

To: Juan Pablo Bohoslavsky, UN Special Expert

From: Alabama Appleseed Center for Law & Justice

Re: Call for inputs for March 2020 thematic report to the UN Human Rights Council

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Each year, Alabama’s municipal, district, and circuit courts assess millions of dollars in court costs, fines, fees, and restitution. Most of this money is sent to the state General Fund, government agencies that have nothing to do with the courts, county and municipal funds, and used to finance pet projects.

This hidden tax is disproportionately borne by poor people – particularly by poor people of color. In Alabama, African Americans are arrested, prosecuted, and convicted at higher rates than white people. For example, while African Americans and white people use marijuana at roughly the same rate, African Americans are over four times as likely to be arrested for marijuana possession in Alabama.

This system is a perfect setup for conflicts of interest, as courts and law enforcement agencies weigh the fair administration of justice against their own financial viability, which hinges on collecting fines, fees, court costs, and other debt connected to the criminal justice system. Courts and prosecutors are recast as revenue collectors who impose and collect the debt that finances their daily activities and supplements the state’s perennially underfilled coffers.

The fallout is not hypothetical: A recent national study found that police departments in cities that relied heavily on court debt as a revenue source solved violent crimes at a lower rate than those that rely on more equitable sources of revenue.[[1]](#endnote-1) Possible reasons for this correlation, according to the study, included pressure on police to focus their resources on debt collection instead of police work, and distrust of police by people who had come to perceive them as debt collectors with badges.

Under this system, people who commit the same act face very different punishments because of nothing more than their relative wealth. People with the resources to make timely payments experience fine-only violations as costly nuisances at worst. They can minimize the fallout from even criminal charges by paying to participate in diversion programs that result in either reduced penalties or clean records if successfully completed. People without ready access to cash, meanwhile, find themselves in an escalating cycle of late fees, collections fees, loss of drivers’ licenses, jail time, and life-altering criminal records. The result is a two-tiered justice system that has disastrous human, economic, and public safety consequences for individuals, families, and communities.

Making matters worse, the financial consequences can vary by location, as counties and municipalities often assess different court costs for the same offenses.

In Alabama, the problem is worsened by state lawmakers’ longstanding aversion to traditional means of raising revenue. The state constitution severely limits property taxes, and property values in some of the poorest parts of the state are so low that they would not generate adequate revenue even if they were taxed at a much higher rate. But even where more equitable mechanisms for generating income exist – including things like constitutional reform – lawmakers have not adopted them.

In 2018, Alabama Appleseed and a network of partners across the state examined, in detail, the collateral consequences of Alabama’s court debt system and the ways in which it undermines public safety and drives the state’s racial wealth divide. The resulting report was a product of our work with the Annie E. Casey Foundation’s Southern Partnership to Reduce Debt, which is developing strategies to lessen the impact of criminal and civil judicial fines and fees, as well as medical fees and high-cost consumer products, on communities of color.

We surveyed 980 Alabamians about their experience with court debt, asking how court costs, fines, and fees had affected their daily lives. Study participants included 879 “justice-involved” individuals who were paying their own court debt for offenses ranging from traffic violations to felonies, and 101 people who did not themselves owe court debt but were paying debt for other people. We analyzed results for the two groups separately and conducted a further analysis of the 810 justice-involved individuals who had also helped others pay off their debt.

The purpose of any criminal justice system is to deter unlawful activity, protect the public, and rehabilitate people with criminal convictions. We found that Alabama’s criminal justice system, which imposes court debt on people who cannot possibly afford to repay it, does the opposite. Almost 40% of all justice-involved people, including an astounding 19.6% of people whose court debt stemmed solely from traffic violations like driving with an expired tag or without insurance, admitted that they had stolen, sold drugs, engaged in sex work, or committed other unlawful acts to stay current on their debt.

In addition, we found:

* More than eight in ten (82.9%) gave up necessities like rent, food, medical bills, car payments, and child support to pay their court debt.
* Nearly half (49.6%) said they had been jailed for failure to pay court debt. People who had been declared indigent in a court of law were far more likely than their non-indigent peers to have spent time behind bars for failure to come up with the money demanded of them, with eight in ten (80.4%) of them reporting that this had happened to them.
* 44% had used payday loans which can carry annual interest rates of up to 456% to cover court debt.
* Eight in ten borrowed money from a friend or family member to cover their court debt.
* Almost two-thirds (65.9%) received money or food assistance from a faith-based charity or church that they would not have had to request if it were not for their court debt.
* Almost four in ten (38.3%) admitted to having committed at least one crime to pay off their court debt, including almost one in five (19.6%) whose only previous offenses were traffic violations. The most common offense committed to pay off court debt was selling drugs, followed by stealing and sex work. Survey respondents also admitted to passing bad checks, gambling, robbery, selling food stamps, and selling stolen items.
* About one in five (19.9%) were turned down for a diversion program like drug court because they could not afford it. The likelihood of being turned down for diversion for that reason rose to almost one in four (23.7%) if they had been declared indigent.
* About one in six (14.6%) were kicked out of a diversion program such as drug court or court referral because they could not afford it. This rose to 17.4% for individuals who had been declared indigent.
* Almost half (48%) did not think they would ever be able to pay what they owe. Nearly the same number (48.7%) said they would have no money to get out of jail if they needed it that day. The median amount owed was $2,700, and the mean was $6,536.

In general, we found that black and white Alabamians had broadly similar experiences with court debt once they were caught up in the criminal justice system. People of both races faced the same desperate choices and suffered the same consequences when it came to impositions on their economic stability, employment status, mobility, civic engagement, and liberty.

However, the 101 non-justice-involved individuals who took our survey – that is, people who were paying debt for someone else (usually a family member) – were demographically distinct. Our findings indicate unambiguously that middle-aged African-American women were more likely than any other group to be paying someone else’s debt.

This is not the only reason to be concerned about the disparate harms visited upon people of color. While Alabama’s court debt system is damaging to all lower-income Alabamians once they are caught up in it, other factors mean that its harms are disproportionately inflicted on people of color, and especially the state’s African-American community.

First, the legacy of slavery and Jim Crow, coupled with modern-day structural racism, has left African-American Alabamians disproportionately impoverished as compared to their white peers.

Second, the over-policing of African-American communities means African Americans are far more likely than white people to face court debt. In 2016, for instance, black people were more than twice as likely as white people to be arrested for six of the 20 charges (among them marijuana possession) for which the most Alabamians were arrested in 2016. That includes several offenses that hinge on the perception and inclinations of the police officer making the arrest, such as disorderly conduct.[[2]](#endnote-2)

African Americans are also overrepresented in Alabama’s jails and prisons. While black people comprise about 27% of the state’s overall population, the jail and prison populations are 54% black. Thus, because they are caught up in the criminal justice system at a much higher rate than their white peers, African Americans are more likely to owe court debt, and the fallout of Alabama’s court debt system lands more heavily on African Americans as a group.

The status quo is both unsustainable and unconscionable. As a practical matter, Alabama should not fund its state government on the backs of poor people whose ability to obtain gainful employment is severely hampered by the consequences of having criminal records. As a matter of conscience, we should not tolerate a system that forces people to choose between paying for basic necessities like food and medicine and paying their court debt.

To be effective, reforms will have to be implemented by a range of bodies, including state lawmakers, judges, district attorneys, court clerks, and local governments.

State lawmakers should…

* Eliminate court costs and fees, and scale fines to each person’s ability to pay.
* Create a truly unified court system that includes municipal courts.

Short of eliminating all forms of court debt, lawmakers should…

* Insist on transparency regarding money assessed via the criminal justice system and collected from justice-involved people.
* Fully fund courts from Alabama’s state budget.
* Adequately fund district attorneys and repeal all laws creating alternative revenue streams outside of the General Fund.
* Send revenue from all court debt to the state General Fund.
* Create an indigency standard that is uniform and applied across the entire system and at all phases, from pretrial to post-conviction.
* Create a mechanism for appeal and settlement of unpaid debt and ensure that justice-involved individuals have access to counsel throughout the post-conviction period during which they continue to owe court debt.
* Limit restitution to material losses.
* Eliminate poverty penalties such as extended probation, late fees, installment plan fees, and denial of voting rights restoration to those unable to pay their court debt.
* Prohibit the suspension of drivers’ licenses unless the suspension is public safety focused and directly connected to a driving offense.
* Ensure equal access to diversion programs.
* Eliminate court costs, fines, and fees for children under 18, and prohibit the transfer of court costs, fines, and fees from children to parents and guardians.
* Eliminate Failure to Appear warrants when the individual failed to appear because they were in government custody.
* Create a database accessible to municipal, district, and circuit judges that includes records of outstanding court debt across all Alabama jurisdictions.
* Prohibit the denial of voting rights based only on the nonpayment of court costs and fines.
* Reclassify one ounce or less of marijuana and possession of drug paraphernalia as civil infractions with fines scaled to the defendant’s ability to pay.

Judges should…

* Determine whether a person is in government custody prior to issuing a Failure to Appear warrant, and not issue the warrant if the person is found to be in government custody.
* When discretionary, reduce debt assessed against any person found to be indigent for criminal representation purposes.
* Docket hearings on ability to pay within 90 days of a missed payment, and appoint counsel at ability-to-pay hearings.
* Appoint counsel any time a justice-involved individual faces loss of liberty.

District Attorneys should…

* Voluntarily disclose revenue from all sources, by source, on an annual basis.
* Apply an objective standard to determine eligibility for diversion, and use an objective standard to determine indigency for purposes of participation in diversion programs.
* Avoid revenue streams that are funneled through the court system.
* When people miss court dates, determine whether they are in government custody and argue that the court not issue a warrant if they are.
* Decline to establish District Attorney Restitution and Recovery Teams (DART).
* Advocate in the legislature for the elimination of the current court debt system, as it makes communities less safe when people commit crimes to pay their court debt.
* Stop prosecuting people for possessing one ounce or less of marijuana and for possessing drug paraphernalia.

Court clerks should…

* Prioritize making victims whole over repaying entities, such as DART teams, that assist with collections.
* Make a practice of alerting judges when people are behind on payments so that ability-to-pay reviews can be conducted within 90 days.

Local governments should…

* Instruct local law enforcement to de-emphasize the enforcement of Alabama’s marijuana possession and drug paraphernalia possession laws.

*The Alabama Appleseed Center for Law & Justice is a non-profit, non-partisan 501(c)(3) organization founded in 1999 whose mission is to work to achieve justice and equity for all Alabamians. Alabama Appleseed is a member of the national Appleseed Network, which includes 18 Appleseed Centers across the U.S. and in Mexico City. Alabama Appleseed is also a member of the Sargent Shriver National Center on Poverty Law’s Legal Impact Network, a collaborative of 36 advocacy organizations from across the country working with communities to end poverty and achieve racial justice at the federal, state, and local levels. The research discussed in this statement was funded by the Annie E. Casey Foundation, but its findings and conclusions do not necessarily reflect the opinions of the Foundation.*

*The authors of this report and the Alabama Appleseed Center for Law & Justice consent to the publication of this report on the Independent Expert’s official webpage.*

*For more information and detail, including video testimony from individuals affected by court debt, please read Appleseed’s 2018 report, “Under Pressure: How fines and fees hurt people, undermine public safety, and drive Alabama’s Racial Wealth Divide” and visit our webpage:* <http://www.alabamaappleseed.org/underpressure/>

1. Rebecca Goldstein, Michael W. Sances, and Hye Young You, “Exploitative Revenues, Law Enforcement, and the Quality of Government Service,” Urban Affairs Review 1-27 (2018) https://hyeyoungyou.files.wordpress.com/2018/08/finesandpolicing.pdf [↑](#endnote-ref-1)
2. According to 2016 data provided to the Southern Poverty Law Center by the Alabama Law Enforcement Agency. Data and calculations courtesy the Southern Poverty Law Center. [↑](#endnote-ref-2)