

Written Testimony in Support of H.B. 1417

To: Representative Lawrence R. Klemin, Chair
Representative Karen Karls, Vice Chair
Members of the North Dakota House Judiciary Committee

From: Mary Mergler
Fines & Fees Justice Center

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The Fines and Fees Justice Center (FFJC) submits this testimony in support of H.B. 1417, and we thank Chairman Klemin, Senator Davison, Representative Hanson, Senator Larson and Representative Stemen for filing this critically important legislation. H.B. 1417 would eliminate several fees that are charged to people who have been charged with or convicted of a criminal offense in North Dakota: a \$55 per month supervision fee, a \$35 indigent defense application fee, and reimbursement of the costs of appointed defense counsel (collectively referred to as “criminal justice fees” in this testimony). It would also require a study of court fines and fees in the interim. Finally, H.B. 1417 would make improvements to probation and parole supervision. While we support the intent of this bill related to probation and parole supervision, this testimony is focused solely on the provisions of the bill related to fines and fees, given that is our organization’s focus and area of expertise.

Eliminating these criminal justice fees would improve outcomes for people who have been involved in the system, making it more likely they would be able to successfully reenter their communities and avoid rearrest, as well as help North Dakota families who are financially struggling to meet their most basic needs. **FFJC urges the Committee to support H.B. 1417 and eliminate these criminal justice fees in North Dakota.**

Criminal Justice Fees Are Imposed on North Dakotans who Cannot Afford Them

The vast majority of people charged with crimes in North Dakota are low income. Nationally, an estimated four in five people who are charged with a crime are too poor to afford an attorney and qualify to have a public defender appointed to represent them.¹ More than half

¹ See Marea Beeman et al., *At What Cost?: Findings From an Examination Into the Imposition of Public Defense System Fees* at 3, National Legal Aid & Defender Association (2022), available at https://www.nlada.org/sites/default/files/NLADA_At_What_Cost.pdf?v=2.0 (hereinafter “At What Cost?”).

of people who are incarcerated had virtually no annual earnings three years preceding their incarceration, and for those that were employed, their median earnings were about \$6,300 annually.²

After being convicted of a crime, a person will experience a significant reduction in their lifetime earnings. People who were convicted of a felony and incarcerated for some period of time experience the greatest decrease: they will earn approximately \$480,000 less over the course of their lifetime compared to someone who was not involved in the criminal justice system.³

Overwhelmingly, people who are charged with and convicted of crimes do not have the financial resources to pay for anything beyond their basic needs. Yet, they are still charged huge amounts of fees related to their system involvement in North Dakota, including fees for the cost of their defense counsel, court costs, supervision fees, and other fees.

Importantly, these criminal justice fees are distinct from fines. **Fines are intended as a form of punishment. On the other hand, fees are not intended to serve as punishment and are only intended to generate revenue for the government.** Criminal justice fees are unjust in that they operate as a tax, attempting to force those people who are least able to pay to fund the justice system, rather than evenly distributing the financial burden among everyone that the criminal justice system serves.

While North Dakota is not alone in charging fees to people in the criminal justice system, a rapidly growing number of states are recognizing the harms inflicted by such fees and have begun to eliminate them. In recent years:

- Three states have eliminated fees related to public defenders or appointed counsel, joining the seven other states that already do not charge such fees.
- Five states have eliminated some court costs and assessments.
- Six states have eliminated fees related to probation supervision and/or parole supervision.
- Nine states have eliminated some types of fees charged to people who are incarcerated, including room and board fees, medical copays and phone call fees.

² Adam Looney, *Work and opportunity before and after incarceration*, The Brookings Institution (2018), available at https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf.

³ Terry-Ann Craigie et al., *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, The Brennan Center (2020), available at <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>.

- At least 24 states have eliminated all or some of the fees assessed against youth and their families in the juvenile justice system.⁴

Increasingly, states are recognizing that fees harm public safety and harm families, while being an inefficient and problematic source of funding for the criminal justice system.

Fees are a Barrier to Successful Reentry and Damage Community Safety

After people have been incarcerated or punished by the criminal justice system, they deserve a meaningful second chance to rebuild their lives. When returning citizens are able to gain financial stability, their chances of avoiding rearrest and further criminal justice system contact decreases dramatically. **However, fees are a widely recognized barrier to successful reentry. They trap people in a perpetual cycle of debt and punishment, making successful reentry exponentially more difficult and increasing recidivism.**⁵

Finding a job after incarceration is particularly challenging. An estimated 3 in 5 formerly incarcerated people are unemployed,⁶ and individuals with a criminal record are only half as likely to get a callback or job offer.⁷ Only 55% of people have any reported earnings at all in the calendar year following their incarceration.⁸ Of the 55% with earnings, the median income is \$10,990 – i.e., less than \$1,000 per month.⁹ Only 1 in 5 people have jobs in which they make more than \$15,000 in the year following their incarceration.¹⁰

Nonpayment of fees prolongs people's involvement with the criminal justice system, making it impossible to move on. When people do not pay the fines and fees they owe, a warrant may be issued for their arrest and they may even be incarcerated for nonpayment of fees: a recent study found nearly 1 in 5 people with fines and fees from criminal cases served some amount of time in jail due to nonpayment.¹¹

⁴ For a list of state and local governments that have eliminated fees, visit the End Justice Fees campaign website, www.endjusticefees.org/reform. For a list of all states that fully or partially eliminated juvenile justice fines and fees, see <https://debtfreejustice.org/our-impact>.

⁵ See, e.g., U.S. Dept. of Justice Office of the Associate Attorney General, *Dear Colleague Letter to Courts Regarding Fines and Fees for Youth and Adults* at 3 (Apr. 20, 2023), available at https://www.justice.gov/d9/press-releases/attachments/2023/04/20/doj_fines_and_fees_dear_colleague_letter_final_with_signatures_0.pdf (hereinafter DOJ Dear Colleague Letter).

⁶ Leah Wang & Wanda Bertram, *New data on formerly incarcerated people's employment reveal labor market injustices*, Prison Policy Institute (2022), available at <https://www.prisonpolicy.org/blog/2022/02/08/employment/>.

⁷ Caroline Cohn et al., *The High Cost of a Fresh Start: A State-by-State Analysis of Court Debt as a Bar to Record Clearing*, National Consumer Law Center (2022), available at <https://www.nclc.org/resources/the-high-cost-of-a-fresh-start-a-state-by-state-analysis-of-court-debt-as-a-bar-to-record-clear/>.

⁸ Adam Looney, *Work and opportunity before and after incarceration*, The Brookings Institution (2018), available at https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See, e.g., Aravind Boddupalli, *How Fines and Fees Impact Family Well-Being*, Urban Institute-Brookings Institution Tax Policy Center (2024), available at <https://www.taxpolicycenter.org/publications/how-fines-and-fees-impact-family-well-being/full> (hereinafter

The nonpayment of criminal justice fees can also lead directly to consequences that make getting hired for a job much more difficult – which in turn, is a barrier to them ever paying their fees. For example, not paying fees is a barrier to expungement and record sealing.¹² They may also endure years of court involvement when fees go unpaid, causing them to miss work repeatedly.¹³

Research has shown that higher amounts of fees owed were linked to increases in returning citizens being rearrested for a new offense.¹⁴ Fear of the profound consequences of not paying these fees can lead people to criminal activity to get the money to resolve their debt. A survey of more than 900 people with court debt found nearly two in five people reported engaging in illegal activities for purposes of paying their court debt, with similar results found in a second survey.¹⁵ **Eliminating criminal justice fees would reduce the amount of debt that people owe after criminal justice system involvement, and hence reduce the pressure people feel to pay these fees or suffer the consequences, ultimately improving public safety overall.**

Criminal Justice Fees Burden Entire Families, Not Just People Charged with Crimes

While criminal justice fees are technically assessed against individuals who have been charged with a crime, the costs are inevitably borne by entire households – children, spouses, parents and other dependents. Families are most often the primary source of support for people who are reentering communities after incarceration, and those families are also the ones footing the bill for outstanding fees while their loved one tries to reestablish their life and find stable employment. One study across 14 states found that in more than 3 in 5 cases, family members were the ones primarily responsible for paying what the fees of their incarcerated loved one, and the majority of families reported they

“Fines and Fees Impact”). See also Johann D. Gaebler et al., *Forgotten But Not Gone: A Multi-State Analysis of Modern-Day Debt Imprisonment*, PLoS ONE 18(9): e0290397, available at <https://doi.org/10.1371/journal.pone.0290397>; At What Cost?, *supra* n.1 at 13.

¹² Caroline Cohn et al., *The High Cost of a Fresh Start: A State-by-State Analysis of Court Debt as a Bar to Record Clearing*, Nat’l Consumer Law Ctr (2022), available at <https://www.nclc.org/resources/the-high-cost-of-a-fresh-start-a-state-by-state-analysis-of-court-debt-as-a-bar-to-record-clear/>.

¹³ At What Cost?, *supra* n. 1 at 13.

¹⁴ Michael Ostermann et al., *Reframing the debate on legal financial obligations and crime: How accruing monetary sanctions impacts recidivism*, *Criminology*, Vol. 62, Issue 2, 331-363 (May 2024) DOI: 10.1111/1745-9125.12375; Tyler Giles, *The Government Revenue, Recidivism and Financial Health Effects of Criminal Fines and Fees*, Working Paper, available at <https://sites.google.com/view/tylergiles/research?authuser=0>.

¹⁵ Alabama Appleseed et al., *Under Pressure: How fines and fees hurt people, undermine public safety, and drive Alabama’s racial wealth divide* (2018) available at <https://www.alabamaappleseed.org/underpressure>. See also Fines and Fees Justice Center, *The Impact of New Mexico’s Fines and Fees: Interim Survey Results* (2023), available at https://finesandfeesjusticecenter.org/content/uploads/2023/01/New-Mexico-Survey-DIGITAL_2023.pdf.

could not afford what was owed.¹⁶ Of the family members responsible for paying, 83% were women.¹⁷

Families regularly forgo basic necessities, like food, rent, and medical care, to pay fees owed to the justice system, fearing the consequences of nonpayment, like arrest and incarceration of their loved one.¹⁸ A 2023 study by the Fines and Fees Justice Center and the Wilson Center for Science and the Law at Duke University found that 1 in 3 adults in the U.S. had fine or fee debt in the previous 10 years.¹⁹ Of those with debt, more than 1 in 3 had challenges obtaining food as a result, and more than 1 in 4 reported the debt causing hardships related to housing.²⁰ **Another recent study looked at families owing court and incarceration-related fees, and the financial devastation was even more profound: 57% of families experienced food insecurity and 29% reported difficulty paying housing costs** (compared to 25% and 8% of families who did not owe fines and fees).²¹ Elimination of criminal justice fees would provide immediate financial relief to families, putting money back into their budgets to meet the essential needs of everyone in the household, including food, housing and healthcare.

Criminal Justice Fees Assessed are an Ineffective, Unreliable Way to Fund the Justice System

Collection rates of criminal justice fees are very low given that these fees are assessed against people who do not have the financial resources to pay them. Only a fraction of what is assessed is ever collected.²² For example, the collection rate of the supervision fees that would be eliminated by this bill is only 25%. While collection rates vary based on the type of fees and the jurisdiction, studies from across the country have documented dismal collection rates.²³ Nationally, there is more than \$27 billion in unpaid fines and fees outstanding.²⁴ With so many fees going uncollected, the amount collected from criminal

¹⁶ Saneta deVunono-powell et al., *Who Pays? The True Cost of Incarceration on Families* at 13-14, Ella Baker Center (2015), available at <https://ellabakercenter.org/wp-content/uploads/2022/09/Who-Pays-exec-summary.pdf>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Fines and Fees Justice Center & Wilson Center for Science and Justice at Duke Law, *Debt Sentence: How Fines And Fees Hurt Working Families* (2023), available at <https://finesandfeesjusticecenter.org/articles/debt-sentence-how-fines-and-fees-hurt-working-families/>.

²⁰ *Id.*

²¹ *Fines and Fees Impact*, supra n. 22 at 11.

²² See, e.g., Matthew Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, The Brennan Center (2019), available at brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf (hereinafter “Steep Costs”); Lauren-Brooke Eisen, *Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause*, Brennan Center (Jul. 31, 2024), available at <https://www.brennancenter.org/our-work/research-reports/paying-your-time-how-charging-inmates-fees-behind-bars-may-violate>.

²³ *Id.* See also Paige Wanner et al., *Legal Financial Obligations in Washington State: Final Report*, Washington Institute for Public Policy (December 2022).

²⁴ Brianna Hammons, *Tip of the Iceberg: How Much Criminal Justice Debt does the U.S. Really Have?* Fines and Fees Justice Center, 5 (Apr. 2021), available at <https://finesandfeesjusticecenter.org/articles/tip-of-the-iceberg-how-much-criminal-justice-debt-does-the-u-s-really-have/>.

justice fees is a tiny drop in the bucket of state revenue and only a fraction of the costs of the justice system. This revenue stream is also unreliable, ebbing and flowing based on external factors, and dependent upon crimes being committed to generate revenue.

Additionally, there are enormous costs associated with the collection of fees charged in the criminal justice system. **One study showed that on average it costs 121 times more to collect one dollar of criminal justice fees than it does to collect one dollar of tax revenue.**²⁵ In counties across Texas, New Mexico and Florida, more than 40% of each dollar collected went towards collection costs, and in some cases, counties actually spent more to collect the fees than they were raising in revenue.²⁶ In another study in Washington State, the state recouped less than 30% of every dollar spent on collections.²⁷

Reliance on fee revenue may misdirect law enforcement and court resources away from true safety concerns, instead forcing them to chase uncollectable debts. **Research shows that every 1% increase in revenue from fines and fees corresponds with a 6% decrease in the violent crime clearance rate and an 8% decrease in the property crime clearance rate.**²⁸ Police resources are limited and focusing them on fee collection puts public safety at risk. Revenue generation also generates greater distrust of law enforcement within communities, making people less likely to report crime and cooperate with police.²⁹

In short, the current framework of levying unaffordable fees on people least able to afford them is failing. The criminal justice system is an essential government service that works to ensure that people follow the law and are held accountable when they do not. Attempting to transfer the costs of the system to the people least able to afford it through fees puts the effectiveness and efficiency of this critically important system at risk.

The Solution: H.B. 1417 Eliminates Harmful Fees

The assessment of criminal justice fees, including supervision fees and counsel fees, is a failed attempt to transfer the costs of the criminal justice system to those least able to afford those costs. People who are returning to their families and communities after incarceration and system involvement are saddled with enormous debt that is a major barrier to their successful reentry. H.B. 1417 would eliminate certain criminal justice fees, thereby improving reentry outcomes and public safety, and providing immediate relief to families struggling to meet their basic needs. It would also require a study of fines and fees

²⁵ *Steep Costs*, *supra* n. 5.

²⁶ *Id.*

²⁷ *Wanner*, *supra* n. 23.

²⁸ Rebecca Goldstein et al., *Exploitative Revenues, Law Enforcement, and the Quality of Government Services*, *Urban Affairs Review* (August 2018): 1-27, 4-5 & 17.

²⁹ See, e.g., U.S. Dep't of Justice, *Investigation of the Ferguson Police Department*, March 4, 2015, 1-2, available at

https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

assessed in the system, thereby providing greater transparency into the fines and fees assessed and the impact that they are having on North Dakotans.

We appreciate the Committee's attention to this critical issue and urge you to support H.B. 1417. Do not hesitate to contact me with any follow up questions or requests for additional information.

Respectfully submitted,

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About the Fines & Fees Justice Center

The Fines and Fees Justice Center is a national hub for information, advocacy, and collaboration for the reform of fines and fees. Our mission is to eliminate fees in the justice system, ensure that fines are equitably imposed, and end abusive collection practices. Fines and fees in the justice system hurt millions of Americans – entrenching poverty, exacerbating racial disparities, diminishing trust in our courts and police, and trapping people in perpetual cycles of punishment. FFJC spearheads the bipartisan End Justice Fees coalition, which supports the elimination of fees that are charged in the justice system. These fees operate as a regressive tax, forcing those least able to pay to fund the justice system rather than evenly distributing the burden among everyone that it serves. Learn more about our work at www.finesandfeesjusticecenter.org and www.endjusticefees.org.