



- Introduce self
- Slides will be available after presentation
- Will have some time for questions at the end, can use chat to ask questions, but will only go to host



15 years old – no priors – admitted to 1 ct obstructing official business (F5) – story behind adjudication – placed on INDEFINITE probation



Probation terms: (1) attend an alternative school, (2) submit to random urine screens, and (3) attend MH and SA counseling

35 Review Hearings

\$50 due at each hearing



18 Drug Screens

\$60/
drug
screen



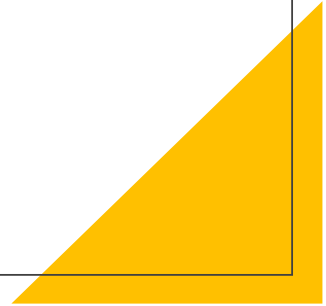
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204 days in detention



1 week before terminated from probation, ordered to pay amount due or it will be sent to collections.

\$28,063.31



CHLOE'S CHARGES

\$24,480 for 204 days in detention (\$120/day)

\$1,750 for probation supervision (\$50/month)

\$1,080 for 18 drug screens (\$60/screen)

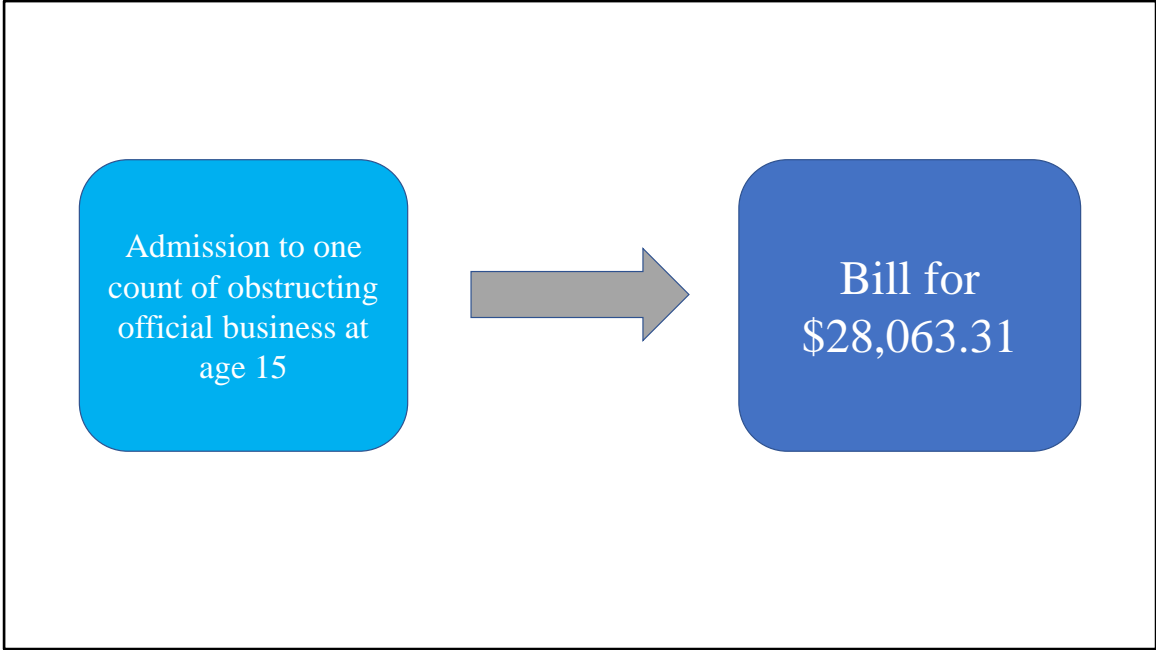
\$714.56 for 112 days on EMD (\$6.38/day)

\$24 for 2 green polo shirts

\$9.50 for 2 yellow t-shirts

\$5.25 for 1 shirt of unknown color

\$28,063.31



Chloe's case is not typical, but it's an example of what could happen (usually on a much smaller scale) when courts have discretion to charge these fees with little accountability.

Outline

Laws authorizing assessment of financial sanctions in delinquency cases

- Fines
- Costs
- Restitution
- Reimbursement (e.g., costs of confinement)

Collection methods (permitted and prohibited)

Collateral consequences of juvenile court debt

What you can do to reduce/eliminate court debt



Juvenile Court's Authority to Impose Financial Sanctions – R.C. 2152.20

(A) If a child is adjudicated a delinquent child or a juvenile traffic offender, the court may order any of the following dispositions, in addition to any other disposition authorized or required by this chapter:

- (1) Impose a fine;
- (2) Require the child to pay costs;
- (3) Require the child to make restitution to the victim based upon the victim's economic loss;
- (4) Require the child to reimburse any or all of the costs incurred for services or sanctions provided or imposed.

What if the case is dismissed?

- Under R.C. 2152.20, the imposition of court costs and other financial sanctions are dispositional orders.
- The court cannot impose costs or other financial sanctions if the case is dismissed. *In re Graham*, 7th Dist., 2002-Ohio-6615 (“[C]ourt costs may be assessed if and only if a child is actually adjudicated a delinquent.”); *In re K.M.*, 11th Dist., 2012-Ohio-5825.

Discretionary

- Courts may waive all fees and costs. R.C. 2151.54.

Transfer of cases

- Because financial sanctions are dispositional orders, a juvenile court cannot order costs and then transfer the case to another county for disposition. *In re Sekulich*, 65 Ohio St.2d 13 (1981).

Fines

Costs

Restitution

Reimbursement
(including costs of confinement)

Fines – R.C. 2152.20(A)(1)

Offense Level	Maximum Fine
Agg murder or murder	\$2,000
F1	\$1,500
F2	\$1,000
F3	\$750
F4	\$400
F5	\$300
M1	\$250
M2	\$200
M3	\$150
M4	\$100
MM	\$50

A fine is an amount of money a court orders someone to pay as a penalty or a punishment for an offense. Since we practice in juvenile court, the idea behind a fine is that ordering a child to pay for committing a delinquent act in some way is rehabilitative.

COURT OF COMMON PLEAS, JUVENILE COURT DIVISION
Court Fees and Fines

Cost Type	Cost	ORC Authority
TRAFFIC - MOVING		
Court Fees	\$31.00	2303.20
Victims of Crime	\$9.00	2743.70(A)(2)(b)
General Revenue	\$20.00	2949.09(A)(2)(a)(ii)
Moving Violation (CRIS)	\$5.00	2949.09
ADR	\$52.00	2303.20(E)(1)
Legal Computerization	\$20.00	2303.20(B)(1)
Legal Research	\$6.00	2303.20(A)(1)
Total	\$143.00	
TRAFFIC - NON-MOVING		
Court Fees	\$31.00	2303.20
General Revenue	\$10.00	2949.09(A)(2)(a)(ii)
ADR	\$52.00	2303.20(E)(1)
Legal Computerization	\$20.00	2303.20(B)(1)
Legal Research	\$6.00	2303.20(A)(1)
Total	\$119.00	
VARIOUS TRAFFIC		
Seat Belt Fine - Driver	\$30.00	4513.263(G)(1)
Seat Belt Fine - Passenger	\$20.00	4513.263(G)(2)
Tobacco	\$100.00	2151.87(F)(2)
Traffic Moving Violation	\$5.00	***
HS562 Moving	\$10.00	2949.094
Texting While Driving 1st	\$150.00	4511.205(C)(1)
Texting While Driving 2nd+	\$300.00	4511.205(C)(2)
DELINQUENCY TRAFFIC		
Court Fees	\$31.00	2303.20
Victims of Crime-Fel	\$30.00	2743.70(A)(2)(a)
General Revenue	\$30.00	2949.09(A)(2)(a)(ii)
ADR	\$52.00	2303.20(E)(1)
Legal Computerization	\$20.00	2303.20(B)(1)
Legal Research	\$6.00	2303.20(A)(1)
Total	\$169.00	
DELINQUENCY MISDEMEANOR		
Court Fees	\$31.00	2303.20
Victims of Crime-Misd	\$9.00	2743.70(A)(2)(b)
General Revenue	\$20.00	2949.09(A)(2)(a)(ii)
ADR	\$52.00	2303.20(E)(1)
Legal Computerization	\$20.00	2303.20(B)(1)
Legal Research	\$6.00	2303.20(A)(1)
Total	\$138.00	
UNRULY		
Court Fees	\$31.00	2303.20
ADR	\$52.00	2303.20(E)(1)
Legal Computerization	\$20.00	2303.20(B)(1)
Legal Research	\$6.00	2303.20(A)(1)
Total	\$109.00	

Revised 9/19/18

- Fees that the court passes on to a defendant or delinquent child, and usually include filing fees, charges for serving summons and subpoenas, fees for transcripts, and copying and serving motions or court entries. Could also include costs of appointed counsel and GAL, assessed against child or parents.
- Costs can also include all costs that the state, municipal corporation, or county incurred in investigating and prosecuting acts of terrorism. R.C. 2152.201. A hearing is required. Id.
- Court can order delinquent child to pay costs of tests performed on controlled substance in a drug abuse offense (but only if results are positive). R.C. 2152.202.

Restitution

The child may be ordered to pay the victim “an amount based upon the victim’s economic loss caused by or related to the delinquent act.”

Unless the child was adjudicated for MM

R.C. 2152.20(A)(3)



Reimbursements

- Community control (including a supervision fee)
- Confinement
 - Residential treatment
 - DYS

R.C. 2152.20(A)(4)



Costs of Confinement

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Reimbursement under R.C. 2152.20(A)(4)(b)

“All or part of the costs of confinement in a residential facility * * * or in a [DYS] institution, including, but not limited to, a per diem fee for room and board, the costs of medical and dental treatment provided, and the costs of repairing property the delinquent child damaged while so confined.”



The juvenile court may order the child, as part of the disposition, to reimburse for any or all of the costs incurred for services or sanctions provided, including:

Limitations to
reimbursement
under R.C.
2152.20(A)(4)(b)

Cannot exceed the
amount the child
is able to pay

Cannot exceed the
“actual cost of
confinement”



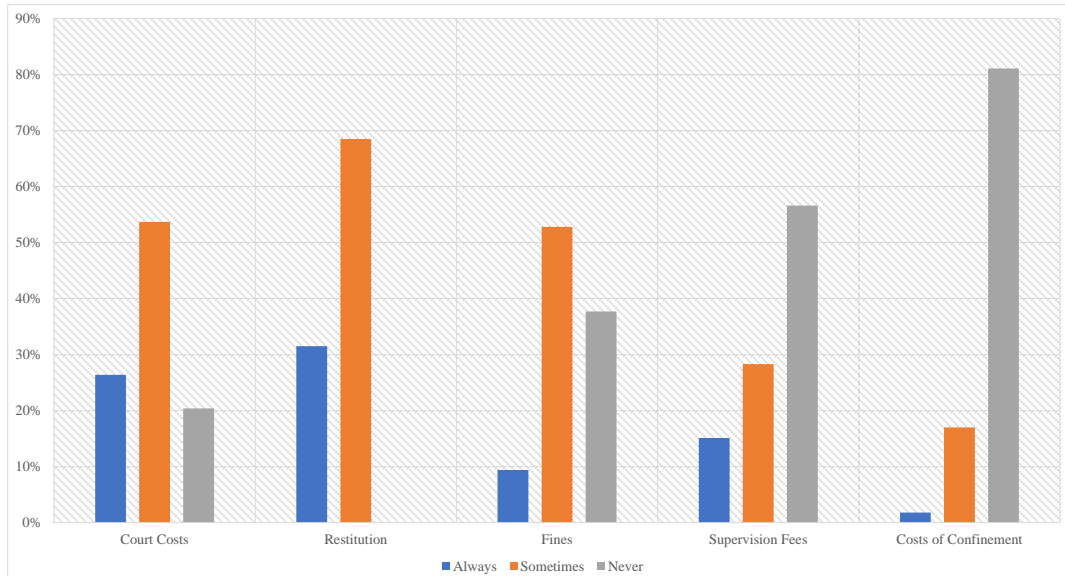
Results of Survey

The graphic features a dark grey header bar with the text 'Results of Survey' in white. Below this, a light grey background contains two white rounded rectangular boxes with blue borders. The left box contains the text '55 participants' and the right box contains '33 counties'. The entire graphic is enclosed in a thin black border.

55
participants

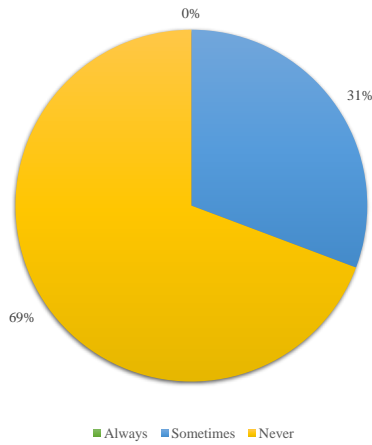
33 counties

What types of financial sanctions are assessed in your juvenile court?



- Almost 80% of respondents practice in juvenile courts that always or sometimes impose court costs
- 100% of respondents report that their courts either always or sometimes impose restitution
- Fines are less common: about 40% of respondents report their juvenile courts never impose fines
- As far as reimbursements, over half of respondents say their juvenile courts never impose supervision fees, and over 80% say their courts never order their clients to reimburse for costs of confinement. (However, 19% reported their juvenile courts either always or sometimes order kids to pay back the cost of being incarcerated.)

Do the juvenile courts you regularly practice in order other costs against the parents or legal guardians?





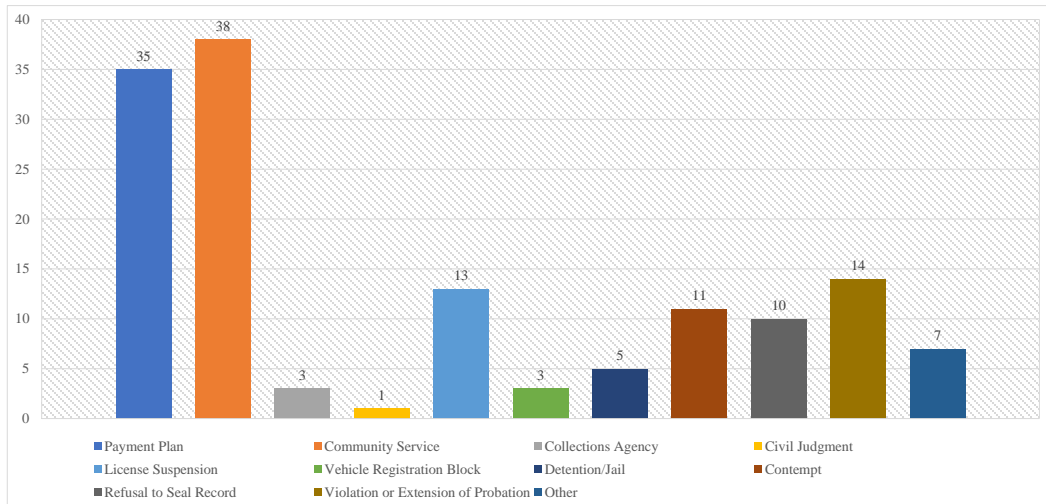
- For the most part, no – court costs and other financial sanctions are dispositional orders, meaning they are part of a child’s sentence.
- In reality, parents are occasionally ordered to pay some or all of a delinquent child’s costs.
- And, Juv.R. 4 permits the court to tax the costs of appointed counsel and GALs against parents.
- Juvenile court cannot order parents to pay restitution in a delinquency proceeding. *In re Daudt*, 12th Dist., 1986 WL 9630.
 - But, parents can be held liable for

restitution through a separate civil suit.
R.C. 2307.70, 3109.09, 3109.10.

Collection Methods



Methods courts use to attempt to collect juvenile court debt



55 participants

- Payment plan and community service most common
- License suspension, contempt, refusal to seal record, violation or extension of probation also occurring in many jurisdictions
- Also concerning is that 5 respondents indicated their juvenile courts place kids in detention or jail for failure to pay juvenile court debt



Internal collection

All financial sanctions

Court may allow child to enter into payment plan rather than accept a lump sum payment and charge a “reasonable fee” to defray administrative costs. R.C. 2152.20(E)(3).

The maximum time permitted for payment shall not exceed 5 years. R.C. 2152.20(E)(2).

Internal collection

- The clerk of the court (or another person authorized by law or by the court) may permit payment of all, or any portion, of the financial sanction in installments by any reasonable method and on any terms that the court considers just. R.C. 2152.20(E)(2).
- May accept credit or debit cards or other types of electronic payment, and transfer the cost of card processing to the juvenile. R.C. 2152.20(E)(2).

Community Service



All financial sanctions

If a child fails to pay a financial sanction, the juvenile court may impose a term of community service in lieu of payment. R.C. 2152.20(D).

If community service is ordered in lieu of court costs, contempt and any subsequent incarceration may not be imposed for failure to perform. *State v. Lamb*, 2005-Ohio-4741 (2d Dist.).



Collection Agency

- All financial sanctions

Permitted under R.C. 2152.20(E)

Collection should end at age 21



Collection agencies

- The clerk of court (or another person authorized by law or by the court) may enter into contracts with public agencies or private vendors for the collection of financial sanctions, which may include interest from the date of imposition of the sanction. R.C. 2152.20(E)(1).
- Because all dispositional orders end when child turns 21, agency should be notified they can only collect for the period designated by the court or until the juvenile attains age 21. R.C. 2151.38, 2152.22(A).
- Best practice to consider collateral consequences resulting from use of a collection agency.

Civil Judgment

- Fees
- Costs
- Restitution
- Fines



- R.C. 2335.19
- Methods to collect civil judgments include garnishment and liens on property.



License Suspension



Fines



Court costs

Ends at age 21

- *In re R.K.*, 8th Dist., 2004-Ohio-6918; R.C. 2151.38, 2152.22(A)

- A court may declare the forfeiture of a person's license if he has been issued a citation for (or charged with) specific violations of traffic law, motor vehicle crimes, or other laws involving the suspension of a license or licensing of motor vehicles and the person has either (a) failed to appear in court, or (b) failed to pay the fine imposed within the required time. R.C. 2935.27(D), 4510.22(A).
- Not a permitted method of collecting outstanding court costs. *State v. Short*, 2d Dist. Darke No. 2011 CA 16, 2012-Ohio-2546, ¶ 8.
- But see Ohio Supreme Court bench card on Juveniles Fines and Fees, which indicates that license suspension is a permitted collection method. (I disagree.)
- Note: A juvenile court can order—as a condition of community control—that the child's license be suspended. R.C. 2152.19(A)(4)(I). But, that is different than suspending a child's license as a consequence for not paying financial sanctions.

Vehicle Registration Block

Fines

Costs

Remains in effect until child pays fine or costs imposed by the court.

R.C. 2947.09.

Must end at age 21.

R.C. 2151.38, 2152.22(A).



- If child charged with an offense in juvenile court and either (a) fails to appear in court at the required place and time to answer the charge, or (b) is adjudicated delinquent and fails within the time allowed by the court to pay any fine or costs imposed, court may notify registrar of motor vehicles to refuse to register the child's vehicle. R.C. 2947.09.
- BMV amended policies to allow staff to lift registration block if person is 21 or older and block issued by juvenile court. Person does not need to go back to juvenile court to request that block be lifted first.



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Detention for Nonpayment

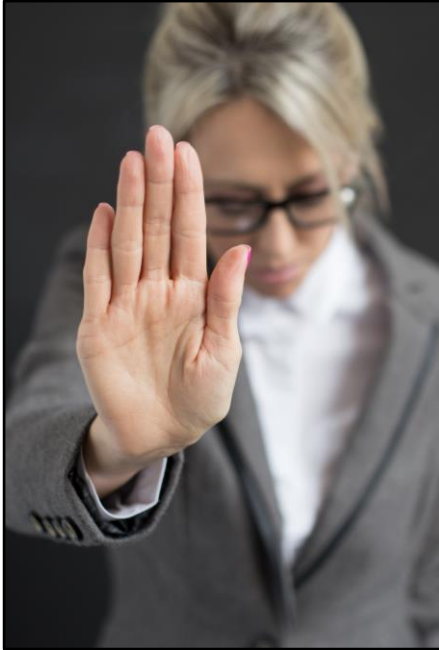


Any financial sanction

Court costs and fees are civil—not criminal—obligations, and may be collected only by the methods provided for the collection of civil judgments. *Strattman v. Studt*, 20 Ohio St.2d 95, 253 N.E.2d 749 (1969).

A juvenile cannot be ordered to detention for failure to pay court costs. *In re Rinehart*, 10 Ohio App.3d 318, 320 (4th Dist.1983) (applying *Strattman* to juvenile proceedings).

- Section 15, Article I of the Ohio Constitution expressly prohibits imprisonment for civil debt, and “there is no justification for imprisonment for nonpayment of costs in criminal cases but not in civil cases.” *Id.* At 102-103.
- Note also: a court may not order a person to appear or issue a warrant for unpaid court costs. *Strongsville v. Waiwood*, 62 Ohio App.3d 521, 577 N.E.2d 63 (8th Dist.1989), syllabus.



Contempt

- ⊘ Nonpayment of costs in adult court
- ⊘ Nonpayment of financial sanctions in juvenile court

- Contempt is never an appropriate method to collect costs in adult court. *State v. Ellis*, 2d Dist., 2008-Ohio-2719.
- Should argue contempt cannot be used to collect costs in juvenile court as well. *In re Buffington*, 6th Dist., 89 Ohio App.3d 814 (1993), *but see In re J.Z.*, 6th Dist., 2012-Ohio-1105 (use of contempt proceedings to collect restitution and court costs).
- Court costs and fees are civil—not criminal—obligations, and may be collected only by the methods provided for the collection of civil judgments. *Strattman v. Studt*, 20 Ohio St.2d 95, 253 N.E.2d 749 (1969).
- Ohio Supreme Court Collection of Fines and Fees in Juvenile Court bench card states contempt proceedings for failure to pay are “not recommended” and should be used as a “last resort.” If used, an ability to pay hearing is mandatory.



Refusal to Accept Filings

Any financial sanction

The trial court's order barring all current and future actions and filings until all fees were paid constituted an improper denial of access to the courts. *In re GMS Mgt. Co., Inc. v. Unpaid Court Costs, Fees and Delinquencies*, 7th Dist., 2010-Ohio-2203.

Juvenile court clerks should not be refusing to allow people to file a motion to seal their record.

But, courts might take nonpayment into consideration when granting or denying an application to seal.



Violation or Extension of Probation



Any financial sanction

Due process and equal protection prohibit juvenile courts from treating two similarly situated children differently based solely on their economic status or the economic status of their parents. U.S. DOJ Advisory (Jan. 2017). *See also* *Strattman v. Studt*, 20 Ohio St.2d 95 (1969).

If court concerned child will not pay financial sanctions once probation terminated, these are separate orders, rather than simply a condition of probation/community control. They can extend beyond the termination of supervision, up until a child's 21st birthday.

If court wants child to remain on supervision so that they have the threat of a violation if they do not pay, that is not a lawful collection method. Courts cannot put someone in detention for failure to pay, even they label it something else, such as a "violation of probation" or "violation of court order."

Methods of Collection - Summary

Permitted Methods of Collection	Prohibited Methods of Collection
Voluntary payment	Detention/jail
Payment plan	License suspension (<i>except for fines</i>)
Community service	Contempt*
Collection agency	Warrant
Civil judgment (<i>except for fines</i>)	Refusal to accept filings
Registration block	Violation or extension of probation

Ohio Supreme Court Juveniles Fines and Fees Bench card indicates contempt is “not recommended” and should be the “last resort.”

The Constitution requires that before punishing someone for failing to pay a fine or fee, a court must inquire into the individual’s ability to pay.

Detention/jail is not permitted for nonpayment of any financial sanction.

||| WHEN
DOES
IT END???



- All dispositional orders end by court order or when the child turns 21, whichever occurs first. R.C. 2151.38, 2152.22(A).
- This includes all orders to enforce the payment of fines, costs, license suspensions, community service requirements, and vehicle registration blocks.

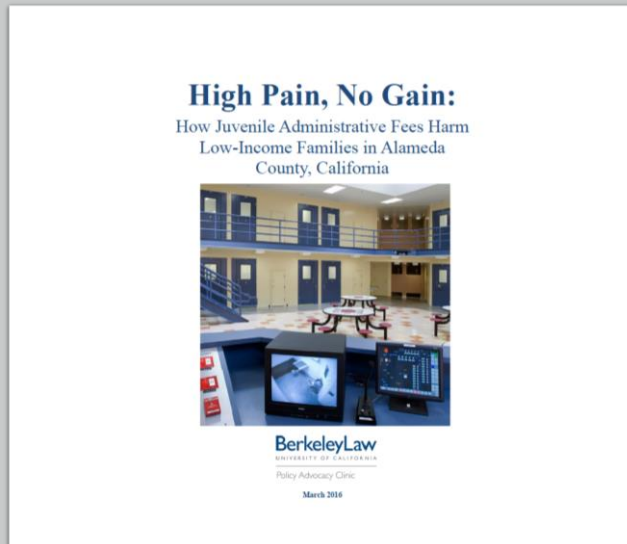
- If amount already sent to collection agency, court should inform agency it can no longer continue to collect once child turns 21 years old.

Collateral Consequences of Juvenile Court Debt



Juvenile court fees:

- 1) Harm vulnerable families
- 2) Undermine the rehabilitative purpose of the juvenile system
- 3) Provide minimal revenue to the county imposing the costs



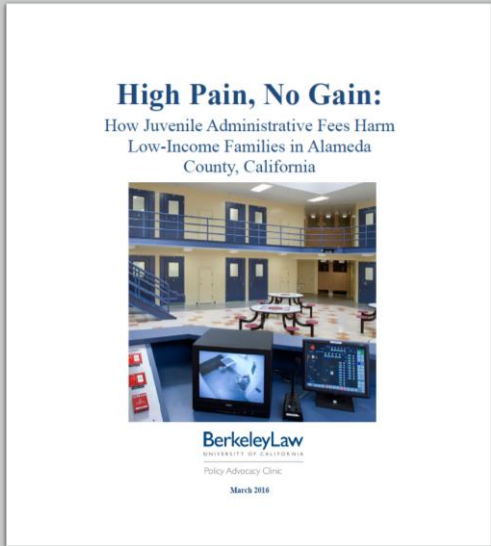
Harms families

- Families reported that juvenile court fees disrupted their financial stability, often forcing them to choose between meeting basic necessities and paying the county.

Strains family relationships

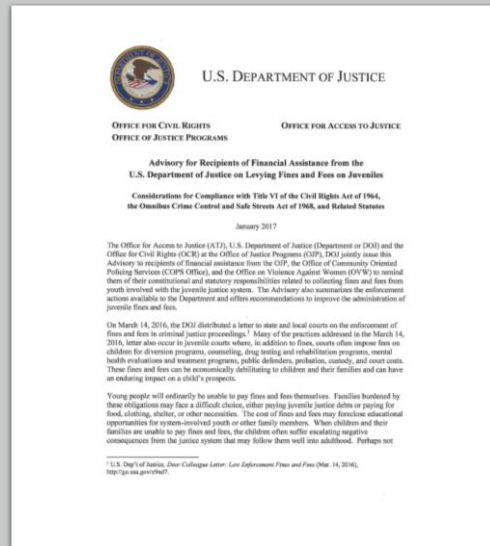
- “Many families already have challenging relationships due to the involvement of their child in the juvenile system, and adding a financial burden only amplifies feelings of anger or resentment. This is contrary to the goal of the juvenile system in fostering family stability and the reintegration of a youth back into a household.”
- Juvenile court costs sometimes create “perverse incentives” for families, including choosing to give up guardianship of a delinquent child in order to avoid paying costs, or the delinquent child running away from home to relieve his family of the burden of the costly administrative fees.
- Included in your materials.

Annual amount collected from families	\$400,000
Costs associated with collecting fees	\$250,000
Total net collection	\$150,000
Outstanding balance	\$1,500,000



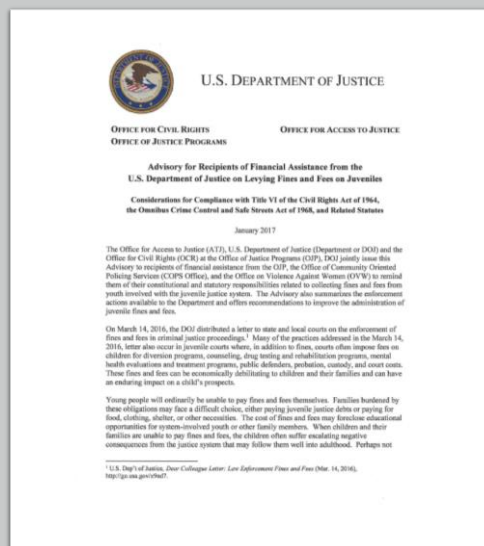
- Alameda County collected approximately \$400,000 annually from families charged juvenile court costs.
- The costs associated with assessing and collecting fees totaled more than \$250,000.
- The outstanding balance owed by families exceeded \$1.5 million.
- As a result of this and other studies, both Alameda and Los Angeles Counties placed a moratorium on the assessment of juvenile administrative fees.

“These fines and fees can be economically debilitating to children and their families and can have an enduring impact on a child’s prospects.”



- In January 2017, the U.S. Department of Justice issued an Advisory regarding collecting fines and fees from youth involved with the juvenile justice system.
- Later rescinded by the Trump administration.
- Included in your materials.

“Perhaps not surprisingly, given the collateral negative consequences, there is evidence that fines and fees increase the risk of recidivism.”



“Young people will ordinarily be unable to pay fines and fees themselves. Families burdened by these obligations may face a difficult choice, either paying juvenile justice debts or paying for food, clothing, shelter, and other necessities. The cost of fines and fees may foreclose educational opportunities for system-involved youth or other family members. When children and their families are unable to pay fines and fees, the children often suffer escalating negative consequences from the juvenile justice system that may follow them well into adulthood. Perhaps not surprisingly, given the collateral negative consequences, there is evidence that fines and fees increase the risk of recidivism.”

The Supreme Court of Ohio

65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

CHIEF JUSTICE
MAUREEN O'CONNOR

JUSTICES
TERRANCE O'DONNELL
SHARON L. KENNEDY
JUDITH L. FRENCH
PATRICK T. FISCHER
E. PATRICK DOWSE
MARY DEGENARO

CHIEF JUSTICE
MAUREEN O'CONNOR

TELEPHONE 614.387.9060
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January 29, 2018

Dear Judges:

Practices that penalize the poor simply because of their economic state; that impose unreasonable fines, fees, or bail requirements upon our citizens to raise money or cave to local funding pressure; or that create barriers to access to justice are simply wrong. No rescission of guidance by the Department changes that.

I know the pressure that many of you face to generate revenue, to increase collection rates, to "self-fund" as if the courts are a business trading in a commodity. But court cases are not business transactions. We do not buy and sell a commodity; we perform a public service.

Included in materials



Research Note

Research Note: Justice System–Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders

Alex R. Piquero¹ and Wesley G. Jennings²

Abstract

Although the use of financial penalties is pervasive in the justice system, there has been limited (and mostly dated) empirical research that has investigated the effect of financial costs incurred by juvenile offenders and the extent to which such costs relate to the likelihood of recidivism and reintegration into society. This study uses data from a large cohort of adolescent offenders to examine how demographics and case characteristics relate to financial penalties imposed by the justice system and the degree to which such monetary penalties are related to recidivism in a 2-year follow-up. Results suggest that financial penalties increase the likelihood of recidivism. Study limitations and directions for future research are also discussed.

Keywords

juveniles, delinquency, recidivism, restitution, costs, fines, fees

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jyvj.sagepub.com/home/yvj



2019

Included in materials (except Piquero and Jennings article)

What can you do?

Before financial sanctions imposed

- Ask for ability to pay determination
- Community service in lieu of financial sanctions
- Dispute amount or form of restitution

After financial sanctions imposed

- Appeal/motion to vacate
- Motion to suspend or modify payment terms
- Motion to cancel uncollectible debt

After nonpayment

- Ask for ability to pay determination (mandatory)
- Community service in lieu of financial sanctions
- Motion to suspend or modify payment terms
- Motion to cancel uncollectible debt
- Motion to vacate

After client turns 21

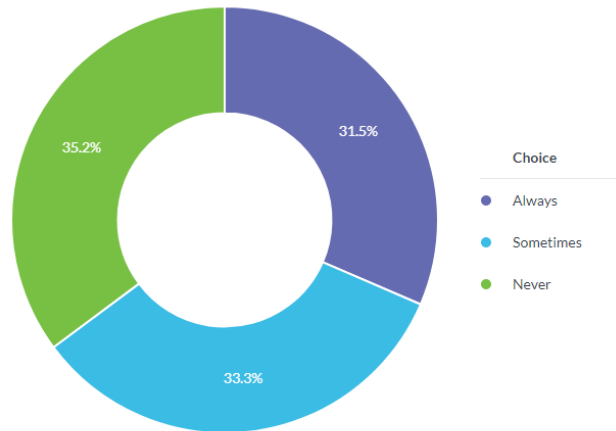
- Motion to cancel debt and end all collection efforts
- Request court notify collections agency to delete debt

Determining Ability to Pay

Mandatory	Discretionary
Reimbursement for costs of confinement	Fines
After failure to pay	Costs
Court-appointed attorney fees	Restitution

- Costs ordered to reimburse cost of confinement shall not “exceed the total amount of reimbursement the child is able to pay as determined at the hearing and shall not exceed the actual cost of the confinement.” R.C. 2152.20(A)(4)(b).
- Hearing on ability to pay is discretionary when imposing fines or costs, but hearing to determine ability to pay after failure to pay is mandatory. *In re McClanahan*, 5th Dist. No. 2004AP010004, 2004-Ohio-4113; *In re Carter*, 4th Dist. Nos. 04CA15 and 04CA16, 2004-Ohio-7285.
- Juvenile court must make an affirmative determination on the record that a child has, or can reasonably be expected to have the ability to pay the cost of legal services. The court must determine the child’s ability to pay before imposing court-appointed attorney fees. *In re J.W.*, 12th Dist. Nos. CA2004-02-036 and CA2004-03-061, 2004-Ohio-7139; Juv.R. 4; OAC 120-1-05.

Do the juvenile courts you regularly practice in make an ability to pay determination prior to imposing a financial sanction?



Over 1/3 of respondents indicated their juvenile courts NEVER make a determination that the child is able to pay before imposing financial sanctions

DETERMINING THE ABILITY TO PAY



The juvenile court should presume that young people are unable to pay fines and fees and only impose them after an affirmative showing of ability to pay.⁷

- 7 U.S. Dep't of Justice, Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles (January 2017), <https://ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf>.

Collection of Fines and Fees in Juvenile Courts Bench Card, The Supreme Court of Ohio (2018)

Also comes from Juv.R. 4 and OAC

Determining Ability to Pay

Consideration of ability to pay should focus on unique circumstances that inhibit the child's ability to pay, including:¹¹

- o Requiring a child to work to pay fines and fees may have negative consequences like missing school in order to work;
- o Children often lack their own means of transportation; and
- o Children under probation or in a diversion program may find it difficult to simultaneously fulfill obligations related to their probation, program, school, and job.

Collection of Fines and Fees in Juvenile Courts Bench Card, The Supreme Court of Ohio (2018)

- Court should focus on CHILD's ability to pay, not parents' ability to pay. This is a dispositional order imposed on the child.
- Appointed counsel may be one indicator that the juvenile is indigent, but courts split as to whether it is sufficient by itself to determine the juvenile is unable to pay a financial sanction. *In re J.G.*, 8th Dist., 2013-Ohio-583 (“[I]f a juvenile is indigent for purposes of appointed counsel, he or she is indigent for purposes of imposing financial sanctions.”); *but see In re Carter*, 4th Dist., 2004-Ohio-7285.

Determining Ability to Pay: Questions to Ask Your Client at the Hearing

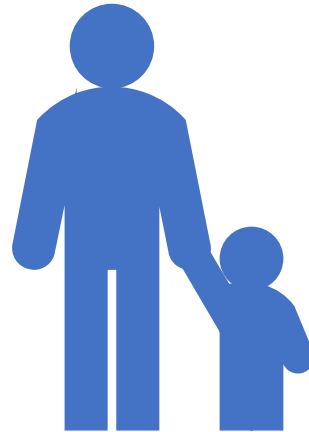
1. Client's age?
2. Are you employed?
3. Have you ever been employed?
4. Do you have a work permit?
5. Do you have a checking account?
6. Do you have a savings account?
7. Do you have any bank account?
8. Do you have cash saved at home?
9. Do you own a car?
10. Do you own a home?
11. Do you own any stocks or bonds?
12. Did you receive an inheritance?
13. Do you own any assets?
14. Do you have a disability (questions to draw out any barriers to working)?
15. Do you have reliable transportation?
16. Do you have other obligations that might prevent you from working?

- Cannot consider parents' ability to pay @ hearing to consider child's indigence
- Indigence for purposes of appointed counsel sufficient to determine indigence for purposes of imposing financial sanctions?
- Criticism of ability to pay hearings:
 - Provides too much discretion to judges
 - Some courts consider future ability to pay after kids graduate H.S.

Community Service Before Financial Sanctions Imposed

If a child is indigent, the court *shall* consider imposing a term of community service in lieu of imposing a financial sanction. R.C. 2152.20(D).

Community service *may be considered* even if the child is not indigent. R.C. 2152.20(D); 2152.19.



The juvenile court *is not required* to state its consideration of the child's indigency on the record. *In re J.G.*, 8th Dist., 2013-Ohio-583; *In re Cory P.*, 5th Dist., 2012-Ohio-5453; *In re Boss B.*, 6th Dist., 2008-Ohio-2995; *In re Hopkins*, 5th Dist., 2003-Ohio-5081 (denial of motion to vacate fines and costs sufficient to show court "considered" community service); *but see In re J.W.*, 12th Dist., 2004-Ohio-7139 (reversed when nothing in record indicated trial court considered imposing community service before imposing financial sanction).

Juvenile must apprise court of indigency in order for court to consider community service in lieu of costs. *In re Carter*, 4th Dist., 2004-Ohio-7285.



Community Service After Nonpayment

If a child fails to pay a financial sanction, the juvenile court may impose a term of community service in lieu of payment. R.C. 2152.20(D).

If community service is ordered in lieu of court costs, contempt and any subsequent incarceration may not be imposed for failure to perform. *State v. Lamb*, 2005-Ohio-4741 (2d Dist.).

Disputing Amount of Restitution

An evidentiary hearing is required before a court can order restitution if the amount is disputed.

Amount limited to victim's actual economic loss.

Must provide competent, credible evidence to support amount requested.

Court may apportion restitution amount co-defendants.

- Court must find a definite amount of restitution and must determine the amount is reasonable. An evidentiary hearing must be held if the amount is disputed. R.C. 2152.20(A)(3); *In re Holmes*, 70 Ohio App.2d 75 (1st Dist. 1980); *In re Clemens*, 11th Dist. Case No. 2001-L-004, 2002-Ohio-3370.
- Limited to victim's actual economic loss caused by delinquent conduct. R.C. 2152.20(A)(3).
- Court record must contain competent, credible evidence to show amount. *In re Hatfield*, 4th Dist. Case No. 03CA14, 2003-Ohio-5404.
- Court may apportion restitution among co-defendants. *In re Daudt*, 1987 WL 13715, 1987 Ohio App. LEXIS 7717 (12th Dist. 1987).

Impermissible Restitution



COSTS OF INVESTIGATING
AND PROSECUTING THE CASE



FUTURE EXPENSES



AMOUNT ALREADY
REIMBURSED BY INSURANCE



PAYMENTS TO THIRD
PARTY

- *City of Centerville v. Knab*, 2020-Ohio-5219 → city seeking restitution for responding to false 911 call. Ohio Supreme Court held cities are not “victims” under Marsy’s Law.
- Dispo entry ordering restitution is final, appealable order, so cannot add additional expenses that appear in the future.
- “[A] trial court exceeds its authority when it orders an offender to pay restitution to a victim without considering the offset of the victim’s loss by an insurer.” *State v. Johnson*, 4th Dist. No. 03CA 11-2004-Ohio-2236, ¶ 11, citing *State v. Martin*, 140

Ohio App. 3d 326, 337, 2000-Ohio-1942.

- Legislature's intent to not allow payment to victims' insurance companies is clear. State v. Allen, 8th Dist. Cuyahoga 2013-Ohio-1656, ¶ 18.

Forms of Restitution

Collection of Fines and Fees in
Juvenile Courts Bench Card,
The Supreme Court of Ohio
(2018)

Restitution may be in the form of a cash reimbursement paid in a lump sum or in installments, the performance of repair work to restore any damaged property to its original condition, the performance of a reasonable amount of labor for the victim or survivor of the victim, the performance of community service work, any other form of restitution devised by the court, or any combination of the previously described forms of restitution.²⁹

Community service is an option that the juvenile court **must consider** if the child is indigent in lieu of any type of financial sanction, including restitution.

Appeal/ Motion to Vacate

Initial Order Unlawful

- Fines ordered exceed the statutory limit
- Restitution ordered after disposition
- Restitution ordered for impermissible expenses
- No ability to pay hearing (where mandatory)
- Costs ordered against parents*
- Case dismissed

Collection/Enforcement Method Unlawful

- Cannot incarcerate a person for failure to pay costs
- Cannot garnish wages without a valid civil judgment
- Cannot suspend a person's license for failure to pay costs

Over 21

- No jurisdiction to continue to collect debt

- Since we represent the children, this might not be an option unless we know it would not backfire and assess the costs to our client
- Also: *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784 might limit motions to vacate, direct appeal is preferable.

Motion to Suspend or Modify Payment

- Can be filed at any time
- Request ability to pay hearing to establish child's indigence
- Request community service in lieu of financial sanctions
- General policy argument regarding collateral consequences of juvenile court debt

- Can file motion to modify payment of restitution under R.C. 2152.20(A)(3).



Motion to Cancel Uncollectible Debt

“If at any time the court finds that an amount owing to the court is due and uncollectible, in whole or in part, the court may direct the clerk of the court to cancel all or part of the claim.”

R.C. 2151.542

- Worked in Chloe's case!



Best Practices

1. Encourage court to adopt local rule waiving all costs and fines
 - Increases recidivism
 - Barriers to rehabilitation
2. Juvenile courts should presume that young people are unable to pay fines and fees, and only impose them after an affirmative showing of ability to pay
3. Impose community service in lieu of financial sanctions*

*Many kids might have same challenges with community service as they do working: lack of transportation, school and other obligations

Questions?

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