

**Testimony of the New York Civil Liberties Union
before
New York State Joint Legislative Budget Hearing
for Public Protection
regarding
Eliminating Regressive Fines and Fees**

Tuesday, January 25, 2022



1 Whitehall Street, 3rd Fl.
New York, NY 10004
nyclu.org

Donna Lieberman
Executive Director

Olivier Sylvain
President

The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony to the Joint Legislative Budget Hearing for Public Protection. The NYCLU, the New York State affiliate of the American Civil Liberties Union, is a not-for-profit, nonpartisan organization with eight offices throughout the state and over 180,000 members and supporters. The NYCLU defends and promotes the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including the right of every New Yorker to enjoy life, liberty, and equal protection under law.

As the legislature makes important decisions about raising revenue and allocating state funds, it must act to ensure that important government services are not funded on the backs of those who can least afford it. In New York, a regressive system of mandatory surcharges tied to traffic tickets and criminal convictions, supervision fees for people on parole, and mandatory minimum fines extracts revenue from some of the poorest New Yorkers and makes it nearly impossible for indigent defendants to move forward from an encounter with the criminal legal system.

The Fiscal Year 2023 budget process offers an opportunity for lawmakers to focus on more just ways to raise revenue and to dismantle this backwards system of funding essential government services. Governor Hochul has taken a first step towards this end by including in her executive budget proposal legislation to eliminate parole supervision fees. But that is not enough. **The legislature and governor must ensure that the End Predatory Court Fees Act (A.2348-B/S.3979-C) is included in the final state budget.**

This legislation would eliminate mandatory surcharges and mandatory minimum fines, get rid of probation supervision fees, and end the shameful practices of incarcerating people for unpaid court debts and garnishing commissary funds



In New York, every offense and many traffic violations come with a mandatory surcharge attached, which can total hundreds of dollars for a single defendant. These fees were originally created for the express purpose of raising revenue, and have become more costly over time. In the early 1980s, lawmakers created the mandatory court surcharge “as part of a massive revenue-raising bill meant to ‘avert the loss of an estimated \$100 million in State tax revenues,’”¹ shifting the costs of operating the court system to criminal defendants themselves.² In 1995, the legislature amended state law to explicitly provide that under no circumstances could mandatory surcharges be waived, making it impossible for those who simply cannot afford to pay to rid themselves of these court-imposed debts.³

Fines and fees imposed in New York do not adequately account for a person’s ability to pay – a problem that courts are largely powerless to address. Mandatory surcharges, victim assistance fees, and DNA databank fees attach to convictions regardless of a person’s financial circumstances. Court surcharges are non-waivable in most circumstances, and the options for deferral are limited, requiring a showing of unreasonable hardship.⁴ In fact, the law plainly states that courts must be “mindful of the mandatory nature” of these surcharges when considering deferral.⁵

This system inevitably pushes people further into poverty. A study of 37 New York residents who owed mandatory fines and fees illustrates this reality: over 40% owed amounts greater than \$1,000,⁶ and for over half of this group, \$1,000 represented more than their household monthly income.⁷ It is inescapable that court fees function as a regressive tax on those least able to afford the costs.

These regressive practices are an affront to our notions of due process. Courts exist for the purpose of administering justice, not to function as

¹ *People v. Guerrero*, 12 N.Y.3d 45, 49 (N.Y. 2009).

² *People v. Quinones*, 95 N.Y.2d 349, 352 (N.Y. 2000).

³ *People v. Jones*, 26 N.Y.3d 730, 735 (N.Y. 2016) (describing legislative history) (“the legislature could not be clearer in communicating its intent to restrain the judiciary from discharging a person's obligation to pay the statutorily imposed amount”).

⁴ N.Y. Crim. Proc. Law § 420.40(5).

⁵ N.Y. Crim. Proc. Law § 420.40(3).

⁶ Alexes Harris et al., *United States Systems of Justice, Poverty and the Consequences of Non-Payment of Monetary Sanctions: Interviews from California, Georgia, Illinois, Minnesota, Missouri, Texas, New York, and Washington* (Laura and John Arnold Foundation, November 2017), <https://perma.cc/YJ3B-3PDK>.

⁷ *Id.*



debt collectors. Criminal prosecution is fundamentally the state's burden, and our constitutional system has built-in protections for the poorest defendants, such as the right to appointed counsel for those who cannot afford a lawyer. Mandatory, non-waivable court surcharges turn this system on its head, leaving criminal defendants – no matter how indigent – to pay for their own prosecution.

Placing the financial burden of administering the criminal legal system on the backs of those targeted by it is indefensible in light of how that system operates in practice, disproportionately targeting Black and Brown people. The imposition of these fees cannot be separated from the racially divided reality of our criminal legal system. Though Black New Yorkers make up 15% of the total adult population, they made up 38% of all arrests and 45% of felony arrests in 2019.⁸ Black and Hispanic New Yorkers made up 71% of the total prison sentences issued that year.⁹ A system that attaches mandatory fees for convictions and parole will inevitably have a disparate impact on Black and Brown communities.

New York cannot continue to extract revenue from its poorest residents and allow its court system to function as a collections agency. This budget process is a chance for lawmakers and Gov. Hochul to begin to meaningfully reform this system. The legislature must include the entirety of the End Predatory Court Fees Act into this year's budget bills. That means not merely getting rid parole supervision fees, but also eliminating mandatory surcharges and requiring judges to examine a person's economic circumstances when setting fine amounts, while also ensuring that no person in New York is jailed for their inability to pay a fee or fine.

These reforms would represent an enormous step towards dismantling a system that penalizes people for their economic conditions and puts the burden of funding the criminal legal system on the people unjustly caught in its grips. The legislature must not miss this opportunity to act.

⁸ New York State Division of Criminal Justice Services, *NYS Adult Arrests and Prison Sentences by Race/Ethnicity in 2019*, <https://www.criminaljustice.ny.gov/crimnet/ojsa/comparison-populationarrests-prison-demographics/2019%20Population%20Arrests%20Prison%20by%20Race.pdf>.

⁹ *Id.*