 4,000 defendants currently active on ACH payment plans, and approximately 30-50 new payment plans are added per week. Some defendants inevitably start paying and then default. Sometimes they are signed up for new payment plans, and sometimes their cases are referred to a private debt collection agency.

More than 5,600 ACH participants have paid their fines, costs, and restitution in full. Through this program, the Clerk of Courts has collected over \$12 million beyond what the Court collected prior to creating ACH. In fact, data from AOPC shows that the Montgomery County Court of Common Pleas collects more fines, costs, and restitution than any county other than Philadelphia and Allegheny counties. The Montgomery County collection rate for cases adjudicated in 2013 is 40%, above the state average of 38% and well above the collection rates of Philadelphia, Delaware, and Chester, and Berks Counties (Bucks County is at 42%).

It is the Public Defender’s position that these cases are not violations and thus Adult Probation should be terminating these cases and referring them directly to the Clerk of Courts for collection. In those circumstances, however, where the matters come to the Courts as alleged violations, the assigned Court should terminate supervision and refer defendants to ACH and allow the Clerk of Courts to use its established program to collect money owed. If the Clerk of Courts and the defendant cannot agree on a payment plan, they can always ask the Court to set a payment plan after an evidentiary hearing under Rule 706 and 42 Pa. Cons. Stat. § 9730.

III. The Court should trust the Clerk of Courts to determine if contempt proceedings are appropriate for nonpayment

Rather than transitioning from an active-supervision model to one in which the Court automatically schedules contempt hearings, the Court should allow the Clerk of Courts to first work with defendants through payment plans. The Clerk of Courts is in the best position to know whether a defendant is following through on his or her financial obligations. If a defendant refuses to work with the Clerk of Courts or has entered into a payment plan but does not make the required payments, the Clerk of Courts can ask the District Attorney to file a contempt petition and request a hearing with the Court.

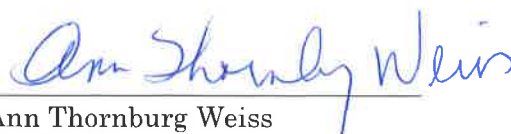
This is the model that other courts use. ACH is based on the Clerk of Courts' practice in Westmoreland County, which also tries to work with defendants but reserves contempt hearings for those who are able to pay but refuse to. Chester County has a similar program: a Collections Court run by the probation department; they do occasionally schedule contempt hearings for defendants, but they are almost always able to come to an agreement with the defendant for a new payment schedule and cancel the hearing. These are proven methods that will save judicial resources and will allow the collections staff in the Clerk of Courts to continue to bring in money to the Court while also working with defendants and their financial limitations.

In summary, where a defendant has outstanding fines, costs, and/or restitution at the conclusion of the term of supervision, Adult Probation should refer those cases directly to the Clerk of Courts. If the cases are, instead, sent to the Court of Common Pleas for violation determinations solely on the balance of money owed, the assigned Court should terminate supervision and transfer the cases to the Clerk of Courts for participation in ACH. Thank you for your consideration of this recommendation.

Respectfully,



Dean Beer
Chief Public Defender



Ann Thornburg Weiss
Clerk of Courts



Michael Paston
First Deputy, Manager - ACH Program

CC: Hon. Thomas M. Del Ricci
Mike Gordon, Department of Adult Probation
Kevin Steele, Esq., District Attorney

PLEA AGREEMENT

The subscribing parties certify the following facts are accurate and the plea agreement to be voluntarily and intelligently executed with full knowledge of the maximum possible sentences. The defendant, Troy Evan Bell, with counsel, consents to proceed and enter a plea of guilty to the listed charges.

DEFENDANT: Troy Evan Bell
 DOCKET NO : CP-36-CR-0003211-2017

| <u>OFFENSE</u> | <u>GRADE</u> | <u>DISPOSITION</u> |
|---|--------------|--------------------|
| 1. <u>Dui-highest Amount Of Alcohol</u> | <u>M1</u> | <u>Guilty</u> |
| 2. <u>Driving Under The Influence Of Alcohol Or Controlled Substance General Impairment</u> | <u>M</u> | <u>Guilty</u> |
| 3. _____ | _____ | _____ |
| 4. _____ | _____ | _____ |
| 5. _____ | _____ | _____ |
| 6. _____ | _____ | _____ |
| 7. _____ | _____ | _____ |

AGREED SENTENCE

1. Intermediate Punishment for a period of 5 years, with the first 45 days to be served on Work Release/Intermediate Punishment, followed by 45 days of House Arrest with electronic monitoring, followed by up to two (2) months of intensive supervision. Defendant will also pay a fine of \$ 1,500, costs and restitution.

| <u>JAIL</u> | <u>PROBATION</u> | <u>CONSECUTIVE</u> | <u>FINE</u> | <u>COSTS</u> |
|-------------|------------------|--------------------|-------------|--------------|
| 2. _____ | _____ | _____ | _____ | <u>X</u> |
| 3. _____ | _____ | _____ | _____ | _____ |
| 4. _____ | _____ | _____ | _____ | _____ |
| 5. _____ | _____ | _____ | _____ | _____ |
| 6. _____ | _____ | _____ | _____ | _____ |
| 7. _____ | _____ | _____ | _____ | _____ |

- All counts are concurrent unless otherwise noted above.
- **Condition(s) of Parole/Probation/Intermediate Punishment:** Defendant must complete D&A counseling/treatment, Alcohol Highway Safety Classes, CRN Evaluation, 12 months Ignition Interlock, Perform 100 hours of community service, Act 24 of 2004 treatment applies, 18 month PENNDOT-imposed license suspension. Shall return all SCRAM equipment (ankle monitor, base station, etc.) to VigilNet upon reporting to Lancaster County Prison or within 48 hours of release from incarceration.
- If Defendant fails to qualify for the Intermediate Punishment Program, the sentencing judge will immediately resentence the Defendant to 3 to 23 months/~~years~~ plus 3 year(s) probation. The Defendant will receive credit for time served. All other conditions as originally imposed will remain.
- Total amount of restitution owed is \$ as detailed on the restitution summary.

DEFENDANT Troy Bell DATE 11/13/17
 DEFENSE COUNSEL [Signature] DATE 11/13/17
 A. DISTRICT ATTORNEY [Signature] DATE 11/8/17
 PRESENTED TO JUDGE On 11/13/17 ON 11/13/17 ACCEPTED ✓
 REJECTED _____

PLEA AGREEMENT

The subscribing parties certify the following facts are accurate and the plea agreement to be voluntarily and intelligently executed with full knowledge of the maximum possible sentences. The defendant, Tyrek Tenner McDuffee, with counsel, consents to proceed and enter a plea of guilty to the listed charges.

DEFENDANT: Tyrek Tenner McDuffee
DOCKET NO : CP-36-CR-0004095-2017

| <u>OFFENSE</u> | <u>GRADE</u> | <u>DISPOSITION</u> |
|--------------------------------|--------------|--------------------|
| 1. <u>Corruption Of Minors</u> | <u>M1</u> | <u>Guilty</u> |
| 2. _____ | _____ | _____ |
| 3. _____ | _____ | _____ |
| 4. _____ | _____ | _____ |
| 5. _____ | _____ | _____ |

| <u>JAIL</u> | <u>PROBATION</u> | <u>CONSECUTIVE</u> | <u>FINE</u> | <u>COSTS</u> |
|-------------|------------------|--------------------|-------------|--------------|
| 1. _____ | <u>5 years</u> | _____ | <u>300</u> | <u>xx</u> |
| 2. _____ | _____ | _____ | _____ | _____ |
| 3. _____ | _____ | _____ | _____ | _____ |
| 4. _____ | _____ | _____ | _____ | _____ |
| 5. _____ | _____ | _____ | _____ | _____ |

• All counts are concurrent unless otherwise noted above.

• Notes:

• Condition(s) of probation/parole: SO 1-20 apply; no contact with victim; probation may terminate in 4 years with no pv and f/c/r paid

• Total amount of restitution owed is \$239.76 as detailed on the restitution summary.

• As a condition of the sentence, the defendant agrees to the destruction of:

DEFENDANT Tyrek McDuffee DATE 11/13/17
DEFENSE COUNSEL [Signature] DATE 11/13/17
DISTRICT ATTORNEY [Signature] DATE 11/9/17
PRESENTED TO JUDGE [Signature] ON 11/13/17 ACCEPTED ✓
REJECTED _____

PLEA AGREEMENT

The subscribing parties certify the following facts are accurate and the plea agreement to be voluntarily and intelligently executed with full knowledge of the maximum possible sentences. The defendant, Saul Atanacio, with counsel, consents to proceed and enter a plea of guilty to the listed charges.

DEFENDANT: Saul Atanacio

DOCKET NO : CP-36-CR-0003637-2017

| <u>OFFENSE</u> | <u>GRADE</u> | <u>DISPOSITION</u> |
|---|--------------|--------------------|
| 1. <u>Theft By Unlawful Taking-movable Property</u> | <u>M1</u> | <u>Guilty</u> |
| 2. _____ | _____ | _____ |
| 3. _____ | _____ | _____ |
| 4. _____ | _____ | _____ |
| 5. _____ | _____ | _____ |

| <u>JAIL</u> | <u>PROBATION</u> | <u>CONSECUTIVE</u> | <u>FINE</u> | <u>COSTS</u> |
|-------------|------------------|--------------------|--------------|--------------|
| 1. _____ | <u>2 years</u> | _____ | <u>\$100</u> | <u>yes</u> |
| 2. _____ | _____ | _____ | _____ | _____ |
| 3. _____ | _____ | _____ | _____ | _____ |
| 4. _____ | _____ | _____ | _____ | _____ |
| 5. _____ | _____ | _____ | _____ | _____ |

- All counts are concurrent unless otherwise noted above.
- Notes:
- Condition(s) of probation/parole:
- Total amount of restitution owed is \$ as detailed on the restitution summary. 1280.00
- As a condition of the sentence, the defendant agrees to the destruction of:

DEFENDANT Saul Atanacio DATE 4/20/2018

DEFENSE COUNSEL Austin DATE 4/20/2018

ASST DISTRICT ATTORNEY [Signature] DATE 10/20/17

PRESENTED TO JUDGE O. J. [Signature] ON 4/20/18 ACCEPTED X
REJECTED _____

11/13/17 AM
Date of Plea

10/25/17

ADA: DUE DATE

TERMS

Appendix E

PLEA AGREEMENT

The subscribing parties certify the following facts are accurate and the plea agreement to be voluntarily and intelligently executed with full knowledge of the maximum possible sentences. The defendant, Daniel Clark Miller, with counsel, consents to proceed and enter a plea of guilty to the listed charges.

DEFENDANT: Daniel Clark Miller

DOCKET NO : CP-36-CR-0002975-2017

| <u>OFFENSE</u> | <u>GRADE</u> | <u>DISPOSITION</u> |
|--|--------------|--------------------|
| 1. Driving Under The Influence Of Alcohol Or Controlled Substance General Impairment | M | Guilty |
| 2. Int Poss Contr Subst By Per Not Reg | M | Guilty |
| 3. Period For Requiring Lighted Lamps | S | Guilty |
| 4. Endangering Welfare Of Children | M1 | Guilty |
| 5. Endangering Welfare Of Children | M1 | Guilty |
| 6. Securing Loads in Vehicles | S | Guilty |

| <u>JAIL</u> | <u>PROBATION</u> | <u>CONSECUTIVE</u> | <u>FINE</u> | <u>COSTS</u> |
|------------------------|------------------|--------------------|-------------|--------------|
| 1. 72 hours - 6 months | | | 1000.00 | x |
| 2. | 1 year | | | x |
| 3. | | | 25.00 | x |
| 4. | 3 years | | | x |
| 5. | 3 years | | | x |
| 6. | | | 25.00 | x |

~~split sentence~~; probation is consecutive to DUI sentence

- **Conditions(s) of probation/parole:** Defendant must complete D&A counseling/treatment, Alcohol Highway Safety Classes and a CRN evaluation. PENNDOT imposed license suspension. ~~Shall return all SCRAM equipment (ankle monitor, base station, etc.) to VigilNet upon reporting to Lancaster County Prison or within 48 hours of release from incarceration.~~
- **Total amount of restitution owed is \$0.00.**

DEFENDANT Daniel C Miller DATE 11/13/17
DEFENSE COUNSEL [Signature] DATE 11/13/17
DISTRICT ATTORNEY [Signature] DATE 9/8/17
PRESENTED TO JUDGE: On - 72 ON 11/13/17 ACCEPTED: ☒
REJECTED: ☐

PLEA AGREEMENT

The subscribing parties certify the following facts are accurate and the plea agreement to be voluntarily and intelligently executed with full knowledge of the maximum possible sentences. The defendant, Daniel Otero, with counsel, consents to proceed and enter a plea of guilty to the listed charges.

DEFENDANT: Daniel Otero

DOCKET NO : CP-36-CR-0002511-2017

| <u>OFFENSE</u> | <u>GRADE</u> | <u>DISPOSITION</u> |
|---|--------------|--------------------|
| 1. <u>Driving While Under The Influence Of Alcohol</u> | <u>M</u> | <u>Guilty</u> |
| 2. <u>Driving Under The Influence Of Alcohol Or Controlled Substance General Impairment</u> | <u>M</u> | <u>Guilty</u> |
| 3. <u>Driving On Roadways Laned For Traffic</u> | <u>S</u> | <u>Guilty</u> |
| 4. _____ | _____ | _____ |
| 5. _____ | _____ | _____ |

| <u>JAIL</u> | <u>PROBATION</u> | <u>CONSECUTIVE</u> | <u>FINE</u> | <u>COSTS</u> |
|-------------------------------|------------------|--------------------|--------------|--------------|
| 1. _____ | <u>6 months</u> | _____ | <u>\$300</u> | <u>xxx</u> |
| 2. <u>Merges with Count 1</u> | _____ | _____ | _____ | <u>xxx</u> |
| 3. _____ | _____ | _____ | <u>\$25</u> | <u>xxx</u> |
| 4. _____ | _____ | _____ | _____ | _____ |
| 5. _____ | _____ | _____ | _____ | _____ |

- All counts are concurrent unless otherwise indicated above.

- Notes:

- **Conditions(s) of probation/parole:** Defendant must complete D&A counseling/treatment, Alcohol Highway Safety Classes and a CRN evaluation. ~~If applicable, Defendant shall return all SCRAM equipment (ankle monitor, base station, etc.) to VigilNet upon reporting to Lancaster County Prison or within 48 hours of release from incarceration~~

- Total amount of restitution owed is \$0.00 as detailed on the restitution summary.

DEFENDANT Daniel Otero DATE 11/13/17

DEFENSE COUNSEL Courtney Monson DATE 11/13/17

A DISTRICT ATTORNEY TM Boyd DATE 11/13/17

PRESENTED TO JUDGE: O - TE ON 11/13/17 ACCEPTED: ✓

REJECTED: _____

PLEA AGREEMENT

The subscribing parties certify the following facts are accurate and the plea agreement to be voluntarily and intelligently executed with full knowledge of the maximum possible sentences. The defendant, Luis Joel Andino-Rivera, with counsel, consents to proceed and enter a plea of guilty to the listed charges.

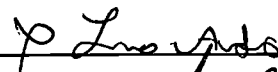
DEFENDANT: Luis Joel Andino-Rivera

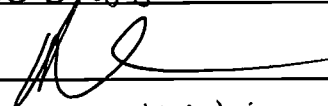
DOCKET NO : CP-36-CR-0003150-2018

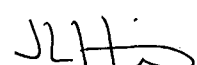
| <u>OFFENSE</u> | <u>GRADE</u> | <u>DISPOSITION</u> |
|--|--------------|--------------------|
| 1. <u>Delivery - Marijuana, Sch. I</u> | <u>F</u> | <u>Guilty</u> |
| 2. <u>Criminal Conspiracy / Delivery - Marijuana, Sch. I</u> | <u>F</u> | <u>Guilty</u> |
| 3. _____ | _____ | _____ |
| 4. _____ | _____ | _____ |
| 5. _____ | _____ | _____ |

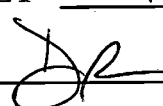
| <u>JAIL</u> | <u>PROBATION</u> | <u>CONSECUTIVE</u> | <u>FINE</u> | <u>COSTS</u> |
|-------------|------------------|--------------------|--------------|--------------|
| 1. _____ | <u>2 yrs</u> | _____ | <u>\$100</u> | <u>XXX</u> |
| 2. _____ | _____ | _____ | <u>\$50</u> | <u>XXX</u> |
| 3. _____ | _____ | _____ | _____ | _____ |
| 4. _____ | _____ | _____ | _____ | _____ |
| 5. _____ | _____ | _____ | _____ | _____ |

- All counts are concurrent unless otherwise noted above.
- Notes: Probation may terminate in 1yr if all fines and costs are paid in full and there are no pvs. JLH
- Condition(s) of probation/parole: Defendant must give a DNA sample and pay costs. Defendant must pay any and all lab fees. Defendant must undergo drug/alcohol evaluation and comply with any recommended treatment.
- The defendant acknowledges and agrees that he has the ability to pay all fines and costs, and waives any further pre-sentence determination of ability to pay.

DEFENDANT  DATE 12/10/18

DEFENSE COUNSEL  DATE 12/10/18

ASST. DISTRICT ATTORNEY  DATE 12.4.18

PRESENTED TO JUDGE  ON 12/10/18 ACCEPTED ☒ REJECTED ☐

PLEA AGREEMENT

The subscribing parties certify the following facts are accurate and the plea agreement to be voluntarily and intelligently executed with full knowledge of the maximum possible sentences. The defendant, Ashley Diane Bowers, with counsel, consents to proceed and enter a plea of guilty to the listed charges.

DEFENDANT: Ashley Diane Bowers

DOCKET NO : CP-36-CR-0002451-2018

| <u>OFFENSE</u> | <u>GRADE</u> | <u>DISPOSITION</u> |
|--|--------------|--------------------|
| 1. PWID - Meth > Amended to > Possession Meth | M | Guilty |
| 2. Criminal Conspiracy / Manuf/del/poss/w Int Manuf Or Del | F | Nol Pros |
| 3. PWID - Marijuana | F | Nol Pros |
| 4. Vcsa-possession Of A Small Amount-personal Use | M | Guilty |
| 5. Possession Oxycodone | M | Guilty |

| <u>JAIL</u> | <u>PROBATION</u> | <u>CONSECUTIVE</u> | <u>FINE</u> | <u>COSTS</u> |
|-------------|------------------|--------------------|-------------|--------------|
| 1. _____ | 1 year | _____ | \$50 | XXX |
| 2. _____ | _____ | _____ | _____ | XXX |
| 3. _____ | _____ | _____ | _____ | XXX |
| 4. _____ | _____ | _____ | \$50 | XXX |
| 5. _____ | 1 year | _____ | \$50 | XXX |

- All counts are concurrent unless otherwise noted above.
- Notes: This docket is to run consecutive to 1672-2018.
- Condition(s) of probation/parole: Defendant must undergo drug/alcohol evaluation and comply with any recommended treatment.
- The defendant acknowledges and agrees that she has the ability to pay all fines and costs, and waives any further pre-sentence determination of ability to pay.

DEFENDANT

Ashley Bowers

DATE

12/10/18

DEFENSE COUNSEL

[Signature]

DATE

12/10/18

ASST. DISTRICT ATTORNEY

[Signature]

DATE

11-28-2018

PRESENTED TO JUDGE

[Signature]

ON

12/10/18

ACCEPTED ✓

REJECTED _____

PLEA AGREEMENT

The subscribing parties certify the following facts are accurate and the plea agreement to be voluntarily and intelligently executed with full knowledge of the maximum possible sentences. The defendant, Bradley R Herr, with counsel, consents to proceed and enter a plea of guilty to the listed charges.

DEFENDANT: Bradley R Herr
DOCKET NO: CP-36-CR-0002646-2018

| <u>OFFENSE</u> | <u>GRADE</u> | <u>DISPOSITION</u> |
|---|--------------|--------------------|
| 1. <u>Dui-highest Amount Of Alcohol</u> | <u>M1</u> | <u>Guilty</u> |
| 2. <u>Driving Under The Influence Of Alcohol Or Controlled Substance</u> <u>General Impairment</u> | <u>M</u> | <u>Guilty</u> |
| 3. _____ | _____ | _____ |
| 4. _____ | _____ | _____ |
| 5. _____ | _____ | _____ |
| 6. _____ | _____ | _____ |
| 7. _____ | _____ | _____ |

AGREED SENTENCE

1. Intermediate Punishment for a period of 5 years, with the first ^{75 dr}~~45~~ days to be served on Work Release/Intermediate Punishment, followed by 45 days of House Arrest with electronic monitoring, followed by up to two (2) months of intensive supervision. Defendant will also pay a fine of \$1,500 and costs.

| <u>JAIL</u> | <u>PROBATION</u> | <u>CONSECUTIVE</u> | <u>FINE</u> | <u>COSTS</u> |
|------------------------|------------------|--------------------|-------------|--------------|
| 2. <u>merges w/c+1</u> | _____ | _____ | _____ | <u>X</u> |
| 3. _____ | _____ | _____ | _____ | _____ |
| 4. _____ | _____ | _____ | _____ | _____ |
| 5. _____ | _____ | _____ | _____ | _____ |
| 6. _____ | _____ | _____ | _____ | _____ |
| 7. _____ | _____ | _____ | _____ | _____ |

- All counts are concurrent unless otherwise noted above.
- **Condition(s) of Parole/Probation/Intermediate Punishment:** Defendant must complete D&A counseling/treatment, Alcohol Highway Safety Classes, CRN Evaluation, 12 months Ignition Interlock, Perform 100 hours of community service, Act 24 of 2004 treatment applies, PENNDOT-imposed license suspension. Shall return all SCRAM equipment (ankle monitor, base station, etc.) to VigilNet upon reporting to Lancaster County Prison or within 48 hours of release from incarceration.
- If Defendant fails to qualify for the Intermediate Punishment Program, the sentencing judge will immediately resentence the Defendant to 3 to 23 months plus 2 year(s) probation. The Defendant will receive credit for time served. All other conditions as originally imposed will remain. Defendant is given credit from 5/23/18 to 8/15/18 for inpatient treatment.
- Total amount of restitution owed is \$0.00 as detailed on the restitution summary.
- The defendant acknowledges and agrees that he has the ability to pay all fines and costs, and waives any further pre-sentence determination of ability to pay.

DEFENDANT [Signature] DATE 12/4/18
DEFENSE COUNSEL [Signature] DATE 12/4/18
A DISTRICT ATTORNEY [Signature] DATE 12/4/18
PRESENTED TO JUDGE [Signature] ON 12/10/18 ACCEPTED ✓
REJECTED _____

open Plea deal
~~PLEA AGREEMENT~~

The subscribing parties certify the following facts are accurate and the plea agreement to be voluntarily and intelligently executed with full knowledge of the maximum possible sentences. The defendant, Benny Ray Stapleton Jr., with counsel, consents to proceed and enter a plea of guilty to the listed charges.

DEFENDANT: Benny Ray Stapleton Jr.

DOCKET NO : CP-36-CR-0001443-2018

| | <u>OFFENSE</u> | <u>GRADE</u> | <u>DISPOSITION</u> |
|----|---------------------------|--------------|--------------------|
| 1. | <u>Theft By Deception</u> | <u>F3</u> | <u>Guilty</u> |
| 2. | <u>Bad Checks</u> | <u>M1</u> | <u>Guilty</u> |
| 3. | <u></u> | <u></u> | <u></u> |
| 4. | <u></u> | <u></u> | <u></u> |
| 5. | <u></u> | <u></u> | <u></u> |

| | <u>JAIL</u> | <u>PROBATION</u> | <u>CONSECUTIVE</u> | <u>FINE</u> | <u>COSTS</u> |
|----|----------------------|------------------|--------------------|--------------|--------------|
| 1. | <u>6 - 23 months</u> | <u>1 year</u> | <u></u> | <u>\$100</u> | <u>X</u> |
| 2. | <u>6 - 23 months</u> | <u>1 year</u> | <u></u> | <u></u> | <u>X</u> |
| 3. | <u></u> | <u></u> | <u></u> | <u></u> | <u></u> |
| 4. | <u></u> | <u></u> | <u></u> | <u></u> | <u></u> |
| 5. | <u></u> | <u></u> | <u></u> | <u></u> | <u></u> |

- All counts are concurrent unless otherwise noted above.

• Notes:

- Condition(s) of probation/parole: Defendant must give a DNA sample and pay costs. D&A eval/treatment as directed by APPS. Banned from D&J Farm Store -- 65 Hess Rd, Lancaster, PA
- Total amount of restitution owed is \$4,104.42 as detailed on the restitution summary.
- The defendant acknowledges and agrees that he has the ability to pay all fines, costs, and restitution, and waives any further pre-sentence determination of ability to pay.

DEFENDANT X *Benny Ray Stapleton Jr.* DATE 12/10/18

DEFENSE COUNSEL *[Signature]* DATE 12/10/18

A DISTRICT ATTORNEY *[Signature]* DATE 12/5/18

PRESENTED TO JUDGE _____ ON _____ ACCEPTED _____
REJECTED _____

PLEA AGREEMENT

The subscribing parties certify the following facts are accurate and the plea agreement to be voluntarily and intelligently executed with full knowledge of the maximum possible sentences. The defendant, Zachary Ian White Sr., with counsel, consents to proceed and enter a plea of guilty to the listed charges.

DEFENDANT: Zachary Ian White Sr.

DOCKET NO : CP-36-CR-0002712-2018

| <u>OFFENSE</u> | <u>GRADE</u> | <u>DISPOSITION</u> |
|---|--------------|--------------------|
| 1. <u>Poss w/ Int to Del - Cocaine, Sch. II</u> | <u>F</u> | <u>Guilty</u> |
| 2. <u>Poss w/ Int to Del - Heroin, Sch. I</u> | <u>F</u> | <u>Guilty</u> |
| 3. <u>Use/poss Of Drug Paraph</u> | <u>M</u> | <u>Guilty</u> |
| 4. <u></u> | <u></u> | <u></u> |
| 5. <u></u> | <u></u> | <u></u> |

| <u>JAIL</u> | <u>PROBATION</u> | <u>CONSECUTIVE</u> | <u>FINE</u> | <u>COSTS</u> |
|--------------------------------------|------------------|--------------------|--------------|--------------|
| 1. <u>4 - 8 years SCI</u> | <u></u> | <u></u> | <u>\$100</u> | <u>XXX</u> |
| 2. <u>2 1/2 - 5 years SCI</u> | <u></u> | <u></u> | <u>\$100</u> | <u>XXX</u> |
| 3. <u></u> | <u></u> | <u></u> | <u>\$50</u> | <u>XXX</u> |
| 4. <u></u> | <u></u> | <u></u> | <u></u> | <u></u> |
| 5. <u></u> | <u></u> | <u></u> | <u></u> | <u></u> |

- All counts are concurrent unless otherwise noted above.

- Notes: Defendant's time credit on this docket is to begin December ¹⁰~~7~~, 2018. Defendant is not to receive and previous time credit on this docket.
- Condition(s) of probation/parole: Defendant must give a DNA sample and pay costs. Defendant must undergo a drug/alcohol evaluation and comply with any recommended treatment.
- The defendant acknowledges and agrees that he has the ability to pay all fines and costs, and waives any further pre-sentence determination of ability to pay.

DEFENDANT X Zachary Ian White DATE 12/10/18

DEFENSE COUNSEL [Signature] DATE 12/10/18

ASST. DISTRICT ATTORNEY JLH DATE 12.6.18

PRESENTED TO JUDGE [Signature] ON 12/10/18 ACCEPTED ✓
REJECTED