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### THE COST TRAP: HOW EXCESSIVE FEES LOCK OKLAHOMANS INTO THE CRIMINAL JUSTICE SYSTEM WITHOUT BOOSTING STATE REVENUE

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#### EXECUTIVE SUMMARY

Tens of thousands of Oklahomans enter the justice system each year and come out with thousands of dollars in legal financial obligations. For poor Oklahomans, this debt can amount to most of their family's income, and it often leads to a cycle of incarceration and poverty. The system does nothing to improve public safety but incurs high costs to law enforcement, jails, and the courts. Lawmakers should reduce the financial burdens of the criminal justice system for poor defendants, and they can do that without jeopardizing critical sources of revenue for state agencies.



**Growth of Criminal Court Fees:** The costs charged to criminal defendants have skyrocketed in recent years as the Legislature has added or increased fees that fund various state agencies. In many cases, costs have more than doubled. A speeding ticket for driving 20 mph over the speed limit has increased almost 150 percent since 1992, from \$107 to \$250. Felony and misdemeanor costs multiply with each charge, often totaling in the thousands of dollars for a single case. Jail fees alone often total in the thousands of dollars in jurisdictions where counties charge inmates a daily rate.

**Defendants' Inability to Pay:** Because most defendants are economically disadvantaged, very little criminal court debt is actually collected. About 80 percent of criminal defendants are indigent and eligible for a public defender, and jail inmates typically make less than half the income of their peers even before their arrest. A judge in Oklahoma County estimates that only 5 to 11 percent of criminal court debt is collected. Despite this fact, those who can't pay are repeatedly arrested, jailed, and brought before a judge, at great expense to the state.

**Fine and Fee Revenue in Agency Budgets:** Fine and fee revenue contributes to many agencies' budgets. The District Courts and the Council on Law Enforcement Education and Training, for example, each receive over 80 percent of their funding from fines and fees. However, District Court financial records show that criminal case collections for the courts decreased slightly between 2003 and 2015, while civil case collections nearly doubled. This indicates that little if any new revenue can be raised from new fees in the criminal justice system.

**Recommendations:** Because such a small percentage of criminal court debt is collected, reducing financial burdens on poor defendants would likely have little, if any, effect on fee revenue for the state. Lawmakers should reform court collections practices to ensure a standardized process for ability to pay, end incarceration and license suspension for failure to pay, and improve court administrative infrastructure to consolidate and collect payments. Instituting court debt forgiveness and amnesty programs may improve collections and offer temporary boosts in revenue.

## INTRODUCTION

This report examines how criminal justice fines and fees trap Oklahomans in poverty while providing ever-smaller financial benefits to the state. Lawmakers must recognize that our approach to criminal justice debt is unjust and self-defeating, and they must take measures to fund the justice system in a way that does not put impossible financial burdens on the poorest Oklahomans and their families.

The status quo did not come into being overnight. In Oklahoma's court system, fees associated with every type of case – criminal and civil, felony and misdemeanor – have grown enormously in number and size as legislators seek to fill holes in the state budget. However, the costs to law enforcement, courts, and jails to collect those fees likely outstrip the revenue that is ultimately collected from defendants who simply can't pay.

Further, there is evidence that collections from criminal fines and fees plateaued long ago. Court financial records show that while collections for the courts from civil cases have doubled since 2003, collections from criminal cases have remained virtually unchanged. The current system is built on the assumption that new criminal justice fees will raise new revenues for critical needs; this data suggests that that assumption is flawed. Further, because such a small percentage of criminal court debt is collected, reducing financial burdens on poor defendants would likely have little, if any, effect on fee revenue for the state.

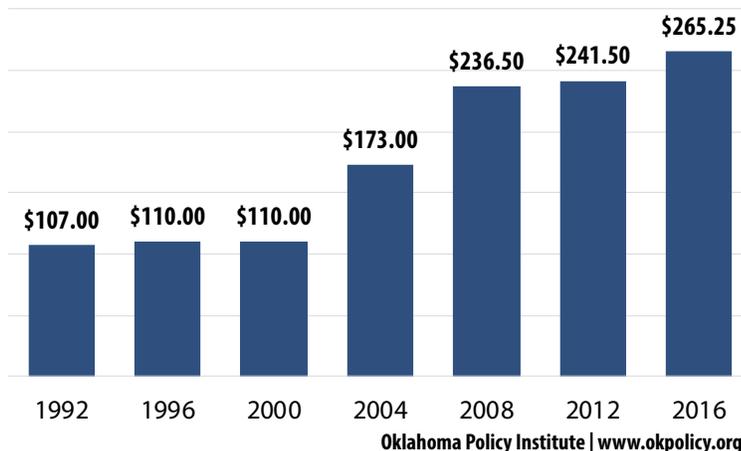
This report seeks to bring together the impact of court-related fines and fees, well-reported by various news outlets, with the less-discussed budgetary motivations behind their emergence. Part I of this report provides examples of how fines and fees have changed between 1992 and 2015 in traffic, misdemeanor, and felony cases. Part II examines how collection of fines and fees is implemented at the county level and the consequences to criminal defendants who are unable to pay their debt. Part III examines how state government agencies have come to rely on court fees to fund their operations and discusses the legislative origins of several fees that provide insight into their intended purposes. Part IV outlines some initial recommendations to combat these problems.

### PART I. FEES HAVE GROWN FOR EVERY TYPE OF CRIME

As a result of their involvement in the criminal justice system, criminal defendants are charged a litany of fines and fees by the courts, county sheriffs, and District Attorneys. At this point it's important to define the distinction between fines and fees. "Fines" are monetary sanctions imposed by the courts meant to punish the offender, while "fees" are amounts charged to defendants to share the costs related to their cases. Most criminal fines have been only modestly increased in recent years, and in many cases they have decreased in value due to inflation. However, the number and amount of fees has expanded significantly.

The growth of fees has resulted in Oklahomans paying much more in connection to their court

#### Costs for speeding 20 mph over the limit have risen nearly 150% since 1992



cases now than they did a quarter of a century ago. It's also created an odd dynamic in which the legal punishment for a crime – the fine – has become less punitive, while being convicted of a crime creates a financial burden that is far beyond many Oklahomans' ability to pay. Here's how this dynamic has played out in different kinds of criminal cases; the following costs were pulled from public records available on the Oklahoma State Court Network's Docket Search.

## Traffic cases

Since 1992, the cost of a ticket for driving 20 miles over the speed limit has increased by \$158, or nearly 150 percent. While one might justify raising a fine for violations by arguing that harsher punishments for speeding would improve public safety, that logic does not appear to be driving the rise in costs of speeding tickets. The fine for speeding 20mph over the limit was \$30 in 1992; in 2016 it had increased by only \$5. However, a speeding ticket for the same offense carried 15 fees that totaled \$230.25 in 2016 compared to just six fees, adding up to \$77 in 1992.

On June 10, 1992, J.S. was pulled over and given a ticket for speeding 20 miles per hour over the speed limit, 75 in a 55 zone. His fine for the violation was \$30, as specified by state statute. But the ticket he received said he owed \$107, which included six fees, detailed in Table A.<sup>1</sup>

Just over 24 years later, N.G. was ticketed for the same offense. The fine was \$35. However, J.A. was charged 10 more fees on top of the six fees that J.S. paid in 1992. The new fees cover items like courthouse security, child abuse prevention, and vehicles for the Department of Public Safety.<sup>2</sup> Although the fine had barely changed, N.G. owed \$265.25, nearly two and a half times what J.S. paid.

One surprising result of the accumulation of fees is that the doubling of fines in school, tollbooth, and construction zones has become a much less significant sanction. Out of all the costs set out on Table A, only the fine of \$35 is doubled in a construction zone, so the total cost of the ticket increases only about 11.3 percent, from \$265.25 to \$300.25.

**Table A: Costs for Speeding 20mph Over**

	1992	2016
Fine	\$30.00	\$35.00
Court Costs	\$49.00	\$88.00
CLEET Penalty Assessment	\$4.00	\$9.00
Law Library	\$3.00	\$6.00
AutomatedFingerprintIdentificationSystem	\$3.00	\$5.00
Sheriff's Fees	\$5.00	\$5.00
Clerk's Fees	\$13.00	--
Oklahoma Court Information System	--	\$25.00
DPS Patrol Vehicle Fund	--	\$20.00
DA Council Prosecution Assessment	--	\$20.00
Trauma Care Assistance Fund	--	\$10.00
Sheriff's Fee for Courthouse Security	--	\$10.00
ForensicScienceImprovementAssessment	--	\$5.00
CourtClerkAdministrativeFeeonCollections	--	\$8.50
Child Abuse Multidisciplinary Account	--	\$3.00
Attorney General Victims Services Unit	--	\$3.00
District Court Administrative Fee	--	\$12.75
<b>Total</b>	<b>\$107.00</b>	<b>\$265.25</b>

1 OklahomaStateCourtsNetwork(OSCN)caserecord, <http://www.oscn.net/dockets/GetCaseInformation.aspx?db=tulsa&number=TR-1992-5351>

2 OSCN case record, <http://www.oscn.net/dockets/GetCaseInformation.aspx?db=tulsa&number=TR-2016-18545>

## Misdemeanor cases

While traffic violations have seen a steep increase in fees, even more fees have been added for more serious offenses. For example, public defender fees are added to criminal misdemeanor and felony defendants if they cannot afford to hire legal representation; about 80 percent of defendants fall into this category.

A sample DUI case from 1992 shows total fines and fees of \$607, which included a \$200 fine, \$149 in court costs, and a \$200 fee for a Victims Compensation Assessment.<sup>3</sup> This misdemeanor offender was also charged a fee to be released on bond, in addition to the fee paid to the bonding service. A 2015 misdemeanor DUI case cost \$1,528, about two and a half times more than in 1992, though the fine is the same.<sup>4</sup>

Court costs more than doubled to \$333. Two new fees – for the Department of Public Safety Patrol Vehicle Fund and the Trauma Care Assistance Fund – together added \$255 to the defendant's costs, and the Court Clerk collected an additional 10 percent, totaling \$31.50, on fees that are passed on to other agencies. Seven other minor fees, ranging from \$3 to \$50, cumulatively add another \$96 to the total.

## Felony cases

In many cases, especially those that involve more serious crimes, several charges are brought in the same case. Because fines and fees are assessed separately on each charge, the minor fees are multiplied and become much more significant.

A case in Comanche County demonstrates the extremely punitive nature of Oklahoma's drug laws, both in sentencing and the resulting financial obligations. Charged with one count of Cultivation of a Controlled Substance and one count of Unlawful Possession of Drug Paraphernalia, B.R. pled guilty in September 2015.<sup>5</sup> For a single felony conviction of Cultivation of a Controlled Substance (Possession of Drug Paraphernalia is a misdemeanor

3 OSCN case record, <http://www.oscn.net/dockets/GetCaseInformation.aspx?db=oklahoma&number=CM-1992-1237>

4 OSCN case record, <http://www.oscn.net/dockets/GetCaseInformation.aspx?db=oklahoma&number=CM-2015-1905>

5 OSCN case record, <http://www.oscn.net/dockets/GetCaseInformation.aspx?db=comanche&cmid=424157>

**Table B: Costs for Misdemeanor DUI**

	1992	2015
Fine	\$200.00	\$200.00
Court Costs	\$149.00	\$333.00
CLEET Penalty Assessment	\$4.00	\$9.00
Law Library	\$3.00	\$6.00
AutomatedFingerprintIdentificationSystem	\$3.00	\$5.00
Sheriff's Fees	\$5.00	\$5.00
Victim's Compensation Assessment	\$200.00	\$300.00
Clerk's Fees	--	\$2.50
Indigent Defense System	\$13.00	\$200.00
Appearance Bond	\$10.00	\$10.00
Jail Fund Fee	--	\$25.00
Return Warrant of Arrest	\$20.00	\$50.00
Oklahoma Court Information System	--	\$50.00
DPS Patrol Vehicle Fund	--	\$155.00
DA Council Prosecution Assessment	--	\$15.00
Trauma Care Assistance Fund	--	\$100.00
Medical Expense Liability Revolving Fund	--	\$10.00
Sheriff's Fee for Courthouse Security	--	\$10.00
ForensicScienceImprovementAssessment	--	\$5.00
CourtClerkAdministrativeFeeonCollections	--	\$31.50
Child Abuse Multidisciplinary Account	--	\$3.00
Attorney General Victims Services Unit	--	\$3.00
<b>Total</b>	<b>\$607.00</b>	<b>\$1,528.00</b>

offense), the defendant was sentenced to 10 years of incarceration and 10 years of probation.

His financial obligations total \$4,516. Outside of Oklahoma and Tulsa Counties, where indigent defendants are represented by county public defender offices, counsel is provided by the Oklahoma Indigent Defense System (OIDS). Applying for OIDS representation carries a fee of \$40. Defendants who are convicted are charged a “cost of representation” fee ranging from \$150 for a guilty plea on a misdemeanor case to \$1,000 for a felony conviction at a jury trial.<sup>6</sup> B.R. will also pay \$40 per month for two years for supervision by the District Attorney’s office after he is released from prison.

Critics have described DA supervision as a conflict of interest, because DA offices depend significantly on the revenue generated by these fees. Oklahoma County Chief Public Defender Bob Ravitz, for example, points out that “When you have the district attorney supervising, they’re the ones who decide to file charges or not. They have a vested financial interest if that person is convicted or not and put on probation.”<sup>7</sup> Many District Attorneys agree; Oklahoma District Attorneys Council Assistant Executive Director Trent Baggett commented, “Would it be a whole lot better system if we were funded entirely by one entity where we didn’t have to rely on these additional funds? Absolutely. Absolutely, it would be great if we could do that, but you know what? That’s the hand we’re dealt.” This dynamic is described in further detail in Part III.

**Table C: 2015 Costs for Cultivation of a Controlled Substance (CCS) and Possession of Drug Paraphernalia (PDP)**

	Count1:CCS	Count2:PDP
Fine	\$1,000.00	\$1,000.00
Court Costs	\$103.00	\$83.00
CLEET Penalty Assessment	\$9.00	\$9.00
Law Library	\$6.00	\$6.00
AutomatedFingerprintIdentificationSystem	\$5.00	\$5.00
Sheriff's Fees	\$5.00	\$5.00
Victim's Compensation Assessment	\$75.00	\$30.00
IndigentDefenseSystemApplicationFee(OIDS)	\$40.00	--
Jail Fund Fee	\$50.00	--
OIDS Cost of Representation Fee	\$250.00	--
Court Reporter	\$20.00	--
Oklahoma Court Information System	\$50.00	\$25.00
DA Council Prosecution Assessment	\$25.00	\$15.00
Trauma Care Assistance Fund	\$100.00	\$10.00
Medical Expense Liability Revolving Fund	\$10.00	\$10.00
Sheriff's Fee for Courthouse Security	\$10.00	\$10.00
Forensic Science Improvement Assessment	\$5.00	\$5.00
CourtClerkAdministrativeFeeonCollections	\$62.00	\$17.50
Child Abuse Multidisciplinary Account	\$3.00	\$3.00
Attorney General Victims Services Unit	\$3.00	\$3.00
Post-Release DA Supervision Fee (2 years, \$40 per month)	\$960.00	--
OSBI Investigative Fee	\$150.00	--
DNA Lab Fee	\$150.00	--
Drug Abuse Education Fund	\$100.00	\$5.00
Notice of Filing	\$38.50	--
Return Judgment	\$50.00	--
<b>Total</b>	<b>\$3,279.50</b>	<b>\$1,236.50</b>
<b>Total Both Charges</b>		<b>\$4,516.00</b>

<sup>6</sup> 22 OK Stat § 22-1355.14 (2015)

<sup>7</sup> JaclynCosgrove,OklahomaWatch,“SupervisionProgramEarnsMillions,”December12,2011,<http://oklahomawatch.org/2011/12/12/supervision-program-earns-millions/>

## Jail fees

In many counties, county jails charge defendants a daily fee while they are incarcerated. For defendants who are denied bail or unable to gather the money to bond out, these fees can easily multiply into several thousand dollars as they wait for their case to be resolved. Some counties, including Oklahoma County, administer these costs through the sheriff's office. Inmates receive a bill for their incarceration costs as they leave the jail, so their total bills are not publicly available in court records. The current rate in Oklahoma County is \$32 per day, so for example a defendant arrested for felony drug possession released after 92 days would be charged \$2,944.<sup>8</sup>

Longer stays quickly add up to large amounts of debt. A 19-year-old man in Sequoyah County was arrested in 2015 for First Degree Burglary and four other charges; he was held in the county jail from June 20, 2015 to May 3, 2016.<sup>9</sup> He was charged \$22 per day for his stay, totaling \$7,018. After he serves his seven year sentence (85 percent of which he is required to spend in prison, rather than on parole), he will face \$8,670.50 in legal financial obligations and at least 10 years of probation. On his release, he will also have a felony record that will make finding steady, well-paying employment needed to meet his financial obligations extremely difficult.

Jail fees are perhaps the most pernicious financial obligation because they add up quickly and because they disproportionately affect those who cannot afford to bond out of jail as they await disposition of their case. Further, inmates appear to bear the brunt of struggling county budgets as policymakers look for ways to fund jails, and local sheriff's offices have increased these fees without much initial oversight. In March 2016, an Oklahoma County judge lowered the daily incarceration fee from \$44.51 to \$32, criticizing the Oklahoma County Sheriff's Department for its inability to explain the reasoning behind the higher charge.<sup>10</sup>

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8 As of 2009, the median time from arrest to adjudication in the 75 largest counties for drug offenses was 92 days. Bureau of Justice Statistics, "Felony Defendants in Large Urban Counties, 2009—Statistical Tables," December 2013, <http://www.bjs.gov/content/pub/pdf/fdluc09.pdf>

9 On Demand Court Records, <http://www1.odcr.com/detail?court=068-&casekey=068-CF++1500423>

10 Nolan Clay, *The Oklahoman*, "Judges slashes cost of stay at Oklahoma County jail," March 12, 2016, <http://newsok.com/article/5484676>

## PART II. COURT DEBT PUNISHES THE POOR, AND MOST GOES UNCOLLECTED

The costs for even a single incident in the criminal justice system are simply out of reach for many Oklahomans. About 80 percent of criminal defendants are considered indigent and eligible for a public defender,<sup>11</sup> and research shows that people in jail on average earned less than half of the median annual income of their peers even before their incarceration.<sup>12</sup> With legal financial obligations that can easily amount to 50 percent or more of an annual pre-tax minimum wage income, the extremely low collection rates on criminal court costs should come as little surprise.

### Accumulation of debt

As the examples above demonstrate, even one case can bring thousands of dollars in financial obligations that are difficult to pay for people with low incomes. These problems are multiplied for many Oklahomans who struggle with mental health and substance abuse issues, which often leads them to being repeatedly arrested and charged with minor crimes. As charges pile up, the accumulation of court debt presents an obstacle potentially even more devastating than jail or prison time.

New York Times columnist Nicolas Kristof told the story of Rosalind Hall, a Tulsa woman who had been jailed for failing to pay court costs that totaled \$11,258.<sup>13</sup> As a result of a pattern of petty crimes related to her mental illness and substance abuse problems, she had been unable to hold a job to pay off her mounting debt to the court. Each time she failed to pay her court costs, a warrant was issued for her arrest, carrying with it new fees that grew over the years. In 2001, she was charged a \$30 bench warrant fee and \$5 fee to the Court Clerk each time this happened. (In 2016, those fees total \$80: \$50 for the court fund, \$25 for the Oklahoma Court Information System, and \$5 for the Court Clerk.) After failing to pay \$4,294 in costs related to three cases, she was found guilty of willful failure to pay in 2002 and ordered to serve 101 days on an inmate work program. She was credited \$25 per day for her labor, but the debt continued to pile up even after five months of working it off.

Although there is no statewide data available on how many people owe court costs or how much they owe, Judge Don Easter estimated that Oklahoma County alone had a balance of over \$100 million due on 124,000 criminal cases between 2000 and 2014.<sup>14</sup> On these rough estimates, each case averages over \$800 in court costs due. Judge Easter also estimated that his office expects to collect only 5 to 11 percent of the costs assessed on criminal cases.

### Economic disadvantage of criminal defendants

The extremely low collection rates in Oklahoma County should be unsurprising given the low socioeconomic status of most criminal defendants. Very high legal financial obligations can spell disaster to the long-term finances of defendants who are struggling to get by even in the best of circumstances.

Although the nature of the relationship between crime and poverty is complex and contentious, no one disputes that those who end up in the criminal justice system tend to be poor. Nationwide, around 80 percent of criminal

11 Bureau of Justice Statistics, "Defense Counsel in Criminal Cases," November 2000, <http://www.bjs.gov/content/pub/pdf/dccc.pdf>

12 Bernadette Rabuy and Daniel Kopf, Prison Policy Initiative, "Detaining Poor: How money bail perpetuates an endless cycle of poverty and jail time," May 10, 2016, <http://www.prisonpolicy.org/reports/incomejails.html>

13 Nicholas Kristof, New York Times, "Is It a Crime to Be Poor?" June 11, 2016, <http://www.nytimes.com/2016/06/12/opinion/sunday/is-it-a-crime-to-be-poor.html>

14 Oklahoma House of Representatives Interim Study 14-033, October 21, 2014, <http://www.okhouse.gov/committees/showinterimstudies.aspx>

defendants are considered “indigent” and eligible for public defenders; statistics provided by the Tulsa County Public Defender’s Office match that estimate almost exactly.<sup>15</sup>

Closer studies of the socioeconomic status of criminal defendants provide a clearer look at how dire their poverty tends to be. One study found that people in jails earn less than half of their peers when controlling for age and race, with a median annual income of \$15,109 before they were incarcerated.<sup>16</sup> Black women in jail had median annual incomes of just \$9,083 per year, compared to \$23,760 for their non-incarcerated peers. That places the median black woman in jail well below the poverty line even for a household of one, which is set at \$11,880 per year for 2016.

The very low incomes of criminal defendants can put them in desperate financial situations that lead to their involvement in the criminal justice system, compounding their financial difficulties. This dynamic is especially apparent in the case of “bogus checks”, an offense that can include any case in which a check is returned for insufficient funds or is written from a closed or nonexistent account. While most bogus check cases, especially involving insufficient funds, are presumably not prosecuted criminally, businesses that receive bogus checks have the option to refer the case to the District Attorney for collection or prosecution. If convicted of passing a bogus check, the defendant, in addition to the court costs outlined above, must pay restitution to the victim and fees to the District Attorney. These fees add up quickly; one man in Tulsa County, who was indigent and whose only source of income was Social Security, was charged \$1,062 in restitution and District Attorney fees for two bogus checks written to grocery stores totaling \$123.27.<sup>17</sup> These fees are added on top of the court costs and other fees that are charged on every criminal case. In this case, the man’s public defender successfully argued against the level of restitution, and the judge lowered it to \$300. Relying on heavily burdened public defenders to provide accountability in such situations, however, undoubtedly allows most cases like his to fall through the cracks.

For a person living on a poverty-level fixed income, any unexpected expense can derail even the most careful budget; about one in eight Oklahomans has no savings or negative net worth, and 60 percent of Americans can’t afford a sudden \$500 expense.<sup>18</sup> Punishing such a person with restitution and DA fees that total eight times the value of the original bogus checks strains the idea of justice. However, as discussed further below, District Attorney offices throughout the state have come to rely heavily on the revenue generated from bogus check cases and other fees charged to criminal defendants.

## Failure to pay warrants and debtor’s prisons

When a defendant is sentenced, the court is required by statute to hold a “Rule 8 hearing” to determine the defendant’s ability to pay the costs related to their case.<sup>19</sup> In practice, many – if not most – courts do not hold such hearings.

Instead of a hearing in Tulsa County, for example, a document that details court costs due is submitted to the

15 Office of Justice Programs, “OJP Fact Sheet: Indigent Defense,” December 2011, [http://ojp.gov/newsroom/factsheets/ojps\\_indigentdefense.html](http://ojp.gov/newsroom/factsheets/ojps_indigentdefense.html)

16 U.S. Department of Health and Human Services, “Poverty Guidelines,” January 25, 2016, <https://aspe.hhs.gov/poverty-guidelines>

17 Restitution schedule provided by Tulsa County Public Defender’s Office. Other case information obtained from OSCN case record, <http://www.oscn.net/dockets/GetCaseInformation.aspx?db=tulsa&number=CM-2014-4045&cmid=2750999>

18 Corporation for Enterprise Development, “Assets & Opportunity Scorecard,” 2011, <http://scorecard.assetsandopportunity.org/latest/measure/extreme-asset-poverty-rate, and Bankrate, “Survey: How Americans contend with unexpected expenses,” January 6, 2016, http://www.bankrate.com/finance/consumer-index/money-pulse-1215.aspx>

19 22 OK Stat § 18, App. Rules of the Court of Criminal Appeals, <http://www.okcca.net/online/rules/rulesrvr.jsp>

Court Clerk's office, which sets up a payment plan for the defendant if he or she is unable to pay the full amount. Although judges are required by law to consider a defendant's ability to pay during the Rule 8 hearing, a team of researchers from the University of Tulsa Law School "found no evidence that the [Tulsa County District Court's] sentencing judges hold hearings regarding ability to pay as a matter of regular practice."<sup>20</sup> Interviews with Court Clerk offices in other districts indicate that similar processes are followed across the state. Most of the collections process is administered through that office, with little involvement from the courts.

Inevitably, many of those with large sums of fines and fees fail to pay their legal financial obligations, even when they're put on payment plans. Court Clerks across the state have developed their own systems to administer the enforcement of court costs in the way they see fit.

In Sequoyah County, for example, defendants who set up payment plans are required to pay at least \$25 per month. If they miss three consecutive payments, a warrant is issued for their arrest and their account is sent to a collection agency, which adds a 30 percent fee on whatever it collects. A warrant fee of \$50, plus \$5 for the Court Clerk and \$25 for the Oklahoma Court Information System, is also added to their balance. After they are arrested, they must pay \$250 towards their costs to get out of jail and go before a judge. The "cost docket," in which a judge sets up new payment plans or holds failure to pay hearings, includes about 150 defendants each week. An associate clerk said that the county jail sets aside a small number of beds for those arrested on failure to pay warrants, but remarked, "If our sheriff put everyone in jail that had a failure to pay, we wouldn't have any room in our jail."<sup>21</sup>

What little data is available indicates that failure to pay is a major contributor to jail admissions in Oklahoma. In Oklahoma County, there were 1,052 bookings solely for failure to pay or failure to appear in 2015, and those booked for these offenses stayed an average of 33 days, compared to 21 days for the general population.<sup>22</sup> Rule 8 hearings are held only after an individual has failed to pay. In Tulsa, 29 percent of jail bookings involved failure to pay in July 2013.<sup>23</sup>

During his testimony at a 2014 Oklahoma legislative interim study, Judge Don Easter estimated that Oklahoma County had a balance of over \$100 million due on 124,000 cases since 2000.<sup>24</sup> He detailed many of the difficulties that he saw criminal defendants face in paying their court costs:

"Very few people come in and pay their court costs upfront, particularly people who are incarcerated. We have people who are incarcerated who can't pay until they get out. We have people who are on Social Security and Veteran's Administration benefits, which are deemed indigent. We have mental health patients, a bunch of mental health patients on the criminal docket who couldn't hold a job if their life depended on it. And then we have the balance of the people who are trying to make a monthly payment who have a felony record, who have a hard time finding a job that makes enough money to support a family and make any kind of a sizeable dent in the amount that they owe to the criminal court system."

20 Quinn Cooper, Lindsey Fine, Sarah Harp, and Clint Wilson, Lobeck Taylor Family Advocacy Clinic, "Assessing the Cost: Criminal Fines, Court Costs, and Procedure versus Practice in Tulsa County," April 2014, <http://law.utulsa.edu/wp-content/uploads/sites/3/2014/12/Final-Report-Assessing-the-Cost.pdf>

21 Personal communication with Sequoyah County Clerk's Office, August 22, 2016

22 Nancy Fishman, et al., "Report to the Greater Oklahoma City Chamber Criminal Justice Task Force," December 2016, [http://www.smartSAFEOKCO.com/Websites/okcountycriminaljustice/images/okcchamber\\_VERA\\_report\\_12-14-16.pdf](http://www.smartSAFEOKCO.com/Websites/okcountycriminaljustice/images/okcchamber_VERA_report_12-14-16.pdf)

23 Casey Smith and Cary Aspinwall, "Increasing number going to jail for not paying fines," Tulsa World, November 3, 2013, [http://www.tulsa-world.com/news/local/increasing-number-going-to-jail-for-not-paying-fines/article\\_8b8d2229-c7ad-5e7f-aea2-baeb13390880.html](http://www.tulsa-world.com/news/local/increasing-number-going-to-jail-for-not-paying-fines/article_8b8d2229-c7ad-5e7f-aea2-baeb13390880.html)

24 Oklahoma House of Representatives Interim Study 14-033, October 21, 2014, <http://www.okhouse.gov/committees/showinterimstudies.aspx>

Judge Easter compared collecting court costs to babysitting, saying that the cost dockets see the same people repeatedly for failing to pay. At the time of her interview, Rosalind Hall, the Tulsa woman mentioned above, had been repeatedly arrested and spent nearly 18 months in jail, a few days at a time, for failure to pay over the course of many years, despite never being sentenced to jail for failure to pay.

## A two-tiered justice system

No comprehensive data is available on the number of Oklahomans affected by court debt and to what extent, but District Court caseloads give reason to believe that the problem is widespread: About 56,000 felony cases, 60,000 misdemeanor cases, and 216,000 traffic cases were filed in Oklahoma District Courts in just one year, FY 2015.<sup>25</sup> Although many cases certainly involved defendants with several cases against them, even conservative estimates would amount to tens of thousands of indigent defendants burdened with enormous financial obligations to the courts each year.

The hundreds or thousands of dollars in legal financial obligations that accompany felony and misdemeanor crimes create a dynamic in the justice system that is all too familiar to those in poverty: those who have financial resources are treated one way, and those who do not are treated another way. A wealthy individual who causes a terrible accident while driving under the influence of alcohol may pay his financial obligations, serve his sentence, and be absolved in the eyes of the courts, never to suffer any further legal consequences. Meanwhile, an individual living in poverty who fails to pay a traffic ticket for speeding – when the hundreds of dollars equal most of her disability benefits check – runs the risk of being repeatedly arrested and jailed for failure to pay. They risk losing their driver's license, limiting their ability to support themselves and driving them further from full participation in society. If convicted of a felony, Oklahomans can be denied the right to vote until they satisfy their debt to the courts.<sup>26</sup> Although the criminal justice system is theoretically predicated on the idea of equal treatment under the law, in truth the financial situation of a defendant has an enormous impact on the length and severity of his or her punishment.

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<sup>25</sup> Supreme Court of Oklahoma, "2015 Annual Report," <http://www.oscn.net/static/annual-report-2015.pdf>

<sup>26</sup> AllianceforaJustSociety, "DisenfranchisedbyDebt:MillionsImpoverishedbyPrison,BlockedfromVoting," March 2016, <http://allianceforajustsociety.org/wp-content/uploads/2016/03/Disenfranchised-by-Debt-FINAL-3.8.pdf>

### PART III. FEE REVENUE FUNDS MANY GOVERNMENT FUNCTIONS, BUT CRIMINAL FEE REVENUE HAS LEVELED OFF

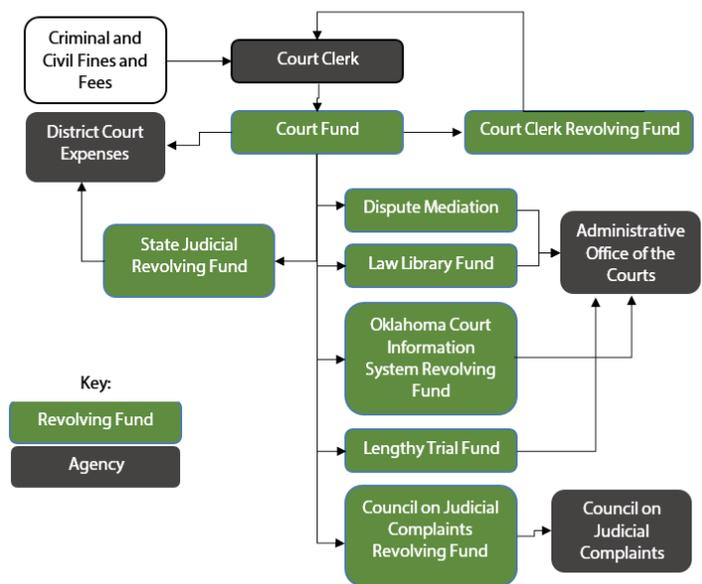
The fees that the courts collect on criminal and civil cases range from relatively large sums that fund the courts to small fees of a few dollars that are distributed to agencies like the Department of Human Services, the Department of Public Safety, and the District Attorneys Council. Over time, as we shall see, as traditional tax dollars have become increasingly scarce, this fee revenue has grown in importance as the funding base for many state agencies. This section examines how the courts and other agencies have grown to depend on that revenue. It also presents evidence that new court fee revenue has come almost exclusively from civil, not criminal cases, raising serious questions about the utility of criminal fees as revenue generators.

#### Judicial functions

The Court Clerk in each county receives collections, uses a portion to pay some court expenses, and distributes the rest to other agencies and funds as required by law. The allocation of funds for judicial branch agencies is illustrated in Figure A. About half of the total amount collected goes towards the maintenance of District Court facilities and paying court employees, including judges, bailiffs, and court reporters.<sup>27</sup> In 2014, \$74 million of the \$152 million collected by court clerks funded the District Courts.

Beyond the District Courts, much of the judicial system is funded wholly or partly by court fines and fees. The Administrative Office of the Courts, which oversees Oklahoma’s District Courts, Appellate Courts and the Supreme Court, receives about \$18 million in total, and the Court Clerk Revolving Fund receives fees totaling over \$5 million. The amounts collected for each entity are listed in Appendix I. As former Oklahoma County Court Clerk Tim Rhodes testified at a 2014 interim study hearing, the Court Clerk’s office operates as a revenue center that is required to pursue collections to fund the court and the court clerk, as well as collecting the fees that are passed along to other agencies.

Figure A: Fee Dispersal to Oklahoma Judicial Agencies



#### Other functions

In addition to the judicial functions outlined above, the Court Clerks charge and collect fees on behalf of dozens of other entities for various purposes. While there is sometimes a logical connection between the origin of the fee and its use, in other cases it is far from clear. A list of agencies and purposes of fees is included in Appendix I.

<sup>27</sup> Court Clerk pays some expenses related to the maintenance of the courts directly from the Court Fund, then transfer the rest to the State Judicial Revolving Fund, which in turn pays the judges and other court employees.

Fee revenue, for example, supports the District Attorneys Council, which oversees the 27 District Attorneys across the state. The DAC received about \$2.6 million in 2013 collected from a Prosecution Fee and 10 percent of the costs of incarceration charged by the court.<sup>28</sup> The Prosecution Fee, which is assessed on all traffic, misdemeanor, and felony cases, was doubled during the 2016 legislative session. As their names suggest, these fees are levied for specific purposes: to incarcerate and prosecute offenders.

Other fees have a far more tenuous relationship with the offense to which they are attached. In 2011, the Legislature passed HB 1414, which places a \$5 fee on all civil case filings that provides revenue to fund the Oklahoma Court Appointed Special Advocates (CASA) program. CASA trains volunteers to “represent the best interests of children who are abused/neglected and are active cases in the juvenile court system.”<sup>29</sup> While this program surely plays a critical role in the court system, there is little logic in funding it through a fee on every lawsuit, divorce, name change, adoption, judicial birth certificate filing, and so on.

Further, fees must, by law, be related to the case to which they are attached. The CASA fee, enacted in 2010, is similar to three fees that were struck down by the Oklahoma Supreme Court the same year. In *Fent v. State ex rel. Department of Human Services*, the Court ruled that three fees connected to civil cases were unconstitutional because they went to non-court state agencies for their general operations and thus constitute an illegal tax that violates open access to the courts.<sup>30</sup> Two of the stricken fees were attached to all civil lawsuits filed in District Courts and were directed to the Child Abuse Multidisciplinary Account and the Attorney General Victim Services Unit; another fee in adoption cases was distributed to another agency. As a result of these fees being ruled unconstitutional, the revenue generated by the courts for the Child Abuse Multidisciplinary Account fell from \$2.9 million in FY 2010 to \$525 thousand in FY 2011; the Attorney General Victim Services Unit received \$475 thousand in FY 2011 compared to \$1.1 million the year before.

As noted in Section II, the Child Abuse Multidisciplinary Account fee is still collected on nearly all criminal cases, including traffic tickets. Jerry Fent, the attorney who successfully challenged the civil fees, said that he wanted to keep his lawsuit narrowly targeted, but that he believed the same principles could be used to successfully challenge the constitutionality of fees attached to criminal cases that are used for purposes not related to the case. However, until someone files that lawsuit or the Legislature acts to change them, these possibly unconstitutional fees will remain in place.<sup>31</sup>

## Fee revenue makes up a large share of funding for several agencies

Many court fees play a critical role in the budgets of the entities for which they are collected. Most notably, this includes the court system itself. District Courts have collected about \$75 million per year for their own operations while receiving a fraction of that in General Revenue appropriations. District Courts depend on these fees to cover most of their budgets. In Fiscal Year 2015, District Courts received nearly \$56 million in transfers from the State Judicial Fund and only \$8.6 million from General Revenue appropriations.<sup>32</sup> General Revenue made up less than five percent of appropriations to the District Courts in FY 2016, down from a recent high of 44 percent in FY 2003.

28 22 OK Stat § 22-979a (2015)

29 Court Appointed Special Advocates for Children, “About CASA,” <http://www.oklahomacasa.org/about-us.html>

30 *Fent v. State ex rel. Dept. of Human Services* (2010 OK 2 236 P.3d 61) <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CitelD=457988>

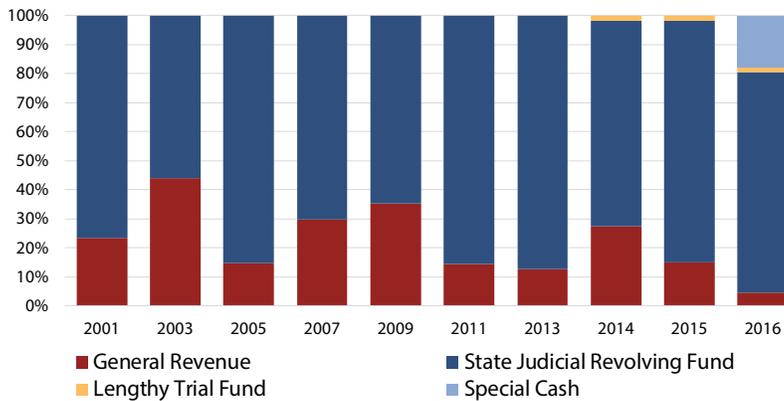
31 Personal communication with Jerry Fent, August 16, 2016.

32 DistrictCourts, “FY2016BudgetPerformanceReview,” [http://appropriation.oksenate.gov/SubPSnJ/Agencies/2015/FY16\\_Budget\\_Performance\\_Review\\_District\\_Court.pdf](http://appropriation.oksenate.gov/SubPSnJ/Agencies/2015/FY16_Budget_Performance_Review_District_Court.pdf)

The revenue retained in county court funds is used for other court purposes, while maintenance is provided by the county.

Court Clerks receive \$5 million through the Court Clerk Revolving Fund; the rest of their funding comes from the counties and, in some cases, the general Court Fund. The Administrative Office of the Courts, which is housed

**General Revenue made up less than 5% of appropriations to the District Courts in FY 2016, down from a high of 44% in FY 2003**



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within the Oklahoma Supreme Court, receives \$18 million for specific functions, most notably \$14.6 million in FY 2014 for maintaining the Oklahoma Court Information System. The Supreme Court received about \$17 million in appropriations in FY 2014.

Even outside the courts, some agencies are almost entirely reliant on court fees. The Council on Law Enforcement Education and Training (CLEET) is charged with providing training, continuing education, and licensing for all state, county, and city peace officers, either through its own programs or the city and agency academies that it oversees. CLEET is almost entirely reliant on revenue generated by a \$9 fee attached to

all felony, misdemeanor, and moving traffic violations. In FY 2015, the agencies received about \$6.4 million in funding, of which about \$5.5 million – almost 85 percent of their total revenue – was collected from Municipal and District Court Fees.<sup>33</sup> Only \$1.7 million of the fee revenue was generated by District Courts, however, down from over \$2 million in 2007 (see Appendix I). The agency has come under heavy criticism for its difficulty in fulfilling its duties to oversee the vast number of private security guards throughout the state, with Director Steve Emmons arguing that his staff is far too small and overworked. Just one CLEET staff member is tasked with investigating all complaints, which Emmons says “has been a problem for CLEET for probably its entire existence.”<sup>34</sup>

For other agencies, the courts are one of several sources of critical fee revenue. In addition to the fees collected by the Court Clerk totaling about \$2.6 million, District Attorneys receive fees directly from defendants for various purposes including supervision (usually \$40 per month for one or two years, generating \$14.5 million in FY 2016) and bogus checks (as described above, totaling \$4.8 million in FY 2016). With various other sources of funding, including federal grants and drug asset forfeiture, District Attorneys received less than half of their funding through state appropriations.<sup>35</sup> In FY 2015, District Attorneys received \$38 million in state appropriations, while their expenditures totaled \$79 million.

In the face of consistent budgetary stress in recent years, even small amounts of fee revenue can become essential to an agency’s operation. General appropriations to state agencies fell by about 15.1 percent between FY 2009 and FY 2017 after adjusting for inflation, even though agencies served a growing population and received new

33 OklahomaCenterforLawEnforcementEducationandTraining, “2015 Annual Report,” [https://www.ok.gov/cleet/documents/Annual%20Report\\_2015.pdf](https://www.ok.gov/cleet/documents/Annual%20Report_2015.pdf)

34 Marty Kaspar, NewsOn6, “Unguarded: State Agency Struggles to Regulate Security Guards,” August 17, 2016, <http://www.news6.com/story/32785359/unguarded-state-agency-struggles-to-regulate-security-guards>

35 District Attorneys Council, “2016 Budget Presentation,” [http://www.oksenate.gov/Committees/Cmte\\_Meeting\\_Notices%20-%202016/2016%20Budget%20Presentation%20SMA%20update%2012-11-15.pdf](http://www.oksenate.gov/Committees/Cmte_Meeting_Notices%20-%202016/2016%20Budget%20Presentation%20SMA%20update%2012-11-15.pdf)

legislative mandates each year.<sup>36</sup> To cope, agencies are forced to find ways to stretch every dollar further, so even for large agencies like the Department of Human Services, the relatively small sums brought in by court fees – about \$516,000 compared to a \$631 million appropriation in 2014<sup>37</sup> — can be seen as essential to staving off deeper cuts to services.

## When fees get added

The timing of and debate around legislation to add or raise court fees is telling. In recent years, legislators have typically passed such bills when there is a need for revenue, either for existing functions during budget shortfalls or for new functions when the need arises. Legislators rarely give much discussion to how the fee will impact the people who are paying it or to the cumulative effect of the fees that have already been put into place. During the 2014 interim study meeting, one Representative asked how the list of fees had been brought about, unsure or unaware that the Legislature itself had passed every one of them at some point.

## Budget shortfalls

Consistent revenue shortfalls in recent years have all public agencies operating on shoestring budgets. Responding to an Oklahoma Policy Institute survey of state agencies about budget cuts, DA offices across the state expressed frustration at insufficient staffing, low salaries, and layoffs of administrative staff. One respondent explained, “We are forced to prioritize where our resources are directed. This effectively delays or denies justice to the citizens that I was elected to serve.”

With Oklahoma confronting a \$1.3 billion budget shortfall during the 2016 legislative session, the District Attorneys Council approached legislative leaders to ask for additional funding. A spokesman for the DA Council said that District Attorneys across that state had been cut by 12 to 14 percent since the beginning of FY 2016 and that the agency badly needed greater revenue to avoid devastating cuts.<sup>38</sup>

In response, legislators introduced a bill to double the Prosecution Fee. After it failed in the House, an identical bill – SB 1610 – was introduced and quickly passed late in the session. It is expected to raise another \$2.2 million for the District Attorneys Revolving Fund.

HB 3220, also approved in 2016, increased civil fees on divorce, custody, alimony, and other proceedings from \$143 to \$183 and added a surcharge of 15 percent of fees collected for other agencies to cover collection expenses. Together they are projected to add \$11.2 million to the District Court Revolving Fund. Rep. Chris Kannady explained during a committee hearing on the bill:

“Over the past few years, the [District] Courts have been about \$10 million short in funding. The way we’ve been able to fix that problem is take money out of the IT fund [i.e., Oklahoma Court Information System Revolving Fund]. The bottom line is that that money isn’t there anymore. . . . We have to find another way to fund the court without going in and dipping into General Revenue. And this is a fix.”

These examples show how as General Revenues available for appropriations have declined, the Legislature has turned to raising court fees to fund critical functions of government.

36 OklahomaPolicyInstitute, “BudgetTrendsandOutlook–November2016,” November 18, 2016, <http://okpolicy.org/budget-trends-outlook-november-2016/>

37 OklahomaPolicyInstitute, “FY2017AppropriationstoTenLargestAgencies,” June 2016, <http://okpolicy.org/issues/responsible-budget-taxes/>

38 Personal communication with Trent Baggett, August 16, 2016

## Specific needs

In addition to raising fees to supplement revenue to core functions of government, the Legislature has created new court fees as they seek to solve public problems that arise. The Trauma Care Assistance Revolving Fund provides an example. The fund was created in 1999 to reimburse health providers for uncompensated costs from trauma care; it distributed \$2 million to \$4 million each year from FY 2001 to FY 2005. This level of funding proved to be insufficient. In November 2003, the state's only Level 1 trauma unit, housed at the OU Medical Center, announced it had lost \$9 million in three years and could only continue to operate if compensation for uninsured and underinsured patients significantly increased.<sup>39</sup>

In response, Governor Brad Henry proposed and the Legislature passed a package of bills in the 2004 legislative session that added several revenue streams to the Trauma Care Fund. These included a \$200 fee for failure to maintain motor vehicle insurance, \$100 for drug offenses, \$100 for open container offenses, \$100 for driving under the influence, and \$10 for other misdemeanor cases, which together were expected to raise over \$14 million per year. Another bill sent a tobacco tax increase to voters, which was expected to raise another \$17 million for the Trauma Fund.<sup>40</sup> The plan significantly increased collections, allowing the Trauma Care Fund to distribute \$15.5 million in FY 2007, nearly four times greater than its level in FY 2005.<sup>41</sup> However, the initial revenue estimates were overly optimistic. In FY 2008, the cigarette tax provided \$10.5 million rather than the \$17 million projected. The additional court fees raised \$8.7 million, far short of the \$14 million projected.

While legislators scrambled to raise money through fees, they also cut taxes that could have provided the funding needed. Most notably, they passed HB 2660, which placed State Question 713 on the 2004 general election ballot. SQ 713 raised the tobacco tax, but also made permanent a previous cut to the highest individual income tax rate to 6.65 percent and exempted some capital gains from income tax. This was the first of several income tax cuts that eventually lowered the top rate to 5 percent in 2016. Combined, these income tax cuts since 2004 have reduced state revenues by over \$1 billion every year.<sup>42</sup>

These decisions by Oklahoma lawmakers have directly resulted in a shift to reliance on court fees rather than broad-based taxes to fund critical functions of government. In a final twist, the Legislature moved \$5 million from the Trauma Fund to the General Revenue Fund in 2014<sup>43</sup> as lawmakers sought to cover a \$188 million budget shortfall.<sup>44</sup> Over the course of ten years, lawmakers deeply cut general revenues through income tax cuts, raised much smaller amounts for specific purposes through fees, then diverted those smaller amounts back to general revenues to patch major budget shortfalls.

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39 Jim Killackey, *The Oklahoman*, "Trauma unit closing causes concern: OU Medical Center has lost \$9 million in three years," November 7, 2003, <http://newsok.com/article/1954381>

40 Oklahoma Office of State Finance, "Oklahoma 2004 Comprehensive Annual Financial Report," <https://www.ok.gov/OSF/documents/04cafr.pdf>

41 Oklahoma State Department of Health, "Trauma Fund 2008 April Distribution Report," <https://www.ok.gov/health2/documents/NewReport-TF%202008%20Apr%2012172010.pdf>

42 David Blatt, Oklahoma Policy Institute, "The Cost of Tax Cuts in Oklahoma," January 2016, <http://okpolicy.org/wp-content/uploads/cost-of-tax-cuts-issue-brief.pdf?997616>

43 Jaclyn Cosgrove, *The Oklahoman*, "Oklahoma lawmakers move money used to pay for uncompensated trauma care from state fund," July 9, 2014, <http://newsok.com/article/4986881>

44 Office of Management and Enterprise Services, "BOE approves \$6.9B for appropriations," February 18, 2014, <http://content.govdelivery.com/accounts/OKOMES/bulletins/a60ef9>

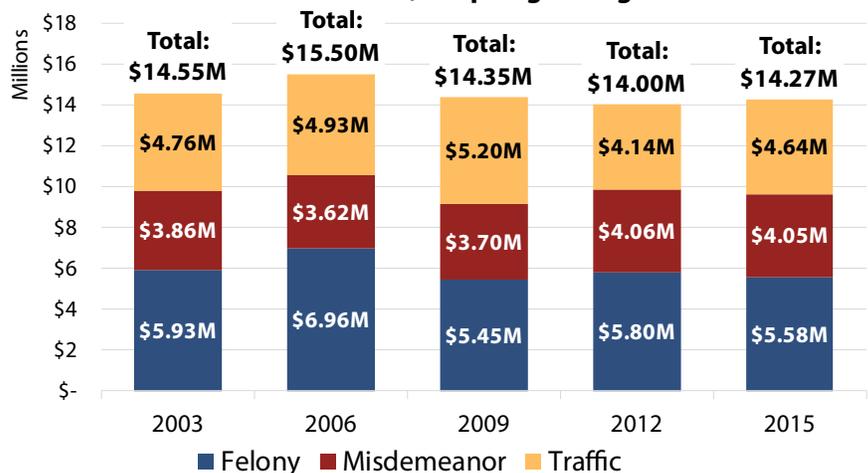
## Court fund collections from criminal cases remained flat between 2003 and 2015

When Legislators have added civil and criminal court fees, they have done so with the intention of raising revenue. But District Court financial records provide evidence that criminal court fees, which are charged to defendants after their case is resolved, have not raised new revenues, while civil fee collections have doubled. If this is the case, any new fee on criminal cases is likely to change the distribution of collections among the courts and the various agencies that revenue is directed to, but unlikely to increase overall collections.

Although the picture is incomplete without more comprehensive data, reports obtained from the Administrative Office of the Courts (AOC) reveal clear trends in collections. Each District Court is required to submit a Court Fund Quarterly Report that details expenses and collections for that period. The AOC generously provided a sample of these reports for our analysis, covering 9 counties for Fiscal Years 2000, 2003, 2006, 2009, 2012, and 2015; annual data is provided in Appendix II.<sup>45</sup> Starting in 2003, the reports include a breakdown of collections received from 17 categories of court filings, including misdemeanor, felony, traffic, civil, and various others including small claims and probate cases.

The reports reveal that collections from civil cases nearly doubled between 2003 and 2015, but collections from criminal cases remain essentially unchanged. In FY 2003, the counties in the sample collected \$5.9 million from felony cases, \$3.9 million from misdemeanor cases, and \$4.8 million from traffic cases; in FY 2015, those numbers remained similar, at \$5.6 million for felonies, \$4.0 million for misdemeanors, and \$4.6 million for traffic violations. Collections on civil and other types of cases, meanwhile, increased by nearly 50 percent, from \$9.5 million in FY 2003 to \$15.5 million in 2015, having peaked in FY 2012 at \$18.0 million.

**Criminal fee collections for the Court Fund have fallen or remained flat since 2003, despite growing caseloads\***



\*District Court data from a sample of 9 counties.

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**Table D: Change in Court Fund Collections by Case Type in a Sample of 9 Oklahoma Counties**

	2003	2015	Change
Criminal - Felony	\$5,927,363.57	\$5,576,562.01	- 5.9%
Criminal-Misdemeanor	\$3,863,588.84	\$4,053,803.75	+4.9%
Criminal - Traffic	\$4,758,115.46	\$4,635,319.76	-2.6%
<b>Criminal - Total</b>	<b>\$14,549,097.87</b>	<b>\$14,265,685.52</b>	<b>-2.0%</b>
<b>Civil - Total</b>	<b>\$4,301,243.70</b>	<b>\$8,055,346.25</b>	<b>+87.3%</b>
<b>Other - Total</b>	<b>\$5,217,711.22</b>	<b>\$7,454,064.87</b>	<b>+42.9%</b>

45 The nine counties are Coal, Custer, Johnston, LeFlore, Oklahoma, Roger Mills, Sequoyah, Texas, and Tulsa.

The fees associated with civil cases must be paid at the time of filing, so they are collected on all cases. This is reflected in higher collections in 2012 than 2015, when there were about a third more civil case filings in the counties studied.<sup>46</sup>

In contrast to rapidly rising civil collections, the stability of criminal case collections over 12 years is remarkable. In 2005, the Legislature passed HB 684, which allowed county sheriffs to use contractors to serve misdemeanor warrants and collect court costs. Shortly after, Court Clerk offices began entering into contracts with collection agencies in an attempt to improve collections; in 2010, the law was amended to allow contractors to also serve failure-to-pay warrants and increased the collection fee from 20 to 30 percent. District courts – at least those in our sample – have not increased collections through this arrangement, but individuals with failure-to-pay warrants now owe significantly more as a result.

Between 2003 and 2015, the Legislature made no significant changes to court fee schedules that would affect the amount of court fund assessments; the fees that were added during this time were collected for specific purposes outside the courts.<sup>47</sup> This suggests that the difference in the trends in collections is mainly due to stagnant collection rates for criminal cases rather than rising amounts assessed on civil cases. Although they have been intended as revenue measures, it's clear that criminal court assessments are at best very inefficient in achieving that purpose. The courts continue to collect a significant amount of money each year from criminal fines and fees, and many state agencies rely ever more on those collections as appropriations are cut each year. But with collections for the courts stagnant for at least 12 years, it appears as though the state is near its limit in raising revenue through criminal fines and fees.

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46 Supreme Court of Oklahoma, "2015 Annual Report," <http://www.oscn.net/static/annual-report-2015.pdf> and Supreme Court of Oklahoma, "2012 Annual Report," <http://www.oscn.net/static/AnnualReport2012.pdf>

47 Supreme Court of Oklahoma, "Civil Filing Fees (Effective July 1, 2003)," <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CitelD=436363> and Supreme Court of Oklahoma, "Uniform Oklahoma Fee Schedule (Effective July 1, 2014)," <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CitelD=474311>

## PART IV. RECOMMENDATIONS

Oklahoma legislators should take steps to reduce the damage of excessive and unaffordable legal financial obligations, and strong reform ideas have already emerged in the Legislature. In 2016, the Justice Reform Task Force, a group of stakeholders assembled by Governor Mary Fallin, submitted recommendations to address various aspects of the criminal justice system, including “more cost effective, evidence based sentencing and supervision practices.”<sup>48</sup> While the Task Force has not released its findings at the time of publication, Sen. Greg Treat, who participated in the discussions, has introduced legislation in 2017 that would make major changes to the administration of court costs. Senate Bill 689 includes provisions for consolidating fines, fees, and costs among all courts; limiting payment plans to 10 percent of discretionary income; and piloting a program that waives legal financial obligations for those who comply with supervision requirements after two years.<sup>49</sup> These proposals are a strong response to the problem of court debt, and lawmakers could make great strides by approving them in the coming legislative session.

These ideas should be put into practice and supplemented by the recommendations of *The Costs of Justice*, a report by the Lobeck Taylor Community Advocacy Clinic at the University of Tulsa College of Law.<sup>50</sup> There are four main areas of reform that lawmakers should consider, starting with the coming legislative session.

### Strengthen and Standardize Rule 8 Proceedings

As explained in Part II, Oklahoma law already mandates that courts determine a defendant’s ability to pay through Rule 8 hearings, but the process is vague and implemented inconsistently across the state. The Task Force smartly recommends limiting payment plans to 10 percent of discretionary income, and lawmakers should ensure such guidelines are properly and consistently implemented by strengthening Rule 8 in the following ways, as recommended by *The Costs of Justice*:

- Defining “poverty” and “disability” in statute through income guidelines and public program eligibility;
- Requiring judicial training, issuing bench cards and manuals, and creating a standard form for Rule 8 hearings; and
- Allowing Rule 8 hearings via videoconference.

The Texas Judicial Council approved rules in August 2016 that put into place similar payment plan guidelines.<sup>51</sup> The fiscal note anticipates no significant costs to state government to implement the rules, likely because collections are very low and, like Oklahoma, most goes uncollected under current practices.<sup>52</sup>

### Improve Court Financial Infrastructure and Reporting Requirements

In recommending the consolidation of fines, fees, and costs from District and Municipal Courts, both the Task Force and *The Costs of Justice* acknowledge the need to correct major infrastructure deficits in the Administrative Office of the Courts. The Legislature should ensure the full effectiveness of the AOC by:

48 Gov. Mary Fallin, “Executive Order 2016-24,” July 8, 2016, <https://www.sos.ok.gov/documents/executive/1045.pdf>

49 Senate Bill 689 (2016), <http://www.oklegislature.gov/BillInfo.aspx?Bill=SB689>

50 Kymberli Heckenkemper, John Kristjansson, and Cody Melton, “The Costs of Justice,” January 2017

51 SupremeCourtOfTexas, “FinalApprovalOfAmendmentsToTheTexasRulesOfCivilProcedureAndTheTexasRulesOfAppellateProcedureAndOfAFormStatementOfInabilityToAffordPaymentOfCourtCosts,” August 31, 2016, <http://www.txcourts.gov/media/1435934/169122.pdf>

52 Texas Register, Proposed Rules, July 2016, <http://www.sos.texas.gov/texreg/pdf/backview/0701/0701prop.pdf>

- Directing and funding the AOC to establish a centralized system to collect and distribute costs;
- Implementing a case management system to consolidate and manage accounts across jurisdictions; and
- Establishing periodic reporting requirements or a statewide audit that produce statistics on the total financial obligations imposed on defendants, the amount of outstanding financial obligations, and the results of ability-to-pay hearings. The Justice Reform Task Force proposes a two-year study on the percentage of court costs actually collected; the reliance of state agencies on fee revenue; and recommendations for reform. This is another worthy – and perhaps more politically feasible – step toward greater transparency.

## Court Debt Forgiveness and Amnesty Pilot Programs

Further recommendations by the Task Force and The Costs of Justice include piloting new approaches to court debt. The Task Force recommends forgiving court debt based participation in a workforce development program or completion of supervision requirements, both of which would provide strong incentives to reenter the workforce. Beyond these worthy ideas, The Costs of Justice suggests a court debt amnesty program that “encourage[s] compliance with payment of overdue [debt] by offering criminal defendants partial debt forgiveness in exchange for lump-sum payments of some percentage of their court fees.”<sup>53</sup> Such programs have provided one-time increases in revenue and led to suspended drivers’ licenses being restored, and the extra revenue could be used to fund the infrastructure improvements outlined above.

## Limiting Collateral Consequences of Failure to Pay

Beyond the above reforms, lawmakers should confront the collateral consequences of failure to pay fines and fees, especially the problems of debtor’s prisons and license revocation. In his testimony before a House interim study in October, Judge Thad Balkman explained that Cleveland County had a “catch and release” policy when bench warrants are issued for failure to pay, resulting in a trip to the police station but no time in jail.<sup>54</sup> He noted that the only jurisdiction that uses his county’s jail for failure to pay warrants is the City of Norman, which must reimburse the county \$42 per day per inmate.

This is another instance of the arbitrary enforcement of the law based on jurisdiction; the consequences of an arrest for failure to pay should not vary so drastically. Lawmakers should recognize the inefficient and self-defeating nature of this practice, and make clear that failure to pay fines should not lead to jail time, even to await a court date, by issuing a summons rather than warrant for failure to pay. Oklahoma City is implementing a system to alert officers when an outstanding municipal warrant is for costs only, and ending jail bookings for that purpose. Such a system should be adopted for district court cost warrants as well, as recommended by the Vera Institute to the Greater Oklahoma City Chamber Criminal Justice Task Force.<sup>55</sup>

Finally, the practice of revoking or suspending driver’s licenses for failure to pay is a deeply self-defeating measure that only further marginalizes indigent defendants who must drive in order to get to work and take care of their families. At the least, lawmakers should ensure license suspension occurs only after a substantiated determination of willful failure to pay. Even better, license suspension should be decoupled from court debt entirely.

53 Heckenkemper, Kristjansson, and Melton, “The Costs of Justice,” January 2017

54 OklahomaHouseofRepresentativeInterimStudy16-056,October4,2016,<http://www.okhouse.gov/committees/showinterimstudies.aspx>

55 NancyFishman,etal.,“ReporttotheGreaterOklahomaCityChamberCriminalJusticeTaskForce,”December2016,[http://www.smartsa-feokco.com/Websites/okcountycriminaljustice/images/okcchamber\\_VERA\\_report\\_12-14-16.pdf](http://www.smartsa-feokco.com/Websites/okcountycriminaljustice/images/okcchamber_VERA_report_12-14-16.pdf)

## CONCLUSION

Oklahoma's criminal justice system, like many others across the country, places enormous financial burdens on the people it serves, forcing them to pay for many functions of government that may or may not bear any relation to their case. The thousands of dollars charged to mostly poor defendants can turn into a permanent punishment that creates high barriers to rebuilding a life after involvement in the criminal justice system. Meanwhile, state agencies increasingly depend on the revenue generated by this arrangement as their appropriations from the Legislature have fallen. Legislators unwilling to raise taxes or to reverse tax cuts already enacted have instead created or increased court fees in order to generate new revenue.

The result is a two-tiered justice system, one for the well-off and one for everyone else, in which the courts must act as collections agencies to extract as much money from defendants as possible. To bend the system back toward justice, the courts and lawmakers need a more careful approach to legal financial obligations. No Oklahoman should be jailed for being too poor to pay his or her fines and fees, and judges should be able to adjust debts based on ability to pay without endangering the financial viability of the courts. The current system developed haphazardly over many years, driven by tax cuts and resulting revenue shortfalls, but also by the easy targeting of criminal defendants with new fees. Today state leaders are actively pursuing criminal justice reform to reduce the state's prison population; for those efforts to succeed, we must also find a way to fund the justice system without placing deep financial burdens on those who can least afford them.

## APPENDICES

Appendix I details the amounts collected by the Courts for various entities between 2007 and 2015. Appendix II details the amounts collected by ten District Courts for their Court Fund, totaled by case type, for Fiscal Years 2003, 2006, 2009, 2012, and 2015. Appendices can be downloaded at <http://okpolicy.org/the-cost-trap-appendices/>.

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