



Legislative Affairs  
One Whitehall Street  
New York, NY 10004  
212-607-3300  
www.nyclu.org

## 2021-2022 Legislative Memorandum

**Subject: The End Predatory Court Fees Act - A.2348-A (Niou) /  
S.3979-A (Salazar)**

**Position: SUPPORT**

---

In 2015, an investigation by federal civil rights officials revealed how a fixation on revenue from criminal court fees and fines in Ferguson, Missouri incentivized police and judicial officers to use policing and the courts as tools to raise money, exacerbating racist and unconstitutional police practices.<sup>1</sup> Those findings put a spotlight on the use of fines and fees tied to the criminal legal system across the United States, and prompted urgent calls for reform.

Yet six years later, New York continues to impose millions of dollars per year in fees, surcharges, and mandatory minimum fines on criminal defendants, punishing poverty and misguidedly attempting to fund government services on the backs of Black and Brown New Yorkers who can least afford to pay. The persistence of these fees and fines encourages policing for profit and keeps people trapped in poverty.

The End Predatory Court Fees Act would help end these practices by eliminating fees and mandatory court surcharges tied to criminal convictions, traffic violations, parole, and probation, and doing away with mandatory minimum fines that function as a regressive tax on the poorest New Yorkers. The bill would also end the unjust practice of jailing people simply because they cannot afford to pay a fee or fine.

At a time when millions of New Yorkers are struggling to recover from the uneven economic impact of the COVID-19 pandemic, we must not fund our state's recovery on the backs of poor New Yorkers. The NYCLU calls on lawmakers to promptly pass the End Predatory Court Fees Act.

---

<sup>1</sup> U.S. Department of Justice Civil Rights Division, *Investigation of the Ferguson Police Department*, March 4, 2015, [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

**Mandatory surcharges unjustly shift the costs of the criminal legal system to defendants, and compound the racially discriminatory harms of the criminal legal system.**

The collection of fines and fees from criminal defendants is a particularly pernicious feature of our unjust criminal legal system. Fines are charges levied against people convicted of offenses or violations that are part of a penalty, which sometimes carry a minimum amount depending on the conviction. Fees, or surcharges, are costs that attach to convictions for the purpose of collecting government revenue.<sup>2</sup> Most mandatory surcharges in New York have no specific connection to the offense committed, and function as a way of shifting the costs of operating the court system to those who are subject to it. Fees are often levied on top of fines, compounding the financial obligations on defendants.

In New York, a person convicted under the penal law will face a mandatory surcharge of \$95 for a single violation, \$175 for a misdemeanor, and \$300 for a felony conviction.<sup>3</sup> Traffic violations also carry mandatory surcharges, charging people for parking violations or certain speeding violations on top of the fine associated with the ticket.<sup>4</sup> Those who have been sentenced for crimes and released on parole or under post-release supervision are charged \$30 per month while under state supervision, unless the fee would create an unreasonable hardship.<sup>5</sup>

These numbers add up. Despite statutory requirements that the Division of Criminal Justice Services (DCJS) collect information on mandatory surcharges levied by the courts,<sup>6</sup> statewide data on the revenue generated by these fees is not published by the state. However, an analysis by the New York City Comptroller of data provided by the New York City Criminal Court found that the city courts alone imposed more than 139,000 mandatory surcharges in 2017, totaling more than \$19 million.<sup>7</sup> Those courts imposed an additional \$2.8 million in crime victim assistance fees that are tacked on to each mandatory surcharge, and more than \$2.3 million in DNA databank fees attached to most misdemeanors and felonies.<sup>8</sup>

While specific data on the racial demographics of fees and fines levied is not available, the imposition of these mandatory fees cannot be separated from the racial disparities

---

<sup>2</sup> *People v. Guerrero*, 12 N.Y.3d 45, 49 (N.Y. 2009) (noting that legislative history reveals the state’s mandatory surcharge was “originally enacted as part of a massive revenue-raising bill meant to ‘avert the loss of an estimated \$100 million in State tax revenues’”).

<sup>3</sup> N.Y. Penal Law § 60.35(1)(a)(i)-(iii).

<sup>4</sup> N.Y. Vehicle & Traffic Law § 1809-aa, § 1809-d.

<sup>5</sup> N.Y. Correction Law § 201(9).

<sup>6</sup> N.Y. Crim. Proc. Law § 420.35(3).

<sup>7</sup> Office of the New York City Comptroller, *Fees, Fines, and Fairness: How Monetary Charges Drive Inequity in New York City’s Criminal Justice System*, Sept. 10, 2019, p.15, <https://comptroller.nyc.gov/wp-content/uploads/documents/Fees-and-Fines-in-the-Criminal-Justice-System.pdf>.

<sup>8</sup> *Id.*

that plague the criminal legal system as a whole. Though Black New Yorkers make up 15% of the total adult population, they made up 38% of all arrests and 45% of felony arrests in 2019.<sup>9</sup> Black and Hispanic New Yorkers made up 71% of the total prison sentences issued that year.<sup>10</sup> As such, a system that attaches mandatory fees for convictions and parole will inevitably have a disparate impact on Black and Brown communities. These court fees, and the mandatory criminal court surcharge in particular, compound the inequities that exist elsewhere in the criminal legal system.

**Fees and mandatory minimum fines punish indigent New Yorkers for their poverty and are an ineffective means of funding government services.**

The imposition of fees and fines in the criminal legal system helps fuel a cycle of poverty and erects a barrier to successful reentry for people who have been incarcerated. Many who pass through the criminal legal system are indigent, and even misdemeanor convictions can negatively limit a person's earning potential in significant ways.<sup>11</sup> Fees that effectively charge defendants for the right to due process, and minimum fines that do not take account of a person's financial circumstances, constitute a regressive tax to raise government revenue. Such practices cruelly burden most the New Yorkers who can least afford it and make it all the more difficult for those with criminal convictions to build lives for themselves and their families.

Fines and fees imposed in New York do not adequately account for a person's ability to pay. Mandatory surcharges, victim assistance fees, and DNA databank fees attach to convictions regardless of a person's financial circumstances. Though state law permits a court to defer payment of a mandatory surcharge upon a showing by defendant of indigence and unreasonable hardship, deferral does not eliminate the obligation, and the charge is collected in the same manner as a civil judgment.<sup>12</sup> Civil judgments can be collected through the garnishment of wages and seizure of property, and can have long-lasting impacts on a person's financial health.<sup>13</sup> Incarcerated people with non-deferred fees will see their commissary funds garnished to pay their financial obligations,<sup>14</sup>

---

<sup>9</sup> New York State Division of Criminal Justice Services, *NYS Adult Arrests and Prison Sentences by Race/Ethnicity in 2019*, <https://www.criminaljustice.ny.gov/crimnet/ojsa/comparison-population-arrests-prison-demographics/2019%20Population%20Arrests%20Prison%20by%20Race.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> Brennan Center for Justice, *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, Sept. 15, 2020, [https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport\\_pdf.pdf](https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf).

<sup>12</sup> N.Y. Crim. Proc. Law § 420.40(5).

<sup>13</sup> See New York City Bar Criminal Justice Operations Committee, Criminal Courts Committee, Corrections & Community Reentry Committee, and Task Force on Mass Incarceration, *Committee Report: New York Should Reexamine Mandatory Court Fees*, May 9, 2019, [https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/new-york-should-re-examine-mandatory-court-fees#\\_ftnref43](https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/new-york-should-re-examine-mandatory-court-fees#_ftnref43).

<sup>14</sup> New York State Department of Corrections & Community Supervision, *Directive: Collection & Repayment of Inmate Advances & Obligations*, April 18, 2017, <https://doccs.ny.gov/system/files/documents/2020/11/2788.pdf>.

depriving them of money earned through work or given by family members to purchase food and other goods.

Such fines and fees are also an ineffective way of raising government revenue – particularly because, in attempting to secure payment for fines and fees, the state ends up bearing the cost of incarceration. Failure to pay a fine or mandatory surcharge can result in issuance of a warrant and imprisonment.<sup>15</sup> Studies have found that other states ultimately spend at least 41 cents out of every dollar in revenue raised from fines and fees on court hearings and jails costs alone, and that the cost of jailing people who are unable to pay fines and fees can be as much as 115% of the amount collected.<sup>16</sup>

**New York must pass the End Predatory Court Fees Act to begin dismantling the predatory fines and fees system.**

These predatory fines and fees and severe collection methods can make it impossible for poorer New Yorkers to move on from even a brush with the criminal legal system – and they contribute to and exacerbate that system’s inequities. This bill is an opportunity for lawmakers to take the first steps to change that.

The End Predatory Court Fees Act would do away with the mandatory court surcharge and associated fees that place the burden of funding the state’s court system on often poor, largely Black and Brown defendants. The bill would also get rid of monthly fees that follow parolees released under supervision and fees tied to probation.

Under the bill, when courts are imposing fines, the legislation would require courts to consider the impact on defendants and their families, and establish fair and reasonable payment schedules that take account of a defendant’s economic circumstances. The bill would also end the practice of jailing people due to their inability to pay a fee or fine, vacate previously issued warrants, and release people who are currently in custody solely because of their failure to pay.

Government revenue should not be extracted from New York’s poorest residents, and are courts must not function as debt collectors. These reforms would represent an enormous step towards dismantling a system that penalizes people for their economic conditions and puts the burden of funding the criminal legal system on the people unjustly caught in its grips.

The NYCLU calls upon lawmakers to pass the End Predatory Court Fees Act without delay.

---

<sup>15</sup> See N.Y. Crim. Proc. Law § 420.10(3) (sentence may provide that if a defendant fails to pay a fine, restitution, or reparation the defendant must be imprisoned until the charge is satisfied); N.Y. Crim. Proc. Law § 420.35(1) (applying CPL provisions concerning collection of fines to collection of mandatory surcharges and permitting sentences that include imprisonment of up to 15 days for nonpayment).

<sup>16</sup> Brennan Center for Justice, *The Steep Cost of Criminal Justice Fees and Fines*, Nov. 21, 2019, <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>.