

**New York City Council
Committee on Justice System
Oversight Hearing on
Cost of Justice
September 27, 2018
Testimony of The Bronx Defenders
By Dawit Getachew**

Chairman Lancman and members of the Committee, my name is Dawit Getachew, and I am a criminal defense attorney and Associate Special Counsel at The Bronx Defenders. I am grateful for the opportunity to testify before you today about this important matter.

The Bronx Defenders is a community-based and nationally recognized holistic public defender office dedicated to serving the people of the Bronx. The Bronx Defenders provides innovative, holistic, client-centered criminal defense, family defense, immigration representation, civil legal services, social work support, and other advocacy to indigent people of the Bronx. Our staff of over 300 represents approximately 28,000 individuals each year. In the Bronx and beyond, The Bronx Defenders promotes criminal justice reform to dismantle the culture of mass incarceration.

For our clients, financial penalties imposed as a result of an open criminal case or a conviction are perhaps the most common form of punishment levied against them by our criminal legal system. Those who plead guilty regularly face a range of financial penalties including fines, mandatory court surcharges, assessments, and program fees that can add up to staggering sums far beyond their ability to pay. For those who choose to fight their cases, the economic cost of criminal justice involvement in the form of lost wages, numerous missed days of work and appointments, school absences, transportation expenses, and childcare complications amounts to a punitive tax for wanting the day in court to which they are entitled.¹

This financial burden disrupts the lives of our clients and their families, which often are already complicated by poverty, mental illness, as well as by other enmeshed penalties that are triggered

¹ For example, a report issued in 2014 by The Bronx Defenders on the financial impact of New York City's marijuana enforcement policies and practices estimates that the economic cost to Bronx residents reached almost \$1 million in fines, fees and lost wages. The Bronx Defenders, *The Hidden Tax: Economic Costs of Marijuana Enforcement in the Bronx and New York City* (2014), available at <https://www.bronxdefenders.org/wp-content/uploads/2014/12/The-Hidden-Tax-A-Bronx-Defenders-Report-Dec2014.pdf>

as a result of criminal justice involvement, including eviction, job loss, deportation, and family court involvement.

Fines, which are often coupled with mandatory court fees, present a particular burden for those with meager financial resources and leave them ensnared in the criminal legal system long after they resolve their case in the courtroom. The most obvious impact of these onerous financial penalties is the risk of incarceration. For example, a sentence to pay a fine of \$75 after pleading guilty to a traffic infraction for driving without a valid license carries with it a jail alternative of up to 15 days. Those unable to pay the fine end up returning to court numerous times to request additional time, until they either miss a date or are hauled before a judge. Failure to pay the fine by a certain date automatically triggers the issuance of a warrant, and should the client thereafter be stopped by the police he would be arrested and would likely spend time in jail. For those who do appear before a judge, either voluntarily or under arrest, it's rare that there is any effort to determine whether the person can afford to pay the fine. Given that New York State law prohibits waiving fines and court fees, judges are limited to affording individuals additional time to pay, starting the process once again, or resentencing them to jail time.

Mandatory court surcharges and fees, which are imposed whenever people are convicted of an offense, represent the largest pool of money that is extracted from Bronx residents involved in the criminal legal system. For example, a guilty plea to the non-criminal violation of disorderly conduct -- one of the most common dispositions across the city -- carries a mandatory court surcharge of \$120. This year alone, clients we have represented have taken over 1,700 pleas to disorderly conduct, for a total of over \$200,000 in mandatory court surcharges. This represents just a fraction of these costs citywide. Even in those cases where the plea is deemed to be a favorable outcome, clients who cannot pay the fees are subject to a lasting consequence of having a civil judgment against them. The civil judgements entered as a result of the imposition of surcharges will remain on people's credit report, undermining their ability to obtain a credit card or loan.

The costs associated with criminal conviction can add up over a period of time, and the cost of complying with the conditions of the sentence, often in the form of participating in a program, can surpass the amount of the fines and charges imposed by the court. Cases involving DWI-related offenses are perhaps the best illustration:

Andrew, a 33 year old who is employed as a plumber and regularly uses his car for work, was convicted of a misdemeanor DWI offense and sentenced to a conditional discharge that required him to pay a \$500 fine, the minimum amount allowed by law, and a mandatory court fee of \$395. He was also required to complete the Impaired Drivers Program and an additional 50 hours of an alcohol treatment program. The total cost to Andrew for these programs amounted to over

\$1,500. Furthermore, he was required to install and maintain an ignition interlock device in a vehicle. In addition to the costs directly attached to his plea, Andrew also had to pay hundreds of dollars for a driver's responsibility assessment to the DMV and a re-application fee for his driver's license. In total, over the course of nine months, Andrew spent close to \$5,000 to comply with the conditions of his sentence and to be able to drive for work.

Andrew, unlike other clients, has managed to eke out the resources to comply with these multiple requirements, primarily because he is employed. Nevertheless, the onerous financial burden related to this single conviction interfered with his ability to pay his rent, and he has suffered significant emotional distress due to his fear of being unable to meet his financial obligations and ultimately having to choose between homelessness and jail.

The dearth of free or low-cost alternative to incarceration programs serving those with limited English proficiency creates an additional financial burden for many of our clients. Angelo, a father of seven, was arrested for and pled guilty to a family offense arising from his struggle with alcohol addiction. The condition of his sentence required him to complete an alcohol treatment program in lieu of incarceration. Angelo sought a free or low cost program because, although employed, he supported several children and did not have health insurance. Although we conducted an exhaustive search for a free or sliding scale program offered in Spanish, the only program that was available to him at the time was untenable due to its hours and location. Unable to complete the program and unable to pay the fee for a more convenient one, Angelo was re-sentenced to seven days of incarceration. Angelo is not alone. Many of our Spanish speaking clients are underserved and often have to pay out of pocket to participate in programs offered in Spanish.

The financial costs of criminal justice involvement can be a significant barrier to the meaningful resolution of a case. Often, our clients express the desire and plan to participate in programs during the pendency of their criminal case. Prosecutor and defense counsel also look to alternative to incarceration programs for clients, with an eye to a more favorable resolution to the case. But the costs for such programs can be onerous if not prohibitive for many of our clients.

Glen is a young client who was accused of misdemeanor public lewdness. He had expressed interest in attending a long-term program to address sexual behavior issues, and the programming was an acceptable condition of a negotiated plea between the prosecutor, defense counsel and the court. However, we were unable to find any program that accepted his insurance and could accommodate his work schedule. Given that the out-of-pocket expenses for the other providers were too high, the cost was an insurmountable barrier that prevented him from participating in such a program. Instead, he was sentenced to one year on probation.

ATI programs for those charged with sexual offenses are few and far between. The programs that are available can be cost prohibitive given that many do not accept insurance, including Medicaid. Sex offender treatment programs, such as Mustard Seed, which may be mandated by the courts as well as a condition of parole or probation, can easily reach \$50 or more per week or session, for a period lasting several months or longer. It's not uncommon for clients to be unable to complete treatment because they simply cannot afford to pay such fee for an extended period. Expanding the availability of these mandated programs at low or no cost for individuals would not only ease the financial burden to low-income individuals but also address important public health and safety concerns.

Financial sanctions stemming from criminal justice involvement have an outsized impact on those who are least able to afford them. The economic burden that disproportionately punish the poorest among us in the interest of raising revenue have no place in our justice system. The Bronx Defenders finds encouraging the Committee's inquiry into this issue and is eager to support your efforts to address the obstacles faced by the most economically vulnerable New Yorkers.

Thank you again for the opportunity to appear before you today, and for your attention to this important subject.