

# The Price of Poverty: Policy Implications of the Unequal Effects of Monetary Sanctions on the Poor

Journal of Contemporary Criminal Justice

1–21

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DOI: 10.1177/1043986220971395

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Ilya Slavinski<sup>1</sup> and Kimberly Spencer-Suarez<sup>2</sup>

## Abstract

Over the last several decades, with the rise of mass incarceration in the United States and its steep costs, governments at the federal, state, and local levels have dramatically ramped up monetary punishment. Monetary sanctions are now the most common type of criminal penalty in the United States. The growth of fines, fees, and other legal financial obligations (LFOs), and the ensuing legal debt, reflect a shifting of the system's costs onto its primarily low-income and indigent subjects. This study provides an exploration of previously underexamined ways in which monetary sanctions impose distinct burdens on the poor. Interviews with 121 defendants in Texas and New York, along with courtroom observations, demonstrate that criminal legal debt is particularly challenging for people with low incomes in three meaningful ways. First, systems set up to handle indigency claims do not adequately address the needs or complex individual circumstances of those who simply do not have the ability to pay. Oftentimes, alternatives are unavailable or statutorily prohibited. Second, the lack of alternatives to payment lead to compromising situations, which then compel indigent defendants to make difficult choices about how to allocate scant resources. Finally, being encumbered with fines and fees and participating in alternatives like community service comes with taxing time requirements that can prove uniquely challenging for those who are poor. These three findings lead us to propose a series of policy recommendations revolving around three key themes: (a) enhancement of indigency procedures, (b) equity in monetary sanctions, and (c) alleviating burdens by improving accessibility.

## Keywords

monetary sanctions, poverty, indigency, punishment

<sup>1</sup>The University of Texas at Austin, Texas, USA

<sup>2</sup>Columbia University, New York, USA

## Corresponding Author:

Ilya Slavinski, Department of Sociology, The University of Texas at Austin, 305 E 23rd St, A170 RLP 3.306, Austin, TX 78712-1086, USA.

Email: [ilya.slavinski@utexas.edu](mailto:ilya.slavinski@utexas.edu)

## Introduction

Monetary sanctions are not a modern invention. For centuries, judicial systems the world over have meted out punishment through the levying of fines (Faraldo Cabana, 2015; Sutherland & Cressey, 1934). Yet, over the last several decades, with the ascent of mass incarceration in the United States and its steep costs, governments at the federal, state, and local levels dramatically ramped up monetary punishment. The growth of fines, fees, and other legal financial obligations (LFOs), and the resultant debt, reflects a shifting of the system's costs onto its primarily low-income subjects. The poor and people of color are overrepresented on court dockets and in jails, prisons, and community supervision. Through LFOs, they also fund the expansion of a disproportionate share of the criminal legal system (Appleman, 2016).

Despite their ubiquity, LFOs did not attract a great deal of scrutiny until fairly recently. The U.S. Department of Justice (DOJ) investigation of the Ferguson Police Department marked a watershed moment for public recognition of the monetary sanctions issue. The "Ferguson Report" (2015) investigative commission found local police and courts to be collaborating in the systematic extraction of revenue from the city's Black residents to fund their own operations. Policing, adjudication, and jailing had become increasingly organized around generating funds. The DOJ's widely publicized findings sparked interest and concern about monetary punishment among scholars, policymakers, advocates, the media, and the public (Harris, 2016; Harris et al., 2010; Martin et al., 2018; Taggart & Campbell, 2015). Recent scholarship has demonstrated that LFOs have unequal and disproportionate effects on the lives of the poor (Harris, 2016; Katzenstein & Waller, 2015). Particularly, financial penalties reduce income and increase further run-ins with the criminal legal system (Harris et al., 2010). This study extends that previous work through an in-depth examination of the inadequacies of current systems that are set up to address inability to pay, a further examination of the ways in which being poor exacerbates the challenges associated with LFOs, and finally, by reviewing policy considerations based on the results of our analysis.

We interviewed 121 defendants responsible for paying LFOs in Texas and New York, the vast majority of whom were coping with serious economic hardships. Through our exploration of debtors' narratives about their experiences dealing with criminal legal debt, which were supplemented by insights gleaned from 490 hours of ethnographic observations in criminal courts, we developed two comprehensive thematic findings. First, existing mechanisms surrounding indigency are systematically inadequate. By and large, poor defendants lack the means to resolve their criminal legal debts, and oftentimes, alternatives are unavailable or statutorily prohibited (e.g., mandatory surcharges in New York). Being unable to pay creates a unique set of obstacles, consequences, and stressors, and tends to prolong one's criminal case and overall system involvement. The insufficient procedures for handling indigence and lack of legally or practically viable alternatives means that monetary sanctions can create compromising situations in which poor defendants must make difficult choices amid conflicting obligations. Second, legal debt leads to burdensome, sometimes

unmanageable time requirements for low-income defendants. Even alternatives to payment such as community service are time-intensive. Simply appearing in court can prove especially difficult for defendants with insecure employment, transportation barriers, and child care responsibilities. Based on these findings, we proffer three sets of policy recommendations, all designed to improve the system of indigency and decrease racial and economic inequality in the criminal legal system.

## Poverty and Monetary Sanctions

The carceral system's expansive growth from the early 1970s led to the warehousing of an unprecedented number of the urban poor. Theoretical work has proposed that prisons came to function as "rabble management" institutions (Fitzpatrick & Myrstell, 2011; Irwin, 1985; Tillotson & Colanese, 2017), designed to control and punish the lives of the poor just as the state commenced with welfare retrenchment (De Giorgi, 2017; Soss et al., 2011; Wacquant, 2009; Western, 2006). During the mass incarceration era, criminalized populations have become vast in number, yet highly concentrated among the most marginalized segments of society. By the end of 2016, approximately one in 38 adults in the United States were either in correctional custody or under community-based supervision (Kaeble & Cowhig, 2016). Copious evidence from national, state, and local jurisdictions has repeatedly shown that criminal justice involvement disproportionately affects people of color, particularly African Americans, and the poor (Wakefield & Uggen, 2010). Using 2014 Internal Revenue Service data, one recent study (Looney & Turner, 2018) found that less than half (49%) of working-age men were formally employed three years *before* they were incarcerated, and just 13% reported annual income exceeding US\$15,000. They did not fare much better after prison. Just 55% had any formal earnings one year following their release. Among those who did secure employment, 80% earned less than US\$15,000 per year.

There are numerous aspects of the criminal legal system that uniquely disadvantage the poor. Bail, for instance, extracts millions of dollars from structurally disadvantaged communities and leads to pretrial incarceration for people who cannot come up with the funds or collateral to post bail or bond (Gupta et al., 2016; Page et al., 2019). With regard to jails and prisons, private firms contract with public corrections agencies to charge incarcerated persons for a wide range of basic services and goods, such as telephone communication and commissary items such as hygiene products and food (Harris et al., 2019; Page & Soss, 2018). These costs often spill outward and are borne by the families of defendants and incarcerated people. Monetary sanctions are yet another element in this mosaic of punitive resource extraction from institutional subjects and their support networks. Katzenstein and Waller (2015) describe monetary sanctions as an inverted welfare system that "taxes poor families to help fund the state's project of poverty governance" (p. 639). Others argue (e.g., Harris, 2016) that LFOs compound socioeconomic inequality by making those charged or convicted of crimes—who are mostly poor to begin with—pay for their own punishment.

In addition to the financial hardship that they inflict, monetary sanctions uniquely disadvantage the poor by leading to onerous time burdens. Time and waiting are additional costs that play an important role in many criminal legal contacts. This is evident in literature on the maintenance of family relationships during incarceration. Visiting loved ones in prison requires that people submit to invasive, time-consuming security procedures and involves significant periods spent waiting idly (Comfort, 2009). Waiting is central to the experience of incarceration, whether pretrial or post-conviction. It involves waiting for hearings, phone calls, and waiting to be released (Cohen & Taylor, 1972; Irwin, 1985). Prior work on misdemeanor courts illuminates the importance of time as well. Simple cases require numerous court appearances and serious costs for defendants (Feeley, 1979). Kohler-Hausmann (2018) describes the inordinate amount of time spent on delays and compliance, including the *de facto* requirement that defendants take time off from work. The burdens of waiting borne by the poor extend beyond the criminal legal system. Research on the welfare system and eviction shows that time requirements create serious obstacles and stress for poor communities (Auyero, 2012; Piven & Cloward, 1971; Redko et al., 2006; Sullivan, 2018).

## **Data and Method**

### ***Research Setting***

This study focuses on the experiences of people dealing with criminal legal debt in Texas and New York. In each state, the research team identified three distinct regions—and at least two local jurisdictions (e.g., city, county) within each region—in which to conduct interviews with criminal defendants and observe courtroom processes. Sites were selected to maximize variation with regard to population density and other local characteristics (Harris et al., 2017).

Both Texas and New York are populous states with significant geographic and demographic diversity. Texas has more than 1,000 incorporated cities and 254 counties—more counties than any other state—including sprawling urban jurisdictions, medium-sized suburban districts, and rural exurbs. Across the state, there are 807 justice courts, 928 municipal courts, 515 county-level courts, and 465 district courts. With regard to political leanings, it has both very conservative cities and counties as well as very liberal cities and counties (Harris et al., 2017). Selected jurisdictions included three counties—one in Central Texas, one in the Southeast, and one located on the U.S.-Mexico border—and municipalities within them. New York contains 62 counties, but more than 40% of the state's population is concentrated in the five counties that comprise New York City. Given that jurisdictions across the state are wildly disparate in size, there are notable differences in how the courts are organized. Outside New York City, lower-level offenses are handled in city courts, and felony cases are heard in county courts, though in more rural parts of the state both civil and low-level criminal<sup>1</sup> matters fall under the authority of justice (i.e. town and village) courts. These sparsely populated jurisdictions lean more conservative and are less

well-resourced than other parts of the state; hence, the roughly 1,300 rural justice courts often rely heavily on revenue from fines. Many of these courts, which collectively handle over two million cases per year, regularly hold hearings without any attorneys present, even in criminal matters (Patnode et al., 2017). Given these distinctive features, researchers in New York conducted observations in two justice courts, in addition to the six primary jurisdictions.

Regarding the monetary sanctions regimes in Texas and New York, there are a number of commonalities. Some shared features include the following: all criminal convictions result in an assessment of fees or surcharges; fees are imposed for community supervision (i.e., probation, parole); driver's licenses may be suspended for nonpayment of vehicle and traffic-related fines, but not for other LFOs, with the exception of child support noncompliance (though this typically falls within the purview of civil rather than criminal law); and the revenue from fines and fees is generally shared between state and local governments, with the specific arrangements varying by the specific type of LFO. There are also numerous points of contrast between the two states. In New York, unpaid criminal surcharges are frequently converted to civil judgments. Surcharges in Texas refer to an entirely different type of LFO (i.e., specific to vehicle and traffic offenses), and neither surcharges nor other types of court debt are converted to civil judgment. Regarding alternatives to LFOs, legal actors in Texas appear to have greater discretion. They can, for instance, sentence defendants to community service. New York authorities may impose community service in addition to a fine or to offset some amount of a fine, but they cannot substitute community service for mandatory surcharges. Other differences include indigent defense fees (Texas imposes them, New York does not) and "poverty penalties," such as payment plan fees, interest, and additional fees for nonpayment. There are a myriad of consequences for nonpayment of LFOs in New York, but they generally do not entail poverty penalties. In Texas, however, they do (Bannon et al., 2010; Harris et al., 2017).

### *Sample and Data Collection*

To examine defendants' perceptions of and experiences with monetary sanctions and the various institutional processes related to LFOs, we interviewed 121 people with criminal legal debt—62 in Texas and 59 in New York. By and large, respondents were low-income. This comports with evidence about the socioeconomic demographics of people entangled in the criminal legal system, namely that they are mostly poor (Finkel, 2019). Though it also stands to reason that the large proportion of poor and low-income respondents reflected the study's inclusion criteria. By focusing on individuals with outstanding fines and fees, it is probable that we missed individuals who paid their monetary sanctions straightaway. Moreover, the gift card offered in New York and the cash offered in Texas as participation incentives were likely more attractive to individuals with limited resources.

To recruit potential respondents, research teams posted flyers near criminal courts, established relationships with probation and parole departments, and conducted in-person outreach outside of courtrooms and payment centers. Respondents were also

recruited among clients at a nonprofit reentry service organization. Respondents came from a wide range of backgrounds. In Texas, about one third of interviewees (36%) self-identified as White and 39% identified as Black. One third indicated Hispanic or Latino ethnicity. Almost half (49%) were below the age of 30 years. The New York sample was older on average—only 11 respondents (19%) were below the age of 30—and fewer self-identified as Latino (13%). Nearly half self-identified as Black (46%) and 31% identified as White. In both Texas and New York, two thirds of participants self-identified as men, and majorities reported household incomes below the poverty line.

The findings presented in this article draw primarily from interview data, though they are also informed by court observations. Researchers observed hearings in each of the six selected regions (plus two rural jurisdiction justice courts in New York), for a total of 240 hours in Texas and 250 hours in New York. While in the courtroom, we took detailed field notes observing courtroom interactions, demographic characteristics of all individuals' present, clothing, manner of speaking, word choice, case outcomes, and other assorted details. Observing numerous courtrooms and interviewing defendants from different locations did not give us a representation of every courtroom in the country, but observing courtrooms of various sizes, locations, legal settings, and demographic compositions gives us a fuller picture than what has been rendered in most previous relevant literature.

## **Analysis**

All interview transcripts and court observation notes were entered into NVivo, a qualitative data analysis software program. A codebook was developed in collaboration with a multistate team of researchers<sup>2</sup> over multiple stages of initial coding and inter-coder reliability testing. Once the codebook was finalized, all interviews were analyzed. We then specified common themes in the interviews by composing and comparing thematic memos. We focused on several codes, including the following, grouped by topic: (a) LFOs: "payment," "consequences of nonpayment," "alternatives to payment"; (b) ability to pay: "assessing ability to pay," "inability to pay," "indigence," "community service," "fairness," "post-conviction hearings," and "mandated program participation"; (c) issues related to "finances," "needs," "stress and strain," "housing," "transportation," and "employment." By examining the interviews holistically and then focusing on the specific passages that we used the above codes to pinpoint, we identified inadequacies in the current system of assessing indigence and ability to pay and the various difficulties faced by poor defendants.

## **Findings**

### ***Shortcomings in the Indigency Process***

More often than not, defendants could not afford to pay fines, fees, and other monetary sanctions outright, and they often struggled to make payments even when given

substantial period of time (i.e., months) in which to do so. We found that current systems set up to address this inability to pay were severely lacking. Katie, a 26-year-old White woman from a rural town in upstate New York, struggled to make ends meet. Her boyfriend, 32-year-old Jeremy, with whom she recently had a baby, also owed court debt. Although they tried to manage payments, their LFOs were a significant hardship, and they found that the court were unwilling to assist them despite their limited means. Katie explained the economic constraints the couple faced:

It's hard, especially when we scrap for a living. So it's like, you don't know how much you're going to make per day. You don't know how much you're going to be able to afford per month to put on your fine. And it makes it hard, especially when you've gotta pay rent. You've gotta pay your electric. You've gotta pay for food. You've gotta pay everything out of pocket. Especially baby bills now. It's hard . . . And it's like, life crumbles on you all at once. And all they care about is money.

The barriers she and Jeremy encountered when attempting to deal with their fines only intensified their impression of the court as unjust:

They know, like, we've explained to them, you know. We can't make the payments every month. We may be late some months or whatever. We may be able to pay at the end of the month. They won't work with us. They just went to give us bench warrants and send us to jail.

Defendants who found themselves in particularly dire circumstances may have been eligible for some form of relief, through financial hardship hearings, for example. Occasionally respondents like Katie and Jeremy sought to negotiate with the court, but many others, including those who may have been successful, did not seek relief for four key reasons. First, many defendants were inadequately informed of procedural pathways for seeking waivers, reductions, or alternatives to monetary sanctions. Second, relief often translated to additional burdens such as community service requirements that defendants did not have time to complete. Third, inability to pay calculations failed to take their whole financial situation into account. And finally, the legal options that were available to defendants in terms of assessment of indigence and subsequent relief were quite limited. Insofar as this last point is concerned, the states "had some legal language on indigence, but the process of indicating indigence and the assessment of ability to pay" were inconsistent at best (Shannon et al., 2020, p. 278). It then followed that indigency hearings and adjustments generally were not standard practice.

When asked why they did not file for indigency or complete alternatives, some defendants responded with bemusement, indicating that they did not know that any such options existed. Others did not have the time or ability to complete them. Remy, a 37-year-old White woman in a small Texas suburb, recounted pleading with the prosecutor for relief. She argued that, because she was without employment, it was impossible for her to pay her fines, but the prosecutor would not budge. Crucially, the



prosecutor failed to mention alternatives that Remy could have pursued, even though this was her first offense. The prosecutor also made no mention of an inability-to-pay hearing.

Marie shared a similar story. A 27-year-old Latina woman from Texas, she was assessed fines and fees totaling roughly US\$1,000 for speeding and driving without registration. She explained that she simply did not have the money to pay, but was unaware of indigency:

It's been really hard. Especially when I wasn't working and didn't have the money, I know it's there and I want to take care of it but it's just I couldn't do it. Didn't have no resources at the time. Then I didn't know they have, I guess it's some type of program if you're on assistance and then they kind of reduce it or take it away. And I didn't know that, and I was on assistance, didn't know that. And they could have reduced it or maybe even taken it away, and I didn't know that.

Defendants frequently contended with other non-LFO debts, though this factor was rarely captured in ability-to-pay calculations. Armani, a 21-year-old biracial woman from Texas, carried medical debt from several visits to the emergency room for her infant. The earnings from her job as a waitress tended to fluctuate, so she strained to keep up with her medical debt, child care costs, rent, and other essential expenses. Dealing with US\$500 in LFOs on top of that was crippling. Jess and Will, a co-residing couple, each of whom identified as White and 33 years of age, faced similar struggles in New York. Before even accounting for their respective LFOs, they were in serious financial distress. Their incomes put them well below the federal poverty level, and they relied on Will's mother for housing. He was on medication to manage his bipolar disorder but had difficulties accessing care. He related that, "Um, I'm supposed to be on medicine. I'm working on going to get a refill . . . I'm not seeing a psychiatrist right now, I'm waiting on that too." His issues with mental health and access to care exacerbated the strain caused by financial instability and made their fines and fees doubly unmanageable.

Poverty renders LFO payment difficult for a myriad of reasons, beyond the obvious fact that one cannot pay money that one does not possess. John, a young Black Texan, was managing to stay afloat until he lost his job. Consequences cascaded from that point: he had to drop out of school, went into debt, and was unable to get to court to take care of his payments. Not appearing for court or failing to make payments can have serious consequences such as ending up in jail. Regina, a multiracial 38-year-old woman from a rural New York jurisdiction, offered: "It's very stressful 'cause I'm like, wow, if I don't put a payment on my fine, I might be going to jail today . . . That's usually what they do." She then indicated that this had happened to her for prior nonpayment of a fine. They "picked me up on a warrant . . . Um, I served a little bit of time in jail then . . . came out and had to pay the remaining balance of my fine." She recalled having served 15 days in jail for nonpayment, then having to come up with the remaining US\$200 after her release. The current system of indigency misses these complexities and enacts harsh punishments on defendants who do not make their payments.



Another gap in the current system of indigency is the failure to take into account the complexity of debtors' lives and their sometimes conflicting obligations. Whether and how to pay LFOs was a decision often fraught with trade-offs and unintended consequences. Courts treat nonpayment as willful neglect of responsibility rather than a difficult choice that defendants felt they had to make. Adhering to court-ordered payments could mean putting other urgent responsibilities on the back burner. Oftentimes, these decisions negatively impacted respondents' families. Kimberly, a 40-year-old Black woman from a large city in Texas, explained as follows:

It has been very stressful and it's been a burden. Because then you have to choose between getting something maybe I really need for my kids and paying this and taking care of it to try to get it cleared and off my back. So it's been really hard. Especially when I wasn't working and didn't have resources at the time . . . I was just trying to maintain and that's why I kind of put it off for a while 'cause I was just really struggling. So from that particular fine, other fines came. Then it just multiplied and multiplied and multiplied. And then as soon as you pay it off, then there's something else, the conviction was put on there. So it was like the day after I paid something, next day convictions on there. So then there's more money involved. It's like never ending.

Kimberly had to make the stressful yet understandable choice to support her children rather than paying her fines, but this led to poverty penalties in the form of additional accumulated debt. This also led her to drive without a license thus putting her at further risk for legal trouble. Other defendants elected to push their LFOs out of their minds because situational constraints meant there was little they could do to meet the requirements set by the court—such was Leah's response. The 24-year-old White woman from upstate New York conveyed a sense of futility about her efforts to deal with court debt:

Leah: And my mail goes to my parents' house, so I, I don't know if there's been any other correspondence or what happens because I missed the date or what . . . So I don't really know. It's kinda one of those things where I don't really want to know but I should know . . . So I know it's there, but I'm just pretending that it's not . . .

Interviewer: *How often do you think about it?*

Leah: Um, every day. Every day. Just because I just, I'm trying to clear everything up, but it just feels like I clean up one little mess and then the next, like, thing makes even more of a mess and I'm just trying to, like, scramble around . . . And I just don't have the means to really do anything right now.

Even when defendants managed to pay their LFOs, doing so left them with a sense of being caught between a rock and a hard place. Theo, a middle-aged Latino man in Texas, decided to pay his fines with money that he had put aside for baby supplies and rent. At the time, he had recently taken time off from work, so he was stretched unusually thin. Having to pay monetary sanctions, rather than covering other basic needs,

provoked considerable stress. Defendants in New York also had to make sacrifices amid multiple, conflicting financial demands. Gabe, a 40-year-old man in a rural jurisdiction, characterized his criminal legal debt as a complex stressor, as it impacted him in a number of ways. For instance, it compromised his ability to pay rent:

Right now, I mean, I don't have a job. It's really affecting me because then from the rent I gotta take that 35 dollars. So it is affecting me, yes . . . If I'm late on my rent, I mean, I have to let know the landlord. Landlord will give me time to pay the rest of it . . . I will get a late fee on top of that . . . Probably 25, 50 dollars, which is gonna even kill me more . . . I'm gonna pay my rent. Where my kids gonna live at? . . . But I have to make the decision to at least pay some of it . . . So they can see that I'm making an effort . . . And I can have my place and maybe I can get yelled at from the judge.

For Gabe, keeping his family housed while also complying with court orders made for a tenuous balancing act. Frequently, decisions about what financial obligation to prioritize came down to a question of which consequence was worse. Fines and fees became more urgent than housing, phones, and utility bills when nonpayment threatened a warrant and arrest.

### ***Time Burdens***

Because low-income participants were unable to settle their LFOs, their criminal cases often dragged out, extracting far more time from the debtor than if they had been able to pay immediately. Outstanding balances routinely meant having to return to court for multiple compliance hearings and spending half or full workdays inside courtrooms, unable to do anything but sit quietly and wait for one's case to be called. If one spoke to another person, dozed off, or looked at their phone while sitting in the gallery, they would be scolded by court officers. Repeated compliance and post-conviction hearings were often required on top of mandated programs (most of which came with additional fees), community service hours, and other undertakings geared toward dealing with one's court debts (e.g., job-seeking, pawning off personal belongings). In Texas, unequal time burdens were particularly evident in low-level misdemeanor cases where well-off defendants were able to resolve their case by choosing to pay the full fine amount online or over the phone.<sup>3</sup> For defendants who were unaware of these options or lacking adequate funds, a citation meant going to court. The majority of courtrooms we observed were open only during regular business hours. This posed a challenge for many respondents who struggled to make alternative child care arrangements or for whom taking time off from work jeopardized their jobs or reduced their earnings.

One option for financially strapped defendants was to go to court and request an extension.<sup>4</sup> For one New York City couple—each of whom owed fines—that meant coming to court every couple of months and arranging child care for their infant daughter. They had been caught with a small amount of marijuana (“like half a joint”), at which point they were arrested and held in custody for two days. Three years had elapsed since their arrests, but given their sub-poverty-line income, they had yet to

come up with the roughly US\$300 they owed. They just kept returning to court and requesting more time. Neither could say how many times they had gone to court as a result of that incident. It had transformed into a routine chore for them.

Marie, a Latina woman in Texas, was initially dismayed and then frustrated by the “procedural hassle” (Kohler-Hausmann, 2018) of repeated court appearances. She explained how she would show up to court based on the information she was given, take time off from work, only to wind up with continuances:

On a day that I had been given a specific court date and a specific time, the clerk says, “The judge does not take these past two. Can you hang out till two?” after I had been set to be there at 8:30, and I said, “No, I took time off work because you told me to be here on this day at this time and I’m already taking time off work, and I cannot stick around for longer, and I cannot come on another day after you told me to come here on this day.” So after I had showed up for my original court date, I had to go back on a different date to pick up the paperwork after the judge felt like looking at it, which was not my court date . . . It’s been a process that’s taken, I want to say months. And within those months, constant visits to the law library and the court.

In addition to spending months dealing with their cases, multiple court appearances translated to lost wages. Defendants sometimes showed up to court expecting that their hearing would be over within an hour or two, after which point they could return to work. Stuck in court all day and missing scheduled work shifts, these defendants quickly learned just how long the process could take. Isiah, a 41-year-old Black man in Texas, shared his experience:

I wanted him to be in there. I don’t want this case to be reset because I don’t have time and stuff right now. They’re causing problems in my life because I work and right now we’re only getting 40 hours a week on our job. And by me coming here, I’m missing out on money by being here.

Fortunately, Isiah’s employer was understanding and able to accommodate him. Nevertheless, he missed out on a full day’s earnings because his job paid hourly wages and offered no paid time off:

Actually, I thought the process was gonna be a little quicker than this because after I left here I was gonna go back to work for the day. But as you can see, I’m still sitting here. They have a trial going on right now so I might be here on up until tonight.

Taking time off from work could be especially frustrating when court actors informed defendants that they would need to return on another day due to their cases being reset. This occurred for any number of reasons—if, for instance, the defendant forgot a document, or because of some bureaucratic issue beyond the defendant’s control or understanding. Jack, a 53-year-old Black man from New York, described a protracted issue with traffic violations. His car had been impounded two years earlier, after which point his insurance lapsed. He settled everything with the Department of

Motor Vehicles (DMV) and went to court. But then, when the court made an issue of the tickets he thought he had resolved, the confusion between the two agencies left him in a state of vexation:

So I went to DMV. I couldn't go that Monday because I babysit my, uh, granddaughter then I go to work. And so I went that Tuesday . . . they straighten it out . . . They gave an interim license, and I took it and gave it to the judge . . . This is when we came to court the first time . . . And so I gave it to them, and instead of her saying, "Okay. You comply." Instead of that, then that's when she bring up insurance lapse and all this crap. But she didn't say which car. I was telling the last, uh, attorney, I was saying that was car from two years ago . . . It's a process. Okay? I don't like the process. You know. It's just like, uh, you know, people come and, like, when they was going in front of the judge. I mean, half the attorneys didn't even know, I mean, they weren't on the same page . . . the DA, nobody.

Delmy, a Black Texas woman, recounted the inconvenience of having to repeatedly return to court. She did not know that she was required to appear with an attorney and was told to come back at a later date after hiring one. This was all the more frustrating given that, "Now you missed the whole time you took off work just to go to this court thing, been here for hours, probably the last one to get seen. Then, once you're seen, it's just get rescheduled and then you got to do it again." Some respondents vented irritation and resentment over having been forced to run a procedural gauntlet without having been told the rules to which they would be held until after they violated them.

Alternatives to fines and fees, most often community service, could provide some measure of financial relief, but satisfying those requirements seldom proved easy. To the extent that community service and other alternatives functioned as a taxing drain on participants' time, they represented yet another, slightly more indirect way in which monetary sanctions weigh disproportionately on the poor. Those with resources could simply pay their fines and fees and be done with it, whereas low-income defendants, even if relieved of the financial pressure of LFOs, paid a comparatively steep price via the extraction of time. For Marie, juggling three low-paying jobs rendered her community service hours a virtually insurmountable task. Ruth, a White woman from Texas, struggled to complete mandated classes due to family and child care duties, plus a lack of reliable transportation:

My kids were at least 10, 12, and 15 and they didn't need . . . but there's young women out there with these young kids and they . . . you're trying to work to pay for the fines and yet you got to be at this class at night. It's just, I don't know how half of us even do that. I really don't . . . I had to find a way out there, the buses don't run that late. Every Thursday night, there's class. Run out there to do a UA (Urinary Analysis) or Breathalyzer and even if it's on your weekend. I've had to get up on a Sunday and find my way out there just to do a UA before, but I guess that's the price for freedom.

Wes, a 35-year-old Black man from New York City, discussed the program requirements of his domestic violence plea. His particular program had stringent rules about

attendance and payment, which had the effect of dragging out participation and costs along with it:

There was a . . . 26 week program. I ended up on close to 8 months . . . This program is literally designed to try to make you fail. And, you know, go to jail. The, the rules to this program were so, uh, it was so harsh, you would not believe it. Number one, you got, out of 26 weeks, we are talking about over six months. You're only allowed to miss three absences. Three. Anything over three absences, they violate you, and you have to come to court the very next day because they're going to put a warrant out on you. You cannot walk in class past 4PM . . . And I said to myself a million times when, like I was getting off work and it was like three thirty . . . I mean it was like literally 3:55, I'm getting off the train. And literally, by the time I got right here to the corner, it was no use. They violated me like twice. So, when I knew I had the third absence and stuff, I just went ahead I took, I took the next day off work and then to go to uh, come right down here to the courthouse . . . So it was like, back and forth, back and forth . . . also with paying, um, the fee every week, for each class.

Onerous time burdens could also function as a deterrent to seeking justice. We asked one defendant why they did not pursue trial even though they were confident in their innocence. They explained that taking the case to trial would mean having to appear in court over and over. Given health issues, they could afford neither the time nor the energy that such a process would demand. It was not worth the fight. They preferred to just take the plea offer and "get it over with."

## **Policy Recommendations**

The narratives shared by defendants from Texas and New York shed light on the poverty-entrenching effects of LFOs, the difficulties faced by people who owe criminal legal debt given their typically strained resources and life circumstances, and the inadequacies of the current indigency regime. In many cases, it is arguably unreasonable to hold individuals accountable for monetary penalties that might imperil their ability to satisfy their basic needs and those of their family—or, that may violate public safety interests by pressuring debtors to meet their many, sometimes conflicting financial obligations through illicit means. Recognizing the intractability of certain problems with imposing LFOs on the poor, we propose a series of policy recommendations organized around the following themes: (a) enhancement of procedures that address indigency, (b) equity in monetary sanctions, and (c) accessibility and alleviating burdens.

### ***Enhancement of Procedures Addressing Indigency***

Indigent defendants are often unaware that courts might offer reductions or waivers for fines and fees. In Texas, one is legally entitled to an indigency hearing, but this statutory right is dubious if defendants are not informed of it and thus unable to leverage it. In New York, defendants can request a financial hardship hearing, though indigent status does not cover all LFOs. Many respondents, particularly those in

Texas for whom indigency hearings could lead to waivers, were unfamiliar with these procedures. The responsibility to ensure that defendants are able to pay their fines and fees should be borne by the state, rather than by the individual who may not have the resources or wherewithal to seek proper information and exercise their rights. Courts should be mandated to inform defendants of their options to claim indigent status and establish a clear procedure for determining indigency.

Furthermore, the scope of indigent qualifications should be expanded and codified. This recommendation is consistent with those of the American Bar Association (ABA) and legal challenges occurring in some states such as New Jersey and California (Fernandes et al., 2019). Currently, there is no statutory means test to determine indigency in Texas. These determinations fall within the purview of judicial discretion. In New York, attorneys from legal aid societies and public defender offices typically consult defendants and determine eligibility for public counsel, though this process is not carried out in a uniform, standardized manner.<sup>5</sup> However, in rural justice courts, indigency standards are essentially moot because these courts often hold hearings without any attorneys present and even judges typically lack formal legal training. Like the ABA (2018), we recommend establishing a baseline where any defendant who receives public assistance or qualifies for a court-appointed attorney automatically qualifies for indigent status. Our findings related to debtors' conflicting obligations also demonstrate that simple income and asset calculations may not adequately capture the constraints on individuals' ability to pay. Defendants face difficult and often unexpected hardship and should not be expected to prioritize monetary sanctions over basic human needs such as shelter, health care, and child care. Qualifying procedures for indigent status must also take into account the complexities of people's lived experiences. Therefore, for those defendants who do not qualify automatically, an opportunity to explain why the payment of fines and fees presents an unnecessary financial burden should be provided.

Finally, we recommend that courts institute a process for retroactively determining indigent status and forgiving legal debt. Given that prior and existing amnesty programs have proven grossly inadequate to deal with the scale of the monetary sanctions debt problem (Zhen, 2019), we argue that debt forgiveness programs should be as comprehensive as is administratively feasible. Financial, legal, and personal circumstances change, and indigency standards must have sufficient built-in flexibility to account for this. For example, a defendant may not qualify for indigent status at the time of conviction but may lose their employment, assume additional child care responsibilities, suffer from an injury or illness, or face a number of other unexpected and unanticipated difficulties. Courts should establish procedures to alleviate financial burdens for these situations.

### *Equity in Monetary Sanctions*

A foundational problem underlying the issue of criminal justice debt is that LFOs are experienced in completely different ways depending on the defendant's socioeconomic

status. For high earners, a US\$300 traffic ticket is likely a minor inconvenience that can be paid and put in the rearview. For a person experiencing poverty, that same fine may prove ruinous. This clearly violates the principle of equity, which asserts that penal and legal systems should take care to avoid deepening social inequalities by disproportionately punishing already disadvantaged groups (Travis, Western, & Redburn, 2014).

There are a number of actions that jurisdictions could pursue to mitigate this issue. If adopted, the following measures would surely allay some of the disparate impact of LFOs on the poor. First, jurisdictions should take stock of their existing fines and fees to evaluate the necessity and justifiability of each, assess the extent to which LFOs have served their intended purposes, and examine any unintended consequences. As suggested by Martin et al. (2017), such a process should be undertaken by independent commissions because courts, police departments, and other agencies have vested interests in maintaining LFO revenue (Colgan, 2017a). Second, jurisdictions should eliminate monetary sanctions that do not stand up to scrutiny. The New York City Bar (2018), for instance, has recommended that the state eliminate mandatory surcharges or impose them on a sliding scale, as they are unduly burdensome for indigent debtors and their families, and because they serve the same function as taxpayer funding of the criminal legal system. Third, jurisdictions should eliminate poverty penalties, which are additional fees and sanctions imposed when debtors fail to pay LFOs within a designated timeline. Poverty penalties do little to improve compliance among the poor and indigent. Rather, they pile onto existing debts, further entrenching poverty and dragging out system involvement. Fourth, echoing the New York City Bar's recommendation, jurisdictions should change how LFOs are calculated to account for defendants' ability to pay. One such model advocated by other scholars (Colgan, 2017b; Martin et al., 2017), and observed in Europe, is the day fine. Day fines are determined based on the defendant's income as well as the severity of the offense (Kantorowicz-Reznichenko, 2015); hence, they are less regressive than typical fines in the United States. In addition, indigent defendants should be exempted from "user" fees, such as public defender fees.

Finally, we recommend that incarceration not be used as a consequence for nonpayment of LFOs. It is challenging to ascertain how many people are incarcerated as a result of criminal justice debt because jurisdictions tend not to collect such data. However, available estimates suggest that in some places people with outstanding LFOs make up a quarter or more of jail populations (Seyler, 2015, as cited by Colgan, 2017a; United States DOJ, 2015). Despite the U.S. Supreme Court's ruling in *Bearden v. Georgia* (1983) that it is unconstitutional to imprison an individual for nonpayment of a fine if that person lacks the financial means to comply, debtors frequently wind up in jail because it is difficult to legally establish that one's failure to pay was non-willful. Locking debtors up renders them further worse off financially. One might be evicted or lose a job, and in the event that the individual cannot pay, imprisoning them will do little to induce payment. Incarceration for nonpayment is therefore unconstitutional, counterproductive, and costly for the local jurisdiction. Indeed, such practices have come under increasing scrutiny in recent years, with some successful legal challenges occurring in Arkansas, Alabama, and Mississippi (Fernandes et al., 2019).



## ***Accessibility and Alleviating Burdens***

Our findings build upon previous scholarship to demonstrate that the process can in and of itself be part of the punishment (Feeley, 1979; Kohler-Hausmann, 2018). Burdensome time requirements include showing up to court numerous times, waiting in long lines, taking off time from work, fulfilling court-mandated programs and community service. These are just some of the ways in which courts demand time from defendants. These requirements disproportionately affect poor defendants who are more likely to show up to court to contest charges and have more difficulty taking time off from work and finding child care. To address these concerns, we make several recommendations.

First, courts should allow defendants to fulfill responsibilities remotely whenever possible. For example, courts should establish digital and phone-based communication systems that allow defendants to learn about all of their options and decide whether to contest their charge prior to appearance. Because research shows the predatory nature of private service providers in the criminal justice system (Page & Soss, 2018), we strongly recommend that these systems not be privatized. For low-level offenses, defendants should be able to speak to a clerk or prosecutor online or over the phone to discuss their options. In Texas, most defendants who appear in court for traffic offenses are offered defensive driving courses as a way to keep their offense off their record. This choice could be made available prior to appearance. For defendants who choose to pay their fines and fees, payment—including the establishment of payment plans—should be made available online or over the phone. Defendants who want to file for indigent status or request alternatives to payment could submit the necessary paperwork through electronic or paper mail. For defendants who choose to come in, we encourage courts to use an online and/or telephone-based appointment system or at least give defendants more than one appointment time option. Docket times should reflect employment realities. Holding all dockets from 9.00 a.m. to 5.00 p.m. makes appearance particularly difficult for many working defendants.

Finally, one promising idea that has been implemented in several local jurisdictions is the practice sometimes referred to as mobile court. One large urban jurisdiction in Texas holds court in community establishments such as the library every few months and allows defendants to come in and take care of any outstanding legal issues, including outstanding warrants (Leahy, 2019). This enables defendants to stay within their communities and quickly and conveniently come into compliance. In summary, we recommend three specific policy recommendations to alleviate burdens and make the monetary sanction regime more accessible.

## **Conclusion**

In-depth interviews with 121 criminal defendants, courtroom observations, and existing scholarship demonstrate that the monetary sanction regime reflects and reproduces socioeconomic as well as racial inequality (Harris, 2016; Katzenstein & Waller, 2015; Martin et al., 2018). Analogous to other criminal justice institutions and sanctions, the

poor, and particularly, poor people of color, suffer disproportionate effects from the imposition and collection of LFOs. This article builds upon existing work that examines how monetary sanctions reduce household income and complicate individuals' entanglements with the criminal legal system (Harris et al., 2010). Interview data from this study demonstrate that courts inadequately addressed inability to pay. Defendants, already facing poverty, were likely to be incapable of meeting the financial requirements imposed by the court and were often unaware of alternatives, such as applying for indigent status or completing community service hours. Even if defendants were able to secure the funds necessary to satisfy their court-imposed obligations, they were faced with difficult and sometimes impossible decisions. Participants relayed circumstances in which they were forced to choose between paying their rent and paying fines, buying groceries for their families and paying fees, and in some instances even resorting to illicit activity, thus risking additional criminal convictions, incarceration, and public safety.

Interviews and courtroom observations also illuminated excessive time burdens and the limitations of the currently offered alternatives. Demands on defendants' time and accessibility issues proved especially burdensome for those without secure employment, paid time off from work, and alternative child care options. These insights build upon the work of Feeley (1979) and Kohler-Hausmann (2018) by providing additional evidence for the proposition that the process is the punishment. Defendants described showing up to court over and over again, and during our own courtroom observations, we witnessed scores of continuances and orders to show up again at later dates. We also witnessed defendants being sent home without explanation and being reprimanded for bringing their children to the courtroom, despite the fact that they lacked other options.

To address the unique burdens experienced by the poor and to contribute to the amelioration of inequalities in the monetary sanction regime, we put forth a series of policy recommendations revolving around the themes of enhancement of indigence, equity, and alleviating burdens and improving accessibility. In regard to indigence, we recommend (a) informing defendants of rights and procedural options related to indigent status, (b) expanding the scope of indigent qualification, (c) instituting comprehensive ability to pay determinations that take into account lived experiences and difficult choices, and (d) enacting retroactive indigence/debt forgiveness. Specifically, recommendations targeting inequities include (a) jurisdictional audits of existing fines and fees by independent commissions, (b) eliminate unnecessary fines and fees, (c) eliminate poverty penalties, (d) scale LFOs to income, and (e) halt incarceration for nonpayment. Finally, to address burdens and accessibility, we recommend (a) instituting public systems for payment and communication with the court, (b) establishing worker-friendly hours and scheduling practices, and (c) exploring alternative systems, such as mobile court to make court appearance more accessible and defendant friendly.

## **Acknowledgments**

We thank the faculty and graduate student collaborators of the Multi-State Study of Monetary Sanctions for their intellectual contributions to the project.

## Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

## Funding

The author(s) disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: This research was funded by a grant to the University of Washington from Arnold Ventures (Alexes Harris, PI). Partial support for this research came from a Eunice Kennedy Shriver National Institute of Child Health and Human Development research infrastructure grant, P2C HD042828, to the Center for Studies in Demography & Ecology at the University of Washington.

## Notes

1. The criminal jurisdiction of town and village courts is comparable with that of city courts elsewhere in the state. They handle misdemeanors and violations, and hold preliminary hearings for felonies (New York Criminal Procedure Law §§ 10.10, 10.30; see also Esposito, 2017).
2. These data were collected as part of a multistate study of monetary sanctions. The codebook was developed in collaboration with researchers in California, Georgia, Illinois, Minnesota, Missouri, and Washington, as well as New York and Texas (Harris et al., 2017; Shannon et al., 2020).
3. In New York, defendants must usually pay court-ordered legal financial obligations (LFOs) in person, at cashiers' windows or "parts." Exceptions to this include some LFOs for vehicle and traffic offenses, encumbrances on inmate accounts if debtors are incarcerated, payments collected by parole and probation authorities, and restitution payments made to separate agencies (e.g., Safe Horizon in New York City).
4. Extensions could be granted for fines in New York; when mandatory surcharges were not paid, the courts typically entered them into civil judgment.
5. Among the key findings of a large-scale study of indigent defense services in New York conducted by the Spangenberg Group (2006) were the following: performance shortcomings related to the fragmented nature of New York's county-operated and financed indigent defense services; a lack of eligibility standards and determination procedures; and egregious inadequacies in state funding of constitutionally required public defense, amounting to an unfunded mandate imposed by the state onto the counties.

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### Author Biographies

**Ilya Slavinski** is a PhD Candidate in Sociology at the University of Texas at Austin. His work examines relationships between the state and its subjects, concentrating on punishment practices in misdemeanor courts.

**Kimberly Spencer-Suarez** is a PhD Candidate in Social Work at Columbia University. Her research focuses on the intersection of poverty and punishment, including the macro- and microsociological dynamics and policy dimensions of state-initiated debt obligations among people involved in the criminal legal system.