



NYC Council Testimony: The Cost of Justice

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Good morning. I want to thank the Council for your interest in fines and fees reform and for creating a forum to discuss how we can stop punishing poverty in New York City. I would also like to congratulate the Council for making New York City the first city in the country to agree to make all domestic phone calls free for incarcerated people.

My name is Joanna Weiss. I am the Co-Director of the Fines and Fees Justice Center, a national organization that seeks to eliminate fees in the justice system and ensure that fines are equitably imposed and enforced. Fines and fees hurt New Yorkers and New York City. They make our communities less safe, they perpetuate and exacerbate poverty, and they extract millions of dollars from our most vulnerable communities, particularly communities of color. Though some of the fines and fees and many of the enforcement practices are mandated by state law, there are many things New York City – and this council – can and should do to address this problem.

Across New York City, hundreds of thousands of low-income New Yorkers have their driver's license suspended simply because they cannot afford to pay a fine (and not because of their driving record). Driver's license suspension is cruel and counterproductive. A valid driver's license is often a condition of employment. And, even in New York City, where high housing costs are forcing poorer residents to move further from public transportation, without a driver's license, many people cannot access their jobs. It shouldn't surprise us, then, that when people lose their licenses, research shows that more than 40% of them also lose their jobs.¹ If you can't work, you can't possibly pay your fines. Moreover, without a driver's license, people cannot get their children to school, access healthcare or otherwise meet their basic needs.

Many people risk further punishment by driving on a suspended license so that they can work and care for their families. Driving on a suspended license can be a misdemeanor or even a felony if it happens too many times. Thus, we use our limited criminal justice resources—our police, prosecutors, public defenders, judges, clerks, and even our jails and prisons—to arrest, prosecute, convict, and even incarcerate people for driving on a suspended driver's license when the suspension is simply a result of poverty. Instead of fighting serious or violent crime, we have criminalized poverty. The Council should advocate in Albany for an end to driver's license suspensions for unpaid fines and fees.

New York City residents are also harmed by the growing burden of the state's mandatory fees. Over the last twenty years, the state has increased both the severity of mandatory fees and the number of people subject to them. In fact, New York attaches a mandatory "surcharge" to every felony, misdemeanor, infraction, and moving violation. The money collected goes to the state's general fund. It is plain and simple a tax. Because of the demographics of poverty, and the over-policing in certain communities, these regressive taxes fall disproportionately on communities of color. And these excessive fees ensure that poor people convicted of even the most minor infractions, like speeding (an offense almost every driver has committed) remain tethered to the criminal justice system in an endless cycle of punishment, simply because they are poor. Again, the Council should advocate to end the mandatory surcharge.

I want to turn now to reforms that New York City can implement without any assistance from Albany.

First, in all five boroughs, prosecutors and courts offer diversion programs as an alternative to prosecution and incarceration for many people accused of a crime but who need not be incarcerated to keep the community safe. Inexcusably, and quite possibly illegally, many diversion programs are only available if a person can afford the fees and charges associated with the program. For example, in Staten Island, there is a diversion program for DUI cases, and participation costs up to \$14 per day for 90 days. If you complete the program, you get no criminal record. If you can't afford the program, you are incarcerated and have a criminal record. City Council should ensure that everyone who is eligible for diversion (or alternatives to incarceration) has access to such programs. The vast majority of justice-involved people are indigent, and disproportionately people of color. Diversion and alternatives to incarceration are good for everyone. The Council should ensure that all diversion programs are offered for free. At a minimum, they should be free for anyone that can't afford to pay so that families don't have to choose between important diversion programs and financial stability of their families.

Second, in 2006, the state legislature amended Executive Law § 257-c to allow local jurisdictions to impose and collect a probation fee of up to thirty dollars per month. New York City imposes this thirty dollars per month probation supervision fee on everyone under supervision for a DWI. This is not a fine or punishment meant to deter DWIs. It is a tax, and an extremely regressive one, that charges the cost of the justice system to so-called "users." User fees have no place in the justice system. The justice system is a core government function that serves all of us and should be funded by all of us. The Council should abolish any and all probation fees.

Third, the Council should abolish all fees that are charged against people who are incarcerated in New York City, including money transfer fees and fees to access voicemails. As the Council knows, 80% of people who are incarcerated in New York City jails are there without any finding of guilt; they are there merely because they are too poor to afford bail. We have to stop adding additional punishments for their poverty, and end the extraction of wealth from the poorest communities to pay for basic services. We ask City Council to end the use of these fees, just as they successfully ended fees for phone calls.

Similarly, the Council should also end the practice of fines for disciplinary tickets issued to people in custody. Those fines are charged to people's commissary accounts, so we are either taking their already offensively low jail wages, or we are extracting wealth from the poorest communities by taking the money their loved ones gave them to provide for their basic needs during their incarceration. For the same reasons, the Council should also ensure that no one incarcerated in a New York City jail has their outstanding fines and fees garnished from their commissary accounts.

Indeed, we call upon the council to eliminate all of the discretionary fees it imposes in the justice system – fees that under state law, the City may, but does not have to impose. Last month, San Francisco became the first city and county in the United States to end the use of discretionary fees in their local justice system, including probation and supervision fees. Alameda County is considering following their example, as are several other counties in California. We ask City Council for New York City to follow San Francisco's lead in equitably funding the justice system and abolishing the use of fees.

Finally, in addition to eliminating the fees identified in this testimony, the Council should also follow San Francisco's lead and create an Office for Economic Justice. The Office would identify all the fines and fees the City imposes, collect relevant data, and work with the Council, the Mayor's Office and City agencies to eliminate discretionary fees, reduce racial disparities, and make fines proportionate to the offense and a person's ability to pay. Nearly a dozen city agencies issue violations that are adjudicated at the Office of Administrative Trials and Hearings (OATH). At no point in the process is an individual's ability to pay considered. If the purpose of a fine is to punish and deter unlawful behavior, fines should be significant enough to deter, but not enough to cause serious economic harm to an individual or their families. Yet that is precisely what we do when we issue fines without assessing ability to pay. An Office for Economic Justice could also help the City overcome one of the biggest hurdles to grappling with the impact of fines and fees on the people of New York City -- the lack of data. It is astounding that neither the Office of Court Administration nor the Comptroller's office can readily say how many fines and fees were assessed, against whom and for what charges. We ask the Council to ensure that going forward, the city will track and transparently share data on the imposition of fines and fees, including:

- How many fines are assessed? Against whom and for which charges?
- How many fees and surcharges are assessed? Against whom and for which charges?
- How often is a defendant unable to pay at the time of sentencing?
- How many civil judgements are ordered when a defendant is unable to pay a fine or fee at sentencing?
- How often are people asked to appear in court for the purpose of paying fines and fees? What were the consequences for any non-appearances?
- How many warrants are issued for failure to appear, when the primary reason for appearance was to pay a fine or fee?
- How many driver's licenses are suspended in New York City for failure to pay a fine?
- How many of those driver's licenses were reinstated, and after how long?
- Are there racial disparities in the imposition of fines and fees?

The Office for Economic Justice should also pilot graduated economic sanctions or day fines. The Fines and Fees Justice Center would be glad to provide assistance to the Council or a newly created Office for Economic Justice to implement these means-adjusted fines. The Office for Economic Justice should also investigate all fines to ensure they are not issued disproportionately to people of color, and investigate any allegations of perverse incentives to issue fines, such as those alleged in a law suit recently filed by twelve New York Police Department officers.

Thank you for the opportunity to address these important issues. FFJC stands ready to help the Council implement any of the reforms I have just described.

¹ Transportation Center, Rutgers, The State University of New Jersey, Driver's License Suspensions, Impacts and Fairness Study 56 (2007), <https://www.nj.gov/transportation/refdata/research/reports/FHWA-NJ-2007-020-V1.pdf>