

CASE STUDY

USING THE U.S. DEPARTMENT OF JUSTICE TO HELP END JUVENILE STATEGRAFT

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During the Great Recession, cash-strapped local governments around the country turned to vulnerable youth and families in the juvenile delinquency system as a source of revenue. In Alameda County, California, ostensibly a bastion of progressive criminal law and enforcement practices, the Board of Supervisors increased juvenile fees more than twelvefold in 2009 as part of a larger effort to address a gaping budget deficit.¹ Shortly thereafter, families started coming to the East Bay Community Law Center (EBCLC) with bills for thousands of dollars in administrative fees, including charges for things like their child's detention, drug testing, supervision, electronic monitoring, and even their "free" public defender.²

In 2013, Berkeley Law's Policy Advocacy Clinic (PAC) began working with EBCLC and other local advocates to study juvenile administrative fees. We found that these fees were a form of regressive and racially discriminatory wealth extraction often imposed unlawfully on youth and families across California.³ Counties charged fees not authorized, as well as some that were directly prohibited, by state and federal law. For example, Alameda County charged an investigation fee

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1. BERKELEY L. POL'Y ADVOC. CLINIC, HIGH PAIN, NO GAIN: HOW JUVENILE ADMINISTRATIVE FEES HARM LOW-INCOME FAMILIES IN ALAMEDA COUNTY, CALIFORNIA 15 (Mar. 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2738710 [<https://perma.cc/K5D9-2SAC>].

2. *Id.* at 4. The first group to identify this problem in California was the Youth Justice Coalition in Los Angeles. See YOUTH JUST. COALITION, GETTING PAID: THE BILLS COLLECTED BY THE LOS ANGELES COUNTY DEPARTMENT OF PROBATION PUT YOUTH AT RISK AND IMPOVERISH FAMILIES (Feb. 2009), <https://www.youth4justice.org/wp-content/uploads/2012/12/GettingPaidReportYJC.pdf> [<https://perma.cc/6J78-K82N>].

3. See BERKELEY L. POL'Y ADVOC. CLINIC, MAKING FAMILIES PAY: THE HARMFUL, UNLAWFUL, AND COSTLY PRACTICE OF CHARGING JUVENILE ADMINISTRATIVE FEES IN CALIFORNIA 18 (2017) https://www.law.berkeley.edu/wp-content/uploads/2019/12/State-Juvenile-Fees-Report_revised12-10-19-.pdf [<https://perma.cc/QX4Y-STQC>].

that was only authorized in the adult criminal system, several counties charged fees in excess of statutory maximums, and some counties charged for pre-adjudication detention in direct contravention of the law.⁴ Sacramento County was a uniquely bad actor, imposing crushing debt disproportionately on youth and families of color.⁵

As part of a statewide campaign to abolish juvenile fees, we turned to the United States Department of Justice (DOJ) for help fighting these illegal and harmful practices in Sacramento County. Title VI of the Civil Rights Act of 1964 and the Safe Streets Act of 1968 prohibit recipients of federal financial assistance—which includes almost every county in the U.S.—from discriminating against people on the basis of race and other characteristics.⁶ Significantly, counties' actions are unlawful if they have a discriminatory *effect*, regardless of intent.⁷ The DOJ's Office for Civil Rights (OCR) investigates and substantiates claims of this type of discrimination.⁸ After conversations with OCR staff, we shared a trove of documents and data that we had obtained from Sacramento County through Public Records Act requests.⁹

Based on our documentation and OCR's own research about Sacramento County's obligations as a recipient of federal funds, DOJ initiated a compliance review of Sacramento County and its Superior Court to determine whether their juvenile fee practices unlawfully discriminated against youth of color.¹⁰ At risk of losing federal funding if the county was found to be out of compliance, the Sacramento County

4. See *id.* at 14–17 (describing these and other illegal practices).

5. See BERKELEY L. POL'Y ADVOCACY CLINIC, *supra* note 1.

6. See Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; 28 C.F.R. § 42.101 (implementing Title VI); Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), 34 U.S.C. § 10228(c)(1) (nondiscrimination provision); 28 C.F.R. §§ 42.201–42.215, 42.203(e) (implementing Safe Streets Act). Recipients of financial assistance from the DOJ must also comply with nondiscrimination provisions in certain program statutes. This includes: (1) the Juvenile Justice and Delinquency Prevention Act of 1974 and its implementing regulations, 34 U.S.C. § 11182(b); 28 C.F.R. §§ 31, 42; (2) the Victims of Crime Act of 1984 and its implementing regulations, 34 U.S.C. § 20110(e); 28 C.F.R. § 94.114; and (3) the Violence Against Women Act of 1994, 34 U.S.C. § 12291(b)(13).

7. *Proving Discrimination-Disparate Impact*, C.R. DIV., U.S. DEP'T J., <https://www.justice.gov/crt/fcs/T6Manual7> [<https://perma.cc/VQ9N-KR6S>] (last visited Mar. 16, 2024).

8. See *Office for Civil Rights*, U.S. DEP'T J., <https://www.ojp.gov/program/civil-rights-office/home> [<https://perma.cc/U9K4-XAC8>] (last visited Mar. 16, 2024).

9. Responses by Sacramento County to Public Record Act Requests (on file with authors).

10. See Memorandum from U.S. Dep't J. to Sacramento Cnty. Bd. of Supervisors & Sacramento Cnty. Superior Ct. (May 15, 2017), <https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/16-ocr-2156-05152017.pdf> [<https://perma.cc/RUH3-6AP7>].

Board of Supervisors acknowledged the racially discriminatory effects of its juvenile fee regime, stopped fee assessments and collections, and waived more than \$23 million in outstanding debt.¹¹ When the County ended its stategraft, OCR closed the review.¹² Later that year, the California legislature passed the first bill in the country ending juvenile fees statewide.¹³ Twenty-one other states and many local jurisdictions have since followed California by abolishing most or all juvenile fees.¹⁴

Local youth organizers and advocates across the country and political spectrum believe that administrative fees and other monetary sanctions in the juvenile legal system are bad public policy.¹⁵ The data and stories we have collected show this. First, and most importantly, juvenile fees and fines harm families—especially families of color, low-income families, and families in rural areas.¹⁶ They create barriers to

11. Sacramento Cnty., Cal., Res. No. 2017-0171 (enacted); Memorandum from Sacramento Cnty. Prob. Dep't, Pub. Def. & Dep't of Revenue Recovery, to Sacramento Cnty. Bd. of Supervisors 4 (Apr. 11, 2017), <https://agendanet.saccounty.gov/OnBaseAgendaOnline/Documents/ViewDocument/BDL ->

[Elimination_of_Juvenile_Fees.docx?meetingId=3405&documentType=Minutes&itemId=224173&publishId=100939&isSection=false](https://agendanet.saccounty.gov/OnBaseAgendaOnline/Documents/ViewDocument/BDL - Elimination_of_Juvenile_Fees.docx?meetingId=3405&documentType=Minutes&itemId=224173&publishId=100939&isSection=false) [https://perma.cc/387B-GRY4].

12. Memorandum, *supra* note 11. Having the nation's premier civil rights enforcement agency back a claim of discrimination can be a powerful advocacy tool. *See* Bernadette Atuahene, *A Theory of Stategraft*, 98 N.Y.U. L. REV. 1, 23 (2023).

13. S.B. 190, 2017–18 Reg. Sess. (Cal. 2017) (enacted); *see also* BERKELEY L. POL'Y ADVOC. CLINIC, FEE ABOLITION AND THE PROMISE OF DEBT-FREE JUSTICE FOR YOUNG PEOPLE AND THEIR FAMILIES IN CALIFORNIA (2019), https://www.law.berkeley.edu/wp-content/uploads/2019/10/SB-190-Implementation-Report11_10_31_19.pdf [https://perma.cc/KS4C-R4MT] (documenting the impact of the passage of S.B. 190).

14. *Our Impact*, DEBT FREE JUST., <https://debtfreejustice.org/our-impact> [https://perma.cc/2WZ9-AV8F] (last visited Feb. 9, 2024).

15. *See, e.g.*, AM. LEGIS. EXCH. COUNCIL, ELIMINATION OF YOUTH JUSTICE FINES AND FEES ACT (2023), <https://alec.org/model-policy/elimination-of-youth-justice-fines-and-fees-act/> [https://perma.cc/X4HK-3M5N]; NAT'L COUNCIL JUV. & FAM. CT. JUDGES, RESOLUTION ADDRESSING FINES, FEES, AND COSTS IN JUVENILE COURTS (2018), <https://www.ncjfcj.org/wp-content/uploads/2019/08/resolution-addressing-fines-fees-and-costs-in-juvenile-courts.pdf> [https://perma.cc/4FLF-HDUS]; L. ENF'T LEADERS TO REDUCE CRIME & INCARCERATION, ENSURING JUSTICE AND PUBLIC SAFETY: FEDERAL CRIMINAL JUSTICE PRIORITIES FOR 2020 AND BEYOND 17 (2020), http://lawenforcementleaders.org/wp-content/uploads/2020/04/2020_04_LEL_Policy_Report_Final.pdf [https://perma.cc/UJ93-Y92H]. For further discussion, *see* Arnold Ventures, *States Across the Political Spectrum are Reforming Juvenile Court Fees*, <https://www.arnoldventures.org/stories/states-across-the-political-spectrum-are-reforming-juvenile-court-fees> [https://perma.cc/P5YH-Z7MV] (last visited Mar. 16, 2024).

16. *See* Cristina Mendez, Jeffrey Selbin & Gus Tupper, *Blood from a Turnip: Money as Punishment in Idaho*, 57 IDAHO L. REV. 763-64 (2021) (collecting sources).

reunification and increase recidivism.¹⁷ Juvenile monetary sanctions also generate little or no net revenue for government because it is so difficult to collect money from the overwhelmingly low-income families caught up in the system.¹⁸ Finally, these costs have negative, second-order consequences for government and communities, including undermining public trust in the judiciary and wasting public safety resources on low-level policing at the expense of solving serious crimes.¹⁹

Using Title VI to fight racial discrimination is one of many ways to expose harmful monetary sanction regimes as stategraft. The most infamous example was Ferguson, Missouri, where the Department of Justice found that the city imposed fees and fines that violated multiple constitutional provisions.²⁰ Similarly, the Fifth Circuit held that New Orleans courts funding their operations partially through judge-imposed administrative fees created an unconstitutional conflict of interest.²¹ In Washington state, courts have been collecting expired debt and using it to block record relief to which people are entitled.²² The DOJ cites many more examples of illegal fee and fine practices in 2023 guidance to state courts, urging local governments to minimize the use of monetary sanctions generally and to end all juvenile fees and fines.²³

As we expanded our work nationally in 2016 with partners in the Debt Free Justice (DFJ) campaign, we found juvenile fees from Hawai`i

17. See Alex R. Piquero & Wesley G. Jennings, *Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE & JUV. JUST. 325, 336 (2017); Alex R. Piquero, Michael T. Baglivio & Kevin T. Wolff, *A Statewide Analysis of the Impact of Restitution and Fees on Juvenile Recidivism in Florida Across Race & Ethnicity*, 21 YOUTH VIOLENCE & JUV. JUST. 279, 300 (2023).

18. See MATTHEW MENENDEZ, LAUREN-BROOKE EISEN, NOAH ATCHISON & MICHAEL CROWLEY, BRENNAN CTR. FOR JUST., *THE STEEP COSTS OF CRIMINAL JUSTICE FEES AND FINES* 5, 9 (Nov. 21, 2019); Mendez, Selbin & Tupper *supra* note 16, at 780–81.

19. See Rebecca Goldstein, Michael W. Sances & Hye Young You, *Exploitative Revenues, Law Enforcement, and the Quality of Government Service*, 56 URB. AFFS. REV. 5, 21–23 (2020).

20. C.R. DIV., U.S. DEP'T JUST., *INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT* 15 (Mar. 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [<https://perma.cc/2ZSP-B8VB>].

21. *Caliste v. Cantrell*, 937 F.3d 525 (5th Cir. 2019).

22. *Resolution to Stop the Collection of Time-Barred LFOs*, KING CNTY. BAR ASS'N. (Aug. 17, 2022), <https://www.kcba.org/?pg=Res-to-Stop-the-Collection-of-Time-Barred-LFOs> [<https://perma.cc/J93V-4PQY>].

23. Kristen Clarke, Amy L. Solomon & Rachel Rossi, *DEAR COLLEAGUE LETTER* (Apr. 20, 2023), https://www.justice.gov/d9/press-releases/attachments/2023/04/20/doj_fines_and_fees_dear_colleague_letter_final_with_signatures_0.pdf [<https://perma.cc/XFE6-BDMQ>].

to Maine, and Alaska to Florida.²⁴ In fact, less than a decade ago, every state in the country except New York authorized juvenile fees.²⁵ State-level DFJ campaigns seek to abolish fees and fines in juvenile courts. In the state and local jurisdictions that have ended one or more juvenile fees practices, DFJ reforms have relieved almost 200,000 families of more than \$28 million charged annually and discharged more than \$717 million in outstanding debt.²⁶

In California, we undertook strategic county-level work in places like Sacramento County as a building block towards comprehensive statewide reform. Local reforms have also been precursors to successful state abolition campaigns in Louisiana and Michigan. A DOJ enforcement action can help these state campaigns because “a formal declaration of illegality opens the door to the adjudicative entity’s institutional remedies,” and it makes “the state’s abuse of power more visible and condemnable.”²⁷ The DOJ Office of Civil Rights accepts complaints and requests for investigation through their website.²⁸ We hope that advocates will use this powerful tool to build power for policy campaigns and end more forms of stategraft in their communities.

24. JESSICA FEIERMAN, NAOMI GOLDSTEIN, EMILY HANEY-CARON & JAYMES FAIRFAX COLUMBO, *DEBTORS’ PRISON FOR KIDS? THE HIGH COST OF FINES AND FEES IN THE JUVENILE JUSTICE SYSTEM* 10–21 (2016), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf> [<https://perma.cc/5FW3-Y28N>]; *see also* DEBT FREE JUST., <https://www.debtfreejustice.org> [<https://www.debtfreejustice.org>] (last visited Mar. 16, 2024) (providing an overview of the campaign, including which states authorize fees and fines in juvenile delinquency cases, and which states have ended them).

25. FEIERMAN, GOLDSTEIN, HANEY-CARON & COLUMBO, *supra* note 24, at 10–21.

26. Data on file with authors.

27. Atuahene, *supra* note 12, at 24.

28. *Reports*, C.R. DIV., U.S. DEP’T JUST., <https://civilrights.justice.gov> [<https://perma.cc/C9DA-4KX5>] (last visited Mar. 16, 2024). Note that DOJ’s willingness and capacity to respond to requests for investigation depends to a significant degree on its political appointees. Attorney General Jeff Sessions’ rescinded the original DOJ guidance on fines and fees—which had served as one impetus for the Department’s compliance review of Sacramento County—early in his tenure. *See* Lisa Foster, *Jeff Sessions Has Endorsed an Unconstitutional Fine on the Poor*, WASHINGTON POST (Jan. 9, 2018), https://www.washingtonpost.com/opinions/jeff-sessions-just-endorsed-an-unconstitutional-fine-on-the-poor/2018/01/09/87ccffc6-f268-11e7-97bf-bba379b809ab_story.html [<https://perma.cc/ES97-U4XE>]. The DOJ did not reissue it until 2023 under Attorney General Merrick Garland. DEAR COLLEAGUE LETTER, *supra* note 23.