



**The No Price on Justice Coalition
Joint Written Testimony of:**



Presented before

The New York State

Senate Committee on Finance and Assembly Committee on Ways and Means

Joint Legislative Budget Hearing

January 25, 2022

On behalf of The No Price on Justice Coalition, we would like to thank Chair Krueger of the Senate's Standing Committee on Finance and Chair Weinstein of the Assembly's Standing Committee on Ways and Means for holding today's Joint Legislative Budget hearing on Public

Protection, and for giving advocates and impacted community members the opportunity to share the importance of eliminating predatory court fees in the State of New York.

The No Price on Justice Committee strongly supports the immediate passage of S.3979-C (Salazar) / A.2348-B (Niou). No Price on Justice is a coalition of economic and racial justice advocates, grassroots organizations, and impacted people working to end New York's predatory court fines and fees. Our mission is to end legal system fees and find more equitable ways to fund our government. Our coalition members share resources, exchange knowledge and provide mutual support as we strive to create a New York where there is no price on justice.

The End Predatory Court Fees Act, (S.3979-C/A.2348-B), would eliminate mandatory court surcharges, parole and probation fees, mandatory minimum fines, and end the practice of using the court system for ineffective revenue generation.

These fees are predatory. They are unrelated to punishment or accountability. They are hidden regressive taxes that are tacked on to tickets and to charges imposed on to people who have any contact with the legal system, disproportionately from low-income communities and communities of color. Predatory fees encourage policing-for-profit, criminalize poverty, and endanger Black and brown lives. Additionally, the imposition of these fees creates a cycle of punishment and poverty. Non-payment of even the fees attached to low-level violations can lead a long list of horrible consequences including arrest and incarceration. New Yorkers deserve to live without fear of lifelong debt and poverty, and they deserve a fair, transparent government. Governor Hochul has made it clear that eliminating parole supervision fees is a part of the executive budget proposal for the year 2023, and we urge the legislature to pass the End Predatory Court Fees Act in its entirety.

I. NEW YORK'S FISCALLY IRRESPONSIBLE AND REGRESSIVE METHOD OF RAISING REVENUE

A. A Heavy Reliance on the Criminal Legal System

The U.S. Justice Department's Ferguson Report came out over five years ago, after police in Ferguson, Missouri, killed Michael Brown, and uncovered a pattern of racially discriminatory policing practices incentivized by the city's dependence on the criminal legal system to raise revenue.¹ The report cites the use of warrants and jail time to coerce fine and fee payments and stark racial disparities in traffic stops, citations, and arrests. This pattern of discrimination, incentivized by revenue goals, contributed to "deep mistrust between parts of the community and the police department."² Yet New York continues to depend on this toxic revenue source that criminalizes Black and Brown New Yorkers and low-income people. In fact, thirty-four localities in New York are about as reliant or even more reliant on fines and fees for revenue than Ferguson at the time of the USDOJ investigation.³

Racial disparities across New York State mirror many of the DOJ's findings in Ferguson, and the recent findings in Brookside Alabama.⁴ Police acting as "armed debt collectors" risk Black

¹ United States Department of Justice Civil Rights Division, *The Ferguson Report: Department of Justice investigation of the Ferguson Police Department* (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

² "Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs. This emphasis on revenue has compromised the institutional character of Ferguson's police department, contributing to a pattern of unconstitutional policing...Over time, Ferguson's police and municipal court practices have sown deep mistrust between parts of the community and the police department, undermining law enforcement legitimacy among African Americans in particular." (U.S. DOJ, *The Ferguson Report* (2015): 2)

³ 34 localities raise 10 percent or more of their revenue through fines and fees; 12 localities raise 20 percent or more of their revenue through fines and fees. Mike Maciag, "Local Government Fine Revenues By State," *Governing*, September, 2019, <https://www.governing.com/gov-data/other/local-governments-high-fine-revenues-by-state.html>.

⁴ <https://www.al.com/news/2022/01/police-in-this-tiny-alabama-town-suck-drivers-into-legal-black-hole.html>

and brown lives and extract wealth from New York’s poorest communities.⁵ The COVID-19 pandemic and resulting financial crisis only intensify the negative racial, economic, and health impacts of policing in pursuit of revenue.

Additionally, New York does not keep *legally mandated* records on how the government assesses, collects, and distributes revenue from individual fees, including the mandatory surcharge. New York also fails to maintain data reporting infrastructure to track the amounts imposed and collected for specific fees, including the mandatory surcharge and associated revenue spending. This regressive fiscal policy is long overdue for reform.⁶

B. New York’s Mandatory Surcharge Amounts to Taxation-By-Citation

Fees (or surcharges) are extra costs that the government attaches to every conviction — even traffic tickets and minor infractions. They can total hundreds of dollars (not including the amount of any fine a court may impose). Individuals are often required to pay fees on top of a fine, or even when the judge decides not to impose a fine at all. These court fees are explicitly intended as revenue raisers; they function as a form of regressive taxation on New Yorkers who are often the least able to afford them.

⁵ Ariel Nelson, Wingo Smith, and Leah Nelson, “Why the Police Shouldn’t Be Armed Debt Collectors,” *Governing*, July 31, 2020, <https://www.governing.com/now/Why-the-Police-Shouldnt-Be-Armed-Debt-Collectors.html>

⁶ The lead researchers for the No Price on Justice coalition along with the Fiscal Policy Institute, contacted the New York State Division of Criminal Justice Services (DCJS), the Office of Court Administration - New York Unified Court (OCA), the New York Office of the State Comptroller (OSC), the New York State Department of Taxation and Finance (DTF), and the New York State Division of Budget (DOB) in attempts to obtain data and reporting relating to the state’s mandatory surcharge, other fees, and fines. The lack of complete and transparent reporting of all imposition, collection, and disposition of the mandatory surcharge and other fee revenue suggests that government decision-making about these fees suffers from persistent data gaps, which makes the individual and community impact of fees challenging to assess and simultaneously raises questions about fiscal policy intentions. It is also in violation of New York reporting requirements. NY Crim Pro L § 420.35 (2012)

New York's top predatory fee is the mandatory surcharge. The mandatory surcharge is a fee attached to every conviction in New York, from minor violations to felonies.⁷ Courts cannot waive or reduce these fees or surcharges, or even consider your ability to pay them, and ending this practice across the state calls for legislative reform.⁸ Depending on the type of conviction, a single mandatory surcharge can amount to hundreds of dollars. In addition to mandatory fees, many charges come with a mandatory minimum fine, meaning that judges cannot consider someone's ability to pay.

C. New York's Court Fees Place an Undue Burden on the Poor

Fines and fees punish people living in poverty. When governments use predatory fines and fees to raise money, the result is a hidden, disproportionate tax on those who can least afford it. This system of taxation-by-citation encourages policing for profit, extracts wealth from some of the most vulnerable members of our society and exposes Black and brown New Yorkers to more encounters with police resulting in a disproportionate rate of court involvement. Fees have significant consequences, and they impact everything from housing stability to emotional well-being to relationships with friends and family. Paying just one traffic ticket and its mandatory surcharge could mean missing rent, going without healthcare, or living without basic necessities. These fines and fees often force an indigent defendant, or their family, to choose between paying a fine that if unpaid would land a family member in jail, or the ability to afford rent, food, and other daily essentials.

⁷ See New York State Penal Law, §60.35, New York State Finance Law, §97-BB, and New York State Vehicle and Traffic Law, §1809.

⁸ C.P.L. 420.35(2) bars courts from waiving the surcharge, and ending this practice across the state calls for legislative reform.

Moreover, data shows New York has not only increased fees over time, but also made certain fees *less affordable* and a much greater financial burden. Since the creation of the mandatory surcharge in the 1980s, the surcharge for violations has increased *178 percent more* than the expected inflation-adjusted amount. For misdemeanors and felonies, the surcharge increased 92 percent and 75 percent, respectively, relative to the inflation-adjusted amount.⁹

D. New York's Fines and Fees Are a Racist Source of Revenue.

Black and brown New Yorkers are significantly more likely to be stopped, questioned, frisked, and issued summonses by police, and are living everyday with the fear of being arrested and jailed for the inability to pay a fine or fee. Harsh policing of minor violations, driven by governments' dependence on fines and fees as revenue, does not lead to greater public safety. It instead exposes Black and brown people to unnecessary interactions with law enforcement and financial insecurity.

Jailing those unable to pay fines and fees is especially costly, and New York is wasting money to chase money that does not exist. Courts and law enforcement agencies are spending more time and resources than ever on unsuccessful collection efforts aimed at those least able to afford it.

II. IT IS TIME TO END NEW YORK'S PREDATORY COURT FEES

The End Predatory Court Fees Act, (S.3979-C/A.2348-B), would address these injustices by first and foremost eliminating mandatory court surcharges, which is New York's most predatory fee. Probation and parole fees would be eliminated so a person's ability to re-enter the community and the workplace isn't unnecessarily burdened by further financial obligations.

⁹ Data obtained through William Donnino, Practice Commentary, McKinney's NY Penal Law § 60.35.

Additionally, the practice of garnishing the commissary accounts to pay for fines and fees would be eliminated. These accounts are held by individuals who are incarcerated, and family members contribute their hard-earned money to these accounts so that incarcerated individuals can purchase things they need while in prison. This legislation would also eliminate mandatory minimum fines and create a mechanism for judges to consider a person's ability to pay before imposing a fine. And most significantly, this legislation would put a long overdue end to the draconian practice of incarceration for failure to pay a fine or a fee.

New York must start funding government equitably, not on the backs of those least able to afford it. New York must also regularly and transparently report any revenue imposed and collected within the legal system, including geographic and demographic data, as well as how that revenue is spent.

This inefficient, extractive, and predatory practice of imposing predatory fees has far-reaching consequences that endanger individuals' attempts to secure stable housing and employment. In addition to systematically punishing people living in poverty, fines and fees disproportionately exposes Black and brown New Yorkers to more, potentially deadly, interactions with law enforcement.

III. PREDATORY COURT FEES IN PRACTICE

The members of the No Price on Justice Coalition have seen the effects of mandatory surcharges and mandatory minimum fines firsthand. Extracting money from individuals that come into the criminal justice system, impoverished and often-times seeking help for mental health issues or substance use disorders, is not only fiscally irresponsible, but morally wrong. The following are just four, out of many, real-life examples demonstrating the impact of predatory court fees.

Mr. A owed a \$200 fine along with a mandatory court surcharge back in 2019. In the two years since then Mr. A was unable to pay the fine and the surcharge. He has since had a new baby and moved to Staten Island. A few weeks ago, Mr. A was arrested late at night inside his home, where multiple police officers barged inside, scaring his newborn baby and his wife, all because he couldn't pay that \$200 fine. He was brought to Brooklyn Central Booking in handcuffs, where he sat waiting until the next day to see a Judge. His attorney told him that all he could do was ask the judge for more time to pay the fine, otherwise Mr. A could be facing a jail sentence for failure to pay. Unfortunately for Mr. A, the judge did not give him more time to pay and Mr. A spent four days in Rikers Island, amidst a catastrophic humanitarian crisis.

Mr. B. owed a mandatory statutory minimum fine of \$500 along with a mandatory surcharge in 2018. Even though Mr. B's attorney informed the court that he was living in a shelter and could not pay the fine, the judge could not waive the fine because it is mandated by statute. The judge was also unable to consider Mr. B's financial situation and his inability to pay before imposing a mandatory fine. Now, in 2021, Mr. B, who is still living in a shelter, cannot pay this fine and has made several court appearances, through the ongoing COVID-19 pandemic, only to have a judge tell him repeatedly that the fine cannot be waived. His attorney is trying to negotiate with the District Attorney's office so that Mr. B can withdraw his plea from 2018 and enter a plea to a different charge, one that doesn't have a mandatory minimum fine attached to it. Even if Mr. B's attorney is successful at negotiating a new plea, he will still have to pay a mandatory surcharge, which must be imposed by law on virtually every traffic and criminal charge.

Ms. C was arrested for driving on a suspended license. Ms. C's attorney advised her that her best chance of avoiding a criminal record was to pay off her tickets and have her license reinstated. Ms. C is a single mother, and despite the difficulties of taking on additional

employment, she started working extra jobs to pay off her tickets. Eventually, she was able to get her license back and avoid a criminal conviction that would go on her record, but because virtually every traffic offense carries a mandatory surcharge, Ms. C is now working to pay off the surcharge. Forcing Ms. C to make many of the same hard choices these predatory court fees force families to make, taking money needed for food and rent and using it to fund state government.

Mr. D was unable to pay a fine and mandatory surcharge. As a result, a warrant was issued for his arrest. Mr. D was arrested for this warrant and brought in handcuffs to Central Booking in Brooklyn, where he had to wait to see a judge so he could ask for more time to pay. The judge was not willing to give him more time to pay, and as a result he was sentenced to serve time in jail. Mr. D had to get a friend to come to the courthouse with money to pay his fine, otherwise he would've gone to Rikers island. It is often family members or friends that step in to help pay these fines and court surcharges. As a result, predatory fees not only negatively impose financial hardships on the individuals ordered to pay them, but impact their families and communities as well, perpetuating the cycle of poverty, and further preying on the poor.

No one should spend a single day in jail simply because they could not afford to pay a fine or fee. No one should be forced to choose between buying food for their family and paying a fine or a fee. New York State should not be operating debtor prisons, nor should the State continue to forcibly extract money from the poorest communities to fund its court system and other

IV. CONCLUSION

We must end predatory court fees now. In the aftermath of the 2020 pandemic, both local governments and millions of Americans are struggling more than ever to pay for the essentials like rent and food. In other times of financial crisis, local governments have increased their

reliance on mandatory fines and fees, to the detriment of their poorest citizens. Governor Hochul has included the elimination of parole supervision fees in her State of the State and in her budget proposal for 2023, taking a critical first step to address the harmful impact of court fines and fees. New York has an opportunity to build a more just society that does not pay for itself by preying on the poor. The End Predatory Court Fees Act is an important part of that effort. We urge Governor Hochul and the Legislature to support the End Predatory Court Fees Act (A.2348-B/S.3979-C) in its entirety.

Thank you for your time and consideration of our comments. If you have any additional questions for the coalition, please contact Jacqueline Gosdigian, Senior Policy Counsel for Brooklyn Defender Services, at jcaruana@bds.org or 347-585-4626.