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**Debt Arising From Illinois' Criminal Justice System:
*Making Sense of the Ad Hoc Accumulation of
Financial Obligations***

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Table of Contents

I.	INTRODUCTION	1
II.	FINANCIAL OBLIGATIONS IN THE ILLINOIS CRIMINAL JUSTICE SYSTEM	6
A.	Restitution	6
1.	<i>The Mechanics</i>	6
2.	<i>Priority Compared to Other Financial Obligations</i>	7
B.	Fines	9
1.	<i>Discretionary Fines</i>	9
2.	<i>Mandatory Fines</i>	9
3.	<i>Pre-Sentencing Incarceration Credit</i>	11
C.	Fees	12
1.	<i>Court Fees</i>	12
2.	<i>Corrections Fees</i>	25
D.	Distribution of Fines and Fees	29
1.	<i>County Special Revenue Funds</i>	30
2.	<i>State Special Revenue Funds</i>	30
E.	Relief from Financial Obligations	32
1.	<i>Modifications, Payment Plans, and Waivers/Revocations</i>	32
2.	<i>Community Service in Lieu of Payment</i>	34
III.	COLLECTION	36

I. INTRODUCTION¹

When a person enters the criminal justice system, a complicated, ad hoc system of financial obligations awaits. The financial obligations go by many different names: fines, fees, surcharges, assessments, restitution, just to name a few. And they are scattered through the Illinois Code, making them even more difficult to identify. Yet, when a person exits the criminal justice system, all of these financial obligations often converge to create a significant barrier to successful reentry.

As the government branch responsible for collecting and disbursing these financial obligations, the Illinois judiciary has long recognized how complicated the system of financial obligations is. In describing the “plethora of user fees and surcharges,” Chief Justice Benjamin K. Miller of the Illinois Supreme Court remarked in 1991: “The complexity of the structure of various charges is such that they are not uniform and are confusing. It has been impossible for the court system to apply the charge in a consistent and coherent manner.”² Little has changed in the last eighteen years. Today, the Administrative Office of Illinois Courts distributes to chief judges the *Manual on Fines and Fees*, a 500-page cheat sheet of all civil and criminal financial obligations authorized by Illinois statutes and the different funds they flow into.

The universe of financial obligations is best classified by their purpose. Restitution, for example, compensates victims for their losses and attempts to make them whole. Fines punish the defendant for his actual conduct. Traditionally, courts calibrate restitution and fines to the particular facts of a case. By contrast, fees, the third and last type of financial obligation, tend not to be so refined. Instead, they usually aim to recover the costs incurred by the government in running the criminal justice system.

When viewed in isolation, each financial obligation seems unobjectionable. They do not, however, operate in isolation. Rather, they accumulate at multiple points from the pre-trial stage to the last day of correctional supervision, creating significant debt for people who eventually exit the criminal justice system. In a study of men returning home to Chicago after being incarcerated in Illinois prisons, one out of five men reported owing money because of child support, fines, restitution, court costs, supervision fees, and other types of financial obligations. Of this group, nearly three-fourths found those debts difficult to pay down.³

The amount of money that a person owes can really add up, especially where drugs are involved. Take the case of a person who has been convicted for the first time of simple possession of controlled substances, a drug offense of the lowest grade in Illinois. As the following chart shows, if his case took place in Cook County, he would owe, at minimum, \$1445. Below is a snapshot of how financial obligations accrue in the criminal justice system and how they are allocated to funds that finance many different activities.

¹ This report was made possible by a grant from the Public Welfare Foundation, for which the Sargent Shriver National Center on Poverty Law is grateful. Also instrumental was the research assistance of Apreye Baralaye, Kate Flannery, Matt Wolfe, and Emily Zoellner.

² Ill. Sup. Ct. R. 529 cmt. (2003), *available at* http://www.state.il.us/court/supremecourt/rules/Art_V/ArtV.htm.

³ NANCY G. LAVIGNE ET AL., URBAN INSTITUTE, CHICAGO PRISONERS' EXPERIENCE RETURNING HOME 10 (Dec. 2004), *available at* http://www.urban.org/UploadedPDF/311115_ChicagoPrisoners.pdf.

Figure 1

Financial Obligations For a Conviction for Class 4 Felony Possession of Controlled Substances

<i>Triggering Event</i>	<i>Type of Financial Obligation</i>	<i>Amount</i>
Felony Conviction	Filing Fee for Felony Complaint	\$190
Felony Conviction	State's Attorney Fee for Felony Conviction	\$60
Preliminary Hearing	State's Attorney Fee for Preliminary Hearing	\$20
First Felony Conviction	State DNA Identification System Fee	\$200
Conviction	Court Automation Fee	\$15
Conviction	Document Storage Fee	\$15
Conviction	Court Security Services Fee	\$25
Conviction	Court System Fee	\$50
Conviction	Mental Health Court Fee	\$10
Conviction	Peer/Teen Court Fee	\$5
Conviction	Drug Court Fee	\$5
Conviction	Arrestee's Medical Costs Fund	\$10
Conviction	Children's Advocacy Center Fee	\$30
Conviction	Juvenile Expungement Fee	\$30
Drug-Related Conviction	Trauma Fund	\$100
Drug-Related Conviction	Spinal Court Injury Paralysis Cure Research Fund	\$5
Drug-Related Conviction	Performance Enhancing Substance Testing Fund Fee	\$50
Drug-Related Conviction	State Police Services Fund	\$25
Drug-Related Conviction	Drug Assessment	\$500
Drug-Related Conviction	Crime Lab Drug Analysis	\$100
	FIXED SUBTOTAL	\$1445
Conviction	Violent Crime Victims Assistance	\$4 for every \$40 in fines
Conviction	Criminal/Traffic Conviction Surcharge	\$10 for every \$40 in fines
Drug-Related Conviction	Fine for Drug-Related Offenses	Street Value of Controlled Substances

Nearly half of the \$1445 due comes from fees triggered simply by the felony conviction. These fees would apply regardless of whether the felony conviction was of the lowest or highest grade. These fees support activities such as automating court records, maintaining diversion programs, and covering the medical costs of injuries to arrestees within Cook County Jail. None of them are directly related to the offense of possession of controlled substances or the specific circumstances of this person's case.

The remainder of the \$1445 flows from the fact that the offense was drug-related. Out of the six financial obligations assessed, only the fee for crime laboratory drug analysis covers a direct cost of the person's actions: the cost of analyzing the drugs possessed. The other five fees go toward funding tests for performance-enhancing drugs (Performance-Enhancing Substances Testing Fund), drug taskforces (State Police Services Fund), hospital trauma centers (Trauma Fund), research for a cure for spinal cord injury paralysis (Spinal Cord Injury Paralysis Cure Research), and either the state's drug treatment fund or Cook County's County Health Fund (Crime Lab Drug Analysis).

\$1445 is an incomplete figure because it only includes the financial obligations that are fixed by statute. Missing are several other court-ordered financial obligations whose amounts are variable. A conviction for possession of controlled substances charge, for example, comes with a fine equal to the street-value of the controlled substance. The court would also add \$14 for every \$40 that comprises the fine. Four dollars of each additional surcharge would be set aside for the state's Violent Crime Victims Assistance Fund, and the remainder would go to various law enforcement-related funds tied to the Traffic and Criminal Conviction Surcharge.

This table omits corrections-related financial obligations altogether. The type of financial obligations that the defendant would incur would depend on his sentence. For a first-time conviction of possession of a controlled substance, a person is likely to receive probation rather than incarceration. In that case, he would have to pay a monthly probation fee anywhere between \$20 and \$50 for each month of his sentence, depending on his financial circumstances. Proceeds from this probation fee help to finance the county's probation department.

The policy question here is not whether the state of Illinois should be funding all of these different activities. Rather, it is whether the funds for these and other activities should come from people entering and leaving the criminal justice system, many of whom are poor.

Over half of the people leaving Illinois prisons end up in Chicago,⁴ and most are concentrated in six neighborhoods with the highest levels of poverty in the city.⁵ Over half of the people released in 2001 did not finish high school.⁶ Employment barriers can further stifle the efforts of men and women with criminal records to move out of poverty. Numerous studies have shown, for example, that employers are less likely to hire a person with a criminal record.⁷ In addition to criminal background checks, more

⁴ NANCY G. LAVIGNE ET AL., A PORTRAIT OF PRISONER REENTRY IN ILLINOIS 48, fig. 25 (2003), available at http://www.urban.org/UploadedPDF/410662_ILPortraitReentry.pdf.

⁵ *Id.* at 51.

⁶ *Id.* at 29, fig. 14.

⁷ See generally, Harry Holzer et al., *Will Employers Hire Former Offenders? Employer Preferences, Background Checks, and Their Determinants*, in *IMPRISONING AMERICA: THE SOCIAL EFFECT OF MASS INCARCERATION* 205 (Mary Pattillo et al. eds., 2004); Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOC., 937 (2003), available at <http://www.northwestern.edu/ipr/publications/papers/2003/pagerajs.pdf>.

employers are also beginning to use credit reports in their evaluations of job applicants. These employers are less likely to hire someone carrying significant debt, which they can regard as evidence of bad judgment or risk-taking behavior.⁸ And yet, unless these men and women earn an income, their ability to pay off the debt that they accrued within the criminal justice system decreases significantly.

Low-income people may avoid some of these financial hardships if the court could relieve them of these debts. Yet, turning back to the case of a person with a first-time conviction for possession of controlled substances, only two of the financial obligations listed provide statutory relief for low-income defendants: the drug assessment and the criminal laboratory analysis fee. Their relief mechanisms differ. Community service is available as an alternate means of payment for the drug assessment, but the court may not reduce the drug assessment unless the defendant completes an approved drug treatment program.⁹ By contrast, the court may reduce or waive the criminal laboratory analysis fee when it determines that the defendant has no ability to pay, but it cannot accept community service as payment.¹⁰ Similar variations in relief mechanisms exist for other financial obligations as well.

\$1445 is a lot of money for one person convicted of a low-level drug offense. Given how frequently convictions for Class 4 felony drug possession occur, these financial obligations also mean a lot of money for the state of Illinois. It may be the lowest level drug offense, but Class 4 felony drug possession also accounts for the highest percentage of the Illinois Department of Corrections' incoming population. Indeed, in 2004, more people were sent to Illinois prison for possession of controlled substance than for any other single criminal offense.¹¹ Between 1995 and 2004, the number of people who were committed to IDOC for Class 4 felony drug offenses increased by over 100%, contributing significantly to an overall increase in admissions to IDOC over the same period of time.¹² In 2008, well over 4000 people entered Illinois prisons because of a conviction for Class 4 felony possession of controlled substances.¹³ Most of them were assessed with financial obligations in the four-figure range, creating a significant source of revenue for the state, county, and other government agencies.¹⁴ Whether this set-up makes sense from a policy point of view is one question that this project will ultimately grapple with over the coming year.

⁸ Jonathan D. Glater, *Another Hurdle for the Jobless: Credit Inquiries*, N.Y. TIMES, Aug. 6, 2009, at A1, available at <http://www.nytimes.com/2009/08/07/business/07credit.html?hp=&adxnnl=1&adxnnlx=1249624822-AdNTN6kxyhaWwYGWQhdODQ> (last visited Nov. 3, 2009).

⁹ See 720 ILL. COMP. STAT. 570/411.2(e)-(f).

¹⁰ See 730 ILL. COMP. STAT. 5/5-9-1.4(b).

¹¹ See Jessica Ashley & Christopher Humble, *A Profile of Class 4 Felony Offenders Sentenced to Prison in Illinois*, RESEARCH BULLETIN (Ill. Criminal Justice Info. Auth., Chicago, Ill.), Dec. 2005, at 3 (observing that “[d]rug offenders constituted 55 percent of Class 4 felony offenders committed to [Illinois Department of Corrections] in SFY04, with 94 percent having convictions for possession of a controlled substance”); see also CHICAGO METROPOLIS 2020, 2006 CRIME AND JUSTICE INDEX 19 (2006). For purposes of this report, IDOC’s incoming population does not include people who go back to prison for violating parole.

¹² Ashley & Humble, *supra* note 11, at 1-2.

¹³ KATHLEEN KANE-WILLIS ET AL., ILL. CONSORTIUM ON DRUG POLICY, NEW DIRECTIONS FOR ILLINOIS DRUG POLICY: AN UPDATE ON INCARCERATION FOR DRUG OFFENSES IN ILLINOIS 21, tbl.F1 (June 2009), available at <http://www.roosevelt.edu/ima/pdfs/NewDirectionsforIllinoisDrugPolicy0609%20.pdf>.

¹⁴ See, e.g., *People v. Jones*, 223 Ill. 2d 569, 574 (2006) (\$1224 in fines, fees, and costs for possession of controlled substances); *People v. Edwards*, 2008 Ill. App. LEXIS 287, *7 (1st Dist. 2008) (\$1274 in fines, fees, and costs for possession of controlled substances); *People v. Gildart*, 377 Ill. App. 3d 39, 43 (1st Dist. 2007) (\$1215 in fines, fees, and costs for possession for controlled substances).

This report represents the first step in making sense of the financial obligations assessed by the criminal justice system in Illinois. It is part one of what will be ultimately a two-year study of how this system works as well as how it compares to systems in other states. Although it makes some preliminary recommendations, a more in-depth analysis with further recommendations will take place over the upcoming year. For now, this report focuses on identifying the different types of financial obligations that exist within the criminal justice system, any mechanisms that might relieve low-income defendants from debt that they cannot pay, and the devices that government agencies use to collect overdue debt in Illinois.

II. FINANCIAL OBLIGATIONS IN THE ILLINOIS CRIMINAL JUSTICE SYSTEM

This section provides a bird's eye view of the different financial obligations that a person may encounter as he proceeds through the criminal justice system. The authority for these financial obligations are scattered throughout Illinois statutes, and they have different names, such as fines, penalties, assessments, fees, costs, and surcharges. How the criminal justice system treats a financial obligation, however, depends on its purpose, not its label. Restitution functions to make the victim whole by requiring the defendant to pay an amount that covers the victim's loss. Fines punish the defendant for his actions. Fees recoup the government's costs in labor and services.¹⁵ In moving from restitution to fines to fees, this section progresses from financial obligations that are the most narrowly-tailored to the specific circumstances of the defendant's case to those that provide the most general means of recovering costs for the government

This section also looks at the different types of funds that are financed by these financial obligations. In addition, it examines whether and how these financial obligations take into account the circumstances of low-income criminal defendants. In other words, are relief mechanisms in place to modify or revoke financial obligations that the defendant is legitimately unable to pay? Are payment plans or options to perform community service in lieu of payment available? Where financial obligations are imposed without an assessment of the defendant's ability to pay, relief mechanisms can help prevent criminal justice-related debt from overwhelming a defendant's limited resources.

A. Restitution

Of all the financial obligations, restitution is the most narrowly-tailored to the specific circumstances of a case because it addresses the actual loss that the victim experienced as a result of the defendant's actions. Indeed, the Illinois Constitution confers upon victims the right to restitution.¹⁶ The purpose of restitution is twofold: to make victims whole and to require defendants to pay for the costs that arise from their actions.¹⁷

1. The Mechanics

Courts must order restitution where the defendant's actions have injured the victim or damaged the victim's property.¹⁸ Absent personal injury or property damage, the court's decision to order restitution is discretionary. Under state law, the court should consider the victim's actual out-of-pocket expenses, loss, damages, or injuries, including any need for long-term medical care. In addition, the court should consider whether damaged or stolen property can be repaired or replaced in kind and whether

¹⁵ See *Jones*, 223 Ill. 2d at 581 (“Unlike a fine, which is punitive in nature, a cost does not punish a defendant in addition to the sentence he received, but instead is a collateral consequence of the defendant's conviction that is compensatory in nature.”) (quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2d Dist. 2002)).

¹⁶ ILL. CONSTN. art. I, § 8.1(a)(10); see also 725 ILL. COMP. STAT. 120/4(a)(10).

¹⁷ See, e.g., *People v. Villanueva*, 231 Ill. App. 3d 754, 761 (4th Dist. 1992).

¹⁸ 730 ILL. COMP. STAT. 5/5-5-6. Victims do not include public agencies using public dollars, see, e.g., *People v. Mocabey*, 378 Ill. App. 3d 1095, 1102 (5th Dist. 2008) (not permitting restitution to law enforcement agency that used public money to investigate a crime), but it does include agencies providing free services to indigent victims for injuries arising from the criminal offense. See, e.g., *People v. Gray*, 234 Ill. App. 3d 441, 443 (4th Dist. 1992) (permitting restitution to the Illinois Department of Public Aid, which paid some of the medical bills of the indigent victim).

more than one defendant was responsible for the victim's loss.¹⁹ State law does not mention whether the court needs to consider a person's ability to pay restitution. Some courts consider a person's financial circumstances to be relevant in determining whether to order restitution; others do not.²⁰ Depending on where the court sits, therefore, a person may be ordered to pay restitution even if he cannot afford it.

Although it is uncertain whether a person's ability to pay factors into the court's decision to order restitution, state law does make clear that the court must consider the defendant's financial circumstances in determining the payment terms. A person's indigence, for example, may persuade the court to order installment payments rather than one lump sum. It may also influence longer intervals between installments. The only requirement is that restitution must be paid within five years, though not necessarily within five years of the restitution order.²¹

Even if a court does not consider a person's ability to pay before ordering restitution, some relief is available after the restitution order has been entered. If a person fails to make restitution, the first issue is whether the failure to pay was willful. If it was not willful, the court may add a maximum of two years to the payment period.²²

In certain circumstances, a person must pay restitution to someone other than a crime victim. For convictions of DUI or methamphetamine-related offenses, for example, a person must make restitution to the local government for any emergency services provided because of his actions. Included are the regular and overtime costs incurred by local law enforcement agencies and private contractors paid by those agencies.²³ Similarly, a person who is convicted of domestic battery owes restitution to any domestic violence shelter that housed the victim as well as any service provider that counseled a child who witnessed the domestic battery.²⁴

2. *Priority Compared to Other Financial Obligations*

Restitution requires the defendant to contribute to making the victim whole. Other financial obligations are also aimed at helping victims, such as fines levied under the Violent Crime Victims Assistance Act, but these funds subsidize victims' services generally.²⁵ Restitution, on the other hand, is the only financial obligation that assists individual victims directly. Because the victim is the person

¹⁹ 730 ILL. COMP. STAT. 5/5-5-6(a).

²⁰ Whereas the Second, Third, and Fourth Districts hold that the defendant's ability to pay is irrelevant, the First District has held that the defendant is entitled to a hearing on his ability to pay before a restitution order may be entered. *Compare* *People v. Mitchell* 241 Ill. App. 3d 1094, 1097-98 (4th Dist. 1993) ("Ability to pay is only relevant when determining the manner of payment.") *and* *People v. Hamilton*, 198 Ill. App. 3d 108, 114 (2d Dist. 1992) (holding that this statute "requires a court to consider the ability to pay only in conjunction with the method of payment, not in consideration of whether restitution should be ordered") *and* *People v. Hayes*, 173 Ill. App. 3d 1043, 1053 (5th Dist. 1988) ("The court is not required to determine a defendant's ability to pay when ordering restitution, but only when determining the manner of payment.") *with* *People v. Guajardo*, 262 Ill. App. 3d 747, 770 (1st Dist. 1994) (holding that the defendant's ability to pay is relevant in determining whether to order restitution).

²¹ 730 ILL. COMP. STAT. 5/5-5-6(f).

²² 730 ILL. COMP. STAT. 5/5-5-6(i).

²³ 625 ILL. COMP. STAT. 5/11-501.01(i) (driving under the influence); 720 ILL. COMP. STAT. 646/90(a) (methamphetamine).

²⁴ 730 ILL. COMP. STAT. 5/5-5-6(b).

²⁵ Ill. Attorney Gen., Violent Crime Victims Assistance (VCVA), <http://www.illinoisattorneygeneral.gov/victims/vcva.html> (last visited Nov. 6, 2009).

more directly impacted by the defendant's actions, it makes sense for the criminal justice system to prioritize restitution above all other financial obligations. As one federal court has noted, "as between [payment of a fine or restitution], restitution is preferred because it directly compensates the victim or victims of a particular person's crime."²⁶ Indeed, a victim's right to restitution is guaranteed by the Illinois Constitution²⁷ as well as Illinois statutes.²⁸ The answer to the question of whether restitution actually receives priority over other financial obligations, however, is unclear.

Some statutes imply that restitution should be paid first. For example, before a court can impose a fine pursuant to 730 ILCS 5/5-9-1(d)(2), the court must consider the effect of the fine on the person's ability to pay restitution. By allowing the court to reduce a fine so that a victim may obtain restitution, this statutory requirement suggests that Illinois prioritizes the collection of restitution over another type of financial obligation, fines.

Other statutes suggest a different pecking order. For example, if the defendant has posted a cash bond, the court may order that payment of the defendant's financial obligations come out of his cash bond. First in line for the proceeds of the cash bond are court costs and fines. After those financial obligations are paid out, the remainder of the cash bond is applied to restitution.²⁹ Since court costs and fines are paid first, restitution receives the lowest priority in this situation.

This ambiguity does not exist in other states. In Wisconsin, the legislature has directed that a person's financial obligations must be paid in the following order: (1) restitution, (2) fines, (3) costs and fees, and (4) reimbursement of court-appointed counsel.³⁰ Similarly, Arizona prioritizes restitution over all other payments to the state, including fines.³¹ The same is true for North Carolina.³² To bring similar clarity to this issue in Illinois and to respect the important task of making victims whole in the criminal justice system, restitution should be prioritized over all other financial obligations.

Recommendation: The Illinois General Assembly should clarify the law and prioritize restitution over all other financial obligations assessed by the criminal justice system to guarantee that victims, who are most directly impacted by the defendant's actions, are made whole.

²⁶ United States v. Dorsey, 27 F.3d 285, 290-91 (7th Cir. 1994).

²⁷ ILL. CONSTN. art. I, § 8.1(a)(10).

²⁸ 725 ILL. COMP. STAT. 120/4(a)(10).

²⁹ 730 ILL. COMP. STAT. 5/5-5-6(e); *see also* People v. Rayburn, 258 Ill. App. 3d 331, 335-36 (3d Dist. 1994).

³⁰ WISC. STAT. § 973.20(12)(b) ("[P]ayments shall be applied first to satisfy the ordered restitution in full, then to pay any fines or surcharges under [WISC. STAT. § 973.05], then to pay costs, fees, and surcharges under [chapter 814 of the Wisconsin Statutes] other than attorney fees and finally to reimburse county or state costs of legal representation.").

³¹ ARIZ. REV. STAT. § 13-809(A) ("If a defendant is sentenced to pay a fine or incarceration costs, payment and enforcement of restitution take priority over payment to the state.").

³² North Carolina law provides:

In any criminal case in which the liability for costs, fines, restitution, attorneys' fees, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities: (a) Sums in restitution to the victim entitled thereto; (b) Costs due the county; (c) Costs due the city; (d) Fines to the county school fund; (e) Sums in restitution prorated among the persons other than the victim entitled thereto; (f) Costs due the State; (g) Attorney's fees, including appointment fees assessed.

N.C. GEN. STAT. § 7A-304(d)(1).

B. Fines

Fines are probably the most familiar of the financial obligations that people incur in the criminal justice system because they serve a punitive purpose.

1. Discretionary Fines

Fines can be either discretionary or mandatory. Illinois law caps the amount of a discretionary fine that a judge can impose according to the offense for which the defendant was convicted. Unless a specific statute calls for a greater amount, discretionary fines cannot exceed \$25,000 for a felony,³³ \$2,500 for a Class A misdemeanor;³⁴ and \$1,500 for all other misdemeanors.³⁵ These types of fines fit into the traditional concept of how fines operate: as financial penalties calibrated to punish a defendant for committing a criminal offense.

Before the court can impose these fines, it must consider the defendant's financial resources and ability to pay the fine.³⁶ In addition, the court must consider whether imposing the fine will hinder the defendant's ability to make restitution.³⁷ Some statutes authorizing discretionary fines for specific offenses also require the court to examine additional factors in determining the defendant's ability to pay. In deciding whether to impose a fine for narcotics racketeering, for example, the court must consider the defendant's income, his earning capacity, and his financial resources. Notably, the court must also consider the nature of the burden that the fine will impose on the defendant and any of his dependants.³⁸

2. Mandatory Fines

There is no similar inquiry for mandatory fines; the court must impose them, even if neither party wants the fines imposed. In one case, a low-income defendant was sentenced to pay \$2500 in discretionary fines, but the court allowed her to complete a program in lieu of paying the fine. Nevertheless, these fines triggered over \$1000 in additional mandatory fines. Despite her demonstrated inability to pay any of these financial obligations, she was still ordered to pay because the court lacked discretion over whether to impose those mandatory fines.³⁹

Unlike discretionary fees, these mandatory fees are not calibrated to the specific circumstances of a person's case. Instead, a type of conviction will trigger a fine of some fixed amount. Sometimes, the trigger is any conviction; other times, the trigger is a felony conviction. There are also fixed fines linked to specific offenses, such as the possession or delivery of controlled substances or domestic violence. Most of these fees also fund specific activities, such as cameras for law enforcement officers or hospital trauma centers. The fixed nature of these fines as well as their earmarks for specific activities make these mandatory fines seem more akin to fees and taxes rather than traditional fines.

³³ 730 ILL. COMP. STAT. 5/5-4.5-50(b).

³⁴ 730 ILL. COMP. STAT. 5/5-4.5-55(e).

³⁵ 730 ILL. COMP. STAT. 5/5-4.5-60(e) (Class B misdemeanors); 730 ILL. COMP. STAT. 5/5-4.5-65(e) (Class C misdemeanors).

³⁶ 730 ILL. COMP. STAT. 5/5-9-1(d)(1).

³⁷ 730 ILL. COMP. STAT. 5/5-9-1(d)(2).

³⁸ 725 ILL. COMP. STAT. 175/5.1(b).

³⁹ *People v. Sturgess*, 364 Ill. App. 3d 107, 117-19 (1st Dist. 2006),

Some mandatory fines are imposed only if the defendant is already subject to other fines. For example, every time a defendant is fined for a criminal offense, the court must impose a surcharge of \$10 for every \$40 or fraction thereof the fine. This fine, otherwise known as the Traffic and Criminal Conviction Surcharge, increases every fine by at least 25%.⁴⁰ Under this system, a fine of \$90 would garner an additional surcharge of \$30. If, however, the sentence carries no fine, no surcharge is applied. Like most other mandatory fines, the proceeds from this surcharge go into special revenue funds.⁴¹ Since 1998, the amount of this fine has more than doubled, increasing from \$4 to \$10 today.⁴²

Figure 2. Increases of the Traffic and Criminal Conviction Surcharge (for every \$40 in fines)



Other mandatory fines apply even if the court would not otherwise fine the defendant. For every conviction of domestic battery, for example, a defendant must pay a fine of \$10 that goes toward a fund for domestic violence shelters and services.⁴³ Furthermore, beginning in 2010, every person convicted of a criminal offense will receive an automatic fine of \$30. One-third of this fee will go to the State’s Attorney’s Office that prosecuted the defendants, and the remainder will be divided equally between the State Police Services Fund and the Circuit Clerk Operation and Administrative Fund for implementing the expungement of juvenile records.⁴⁴

Drug-related offenses trigger several mandatory fines. First, they carry a minimum fine in the amount of the street value of the drug.⁴⁵ They also incur an additional fine of \$155, the proceeds of which fund hospital trauma centers, research for a cure of spinal cord injury paralysis, and testing for performance-enhancing substances.⁴⁶ Furthermore, beginning in 2010, people with drug-related convictions will be charged an additional \$25 assessment to be deposited in the State Police Services Fund for drug taskforces.⁴⁷

Still other mandatory fines apply differently depending on whether a fine has already been imposed. Fines under the Violent Crime Victims Assistance Act provide the best example of this hybrid set-up. If the defendant has been fined for a felony or misdemeanor conviction, the court will impose \$4 on top of every \$40 in fines, which increases the underlying fine by at least 10%.⁴⁸ Where the defendant has no fines, the Act still requires him to pay \$25 for convictions for violent crimes or \$20 for convictions

⁴⁰ 730 ILL. COMP. STAT. 5/5-9-1(c).

⁴¹ For a discussion of special revenue funds, see Distribution of Fines and Fees, *infra* page 28.

⁴² This mandatory fine increased from \$4 to \$5 in 1998. Act of July 22, 1997, 1997 Ill. Laws 130, § 30. Five years later, it increased to \$9. Act of June 20, 2003, 2003 Ill. Laws 32, § 50-75. The fine finally reached \$10 in 2006 and has been that amount ever since. Act of June 30, 2005, 2005 Ill. Laws 987, § 30.

⁴³ 730 ILL. COMP. STAT. 5/5-9-1.6.

⁴⁴ Act of Aug. 25, 2009, 2009 Ill. Laws 707, § 15.

⁴⁵ 730 ILL. COMP. STAT. 5/5-9-1.1(a).

⁴⁶ 730 ILL. COMP. STAT. 5/5-9-1.1(b) (Trauma Center Fund), (c) (Spinal Cord Injury Paralysis Cure Research Trust Fund). The fine that funds the Performance-Enhancing Substance Testing Fund was added by Act of Aug. 7, 2009, 2009 Ill. Laws 132, § 10.

⁴⁷ Act of Aug. 13, 2009, 2009 Ill. Laws 402, § 5.

⁴⁸ 725 ILL. COMP. STAT. 240/10(b).

for non-violent crimes.⁴⁹

Although the defendant is not entitled to an ability-to-pay hearing before these mandatory fines are imposed, there are some relief mechanisms in place. The court may, upon a showing of good cause, revoke an entire fine or any unpaid portion. The court may also modify the court-ordered method of paying the fine, such as by allowing installment payments over time instead of a single lump-sum payment.⁵⁰ Additionally, if the defendant can show that his failure to pay the fine was unintentional, the court may lengthen the time period for paying the fine, reduce the amount owed for each installment payment or the entire fine, or forgive any unpaid portion of the fine, including the entire amount.⁵¹

Some relief mechanisms are available only for specific offenses. In the cases of domestic violence and sexual assault, for example, the sentence includes a \$200 fine if the defendant is a member of the victim's family or household. The fine may be waived, however, if it would become an undue burden on the victim, such as where the victim is financially dependant on the defendant.⁵²

3. *Pre-Sentencing Incarceration Credit*

From all fines, defendants can find some additional relief if they were incarcerated before their sentencing. In Illinois, defendants are entitled to a credit of \$5 for each day of pre-sentencing incarceration.⁵³ This credit is applied to all fines that comprise the defendant's sentence. A defendant who sits in custody for 100 days before he is sentenced to a fine of \$1200, therefore, will only owe \$700 after he receives a credit of \$500 for his pre-sentencing incarceration. Since, by definition, this credit applies to defendants who lacked the funds to make bail and therefore are more likely to be low-income, this credit can be an important source of relief, especially from high mandatory fines.

For some fines, however, this credit is unavailable. The Illinois General Assembly has barred these credits for a select number of mandatory fines earmarked for special state funds.⁵⁴ Included in this list is the mandatory Traffic and Criminal Conviction Surcharge, which adds \$10 for every \$40 in fines for any criminal or traffic conviction.⁵⁵ In FY 2008, the three funds that received revenue from this

⁴⁹ 725 ILL. COMP. STAT. 240/10(c). A violent crime is defined by 740 ILL. COMP. STAT. 45/2.

⁵⁰ 730 ILL. COMP. STAT. 5/5-9-2.

⁵¹ 730 ILL. COMP. STAT. 5/5-9-3(c).

⁵² 730 ILL. COMP. STAT. 5/5-9-1.5. A similar waiver mechanism applies to violations of orders of protection; the only difference is that the defendant incurs a mandatory fine of \$20 rather than \$200. 730 ILL. COMP. STAT. 5/5-9-1.11(a).

⁵³ The defendant must have been incarcerated for a bailable offense, and he must not have supplied bail. 725 ILL. COMP. STAT. 5/110-14(a). A similar credit applies to those convicted of violations of municipal ordinances; the only difference is that the defendant is entitled to a per-day credit of \$2 rather than \$5. 65 ILL. COMP. STAT. 5/1-2-12.

⁵⁴ See, e.g., 725 ILL. COMP. STAT. 240/10(b) (Violent Crime Victims' Assistance Fund) ("Such additional penalty shall not be considered a part of the fine for purposes of any reduction made in the fine for time served either before or after sentencing."); 730 ILL. COMP. STAT. 5/5-9-1.15(b) (Sex Offender Investigation Fund) (same); 730 ILL. COMP. STAT. 5/5-9-1.6 (Domestic Violence Shelter and Service Fund) (same); 730 ILL. COMP. STAT. 5/5-9-1.11 (Domestic Violence Abuser Services Fund) ("This additional penalty shall not be considered a part of the fine for purposes of any reduction made in the fine for time served either before or after sentencing."); 730 ILL. COMP. STAT. 5/5-9-1.1(c-7) (Spinal Cord Injury Paralysis Cure Research Trust Fund) (same); 730 ILL. COMP. STAT. 5/5-9-1(c-5) (Trauma Center Fund) (same).

⁵⁵ 730 ILL. COMP. STAT. 5/5-9-1(c).

surcharges totaled over \$24.2 million for the state.⁵⁶ For relief from these fines, therefore, the low-income defendant must point to his financial situation to convince the judge to revoke or modify his fine.

C. Fees

Unlike fines, fees are not supposed to punish. Instead, fees help the government to recoup the costs of providing labor and services in the criminal justice system.⁵⁷ This difference matters for two reasons. First, the \$5-per-day credit that defendants receive for any pre-sentencing incarceration applies to fines, but not fees.⁵⁸ Defendants, therefore, will not receive a credit to offset their fees. Second, courts review the constitutionality of fines and fees under different standards. As long as a fine is not grossly disproportionate to the offense, a court is unlikely to strike the fine because it serves the government's interest in punishing people who commit criminal offenses.⁵⁹ Fees, on the other hand, are valid only if a rational relationship exists between the statute imposing the fee and the government's purpose in imposing that fee.⁶⁰ This standard provides slightly more room for a defendant to challenge fees assessed against him. In sum, whereas fees cannot be offset by the pre-sentencing incarceration credit, they are subject to slightly more rigorous constitutional review.

This subsection examines the fees that the government charges to cover the costs that it incurred during a person's interaction with the criminal justice system. The first set of fees comes from the court. A person incurs these fees as he proceeds through the various stages of his trial. Once the defendant is convicted, the court will sentence him. If his sentence includes any sort of correctional supervision, such as incarceration or parole, he will be assessed correctional fees, which is the second set of fees examined.

1. Court Fees

Court fees seek to recoup the costs of prosecuting the defendant. Three general categories of court fees come into play. The first category consists of fees to the circuit court clerks. These fees are generally cost-recovery fees and tend to be triggered simply by a conviction or judgment of guilty. They apply, therefore, regardless of the seriousness of the underlying offense. The second category of fees covers the costs of attorneys working on a defendant's case. Not only does this include court-appointed counsel, but it also compensates the state's attorney for prosecuting the case. Finally, the last category covers the costs associated with analyzing drugs and DNA in government labs.

To show how fees work, this subsection will focus primarily on Cook County. Cook County

⁵⁶ Eighty percent of the proceeds from this surcharge go to the Traffic and Criminal Surcharge Fund, which produced over \$20.6 million in fiscal year 2008. The remainder is split equally between the LEADS Maintenance Fund and the Law Enforcement Camera Grant Fund, which ended fiscal year 2008 with \$2,092,711 and \$1,543,266 respectively. ILL. STATE COMPTROLLER, FEE IMPOSITION REPORT FISCAL YEAR 2008 A-2 (June 2009), available at <http://www.apps.ioc.state.il.us/ioc-pdf/FEEREPT2008WEB.pdf> [hereinafter FEE IMPOSITION REPORT FISCAL YEAR 2008].

⁵⁷ *People v. Price*, 375 Ill. App. 3d 684, 700 (1st Dist. 2007) (“[T]he most important factor is whether the charge ‘seek[s] to compensate the state for any costs incurred as the result of prosecuting the defendant.’”) (citing *People v. Jones*, 223 Ill. 2d 569, 600 (2006)).

⁵⁸ *See People v. Jones*, 223 Ill. 2d 569, 578 (2006) (“Only if the charge were a fine, the court held, would a defendant be entitled to the credit allowed.”).

⁵⁹ *See id.* at 605 (“So far as the defendant who is subject to a monetary fine is concerned, due process requires only that the punishment imposed be rationally related to the offense on which he is being sentenced.”).

⁶⁰ *Price*, 375 Ill. App. 3d at 700 (citing *People v. Jones*, 223 Ill. 2d 569, 595 (2006)).

provides a useful glimpse into the world of criminal justice-related fees because it operates both the largest unified court system and the largest jail facility in the United States.⁶¹ For fiscal year 2010, Cook County estimates that its operating budget will be approximately \$3 billion.⁶² Over one-third of its estimated revenue will go toward the county’s criminal justice system generally, such as the jail, courts, and other related programs.⁶³ In addition, revenue from certain fees will go to specific funds, which will be described below.

a. Fees to the Circuit Court Clerks

Each case begins when the state’s attorney files a complaint against the defendant. For this event, the defendant incurs a filing fee of \$190 for felonies and \$110 for misdemeanors in Cook County if the court has entered a judgment of guilty against the defendant.⁶⁴ The following table compares the filing fees of Cook County to the filing fees of other counties in Illinois.

	<i>Small Counties</i> ⁶⁵	<i>Medium Counties</i> ⁶⁶	<i>Cook County</i>
<i>Misdemeanor</i>	\$25-\$75	\$50-\$75	\$110
<i>Felony</i>	\$40-\$100	\$80-\$125	\$190

In addition to the filing fee, counties may impose certain fees for every conviction or judgment of guilty. Through these fees, counties generate revenue to pay for certain aspects of the operation of their court systems. Furthermore, they generally are not tailored to the circumstances of a person’s trial. In Cook County, these fees can add anywhere from \$120 to \$205, depending on whether a person has been convicted of a felony or misdemeanor.

A *court security services fee* goes to the county general fund and pays for the costs of sheriffs providing courtroom security.⁶⁷ Neither Illinois law nor Cook County ordinance mentions whether this

⁶¹ HEATHER O’DONNELL & RALPH MARTIRE, CTR. FOR TAX AND BUDGET ACCOUNTABILITY, COOK COUNTY’S REVENUE SYSTEM IS STRUCTURALLY UNABLE TO SUPPORT THE PUBLIC SERVICES IT PROVIDES 1 (Sept. 2007), available at

<http://www.ctbaonline.org/All%20Links%20to%20Research%20Areas%20and%20Reports/Budget,%20Tax%20and%20Revenue/Structural%20Deficit%20Report%20on%20Cook%20County.pdf>.

⁶² Press Release, Cook County, Illinois, Stroger 2010 Budget Proposal Holds Line on Costs, Safeguards Vital Services (Oct. 22, 2009),

http://cookcountygov.com/portal/server.pt/gateway/PTARGS_0_0_352_214_487_43/http%3B/backend.cookcountygov.com%3B7087/publishedcontent/publish/cook_county__2_/applications/cook_county_press_release_and_features/articles/release_102209_budget.html (last visited Nov. 4, 2009).

⁶³ [1 REVENUE ESTIMATE] TODD H. STROGER, PRESIDENT, COOK COUNTY BOARD OF COMMISSIONERS, 2010 EXECUTIVE BUDGET RECOMMENDATION 65 (2009), available at

http://www.cookcountygov.com/taxonomy/Budget/Budget2010/cc_2010Exec_Revenue_Estimate.pdf [hereinafter 2010 REVENUE ESTIMATE].

⁶⁴ See the Criminal and Quasi-Criminal Costs section of the Circuit Court of Cook County’s filing costs form at http://198.173.15.31/Forms/pdf_files/CCG0603.pdf.

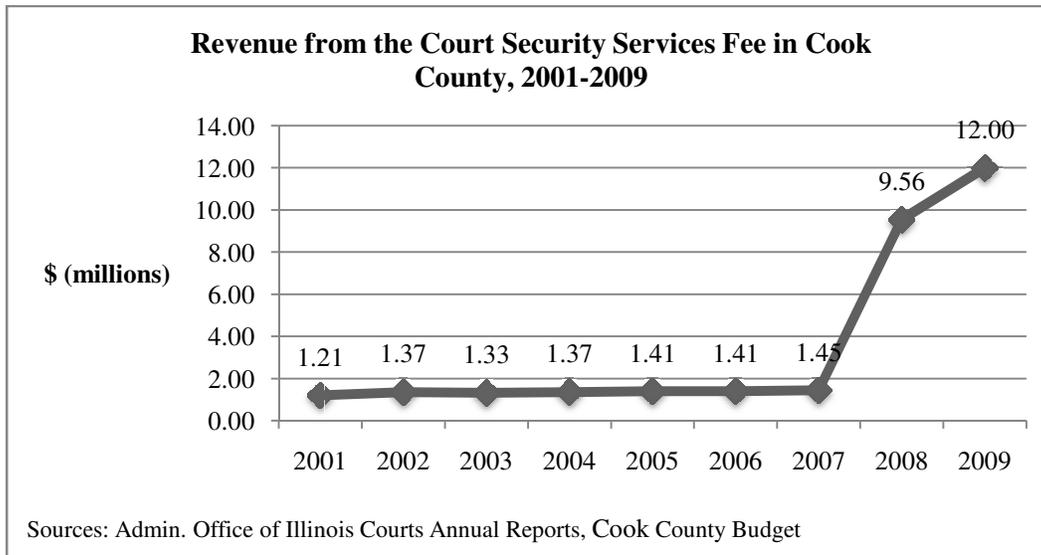
⁶⁵ 705 ILL. COMP. STAT. 105/27.1a(w)(1)(A)-(B). Small counties have a population of 500,000 people or less.

⁶⁶ 705 ILL. COMP. STAT. 105/27.2(w)(1)(A)-(B). Mid-sized counties have a population of more than 500,000 but less than 3 million.

⁶⁷ COOK COUNTY, ILL., CODE ORDINANCES ch. 18, § 32; see *id.* at ch. 31, § 1 (fee schedule). The state statute authorizing the court security services fee is 55 ILL. COMP. STAT. 5/5-1103.

fee may be waived. In March 2008, the fee increased from \$15 to \$25, and its scope expanded to cover all traffic violations rather than just a select few.⁶⁸ These changes help to account for a drastic hike in revenue generated by the fee in 2008. As the following chart shows, whereas Cook County had collected a yearly average of \$1.3 million from this fee between 2001 and 2007,⁶⁹ that number jumped to \$9.5 million in fiscal year 2008. The county expects that number to jump again to \$12 million for fiscal year 2009.⁷⁰

Figure 3



Cook County collects another \$30 through the *court automation fee* and the *document storage fee*. Unlike the court security services fee, proceeds from these fees do not go to the general fund. Rather, they go toward two specific county funds: the Circuit Court Automation Fund and the Circuit Court Document Storage Fund. Together, these funds contribute to the hardware, software, research and development costs and personnel related to the automation of court records.⁷¹ Under Illinois law, these fees may be waived, but only if a judge specifically approves a waiver of these fees.⁷² This waiver provision sets these fees apart from the other fees in this subsection, whose authorizing statutes do not address waivers or other relief mechanisms. The following chart shows the amount collected by Cook County for the past few years.

⁶⁸ Cook County, Ill., Ordinance Increasing the Court Security Services Fee Collected by the Circuit Court of Cook County, No. 08-O-19 (Feb. 20, 2008), available at http://www.cookctyclerk.com/upload/syno_pdf_780.PDF.

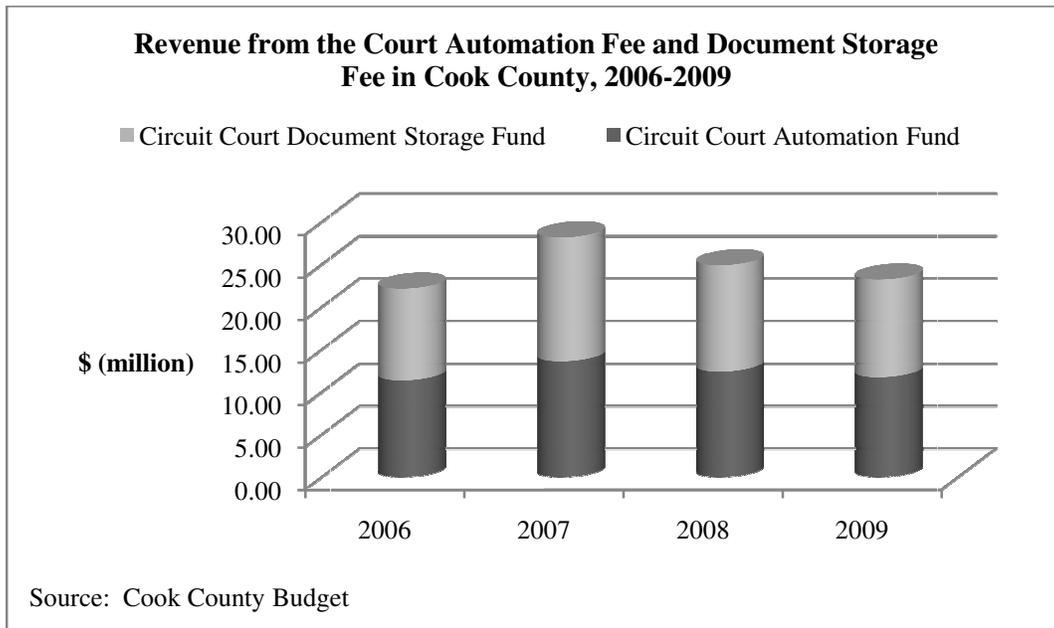
⁶⁹ The Administrative Office of Illinois Courts produces annual reports that include statistical summaries of the fee revenue disbursed by the Circuit Clerk of Cook County as well as the circuit clerks from all other Illinois Counties. For reports on fiscal years 2001 through 2007, see Administrative Office of Illinois Courts, Annual Report of the Illinois Courts, <http://www.state.il.us/court/SupremeCourt/AnnReport.asp> (last visited Nov. 4, 2009).

⁷⁰ 2010 REVENUE ESTIMATE, *supra* note 63, at 59 tbl. 16.

⁷¹ COOK COUNTY, ILL., CODE ORDINANCES ch. 18, § 33 (court automation fee); *id.* at § 34 (court clerk document storage fee); ; *see id.* at ch. 31, § 1 (fee schedule). The state statute authorizing the court automation fee is 705 ILL. COMP. STAT. 105/27.3a, and the state statute authorizing the court document storage fee is 705 ILL. COMP. STAT. 105/27.3c.

⁷² *See* 705 ILL. COMP. STAT. 105/27.3a(c) (waiver of court automation fee); 705 ILL. COMP. STAT. 105/27.3c(c) (waiver of court document storage fee).

Figure 4



The defendant must also pay a *court system fee* to finance the court system. The amount due depends on the type of offense involved: \$30 for the first DUI and \$100 for any subsequent DUIs; \$50 for felonies; \$25 for Class A misdemeanors; and \$15 for Class B or C misdemeanors.⁷³ Neither Illinois law nor Cook County ordinance specifically provides for a waiver of this fee. In 2007, the court system fee generated \$83,470 in revenue for Cook County,⁷⁴ but before 2008, this fee applied only to traffic violations.⁷⁵ Figures for revenue from this fee since its expansion have not yet been published.

The *children's advocacy center fee* was enacted in 2008. This \$30 fee is earmarked for a special county fund that contributes to the operation and administration of centers that serve children who are victims of abuse in Cook County.⁷⁶ Figures for revenue from this fee since its creation have not yet been published.

Finally, the defendant is assessed \$20 in *special court fees*, which are set up to special county funds for mental health courts, peer and teens courts, and drug courts.⁷⁷ \$10 goes to mental health courts, \$5 goes to peer and teen courts, and the remaining \$5 goes to drug courts. Neither Illinois law nor Cook

⁷³ COOK COUNTY, ILL., CODE ORDINANCES ch. 18, § 35; *see id.* at ch. 31, § 1 (fee schedule). The state statute authorizing the court system fee is 55 ILL. COMP. STAT. 5/5-1101(c)-(d).

⁷⁴ ADMIN. OFFICE OF ILL. CTS., 2007 ANNUAL REPORT OF THE ILLINOIS COURTS: STATISTICAL SUMMARY 82 (2008), available at

http://www.state.il.us/court/SupremeCourt/AnnualReport/2007/StatsSumm/2007_Statistical_Summary.pdf (fee labeled "County Fund to Finance Court System).

⁷⁵ Cook County Bd. of Comm'rs, New Items, 3 (Feb. 6, 2008), available at http://www.cookctyclerk.com/upload/syno_pdf_767.PDF.

⁷⁶ COOK COUNTY, ILL., CODE ORDINANCES ch. 18, § 41; *see id.* at ch. 31, § 1 (fee schedule). The state statute authorizing this fee is 55 ILL. COMP. STAT. 5/5-1101(f-5).

⁷⁷ COOK COUNTY, ILL., CODE ORDINANCES ch. 18, § 36 (mental health court fee); *id.* at § 37 (peer and teen court fees); *id.* at § 38 (drug court fee); *see id.* at ch. 31, § 1 (fee schedule). The state statute authorizing these fees is 55 ILL. COMP. STAT. 5/5-1101(d-5)-(f).

County ordinance provides a specific waiver of these fees. The mental health court and peer court fees were created in 2005, and the drug court fee came along the following year. From July 2008 to July 2009, the county collected approximately \$2 million in special court fees, but the money went to the county general fund rather than the special county funds.⁷⁸ In fact, they were not included in any of the county's revenue estimates from 2005 to 2009. For fiscal year 2010, Cook County estimates that these fees will generate a little more than \$80,000 – far less than \$2 million.⁷⁹

Finally, Cook County charges a \$10 *county jail medical costs fee* that goes into a special county fund known as the Arrestee's Medical Costs Fund. This fund reimburses counties, private hospitals, doctors and public agencies for medical services for injuries to people during the course of their arrests. The fee, however, is not limited to arrestees who used those medical services; rather, Cook County collects this fee from every person upon conviction "if possible."⁸⁰ Information about the amount of revenue that this fee generates is not available in Cook County's budget reports. The next largest county is DuPage County, whose population is less than one-fifth of the population of Cook County. Between 2006 and 2008, DuPage County collected nearly \$300,000 in fees for its Arrestee's Medical Costs Fund.⁸¹ It anticipates collecting an additional \$156,794 by the end of 2009.⁸²

The trend in Cook County has been to impose more and more fees on people convicted of a crime. Nearly half of the nine fees were created within the past five years: the mental health court fee and the peer/teen court fee in 2005, the drug court fee in 2006, and the children's advocacy center fee in 2008. A fifth fee, the court system fee, is not new, but last year, Cook County expanded its scope from only traffic violations to all criminal convictions and judgments of guilty. Through this expansion, the county essentially created a new fee that did not exist before in the county's criminal justice system. As for the rest of the fees, their creation may not have been recent, but they did experience significant growth during the same five-year period. In 2005, the court automation fee and the court document storage fees tripled, going from \$5 to \$15 each.⁸³ Three years later, the court security services fee increased by 66%. The one exception is the fee for the Arrestee's Medical Costs Fund, whose value has remained constant

⁷⁸ Radio broadcast: Cook County Collecting Fees Under False Pretenses (WBEZ, July 13, 2009), *available at* <http://www.wbez.org/Content.aspx?audioID=35461>.

⁷⁹ According to the county, the mental health fund is expected to generate \$46,650 in fiscal year 2009. The peer court fund will receive \$1000, and the drug court fund will receive \$33,200. 2010 REVENUE ESTIMATE, *supra* note 63, at 10.

⁸⁰ COOK COUNTY, ILL., CODE ORDINANCES ch. 46, § 3(a); *see id.* at ch. 31, § 1 (fee schedule). The state statute authorizing this fee is 730 ILL. COMP. STAT. 125/17.

⁸¹ DuPage County collected \$125,902 in 2006 and \$104,490 in 2007. ROBERT J. SCHILLERSTORM, CHAIRMAN, DUPAGE COUNTY BD., DUPAGE COUNTY, ILLINOIS: FY2009 FINANCIAL PLAN 244, *available at* <http://www.dupageco.org/finance/budget2009/2009FinancialPlan.pdf>. In 2008, the county collected \$68,368. ROBERT J. SCHILLERSTORM, CHAIRMAN, DUPAGE COUNTY BD., DUPAGE COUNTY, ILLINOIS: PROPOSED FINANCIAL PLAN FISCAL YEAR 2010, 88, *available at* http://www.dupageco.org/emplibary/FY2010_Proposed_Budget_9_21_09.pdf.

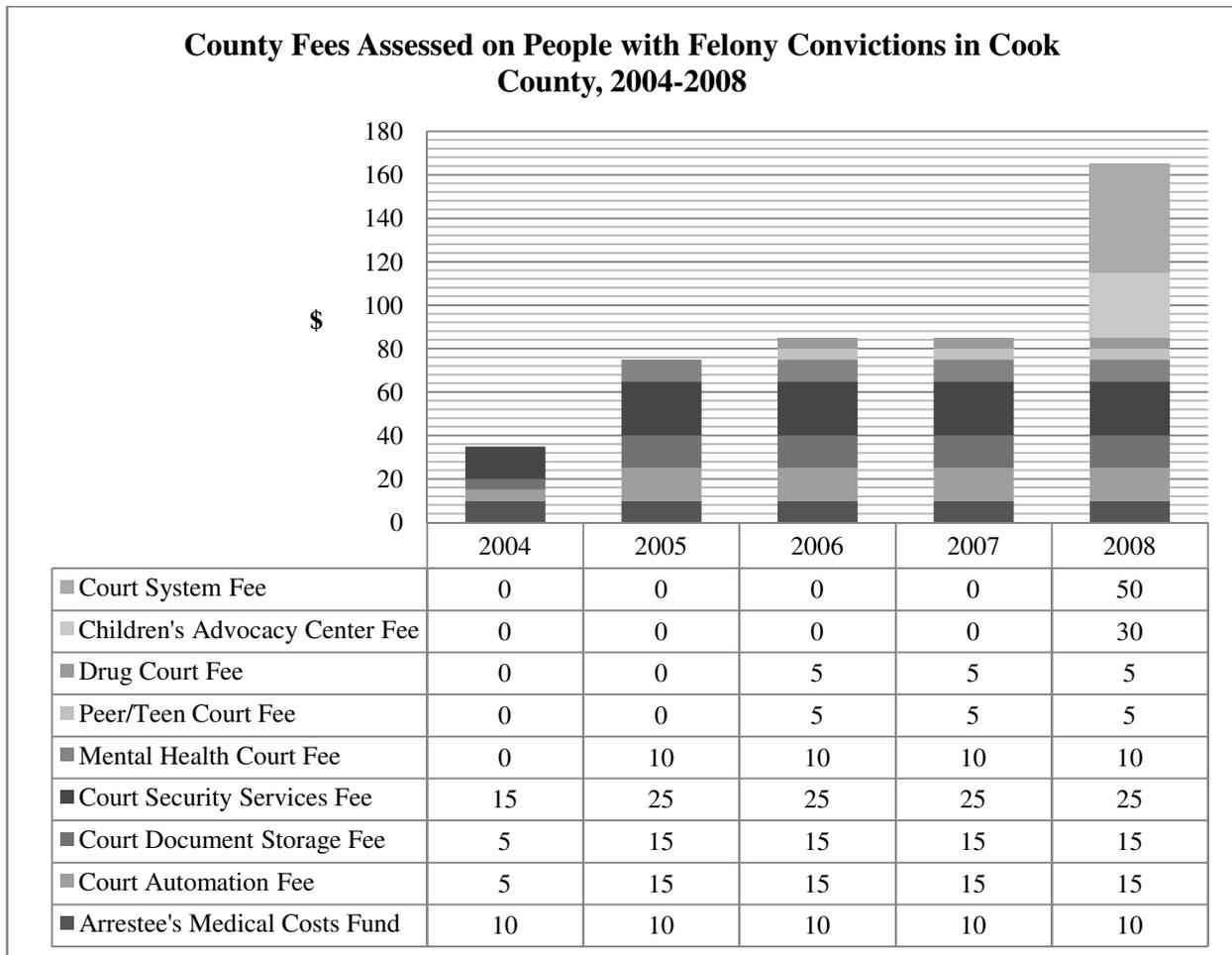
⁸² ROBERT J. SCHILLERSTORM, CHAIRMAN, DUPAGE COUNTY BD., DUPAGE COUNTY, ILLINOIS: PROPOSED FINANCIAL PLAN FISCAL YEAR 2010, 71, *available at* http://www.dupageco.org/emplibary/FY2010_Proposed_Budget_9_21_09.pdf.

⁸³ Cook County Bd. of Comm'rs, Post Board Action Agenda, 26 (Sept. 20, 2005), *available at* <http://www.cookctyclerk.com/pdf/092005pba.pdf>.

since its creation in 1996.⁸⁴

Increases of a few dollars here and there may seem insignificant when the framework is one fee, especially for legislators passing these fee increases. A different picture emerges, however, when the fees are examined in the aggregate. As the following chart shows, the amount that a felony defendant owes in fees to Cook County today is over four times what he would have owed in 2004. Whereas he would have had to pay \$35 in 2004, his amount due in 2008 would be \$165. The cumulative effect of these fee increases may have been overlooked not only by Cook County, but also the Illinois General Assembly. Cook County cannot increase these fees unless the Illinois General Assembly gives the counties authority to do so.⁸⁵ Both legislative bodies may think twice about future increases if advocates present them with the cumulative impact of fee increases, especially when the trigger for these fees is a conviction for *any* offense.

Figure 5



⁸⁴ See Act of Aug. 14, 1996, 1996 Ill. Laws 676 § 5 (creating the fee for the Arrestee's Medical Costs Fund and setting the fee at \$10, the same amount that it is today).

⁸⁵ See, e.g., Cook County Bd. of Comm'rs, Post Board Action Agenda, 26 (Sept. 20, 2005), available at <http://www.cookctyclerk.com/pdf/092005pba.pdf> (showing that all increases of Cook County's court automation fee and court document storage fee followed the enactment of legislation allowing counties to increase their court automation fee and court document storage fee).

Even without factoring in restitution, fines, or other fees, a person convicted of a misdemeanor offense will owe \$250 in filing fees, and a person convicted of a felony offense will owe \$355.

Table 2. County Fees Arising from a Conviction or Judgment of Guilty in Cook County		
	<i>Misdemeanor</i>	<i>Felony</i>
Filing Fee	\$110	\$190
Arrestee’s Medical Costs Fund	\$10	\$10
Court Security Services Fee	\$25	\$25
Court Automation Fee	\$15	\$15
Document Storage Fee	\$15	\$15
Court System Fee	\$25	\$50
Children’s Advocacy Center Fee	\$30	\$30
Mental Health Court Fee	\$10	\$10
Peer/Teen Court Fee	\$5	\$5
Drug Court Fee	\$5	\$5
Total	\$250	\$355

b. Fees for Legal Representation and Costs of Prosecution

The U.S Constitution guarantees indigent defendants the right to an attorney in criminal cases, but that does not mean that they are off the hook for the costs of their legal representation. States may recoup the costs of court-appointed counsel as long as certain procedural safeguards are in place, such as a hearing on the defendant’s ability to pay.⁸⁶ In Illinois, the court may order the defendant to pay a “reasonable sum” to reimburse the county or the state for his court-appointed counsel, including public defenders. For misdemeanors, the cap on this fee is \$500; for felonies, \$5000.⁸⁷

Unlike the other fees in this section, the *court-appointed counsel reimbursement fee* is not limited to defendants whose trials ended in conviction. It applies to all defendants, even those who are ultimately acquitted of their charges.⁸⁸ Kendall County, for example, permits its courts to order a reimbursement fee after the state’s attorney dismisses all charges against the defendant or after the defendant is found not guilty.⁸⁹

Before issuing a reimbursement order, however, the court must have a hearing to determine the amount owed in light of the defendant’s financial circumstances.⁹⁰ At this hearing, the court must also consider the time that the attorney spent representing the defendant, the nature of the legal representation,

⁸⁶ See Helen A. Anderson, *Penalizing Poverty: Making Criminal Defendants Pay for Their Court-Appointed Counsel Through Recoupment and Contribution*, 42 U. Mich. J.L. Reform 323, 335 (2009) (discussing the constitutional requirements of state recoupment).

⁸⁷ 725 ILL. COMP. STAT. 5/113-3.1.

⁸⁸ See *People v. Kelleher*, 116 Ill. App. 3d 186, 190 (4th Dist. 1983) (“The provision permitting assessment of costs only against those convicted does not require a similar rule in regard to recoupment under [this statute].”).

⁸⁹ Circuit Court of Kendall County,

⁹⁰ 725 ILL. COMP. STAT. 5/113-3.1(a). This hearing is intended to comply with the indigent defendant’s due process right to an ability-to-pay hearing. See *People v. Love*, 177 Ill. 2d 550, 557-59 (1997) (discussing Illinois court-appointed counsel reimbursement statute in light of the U.S. Supreme Court’s approval of a similar reimbursement statute in *Fuller v. Oregon*, 417 U.S. 40 (1974)).

and expenses reasonably incurred by the attorney.⁹¹ Even after the court has issued a reimbursement order, it may decrease or waive the amount due as fairness requires.⁹² The court cannot, however, accept community service in lieu of payment.⁹³

Cook County has not collected any fees for court-appointed counsel since 2001.⁹⁴ Other counties, however, do. The left side of the following chart organizes all Illinois counties (except for Cook County) by population in descending order, with DuPage County being first and Pope County last. The right side of the chart shows the amount of money that each county received from defendants in reimbursements for court-appointed counsel in 2007. Out of the 101 counties listed, eighteen, like Cook County, did not report collecting revenue from reimbursement fees. These counties include Madison County, LaSalle County, and Franklin County. By contrast, the county with the highest reimbursement was Rock Island County; it collected \$471,194. Lake County came in at a distant second with \$193,673, less than half of the amount received by Rock Island County. Next is Peoria County with \$128,430. The amount of money collected by the remainder of the counties collected is in the five-figure range or less.

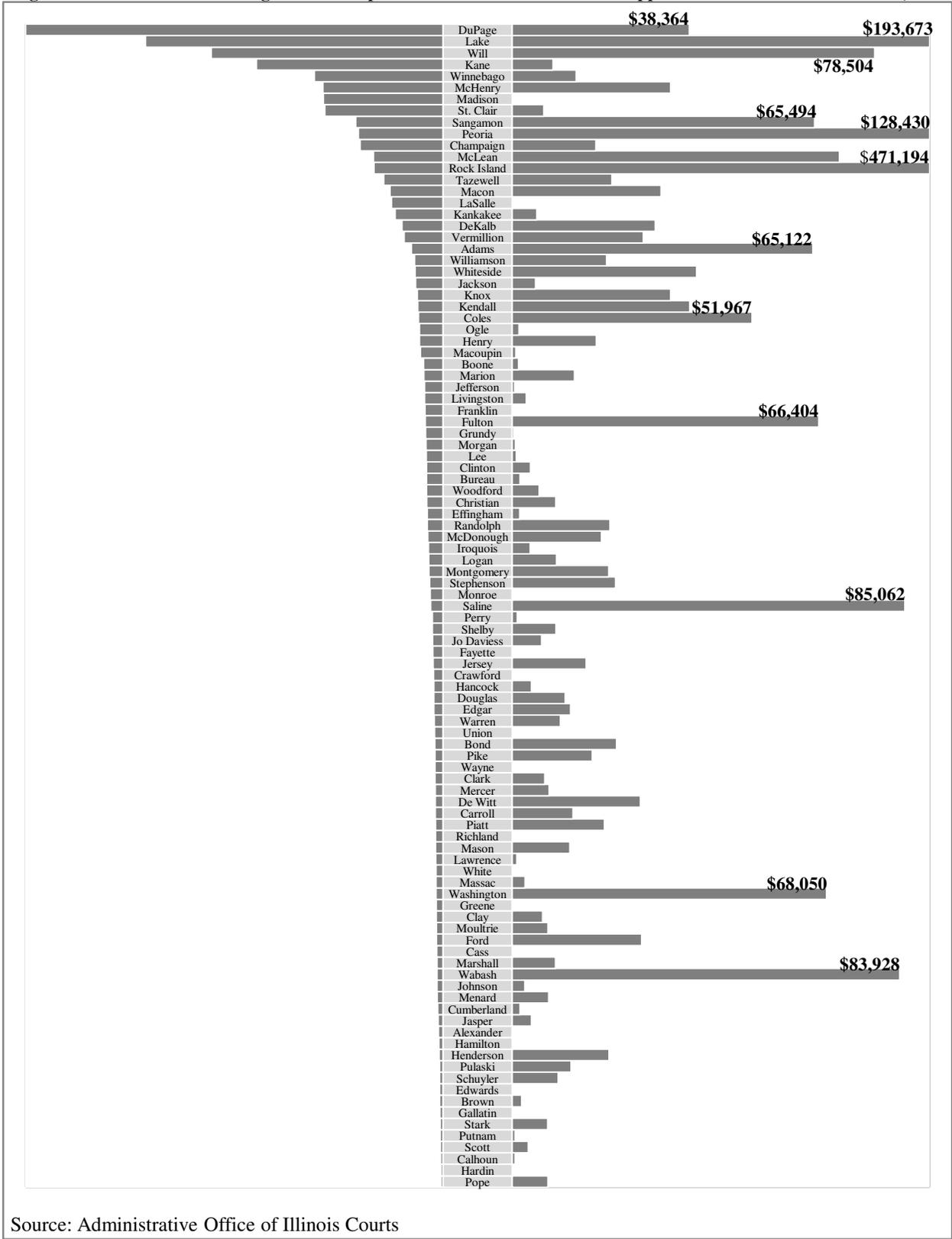
⁹¹ *People v. Terry*, 170 Ill. App. 3d 484, 488-89 (4th Dist. 1988).

⁹² 725 ILL. COMP. STAT. 5/113-3.1(c).

⁹³ *People v. McCaskill*, 298 Ill. App. 3d 260, 266 (4th Dist. 1998) (voiding a court order requiring defendant to perform community service in lieu of paying his reimbursement fee because the order was “beyond the statutory provisions for a reimbursement order found in” 725 ILL. COMP. STAT. 113-3.1).

⁹⁴For all annual reports reports on fiscal years 2001 through 2007, see Administrative Office of Illinois Courts, Annual Report of the Illinois Courts, <http://www.state.il.us/court/SupremeCourt/AnnReport.asp> (last visited Nov. 4, 2009).

Figure 6. Counties in Descending Order of Population & Revenue from Court-Appointed Counsel Reimbursement, 2007



Source: Administrative Office of Illinois Courts

One last note on reimbursement of court-appointed counsel: although Cook County does not appear to require defendants to reimburse the costs of their public defenders, some county commissioners did propose assessing a surcharge on each defendant who uses a public defender in 2008. This proposal offered a rate of \$20 for one case and \$40 for multiple cases, and these funds would have been earmarked for the operation and administration of the Office of the Cook County Public Defender. This proposed legislation did not ultimately pass.⁹⁵

Not only may the defendant have to reimburse his court-appointed counsel, but the state’s attorney will also charge him fees. These *state’s attorney fees* are tied to specific trial events. The following table shows the fees assessed against defendants for a select number of trial events.

Table 3. Select State’s Attorney Fees		
	<i>Cook County</i>	<i>Other Counties</i>
<i>Misdemeanor conviction</i>	\$30	\$15
<i>Felony conviction</i>	\$60	\$30
<i>Preliminary Examination</i>	\$20	\$10
<i>Each day of trial</i>	\$50	\$25

In all, state’s attorney fees in Cook Country range from \$20 to \$100,⁹⁶ while fees in other counties range from \$10 to \$50.⁹⁷ There is no ability-to-pay hearing required before imposing these fees, though the statute does provide that these fees are to be “taxed as costs to be collected from the defendant, *if possible.*”⁹⁸ In fiscal year 2010, all of the revenue from the Cook County state’s attorney is expected to consist of proceeds from these fees,⁹⁹ which has hovered around \$2.58 million over the past three years.¹⁰⁰ Between 2001 and 2007, the downstate counties collected an average of \$3.78 million each year. Using data from the Administrative Office of Illinois Courts,¹⁰¹ this chart compares the amount of fees disbursed by the Circuit Clerk of Cook County and the downstate counties during the same time period.

⁹⁵ Cook County Bd. of Comm’rs, New Items, 6-7 (Feb. 6, 2008), *available at* http://www.cookctyclerk.com/upload/syno_pdf_767.PDF.

New Items, Meeting of the Cook County Board of Commissioners (Feb. 6, 2008), http://www.cookcountyclerk.com/upload/syno_html_767.htm

⁹⁶ 55 ILL. COMP. STAT. 5/4-2002.1 (a).

⁹⁷ 55 ILL. COMP. STAT. 5/4-2002(a).

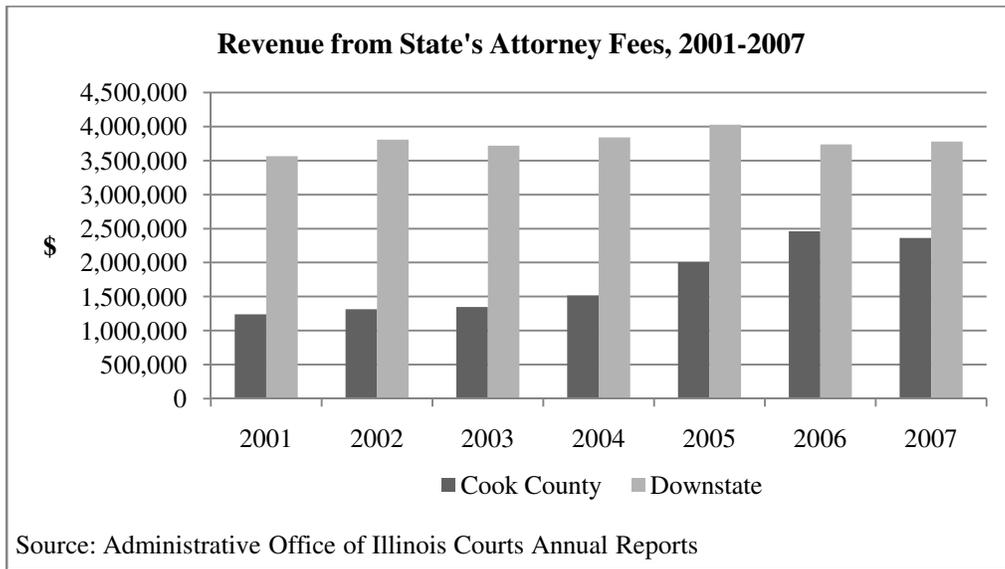
⁹⁸ 55 ILL. COMP. STAT. 5/4-2002.1(a) (emphasis added); 55 ILL. COMP. STAT. 5/4-2002(a) (emphasis added).

⁹⁹ 2010 REVENUE ESTIMATE, *supra* note 63, at 76.

¹⁰⁰ *Id.* at 57, tbl. 13.

¹⁰¹ For all annual reports reports on fiscal years 2001 through 2007, see Administrative Office of Illinois Courts, Annual Report of the Illinois Courts, <http://www.state.il.us/court/SupremeCourt/AnnReport.asp> (last visited Nov. 4, 2009).

Figure 7



The defendant will also be ordered to pay the costs of prosecuting his case beyond the state's attorney fees.¹⁰² Courts have strictly construed the issue of what constitutes a *cost of prosecution*, holding for instance that these costs include witness fees.¹⁰³ Other costs of prosecution include the expenses reasonably incurred by the sheriff in serving arrest warrants, picking up the defendant from a county other than the county where he was convicted, and picking up the defendant outside of Illinois under an extradition order.¹⁰⁴ Costs of prosecution, however, does not include the costs of collecting the defendant's DNA,¹⁰⁵ the state's expert witness,¹⁰⁶ jurors' fees and expenses,¹⁰⁷ or in-jail food or medical expenses.¹⁰⁸ Where these costs apply, the court must order the defendant to pay them, even if the defendant is indigent.¹⁰⁹ Because the court cannot waive these costs, no ability-to-pay hearing is conducted.

c. Lab Analysis Fees

Defendants are can also be expected to bear the costs of any laboratory analysis required by their trials. If a case involves marijuana, methamphetamine, steroids, or other controlled substances, the defendant incurs a *criminal laboratory analysis fee* of \$100 for each offense.¹¹⁰ For DUIs, the fee increases to \$150.¹¹¹ The proceeds go to a criminal laboratory fund at either the state or local level. These funds cover, among other expenses, the costs incurred in providing analysis for controlled

¹⁰² 725 ILL. COMP. STAT. 5/124A-5.

¹⁰³ People v. Hanei, 81 Ill. App. 3d 690, 707 (5th Dist. 1980).

¹⁰⁴ 725 ILL. COMP. STAT. 5/124A-5.

¹⁰⁵ People v. Hunter, 358 Ill. App. 3d 1085, 1098 (4th Dist. 2005).

¹⁰⁶ People v. Reynolds, 152 Ill. App. 3d 216, 220 (4th Dist. 1987).

¹⁰⁷ People v. Klucki, 70 Ill. App. 3d 582, 584 (5th Dist. 1979).

¹⁰⁸ People v. Brachter, 149 Ill. App. 3d 425, 433 (5th Dist. 1986) (in-jail medical expenses); 81 Op. Ill. Atty. Gen. No. 40 (Dec. 15, 1981) (in-jail food expenses).

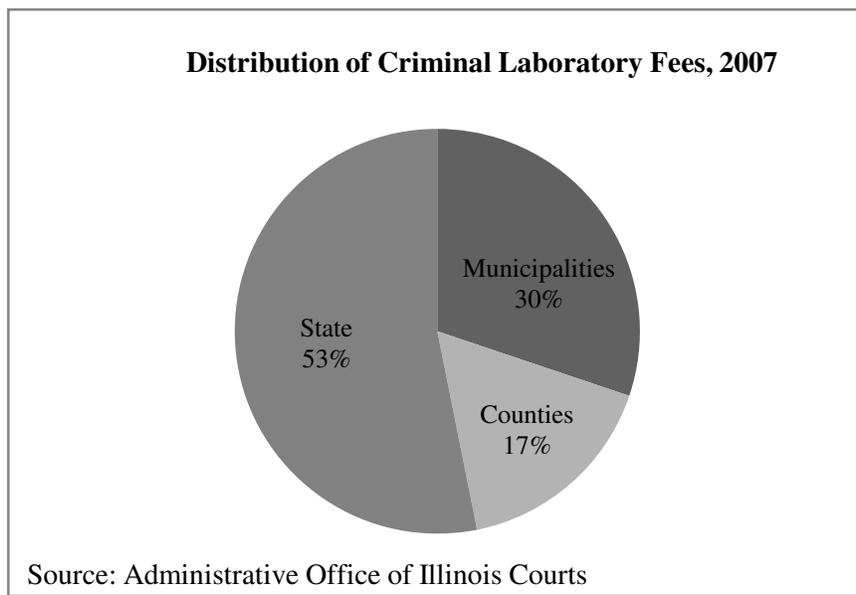
¹⁰⁹ 725 ILL. COMP. STAT. 5/124A-5.

¹¹⁰ 730 ILL. COMP. STAT. 5/5-9-1.4(b).

¹¹¹ 730 ILL. COMP. STAT. 5/5-9-1.9(b).

substances, the purchase and maintenance of equipment to conduct those analyses, and the continuing education, training, and professional development of forensic scientists employed by the laboratories.¹¹² The court may waive this fee if it finds that the defendant lacks the ability to pay the fee.¹¹³ In fiscal year 2007, more than \$1.3 million was collected in criminal laboratory fees statewide.¹¹⁴ The following chart shows the allocation of those funds to the different levels of government.

Figure 8



Related to the criminal laboratory analysis fee is the *DNA analysis fee*. Each defendant convicted of a felony offense must submit his DNA to a database operated by the Illinois State Police. To help cover the costs of operating this database, he must also pay the mandatory \$200 fee, the proceeds of which go to the State Offender DNA Identification System Fund.¹¹⁵ The costs of operating the database include purchasing and maintaining equipment as well as continued training for forensic scientists who analyze the DNA.¹¹⁶

Courts used to be able to waive this fee for defendants who were unable to pay.¹¹⁷ In 2002,

¹¹² 730 ILL. COMP. STAT. 5/5-9-1.4(g) (drugs); 730 ILL. COMP. STAT. 5/5-9-1.9(g) (DUI).

¹¹³ 730 ILL. COMP. STAT. 5/5-9-1.4(b) (drugs) (“Upon verified petition of the person, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay the fee.”); 730 ILL. COMP. STAT. 5/5-9-1.9(b) (DUI) (same).

¹¹⁴ In terms of revenue from criminal laboratory fees, municipalities received \$415,848, counties received \$230,068, and the state received \$732,531. ADMIN. OFFICE OF ILL. CTS., 2007 ANNUAL REPORT OF THE ILLINOIS COURTS: STATISTICAL SUMMARY 70, 73, 76 (2008), available at http://www.state.il.us/court/SupremeCourt/AnnualReport/2007/StatsSumm/2007_Statistical_Summary.pdf.

¹¹⁵ 730 ILL. COMP. STAT. 5/5-4-3(a), (j), (k).

¹¹⁶ 730 ILL. COMP. STAT. 5/5-4-3(k)(3).

¹¹⁷ Act of Aug. 22, 2002, 2002 Ill. Laws 829 § 5. This legislation deleted the following language from 730 ILL. COMP. STAT. 5/5-4-3(j): “Upon verified petition of the person, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay the fee.”

however, the Illinois General Assembly made this fee mandatory.¹¹⁸ To ease the burden, the General Assembly also allowed defendants to enter into a 24-month payment plan if they could not pay the fee at the time of sentencing. In addition, the statute strictly provides that “the inability to pay this analysis fee shall not be the sole ground to incarcerate the person.”¹¹⁹

The DNA analysis fee sets itself apart from the rest of the financial obligations in this report because it underwent a significant decrease, rather than an increase, since its creation in 1998. Originally, the fee was \$500, and it applied primarily to people who had been convicted of sex offenses.¹²⁰ In 2002, the Illinois General Assembly lowered the fee by 60% to \$200. In advocating for this reduction, the sponsor of this legislation remarked that a \$500 fee “in the real world isn’t gonna get paid.”¹²¹ In addition, the General Assembly expanded the pool of payers to everyone convicted of a felony, even if it was not related to a sex offense. In making these changes, legislators believed that this fee would generate more revenue if it was set at a lower, more realistic amount and if it applied to more people. Even then, though, they knew that not everyone was going to be able to pay. In response to an Illinois state representative’s question regarding the fiscal impact of legislation reducing the fee and expanding its scope, the sponsor of the legislation answered:

Well, it shouldn’t cost the state anything. That’s the idea of the ... the goal here, Representative, and I think and it’s a good question. The goal is to utilize the fees or that I should say the cost of the \$200 per person convicted of a felony to pay for it. I think yesterday when we talked about this Bill, if I remember it correctly, I said there are about 75-77,000 convicted felons in the State of Illinois. The hope is that about half of those are on probation as opposed to going to the Department of Corrections and realistically we can expect those people to pay this \$200.¹²²

The sponsor later elaborates:

And what ... what realistically what the expectation is that this will only be utilized in those put on probation, who are not incarcerated. Realistically, it’s gonna be ... you’re not gonna collect from people in [the Illinois Department of Corrections], but those on

¹¹⁸ The following is an excerpt from the floor debate on Senate Bill 2024, the bill that mandated the imposition of the DNA analysis fee. Illinois House Representative Tom Cross was the house sponsor of S.B. 2024, and he was answering the question of Illinois House Representative Lou Lang.

Rep. Lang: So, I understand that the cost that’s being charged is being reduced to \$200, because when it was \$500 no one was paying it, judges were routinely waiving those fees. Is that right?

Rep. Cross: Correct. And under the Bill or the Bill as amended, that discretion from the judges has been withdrawn.

Rep. Lang: And so, they all have to pay the \$200?

Rep. Cross: Correct.

92nd General Assemb., H. Rep. Transcription Deb., 132nd Leg. Day 27 (Ill. 2002), *available at* <http://www.ilga.gov/house/transcripts/htrans92/t051502.pdf>.

¹¹⁹ 730 ILL. COMP. STAT. 5/5-4-3(j).

¹²⁰ Act of July 22, 1997, 1997 Ill. Laws 130 § 30.

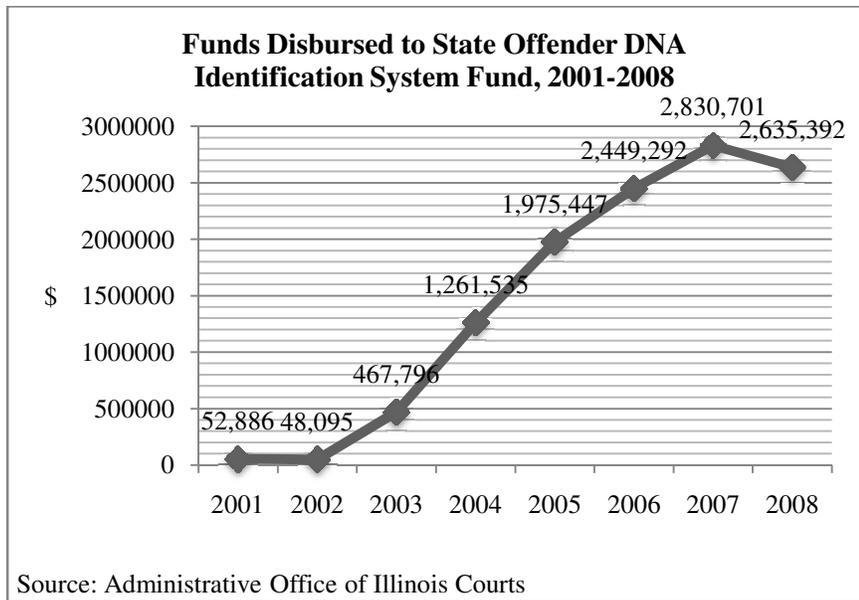
¹²¹ 92nd General Assemb., H. Rep. Transcription Deb., 131st Leg. Day 38 (Ill. 2002), *available at* <http://www.ilga.gov/house/transcripts/htrans92/t051402.pdf>. (Illinois State Representative Tom Cross).

¹²² 92nd General Assemb., H. Rep. Transcription Deb., 132nd Leg. Day 37 (Ill. 2002), *available at* <http://www.ilga.gov/house/transcripts/htrans92/t051502.pdf>. (Illinois State Representative Tom Cross).

probation will have the two years to pay. And I would suggest to you that in the ... in the criminal justice system, let's say that the defendant has made a hundred and seventy-five dollar payment and their probation ends. The court would have the discretion to extend the probation perhaps for another month or two to give the defendant time to complete that payment. So, we're only really focusing on those on probation, not those incarcerated where we're gonna collect the \$200.¹²³

The following chart tracks the changes in DNA analysis fee revenue disbursed to the State Offender DNA Identification System Fund since 2000, the year of the fee's creation. It shows that the fund did experience an increase in revenue after 2002, but it is unclear whether the cause of this increase was the fee reduction to \$200 or its expansion from only sex offenses to all felony offenses.

Figure 9



2. Corrections Fees

In addition to the courts, corrections departments also impose fees onto defendants after their conviction.

a. Illinois Department of Corrections: Prisons

The Illinois Department of Corrections (“IDOC”) may seek reimbursement from past and present inmates for the expenses incurred by their incarceration, including educational, medical, and dental expenses.¹²⁴ IDOC calculates the reimbursement rate by averaging the per capita cost per day for all inmates of a particular institution.¹²⁵ Consequently, rates vary by institution.

¹²³ *Id.* at 44-45.

¹²⁴ 730 ILL. COMP. STAT. 5/3-7-6(a); ILL. ADMIN. CODE tit. 20 § 110.30(a).

¹²⁵ 730 ILL. COMP. STAT. 5/3-7-6(b); *see also* ILL. ADMIN. CODE tit. 20 § 110.30(a).

The Attorney General can sue the inmate on IDOC's behalf to recover the reimbursement, but first, IDOC must know or reasonably believe that the inmate has enough assets to satisfy part or all of the judgment.¹²⁶ Assets can come from "any other source whatsoever."¹²⁷ Examples include income or payment from social security, worker's compensation, veteran's compensation, or pension benefits.¹²⁸ IDOC may also monitor inmate trust funds to determine the state of the inmate's assets.¹²⁹

In one case, a man owed IDOC over \$40,000 for the costs of his incarceration from April 2001 to September 2004.¹³⁰ Since 2000, IDOC has collected over \$1.5 million from the currently and formerly incarcerated.¹³¹ That money goes into a special state fund known as the Department of Corrections Reimbursement and Education Fund.

Besides reimbursements for incarceration costs, IDOC also collects fees from inmates who participate in work-release centers. Known as adult transition centers, they provide job training and placements for inmates before their release. Participating inmates are required to spend at least thirty-five hours working at an outside job, getting their education, taking life skills courses, or doing community service.¹³² For these services, state law authorizes IDOC to collect reasonable fees to cover the costs of these programs.¹³³ The participating inmate incurs a weekly charge of either 20% of his income or \$50, whichever is less.¹³⁴ Between 2004 and 2008, IDOC collected more than \$7.8 million in fees from inmates participating in the work-release program, averaging about \$1.6 million per year.¹³⁵

IDOC sometimes also tries to recover the costs of college tuition where an inmate has attended

¹²⁶ 730 ILL. COMP. STAT. 5/3-7-6(d); *see also* ILL. ADMIN. CODE tit. 20 § 110.35. In addition, the Attorney General can institute an action where the Illinois Department of Corrections reasonably believes that a person is engaged in gang-related activity and has a substantial sum of money or other assets. *Id.*

¹²⁷ 730 ILL. COMP. STAT. 5/3-7-6(e)(3).

¹²⁸ *Id.*; *see also* ILL. ADMIN. CODE tit. 20 § 110.15.

¹²⁹ ILL. AUDITOR GEN., REPORT DIGEST: DEPARTMENT OF CORRECTIONS DEPARTMENT-WIDE FINANCIAL AUDIT FOR THE YEAR ENDED JUNE 30, 2002 (Apr. 23, 2003), <http://www.auditor.illinois.gov/Audit-Reports/Compliance-Agency-List/Corrections/FY02-Corrections-FIN-COMP-digest.htm> (reporting that "the Department [of Corrections would] continue[s] to notify the Attorney General when it [became] aware of any inmate having substantial assets, whether or not appearing in the inmate's trust fund account").

¹³⁰ *People v. Booth*, 215 Ill. 2d 416, 418, 420 (2005).

¹³¹ The Illinois Department of Corrections collected the following reimbursements amounts: \$27,250 in FY2008; \$161,910 in FY2007; \$314,593 in FY2006; \$326,452 in FY2005; \$342,445 in FY2005; \$145,050 in FY2003; \$95,306 in FY2002; \$9804 in FY2001; and \$92,409 in FY2000. Ill. Comptroller, Fee Imposition Reporting, <http://www.apps.ioc.state.il.us/Office/ResearchFiscal/PublicFeeRpt/Report/PublicReportMenu.cfm> (last visited Nov. 5, 2009) [hereinafter Fee Imposition Reporting] (select fiscal year and then under "Select Agency" menu, select Corrections; on next page, select box labeled "Deposit Summary" for fee entitled "Court-Ordered Costs of Incarceration").

¹³² Reentry Policy Council, Adult Transition Centers, http://reentrypolicy.org/program_examples/adult_transition_centers_atcs (last visited Nov. 5, 2009).

¹³³ 730 ILL. COMP. STAT. 5/3-13-6.

¹³⁴ Fee Imposition Reporting, *supra* note 131 (under "Select Agency" menu, select Corrections; on next page, select box labeled "Fee Registry and Rates;" on next page, select "Next" for Fee #2 labeled Maintenance Payments from Incarcerated Persons).

¹³⁵ The Illinois Department of Corrections collected the following amounts in fees from inmates participating in work-release programs: \$1,794,702 in FY2008; \$1,783,260 in FY2007; \$1,393,494 in FY2006; \$1,448,531 in FY2005; and \$1,421,955 in FY2004. Fee Imposition Reporting, *supra* note 131 (select fiscal year and then under "Select Agency" menu, select Corrections; on next page, select box labeled "Deposit Summary" for fee entitled "Maintenance Payments from Incarcerated Persons").

college classes during his incarceration.¹³⁶ IDOC charges a monthly rate of \$20 until the cost is paid off and only if the course work is completed.¹³⁷ While a person is incarcerated, these monthly fees accrue without interest. After his incarceration ends and his parole is terminated, however, Illinois law permits IDOC to charge a yearly interest rate of 6%.¹³⁸ Between 2003 and 2008, IDOC received \$228,525 in reimbursement for college courses.¹³⁹

b. County Sheriff Departments: Jails

Local jails have also looked to their inmates to increase revenue in lean economic times. In 2005, for example, Sheriff Tom Dart of Cook County proposed imposing a booking fee of \$10-\$15 on inmates, to be taken from their inmate accounts, as a means of generating more funds for law enforcement activities.¹⁴⁰ And in Peoria County, the sheriff proposed in August 2009 to charge inmates a daily fee of \$3 to help reduce the county budget's nearly \$4 million shortfall.¹⁴¹ Within that county, a councilman from the city of Peoria expressed interest in establishing a \$20 arrest fee on each of the 17,000 people arrested per year within the city's limits.¹⁴²

Some counties have taken steps to implement these types of user fees as a means of saving costs. In Knox County, for example, the county board recently approved a daily fee of \$5 for its jail inmates, citing reduced levels of state funding as the reason for its approval. For inmates unable to pay the fee, the sheriff has proposed assigning them to projects that both allow them to pay off their debt and save the county money on services that it would have otherwise had to hire people to do. This daily fee also applies to people who are awaiting trial and thus have not yet been found guilty of anything. The yearly amount that the sheriff hopes to raise through this fee is approximately \$110,000.¹⁴³ Other municipalities already have jail fees in place. Peoria County, for example, imposes a \$22 booking fee for inmates booked into the county jail.¹⁴⁴ In 2004, when it was \$2 less, the booking fee generated \$139,000 for the

¹³⁶ 730 ILL. COMP. STAT. 5/3-6-2(d); see also ILL. ADMIN. CODE tit. 20 § 405.80.

¹³⁷ Fee Imposition Reporting, *supra* note 131 (under "Select Agency" menu, select Corrections; on next page, select box labeled "Fee Registry and Rates;" on next page, select "Next" for Fee #4 labeled Payments for College Credit Hours While Incarcerated).

¹³⁸ 730 ILL. COMP. STAT. 5/3-6-2(d); see also ILL. ADMIN. CODE tit. 20 § 405.80(f).

¹³⁹ The Illinois Department of Corrections collected the following amounts in fees from inmates for reimbursement for college courses: \$22,906 in FY2008; \$25,951 in FY2007; \$27,159 in FY2006; \$25,601 in FY2005; \$64,433 in FY2004; and \$62,475 in FY2003. Fee Imposition Reporting, *supra* note 131 (select fiscal year and then under "Select Agency" menu, select Corrections; on next page, select box labeled "Deposit Summary" for fee entitled "Payments for College Credit Hours While Incarcerated").

¹⁴⁰ Charles Thomas, *Facing Budget Crisis, Sheriff Wants Inmates to Pay to be Locked Up*, ABC7 NEWS, Feb. 9, 2007, <http://abclocal.go.com/wls/story?section=news/local&id=5020383> (last visited Nov. 5, 2009).

¹⁴¹ Karen McDonald, *Peoria County May Get Creative with New Fees*, JOURNAL STAR, Aug. 14, 2009, <http://www.pjstar.com/news/x894599538/Peoria-County-may-get-creative-with-new-fees> (last visited Nov. 5, 2009).

¹⁴² John Sharp & Karen McDonald, *Word on the Street: Mystery Road Sparks Residents' Worries*, JOURNAL STAR, Apr. 26, 2009, <http://www.pjstar.com/news/x411808988/Word-on-the-Street-Mystery-road-sparks-residents-worries> (last visited Nov. 5, 2009); see also City of Peoria, Ill., City Council Meeting Proceedings, July 14, 2009, at 29000, <http://www.ci.peoria.il.us/2009-minutes> (select "2009 Jul 14 City Council Proceedings") (discussing proposed arrest fee).

¹⁴³ Eric Timmons, *County to Charge Inmates for Jail Time*, REGISTER-MAIL, July 30, 2009, <http://www.galesburg.com/news/x1543608270/County-to-charge-inmates-for-jail-time> (last visited Nov. 5, 2009).

¹⁴⁴ Sharp & McDonald, *supra* note 142.

county.¹⁴⁵

In addition to fees, counties may seek reimbursement from inmates for any medical care received during their detention, provided that these inmates are reasonably able to pay. Included are reimbursements from an insurance program or other medical benefit program.¹⁴⁶ Some counties making use of this authority are Cook and Kankakee.¹⁴⁷ Counties may also seek reimbursement for other expenses incurred as a result of a person's detention to the extent that the person has the ability to pay.¹⁴⁸ The state's attorney can sue a person on the county's behalf to recover the reimbursement, just as the Attorney General can do so on behalf of the Illinois Department of Corrections.

c. Probation

Sometimes, a person is sentenced to probation rather than incarceration. For each month of probation, state law authorizes the counties to charge \$50. This monthly fee also applies to sentences of conditional discharge, supervision, and supervised community service. The court may assess a lower probation fee if it determines that the person cannot pay \$50 per month.¹⁴⁹ According to the Administrative Office of Illinois courts, when courts make an ability-to-pay determination, they should look at the defendant's financial status, including but not limited to his employment status, the number of his dependents, and other sources of income, assets, and financial obligations. Because probation fees are charged monthly, the extent of the defendant's financial burden will depend on the length of his sentence.

Cook County, which supervises tens of thousands of probationers,¹⁵⁰ has established a monthly fee schedule that ranges from \$20 to \$50 depending on the defendant's household income and number of dependents.¹⁵¹ Based on this fee schedule, a person whose household income falls below the federal poverty guidelines will usually pay a reduced probation fee of \$20 per month.¹⁵²

The following chart tracks the revenue generated by probation fees in Cook County since FY 2005. The only difference between the two fees is that probationers with felony convictions pay the Adult Probation/Probation Services Fee, and probationers with only misdemeanor convictions pay the Social Services/Probation and Court Fee.¹⁵³ Both fees go towards the costs of providing probation

¹⁴⁵ BARBARA KRAUTH & KARIN STAYTON, NAT'L INST. CORRECTIONS, U.S. DEP'T OF JUSTICE, FEES PAID BY JAIL INMATES: FEE CATEGORIES, REVENUES, AND MANAGEMENT PERSPECTIVES IN A SAMPLE OF U.S. JAILS 41 app. B (2005) (booking table), available at <http://nicic.org/Downloads/PDF/Library/021153.pdf>.

¹⁴⁶ 730 ILL. COMP. STAT. 125/17.

¹⁴⁷ See COOK COUNTY, ILL., CODE ORDINANCES ch. 46, § 3(b); Kankakee County, Ill., Ordinance No. 2007-11-13-182 (Nov. 13, 2007), available at <http://www.co.kankakee.il.us/files/20071113182.pdf>.

¹⁴⁸ 730 ILL. COMP. STAT. 125/20(a).

¹⁴⁹ 730 ILL. COMP. STAT. 5/5-6-3(i).

¹⁵⁰ At the end of 2007, Cook County was supervising nearly 30,000 probationers. ADMIN. OFFICE OF ILL. CTS., *supra* note 74, at 100.

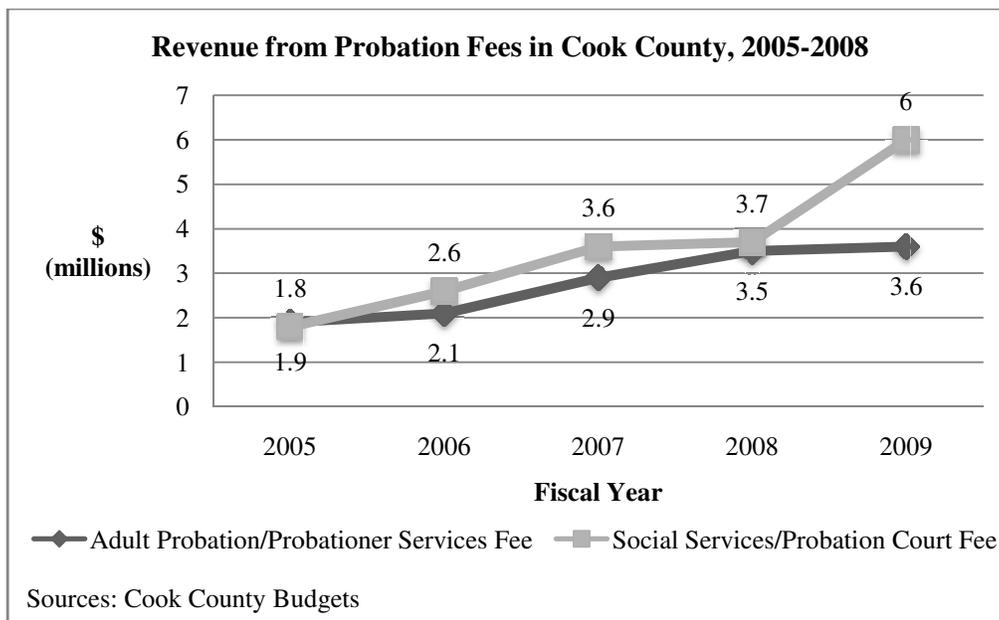
¹⁵¹ Cir. Ct. Cook County, Ill., Standard Probation Fee Guide, Gen. Admin. Order No. 05-09 (2005), http://www.cookcountycourt.org/rules/admin_orders/admin_orders_2005.html#05-09 (last visited Nov. 5, 2009) [hereinafter Standard Probation Fee Guide].

¹⁵² For example, under the federal poverty guidelines, a person with a household income of \$10,830 and no dependants is considered low-income. See U.S. Dep't of Health and Human Servs., The 2009 HHS Poverty Guidelines, <http://aspe.hhs.gov/poverty/09poverty.shtml> (last visited Nov. 6, 2009). Under the Circuit Court of Cook County's standard probation fee guide, a person with a household income of less than \$13,000 and no dependants must pay a reduced monthly fee of \$20. See Standard Probation Fee Guide, *supra* note 151.

¹⁵³ 2010 REVENUE ESTIMATE, *supra* note 63, at 69.

services. These costs include the costs of treatment, such as substance abuse treatment, drug testing, and domestic violence counseling. In addition, these fees cover training of probation staff, equipment, research, lease of office space at community-based sites, and materials for probationer groups and events.¹⁵⁴

Figure 10



D. Distribution of Fines and Fees

The distribution of fines and fees deserve special attention. Defendants usually pay their financial obligations to the circuit court clerk, who then disburses the funds to their proper destinations. In many cases, the proceeds go into the county's general revenue fund.¹⁵⁵ Cook County's general revenue fund include the public safety fund, which provides the county with the money necessary for the different actors of the criminal justice system to operate, such as state's attorneys, public defenders, the circuit clerk, and the sheriff. For fiscal year 2010, the public safety fund will make up nearly half of the county's general fund.¹⁵⁶

Some fines and fees, however, are earmarked for special revenue funds. Special revenue funds are separate from the general revenue fund, and they finance specific programs or activities.¹⁵⁷ Special

¹⁵⁴ [2 CHIEF JUDGE] TODD H. STROGER, PRESIDENT, COOK COUNTY BOARD OF COMMISSIONERS, 2009 EXECUTIVE BUDGET RECOMMENDATION P-23 (2008), available at http://www.cookcountygov.com/taxonomy/Budget2009/cc_FY09_P_ExecBudget.pdf.

¹⁵⁵ David Olson, *Flow of Funds in Illinois' Criminal Justice System*, RESEARCH BULLETIN (Ill. Criminal Justice Info. Auth., Chicago, Ill.), Mar. 1991, at 1, available at <http://www.icjia.state.il.us/public/pdf/Bulletins/funds.pdf>.

¹⁵⁶ [1 CITIZEN'S SUMMARY] TODD H. STROGER, PRESIDENT, COOK COUNTY BOARD OF COMMISSIONERS, 2010 EXECUTIVE BUDGET RECOMMENDATION 41 (2009), available at http://www.cookcountygov.com/taxonomy/Budget/Budget2010/cc_2010Exec_Citizens_Summary.pdf. For fiscal year 2010, the Corporate Fund is expected to be \$199,072,914; the Public Safety Fund, \$1,113,724,686; and the Health Fund, \$968,545,889. *Id.*

¹⁵⁷ Olson, *supra* note 155.

revenue funds exist at two levels of government: county and state.

1. County Special Revenue Funds

Most of the county special revenue funds help to cover the operating costs of the circuit court clerks. The Court Automation Fund, for example, goes toward automating court records,¹⁵⁸ and the Children's Advocacy Center Fund contributes to the administration of centers to serve children who are victims of abuse.¹⁵⁹ These funds and their purposes were discussed in detail in the section on fees to the circuit court clerks, *supra*.

Cook County recently received some attention because it failed to set aside fee revenue for some county special revenue funds. Several years ago, the Cook County Board of Commissioners created the Mental Health Court Fee, the Peer/Teen Court Fee, and the Drug Court Fee, all earmarked to fund the operation of the respective diversion court. These funds, however, were ultimately sent to the county's general revenue fund, and these diversion courts were deprived of much-needed funds.¹⁶⁰ This type of oversight underscores the need to monitor whether these fees ultimately reach their intended destination.

2. State Special Revenue Funds

Besides county special revenue funds, fines and fees can also contribute to state special revenue funds. Of the funds that were disbursed by the circuit court clerks in FY 2007, roughly one-third went to state special revenue funds.

Some of the larger funds are set aside for law enforcement activities. For example, when a person receives a fine for a criminal or traffic offense, he must pay an additional \$10 for every \$40 in fines. Of that \$10, \$8 goes to the Traffic and Criminal Surcharge Fund, which reimburses local governments for law enforcement training. Another \$1 goes to the LEADS Maintenance Fund, helping the government allow authorized entities access to criminal justice data repositories. The last \$1 is for the Law Enforcement Camera Grant Fund, which financially supports installing video cameras in police cars and training officers on how to operate those cameras.¹⁶¹ At the end of FY 2008, the Traffic and Criminal Surcharge Fund produced \$20,678,982, the LEADS Maintenance Fund had \$2,092,711, and the Law Enforcement Camera Grant Fund totaled \$1,543,266.¹⁶²

Another example of a state special revenue fund is the Violent Crime Victims Assistance Fund. This fund consists of revenue from a fee imposed on every person convicted of a criminal offense, whether violent or non-violent.¹⁶³ In FY 2008, this fee generated over \$9 million to help finance crime victims services,¹⁶⁴ including the Illinois Attorney General's Violent Crime Victim Assistance Bureau.¹⁶⁵

¹⁵⁸ 705 ILL. COMP. STAT. 105/27.3a; *see, e.g.*, COOK COUNTY, ILL., CODE ORDINANCES ch. 18, § 33.

¹⁵⁹ 55 ILL. COMP. STAT. 5/5-1101(f-5); *see, e.g.*, COOK COUNTY, ILL., CODE ORDINANCES ch. 18, § 41.

¹⁶⁰ Radio broadcast: Drug, Mental Health and Youth Courts Being Shortchanged \$2 Million by Cook County (WBEZ, July 13, 2009), *available at* <http://www.chicagopublicradio.org/Content.aspx?audioID=35460>.

¹⁶¹ 730 ILL. COMP. STAT. 5/5-9-1(c).

¹⁶² FEE IMPOSITION REPORT FISCAL YEAR 2008, *supra* note 56.

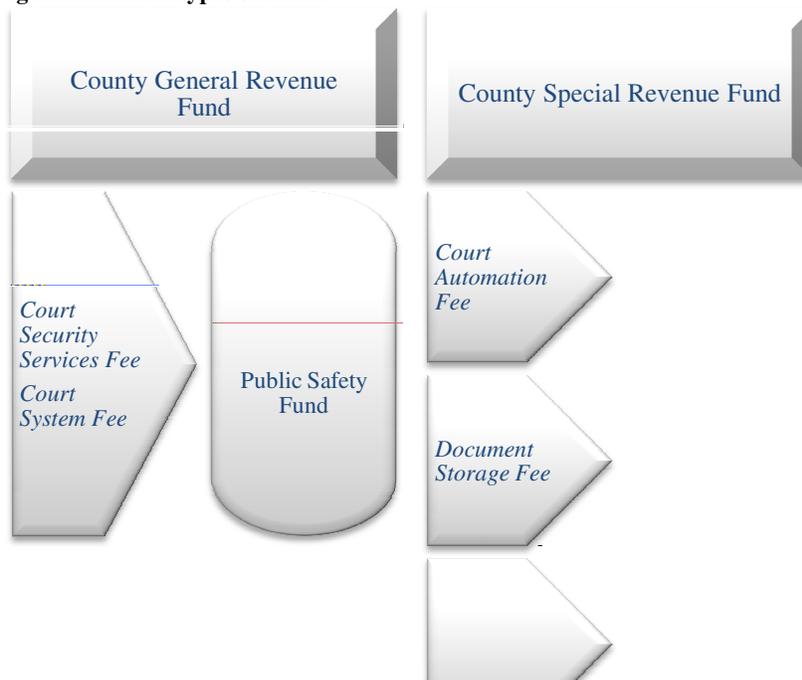
¹⁶³ 725 ILL. COMP. STAT. 240/10. If a defendant has already been fined, he will pay an additional \$4 for every \$40 that comprise the original fine. If, however, the defendant has not yet been fined, he will pay \$25 for violent crimes and \$20 for all other crimes. *Id.*

¹⁶⁴ FEE IMPOSITION REPORT FISCAL YEAR 2008, *supra* note 56.

Other special revenue funds come from financial assessments for specific crimes commonly drug-related offenses. The Trauma Center Fund is set aside for hospital trauma and consists of \$100 fines paid by people with convictions for DUI and other drug-related offenses. The same people also pay \$5 to the Spinal Cord Injury Paralysis Cure Research Trust Fund.¹⁶⁵ If someone relates to cannabis, methamphetamine, or other controlled substance, they also pay fines to the Drug Treatment Fund.¹⁶⁸ In FY 2008, \$12.5 million was earmarked for the Trauma Center Fund. During that same year, \$711,142 went to the Spinal Cord Injury Paralysis Cure Research Trust Fund while the Drug Treatment Fund generated \$4,290,172 to help fund drug treatment programs.¹⁶⁹

The following chart shows the three main types of funds with examples of each and the financial obligations that populate them.

Figure 11. Three Types of Funds



¹⁶⁵ Ill. Attorney Gen., Violent Crime Victims Assistance (VCVA), <http://www.illinoisattorneygeneral.gov/victims/vcva.html> (last visited Nov. 6, 2009).
¹⁶⁶ 730 ILL. COMP. STAT. 5/5-9-1(c-5) (DUI); 730 ILL. COMP. STAT. 5/5-9-1.1(b) (drug-related offenses).
¹⁶⁷ 730 ILL. COMP. STAT. 5/5-9-1 (c-7) (DUI); 730 ILL. COMP. STAT. 5/5-9-1.1(c) (drug-related offenses).
¹⁶⁸ 720 ILL. COMP. STAT. 550/10.3(h) (cannabis); 720 ILL. COMP. STAT. 646/80(h)-(i) (methamphetamine); 720 ILL. COMP. STAT. 570/411.2(h)-(i) (controlled substances).
¹⁶⁹ FEE IMPOSITION REPORT FISCAL YEAR 2008, *supra* note 56.

E. Relief from Financial Obligations

Sometimes, a court will order the defendant to pay certain financial obligations without assessing his ability to pay. Other times, the defendant's financial circumstances may worsen to a point where he cannot pay his financial obligations, even though he had the means to do so before the court issued its order. In both of these situations, the defendant will seek some post-order relief from his financial obligations. In fact, most courts tend to make adjustments after ordering the financial obligations, not beforehand.¹⁷⁰ The first subsection looks at ways in which the court modifies or waives the amount due, while the second section examines the use of community service as an alternative means of payment.

1. *Modifications, Payment Plans, and Waivers/Revocations*

A person may ask the court to modify the payment terms of the financial obligations. Modifications include reducing the amount due, giving more time to pay, or allowing a payment plan rather than one lump-sum payment. When a person is required to reimburse the county for his court-appointed counsel, for example, the court may reduce the amount of reimbursement ordered "as the interest of fairness may require."¹⁷¹

Payment plans can be particularly helpful. They are available as means to pay off fines if a person can show that his failure to pay was not willful.¹⁷² A person can also enter into a payment plan for one specific financial obligation: the \$200 DNA analysis fee for first-time felony offenders. If he cannot pay this fee at the time of sentencing, the court may establish a 24-month payment plan.¹⁷³ Few other financial obligations in the criminal justice system specifically provide for payment plans. During the floor debate, the sponsor of the legislation authorizing these payment plans noted

So, there's a real attempt in this Bill to give individuals opportunity to pay that \$200 over a 24-month period. Which, I think, is frankly something we don't do in other cases and perhaps, we should look at, so we do give 'em ample opportunity to pay.¹⁷⁴

In addition to making financial obligations more manageable, payment plans are helpful because they allow people to avoid financial penalties that the circuit clerks can assess for overdue payments. Without these plans in place, the circuit clerk could tack on an additional 5%, 10%, or 15% of the amount due, depending on how late the payment is.¹⁷⁵

Sometimes, the court may waive or revoke the financial obligation altogether. For example, a defendant's unintentional failure to pay a fine gives the court authority to revoke the entire amount due.¹⁷⁶ A court may reduce or waive a domestic violence fine of \$200 if it finds that the fine will impose an

¹⁷⁰ R. Barry Ruback, *The Imposition of Economic Sanctions in Philadelphia: Costs, Fines, and Restitution*, FED. PROB., June 2004, http://www.uscourts.gov/fedprob/June_2004/philadelphia.html (last visited Nov. 6, 2009).

¹⁷¹ 725 ILL. COMP. STAT. 5/113-3.1(c).

¹⁷² 730 ILL. COMP. STAT. 5/5-9-2 ("[T]he court, upon good cause shown [. . .] may modify the method of payment.").

¹⁷³ 730 ILL. COMP. STAT. 5/5-4-3(j).

¹⁷⁴ 92nd General Assemb., H. Rep. Transcription Deb., 132nd Leg. Day 27 (Ill. 2002), available at <http://www.ilga.gov/house/transcripts/htrans92/t051502.pdf>.

¹⁷⁵ 725 ILL. COMP. STAT. 5/124A-10.

¹⁷⁶ 730 ILL. COMP. STAT. 5/5-9-3(c).

undue burden on the victim.¹⁷⁷ The same is true for the \$20 fine for a violation of an order of protection and the \$200 fine for sexual assault.¹⁷⁸ Beyond these specific types of financial obligations, the court's authority to waive or revoke for indigent defendants is unclear. In particular, relief mechanisms for fees aimed at recovering costs for government services, such as filing fees, appear to be lacking.

The relief mechanisms available tend to depend on the specific financial obligation at hand and thus are scattered throughout the Illinois Code. Those seeking post-order relief, however, may benefit from something more centralized. In New Mexico, for example, one statute covers the relief mechanisms available for all fines and fees. This statute authorizes courts to establish payment plans, modify payment terms, or revoke any fine or fee.¹⁷⁹ In addition, this statute sets forth the option of community service in lieu of payment, an alternative method of payment that will be discussed in further detail in the next section. People seeking relief from their financial obligations in Illinois would benefit from a similarly centralized statute so that they know their options and can work with the court.

New Mexico Statutes § 31-12-3

- A. Any person sentenced to pay a fine or to pay fees and costs in any criminal proceeding against him, either in addition to or without a term of imprisonment, may in the discretion of the court be allowed to pay such fine, fees or costs in installments of such amounts, at such times and upon such conditions as the court may fix. The defendant may also be required to serve a period of time in labor to be known as "community service" in lieu of all or part of the fine. If unable to pay the fees or costs, he may be granted permission to perform community service in lieu of them as well. The labor shall be meaningful, shall not be suspended or deferred and shall be of a type that benefits the public at large or any public, charitable or educational entity or institution and is consistent with Article 9, Section 14 of the constitution of New Mexico. Any person performing community service pursuant to court order shall be immune from civil liability arising out of the community service other than for gross negligence, shall not be entitled to wages or considered an employee for any purpose and shall not be entitled to workers' compensation, unemployment or any other benefits otherwise provided by law. Instead, a person who performs community service shall receive credit toward the fine, fees or costs at the rate of the prevailing federal hourly minimum wage. Unless otherwise provided, however, the total fine, fees and costs shall be payable forthwith.
- B. The court may at any time revise, modify, reduce or enlarge the amount of the installment or the time and conditions fixed for payment of it.
- C. When a defendant sentenced to pay a fine in installments or ordered to pay fees or costs defaults in payment, the court, upon motion of the prosecutor or upon its own motion, may require the defendant to show cause why his default should not be treated as contumacious and may issue a summons or a warrant of arrest for his

¹⁷⁷ 730 ILL. COMP. STAT. 5/5-9-1.5.

¹⁷⁸ 730 ILL. COMP. STAT. 5/5-9-1.11(a) (fine for violation of order of protection); 730 ILL. COMP. STAT. 5/5-9-1.7(b)(1) (fine for sexual assault).

¹⁷⁹ N.M. STAT. § 31-12-3.

appearance. It shall be a defense that the defendant did not willfully refuse to obey the order of the court or that he made a good faith effort to obtain the funds required for the payment. If the defendant's default was contumacious, the court may order him committed until the fine or a specified part of it or the fees or costs are paid. The maximum term of imprisonment for such contumacious nonpayment shall be specified in the order of commitment.

- D. If it appears that a defendant's default in the payment of a fine, fees or costs is not contumacious, the court may allow the defendant additional time for payment, reduce the amount of the fine or of each installment, revoke the fine or the unpaid portion in whole or in part or require the defendant to perform community service in lieu of the fine, fees or costs.

2. *Community Service in Lieu of Payment*

Community service is an underutilized alternative method of payment in Illinois. Currently, community service in lieu of payment is only available when drug-related offenses are involved. When a defendant is convicted of an offense related to cannabis, methamphetamine, or controlled substances, he must pay a drug assessment. The amount of the drug assessment ranges between \$200 and \$3000, depending on the class of the defendant's offense.¹⁸⁰ The defendant may ask the court to accept community service in lieu of actual payment. For every one hour of community service that the defendant performs, \$4 will be subtracted from his drug assessment.¹⁸¹

Community service is not authorized as an alternative method of payment for any other financial obligation. In 2009, an Illinois bill was introduced that would have authorized a court to order defendants to perform community service in lieu of paying their fines.¹⁸² This bill did not ultimately pass.¹⁸³

Other states do permit community service in lieu of payments. Some, like Illinois, allow community service only for specific financial obligations, such as monthly supervision fees in Louisiana,¹⁸⁴ fees for the Alcohol and Drug Abuse and Court Referral and Treatment program in Alabama,¹⁸⁵ restitution in Montana,¹⁸⁶ and fees for court-appointed counsel in Massachusetts.¹⁸⁷

¹⁸⁰ 720 ILL. COMP. STAT. 550/10.3(a) (cannabis); 720 ILL. COMP. STAT. 646/80(a) (methamphetamine); 720 ILL. COMP. STAT. 570/411.2(a) (controlled substances).

¹⁸¹ 720 ILL. COMP. STAT. 550/10.3(e) (cannabis); 720 ILL. COMP. STAT. 646/80(e) (methamphetamine); 720 ILL. COMP. STAT. 570/411.2(e) (controlled substances).

¹⁸² H.B. 248, 96th Gen. Assemb. (Ill. 2009), *available at* <http://www.ilga.gov/legislation/96/HB/PDF/09600HB0248lv.pdf>.

¹⁸³ Ill. Gen. Assemb., Bill Status of HB0248, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=0248&GAID=10&DocTypeID=HB&LegID=40364&SessionID=76&GA=96&SpecSess=0> (last visited Nov. 6, 2009).

¹⁸⁴ LA. CODE CRIM. PRO. art. 895(D) (“The court may, in lieu of the monthly supervision fee provided for in Paragraph A, require the defendant to perform a specified amount of community service work each month if the court finds the defendant is unable to pay the supervision fee provided for in Paragraph A.”).

¹⁸⁵ ALA. CODE § 12-23-18 (“The judge may order an indigent offender to perform community service in lieu of payment of fees.”).

New Mexico's use of community service provides the best model for Illinois. In New Mexico, the community service option is available for all financial obligations arising from the criminal justice system. Community service must be meaningful, and it must also benefit the public at large or any public, charitable, or educational entity or institution. Unlike Illinois, which only compensates defendants \$4 per hour of community service for their drug assessment, New Mexico gives a credit equal to the federal hourly minimum wage. Indeed, most states offering a community service option will offset the financial obligations owed by the federal or state minimum wage, including Florida and Montana.¹⁸⁸ The rate is even better in Massachusetts, where for ten hours of community service, a defendant owes \$100 less in fees for court-appointed counsel.¹⁸⁹ Similarly, Illinois should allow community service in lieu of payment for all financial obligations and compensate defendants with at least the federal minimum hourly rate.

To strengthen this community service option, Illinois should recognize that community service will not be a viable option for all defendants, a reality that Massachusetts has recognized. In Massachusetts, a \$75 fee is assessed against people arrested after forfeiting his bail bond. Indigent defendants must perform a day of community service in lieu of paying the fine, unless a judge finds that they are physically or mentally unable to perform the service.¹⁹⁰ Likewise, Illinois should exempt defendants who lack the physical or mental ability to perform the community service.

Recommendation: To help indigent defendants pay off their court-related debts, Illinois should provide defendants with the option of performing community service in lieu of payment. This option should not be limited to the drug assessment. It should offset the defendant's financial obligations at a rate set at the federal minimum hourly wage, and it should make exceptions for people who are physically or mentally unable to perform the community service.

¹⁸⁶ MONT. CODE ANN. § 46-18-241(3) ("If at any time the court finds that, because of circumstances beyond the offender's control, the offender is not able to pay any restitution, the court may order the offender to perform community service during the time that the offender is unable to pay.").

¹⁸⁷ MASS. GEN LAWS ch. 211D, § 21/2(g) ("The court may authorize a person for whom counsel was appointed to perform community service in lieu of payment of the counsel fee.").

¹⁸⁸ FLA. STAT. § 948.0345 (federal minimum hourly wage); MONT. CODE ANN. § 46-18-241(3) (state minimum hourly wage).

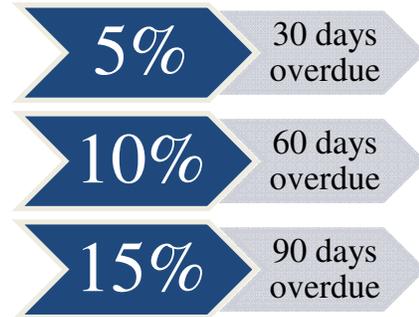
¹⁸⁹ MASS. GEN LAWS ch. 211D, § 21/2(g).

¹⁹⁰ MASS. GEN LAWS ch. 276, § 30.

III. COLLECTION

At sentencing, the court will usually issue an order assessing fines, fees, and costs, which will contain include the due date for payment. If the defendant does not pay on time, the circuit clerk may assess financial penalties depending on how many days have passed, provided that the defendant is not subject to a court-ordered payment plan. After thirty days of non-payment, the circuit clerk will tack on an additional 5% to the amount due. That percentage increases to 10% if payments are sixty days late and jumps again to 15% if payments are ninety days late.

Figure 12. Financial Penalties for Unpaid Financial Obligations



At the ninety-day mark, the circuit clerk can also report the delinquent amount to consumer reporting agencies, which will then include this information in credit reports about the defendant.¹⁹¹ Unpaid debts on a credit report can hinder a person's ability to obtain credit cards and loans. More importantly, negative credit reports increasingly yield negative employment consequences as more and more employers depend on them. Whereas credit checks used to be limited to sensitive positions that required, for example, money handling, many employers are now using credit checks to assess a person's judgment and character. Over 40% of employers checked a job applicant's credit in 2004.¹⁹² In this environment, a person still carrying debt from the criminal justice system will have two strikes against him in his job hunt – a criminal history and a poor credit report – impairing his chances for earning the money that he needs to pay down his debts and that the state needs to support the different activities funded by these financial obligations.

If a person does not make payment after the ninety-day period and his financial obligations become overdue, state law gives the state's attorney of each county the responsibility of collecting these debts.¹⁹³ Some state's attorneys perform the collections in-house. In Champaign County, for example, the civil division of the state's attorney's office houses a program to collect unpaid fines, fees, and restitution. In operation since 2006, this collections program consists of a paralegal who first sends letters to people with unpaid fines, fees, or restitution. In FY 2007, 1200 letters were sent. If they do not pay, then the state's attorney's office may explore other means of collecting the unpaid financial obligations. Through this program, the state's attorney collected \$100,000 in unpaid fines, fees, and restitution in FY 2007, and it estimated that it would collect another \$300,000 between FY 2008 and FY 2009.¹⁹⁴ The

¹⁹¹ 725 ILL. COMP. STAT. 5/124A-10.

¹⁹² Jonathan D. Glater, *Another Hurdle for the Jobless: Credit Inquiries*, N.Y. TIMES, Aug. 7, 2009, at A1, available at <http://www.nytimes.com/2009/08/07/business/07credit.html?hp=&adxnnl=1&adxnnlx=1249624822-AdNTN6kxyhaWwYGWQhdODQ> (last visited Nov. 6, 2009).

¹⁹³ 55 ILL. COMP. STAT. 5/4-2004.

¹⁹⁴ CHAMPAIGN COUNTY, ILL., CHAMPAIGN COUNTY FY2009 BUDGET 119-20 & 123 (2008), available at <http://www.co.champaign.il.us/COUNTYBD/2009budget/2009budgetfinal.pdf>; see also Champaign County Bd., Minutes of Legislative Budget Hearing, 5-6 (Aug. 29, 2006), available at <http://www.co.champaign.il.us/countybd/BF/060829bhminutes.pdf>.

Boone County state's attorney's office also has an internal office for collecting this type of debt.¹⁹⁵

These state's attorneys may use any and all authorized means of collecting money judgments in Illinois. For example, they can seek to garnish up to 15% of a person's income.¹⁹⁶ Wage garnishment is available for outstanding fines and restitution,¹⁹⁷ but not fees and costs.¹⁹⁸ Illinois courts are divided over whether it is proper to garnish wages that an inmate earns from working for the Illinois Department of Corrections while he is serving his sentence.¹⁹⁹

Illinois law usually protects certain types of income and assets from debt collectors. Exempt sources of income include public benefits, such as Temporary Assistance for Needy Families ("TANF") and Aid to the Aged, Blind, or Disabled ("AABD"), as well as Social Security and Supplemental Security Income ("SSI"). As for assets, \$4000 of personal property (including money in a bank account) and the first \$2400 of the value of a person's car are off-limits for debt collectors.²⁰⁰ These exemptions, however, do not apply when the debt is a criminal fine or other penalty, meaning that state's attorneys are free to go after these sources of income and assets to collect a person's unpaid fines.²⁰¹

Since 2006, state's attorneys also have been able to outsource their collections to private attorneys and collection agencies. Harris & Harris, Ltd., a collection agency, drafted the law authorizing this practice in Illinois,²⁰² and it currently has collections contracts with the counties of Cook,²⁰³ Will,²⁰⁴ DuPage,²⁰⁵ Peoria²⁰⁶ and Madison.²⁰⁷ Under these arrangements, the delinquent amount draws interest at

¹⁹⁵ Kevin Haas, *Boone County to Charge Interest on Fines*, ROCKFORD REGISTER STAR, Feb. 8, 2009, <http://www.rstar.com/belvidere/x1452250512/Boone-County-to-charge-interest-on-late-fines> (last visited Nov. 9, 2009).

¹⁹⁶ 735 ILL. COMP. STAT. 5/12-803. Courts have thrown out wage reduction orders in excess of that amount. *See, e.g.,* *People v. Gathing*, 334 Ill. App. 3d 617, 621 (3d Dist. 2002) (declaring an order that withheld 50% of plaintiff's income for unpaid fines to be void); *People v. Mancilla*, 331 Ill. App. 3d 35, 39 (2d Dist. 2002) (declaring an order that withheld 25% of plaintiff's income for unpaid fines to be void).

¹⁹⁷ 730 ILL. COMP. STAT. 5/5-9-4 (fines); 730 ILL. COMP. STAT. 5/5-5-6(h) (restitution).

¹⁹⁸ *People v. Despenza*, 318 Ill. App. 3d 1155, 1156-57 (3d Dist. 2001).

¹⁹⁹ *Compare* *People v. Watson*, 318 Ill. App. 3d 140, 143 (4th Dist. 2000) (holding that IDOC wages could not be withheld) *with* *People v. Mancilla*, 331 Ill. App. 3d 35, 38 (2d Dist. 2002) (holding that IDOC wages could be withheld).

²⁰⁰ Ill. Legal Advocate, *Money and Property Exempt from Judgments*, http://www.illinoislegaladvocate.org/index.cfm?fuseaction=home.dsp_Content&contentID=357 (last visited Nov. 6, 2009).

²⁰¹ 735 ILL. COMP. STAT. 5/12-618.

²⁰² Harris & Harris, *New Law For Old Problems: Court Fine Enforcement*, <http://www.harriscollect.com/governmentinner/cstudies.htm>.

²⁰³ *See* Cook County Bd. of Comm'rs, *New Items*, 4 (Apr. 23, 2008), *available at* http://www.cookctyclerk.com/upload/syno_pdf_836.pdf (authorizing the Clerk of the Circuit Court of Cook County to extend its collections contract with Harris & Harris, Ltd. through July 1, 2010).

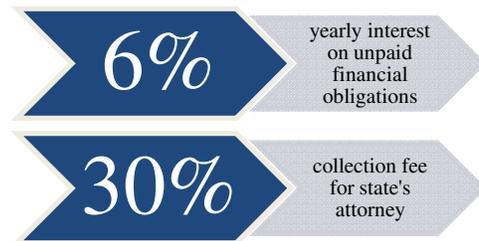
²⁰⁴ Press Release, Will County Circuit Clerk, *Circuit Clerk McGuire Reports New Program Captures More Than \$1.25 Million in Revenues* (Jan. 11, 2008), *available at* <http://www.willcountycircuitcourt.com/Harris%20Collections.pdf>.

²⁰⁵ Press Release, DuPage County State's Attorney, *DuPage County Court Contracts with Agencies to Collect Past Due Fines and Fees*, http://www.dupageco.org/statesattorney/pressreleases.cfm?doc_id=2732 (last visited Nov. 6, 2009).

²⁰⁶ Press Release, Peoria County, *Going After Unpaid Fines and Fees Makes Both Dollars and Sense* (Oct. 21, 2008), <http://www.peoriacounty.org/county/news/show/810> (last visited Nov. 6, 2009).

a rate of 9% per year. Furthermore, the state’s attorney may also tack on an additional fee that equals 30% of the delinquent amount to pay for the contracted collection services.²⁰⁸ Together, these collections fees can greatly inflate the amount owed, especially for indigent defendants.

Figure 13. Collection Fees for Unpaid Financial Obligations



Illinois can, however, take steps to protect indigent defendants; Texas provides a good model. Like Illinois, Texas permits counties and municipalities to contract out its debt collection to private collection agencies, who may then receive a fee equal to 30% of the delinquent amount. Unlike Illinois, however, Texas created a safety net for the indigent by authorizing courts to waive this collections fee if a person lacks the ability to pay.²⁰⁹ If this type of waiver were available in Illinois, many indigent defendants would benefit and be in a better position to pay off their debts.

Recommendation: To put indigent defendants in a better position to pay off their court-related debts, Illinois should waive the collections fee of 30% of the amount due if a defendant shows that he is indigent.

The circuit clerk may call on other government agencies to help it collect delinquent debts. During the 2009 legislative session, the Illinois General Assembly authorized circuit clerks to ask wardens of county jails to deduct the amount of any unpaid financial obligation from inmates’ trust accounts. This deduction is authorized regardless of whether the inmate earned the funds in that account or whether the inmate’s family and friend contributed to that account.²¹⁰

The circuit clerk may also turn to the Illinois Department of Revenue to intercept the state income tax returns of individuals with certain overdue financial obligations. The types of financial obligations subject to intercept are fees aimed at recovering costs, the most significant being filing fees.²¹¹ Fines and restitution are not included. Similar intercept programs exist for overdue child support and debt to the state of Illinois, and those debts have priority over debts to the clerks of the circuit courts.²¹² Indeed, the statute specifically provides that intercepts of overdue court fees cannot interfere with the collection of child support.²¹³ Currently, the federal government does not intercept federal income tax returns to collect court-related debt, but efforts are underway to create such a program.²¹⁴

²⁰⁷ Brian Brueggemann, *Owe Money to Madison County? The Next Call You Get Will Be From Collection Agency*, BELLEVILLE NEWS-DEMOCRAT, Nov. 4, 2009, <http://www.bnd.com/news/local/story/993807.html> (last visited Nov. 6, 2009).

²⁰⁸ 730 ILL. COMP. STAT. 5/5-9-3(e).

²⁰⁹ TEX. CODE CRIM. PROC. art. 103.0031(d) (“A defendant is not liable for the collection fees authorized under Subsection (b) if the court of original jurisdiction has determined the defendant is indigent, or has insufficient resources or income, or is otherwise unable to pay all or part of the underlying fine or costs.”).

²¹⁰ Act of Aug. 13, 2009, 2009 Ill. Laws 432.

²¹¹ 705 ILL. COMP. STAT. 105/27.2b.

²¹² ILL. ADMIN. CODE tit. 86 § 700.500(d)(3).

²¹³ 705 ILL. COMP. STAT. 105/27.2b.

²¹⁴ See, e.g., Conference of Chief Justices & Conference of State Court Administrators, Resolution 10 In Support of the Court Fee Intercept Legislation in the United States Congress (Aug. 5, 2009), available at <http://cosca.ncsc.dni.us/Resolutions/CourtAdmin/resolution10CourtIntercept.pdf> (last visited Nov. 6, 2009).

Imprisonment is not a typical enforcement tool. Recognizing that incarceration is an extreme enforcement tool, Illinois has explicitly barred committing people to Illinois prisons as a means of enforcing payment of fines and costs.²¹⁵

Sending a person to county jail (as opposed to state prison) remains an option, but only in very limited situations, and even then, probably not for indigent defendants. Under the Illinois Constitution, failure to pay a fine may result in incarceration only if the defendant has willfully refused after being given adequate time to pay.²¹⁶ Because of this guarantee, a court may not jail a person simply because his payment is overdue. Rather, the court must first determine whether the defendant willfully refused to pay.

If the defendant acted willfully, then the consequence depends on the type of financial obligation due. For fines, a defendant will either be held in contempt or imprisoned.²¹⁷ The maximum length of incarceration is six months for felonies and thirty days for misdemeanors.²¹⁸ Willful failure to pay restitution can prompt the court to revoke the defendant's sentence of restitution.²¹⁹ Jail time, however, is not an option for a defendant who failed to pay his costs and fees.²²⁰ These rules are essentially the same even if paying the financial obligations is a condition of probation or parole: defendants may not be incarcerated absent a finding of willfulness by a court or the Prisoner Review Board.²²¹

Where the defendant's failure to pay is not willful, the relief mechanisms described earlier come into play. In the case of fines, for example, the court may increase the payment period, decrease the total amount of the fine or any installments, or revoke any unpaid portion altogether.²²² For restitution, the court may extend the time period for payment by a maximum of two years.²²³

Information about how the government uses the various collection tools at its disposal is scarce. What is known, however, is that collection of unpaid financial obligations pre-occupies many actors in the criminal justice system. In a 2007 survey conducted by the Illinois Criminal Justice Information Authority, 92% of circuit court clerks surveyed identified the collection of fines, fees, and restitution as a task that contributed significantly to their workloads. Indeed, more clerks identified collection than recording and filing documents, entering events into the court calendar (i.e., docketing), and the collection of child support.²²⁴ More than a quarter of these clerks also identified the collection of fines, fees, and

²¹⁵ 730 ILL. COMP. STAT. 5/5-8-6(d) (“No defendant shall be committed to the Department of Corrections for the recovery of a fine or costs.”).

²¹⁶ ILL. CONSTN. art 1, § 14 (“No person shall be imprisoned for failure to pay a fine in a criminal case unless he has been afforded adequate time to make payment, in installments if necessary, and has willfully failed to make payment.”)

²¹⁷ 730 ILL. COMP. STAT. 5/5-9-3(a).

²¹⁸ 730 ILL. COMP. STAT. 5/5-9-3(b).

²¹⁹ 730 ILL. COMP. STAT. 5/5-5-6(i).

²²⁰ Even though the Illinois Constitution only mentions “fines,” some courts have held that its protection against incarceration without evidence of willfulness also extends to fees and costs. *See, e.g.,* *People v. Nicholls*, 45 Ill. App. 3d 312, 321 (5th Dist. 1977).

²²¹ 730 ILL. COMP. STAT. 5/5-6-4(d) (probation, conditional discharge, periodic imprisonment and supervision); 730 ILL. COMP. STAT. 5/3-3-9(g) (parole and mandatory supervised release).

²²² 730 ILL. COMP. STAT. 5/5-9-3(c).

²²³ 730 ILL. COMP. STAT. 5/5-5-6(i).

²²⁴ ALEXANDER STRINGER ET AL., ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY NEEDS ASSESSMENT SURVEY CC-3 fig. CC.2 (2007), *available at*

restitution as the dominant need area in court management.²²⁵ Similarly, the judges surveyed identified only one area of court management that needed major improvement – the collection of fines.²²⁶

Corrections is also concerned about collections. Nearly one-third of probation officers surveyed also saw the collection of fines, fees, and probation as significantly contributing to their workload.²²⁷ Moreover 7% reported that probation’s fee and fine collection system needed major improvement, and 3.8% said that a fee and fine collection system needed to be developed.²²⁸

Given the concerns of these criminal justice actors as well as the impact that these debts have on reentry, it is clear that an ad hoc system of financial obligations simply will not do. Instead, the state of Illinois and its counties need a system that balances the government’s interest in increasing public safety by reducing the recidivism of people with criminal records, allowing its criminal justice actors to expend more resources into running the criminal justice system rather than chasing funds, and ensuring that the financial obligations that are imposed are used in the most cost-efficient way.

<http://www.icjia.state.il.us/public/pdf/ResearchReports/ICJIA%20Needs%20Assessment%20Survey%20Final%20Report%20Feb%202007.pdf>.

²²⁵ *Id.* at CC-11 fig. CC.7. 19% of circuit court clerks surveyed reported that improved automation was necessary for the collection of fines, fees, and restitution. *Id.* at CC-12 fig. CC.8.

²²⁶ *Id.* at J-3.

²²⁷ *Id.* at P-4 fig. P.3. 28.3% of probation officers surveyed reported that the collection of fees significantly contributed to their workloads, while 20.9% and 31.1% had the same observation about the collection of fines and restitution, respectively.

²²⁸ *Id.* at P-16 fig. P.11.