

**Following the Money:  
How New York Tries,  
and Ultimately Fails,  
to Extract Revenue  
from Indigent Criminal  
Defendants**

**NYCLU**

# Following the Money: How New York Tries, and Ultimately Fails, to Extract Revenue from Indigent Criminal Defendants

For several decades, courts across New York State have extracted revenue from the often poor, disproportionately Black and Brown residents who are targeted by our criminal legal system through a predatory system of mandatory court surcharges – interchangeably referred to as fees. Surcharges that attach to every criminal and traffic conviction can mean that a brush with the law carries with it a price tag of potentially hundreds of dollars in addition to any fine or other punishment that a sentence might carry. These court fees were explicitly designed with the goal of raising revenue off the backs of defendants, and for those who cannot afford to pay, can mean years of debt, risk of arrest, and an inability to move on from an offense. Advocates have long called for these predatory fees to be eliminated through state legislation.

## Key Findings

- New York charged an estimated \$393 million in court fees related to misdemeanors and felonies, and an estimated \$483 million related to violations, to New Yorkers over a ten-year period.
- Court fees from criminal convictions are collected at a rate of just 27%, and fees from violations were collected at a rate of 58%.
- New York collects only about \$38 million per year on estimate from the most common types of court fees.
- Revenue collected from mandatory court fees are less than 0.001% of New York's annual tax revenues.

While mandatory court fees impose an obvious financial burden on the low-income individuals forced to pay them, far less is known about how the money from these surcharges is collected and distributed. Despite a statutory mandate for courts to report on the collection of court fees to the state, there is no publicly available accounting of how much revenue is obtained through mandatory court surcharges. Efforts to obtain this information from various government agencies has proved elusive, and policymakers have sometimes used the lack of information as an excuse to avoid taking action.

This paper attempts to capture what we know about the imposition and collection of mandatory court fees in New York State, drawing on publicly posted data and government information requests. The picture is necessarily incomplete. The nature of New York's infamously byzantine court system means that mandatory surcharges can be imposed and collected by several different state, county, town, and village courts. This makes a clear, centralized accounting of data related to court fees difficult to assemble. Given that lack of clarity, this paper relies on patterns in the more limited data available to make reasonable inference about the scope and impact of court fees across New York State.

While certain questions about New York’s reliance on court fees remain, one thing is clear: **the limited benefit that New York accrues from mandatory court fees is far outweighed by the burden those fees impose on the individuals saddled with paying them. New York’s state legislature must pass the End Predatory Court Fees Act,<sup>1</sup>** which would do away with these court fees and the hardship they bring upon individuals and families without compromising the state’s fiscal stability.

**Background: A regressive, convoluted, and non-transparent system of mandatory court surcharges.**

Under New York law, nearly all convictions for criminal and traffic offenses carry a mandatory surcharge, which can range from \$25 for certain parking violations to \$300 for felony offenses, along with an additional crime victims assistance fee that is assessed even when there is no victim.<sup>2</sup> Certain offenses will also require payment of a sex offender registration fee, and most will require a DNA databank fee.<sup>3</sup> Unlike fines, which are meted out as part of a person’s sentence, these court surcharges are not intended as punishment for a person’s conduct. Rather, they were created in the 1980s for the express purpose of raising revenue.<sup>4</sup> The ostensible rationale behind the fees was to shift the cost of government services to defendants,<sup>5</sup> placing the burden of paying for basic public services on the backs of the people that state targets for arrest and prosecution.

The path of the revenue extracted from fines and fees depends on the underlying violation and the collecting authority. Court surcharges can be imposed by any court or administrative tribunal in which criminal or traffic cases are adjudicated, which can include state-funded courts overseen by the Office of Court Administration; administrative tribunals operated by the Department of Motor Vehicles (DMV); or locally funded town and village courts. The court or tribunal that hands down the conviction is responsible for collecting the fees.<sup>6</sup>

For fees related to penal law convictions, town and village courts and administrative tribunals must forward the funds to the state comptroller to be deposited into the state treasury; money from mandatory surcharges and crime victims assistance fees is credited to the criminal justice improvement account (CJIA), while funds from sex offender registration and DNA databank fees are placed in the general fund.<sup>7</sup> Criminal offense fees collected by any other court in the state unified court system (UCS) are ultimately distributed in the same manner, but are paid by the collecting court to state commissioner of taxation and finance rather than the comptroller.

Money collected from most traffic-related offenses is also paid to the state to be deposited in either the CJIA or the general fund, depending on the court or tribunal that collects it. Except for a few unique offenses, fees collected by town and village courts are credited to the general fund, while those collected

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1 End Predatory Court Fees Act, NYS S.B. 313 (Salazar), A.B. 4183 (Burgos).

2 See N.Y. Vehicle and Traffic Law § 1809, 1809-a, 1809-aa, 1809-b, 1809-c, 1809-d, 1809-e; N.Y. Penal Law § 60.35(1)(a).

3 N.Y. Penal Law § 60.35(1)(a).

4 *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’”).

5 *People v. Quinones*, 95 N.Y.2d 349, 352 (N.Y. 2000).

6 N.Y. Penal Law § 60.35(3);

7 *Id.*

by any other court are credited to the CJIA.<sup>8</sup> Money from fees for parking violations will either be paid to the state, a municipality, or divided between the two depending on the type of infraction and the size of the city where it occurred.<sup>9</sup>

The decentralized nature of New York's court system, coupled with the divided responsibility for collecting and depositing funds from fines and fees, creates an inherent difficulty in tracking how much money is collected and where it flows to. Under the New York Criminal Procedure Law, courts and tribunals are required to report on the disposition and collection of court surcharges to the state Division of Criminal Justice Services (DCJS), in a manner to be determined by DCJS in consultation with OCA and the DMV.<sup>10</sup> It is unclear how this mandate is implemented by DCJS.

### **The data: New York fails to account for how it extracts revenue from court fees.**

Despite a statutory mandate, there is no centralized, publicly available database or report that comprehensively documents the amount in court fees that are imposed and collected. Some publicly available reports provide a partial glimpse of the data.

The Office of the New York State Comptroller administers the Justice Court Fund (JCF), which reports on its website annual data (most recently for 2020) on revenue collected only by town and village justice courts.<sup>11</sup> That report includes revenue from collected fines, civil fees, penalties, surcharges, and forfeitures.<sup>12</sup> However, the publicly posted JCF data does not disaggregate by types of revenue, making it impossible to know what portion of the total revenue comes from court fees. It also does not include data from state and county courts under the supervision of OCA, further limiting its usefulness.

Since November 2020, following passage of the New York State STAT Act, OCA has been required to publish case-specific information from all courts on misdemeanors and violations, including any fines, fees, or surcharges imposed.<sup>13</sup> OCA has voluntarily expanded reporting to include information on felony cases.<sup>14</sup> However, the most recent data extract published by OCA does not identify the particular fees or surcharges imposed in a given case, and fee data is only available for some of the courts in the dataset.<sup>15</sup> The extract also gives no information on whether these fees and surcharges were collected. While the STAT Act data provides some window into the imposition of court fees, its value is limited.

Given the shortcomings of publicly available data on court fees, the NYCLU submitted Freedom of Information Law (FOIL) requests in 2022 to both OCA and DCJS seeking information on the

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8 N.Y. Vehicle and Traffic Law § 1809(3).

9 See N.Y. Vehicle and Traffic Law § 1809-a(2), § 1809-aa(2), § 1809-b(2).

10 N.Y. Criminal Procedure Law § 420.35(3).

11 See Justice Court Fund: Town and Village Revenue Report, <https://www1.osc.state.ny.us/localgov/justice-court-fund/jc-dataviz.cfm>.

12 See Office of the NYS Comptroller, *Justice Court Fund – Town and Village Court Revenue Report Data Description*, <https://www.osc.state.ny.us/local-government/required-reporting/justice-court-fund-town-and-village-court-revenue-report-data-description>.

13 N.Y. Judiciary Law § 212(2)(u-1), (v-1).

14 See New York State Unified Court System, Division of Technology & Court Research, *OCA-STAT Act Report*, <https://www2.nycourts.gov/oca-stat-act-31371>.

15 See *id.* (file download for “OCA-STAT Act Data Extract” available). The data extract contains separate fields for “Fees Imposed” and “Surcharges Imposed” with an apparent dollar amount listed, but does not specify which of the fees or surcharges mandated by law are included in each category.

imposition and collection of court fees by state and local courts from Jan. 1, 2020 through Dec. 31, 2021. No documents were provided by OCA in response to the FOIL, but DCJS responded with data on the defendant-docket level showing more than 248,000 convictions over that two-year period from 69 courts in 42 counties across New York State (see Table 1). The data includes infractions, violations, and misdemeanors, but not felonies. According to a note in the FOIL response, the data was provided to DCJS by OCA, and was not processed or validated by DCJS.

The data provided to the NYCLU was disaggregated by, among other things, the top conviction charge; top conviction charge category; whether a mandatory surcharge, sex offender registration fee, DNA databank fee, crime victim assistance fee, or supplemental sex offender registration fee was imposed; and the collection status of each fee. While this dataset only reflects a small subset of New York's court system, it provides a more detailed accounting of the imposition and collection of particular fees than other publicly available sources, and thus serves as a useful analytical tool.

Finally, while not providing any information about court fees specifically, New York maintains aggregate data on the number of top-charge misdemeanor and felony convictions that are imposed across New York; violations are not included. DCJS periodically provides this data to the NYCLU. Because certain court fees automatically attach to certain convictions in statutorily prescribed amounts, this conviction data can be used to glean the amount imposed by those fees, though it gives no insight on how much money was collected.

### **Analyzing the data: Court fees are an unwieldy and inefficient means of raising revenue.**

To try to assess the amount of court debt imposed on New Yorkers and the amount of revenue ultimately collected by the state, the NYCLU evaluated the statewide aggregate data from DCJS on top-charge criminal convictions alongside the limited individual-level data on fees obtained through FOIL requests. Using patterns from the FOIL data, we drew inferences about the likely statewide impact of these fees. The picture that emerges is of an ineffective system of public funding that fails to yield substantial revenue.

Conviction data collected by the NYCLU from DCJS shows that there were 1,136,390 misdemeanor and 290,723 felony convictions from 2010 through 2019. Under the Penal Law, a mandatory surcharge of \$175 and \$300 attaches to every misdemeanor and felony conviction, respectively.<sup>16</sup> All misdemeanors and felonies also carry \$25 crime victim assistance fee, and most carry a \$50 DNA databank fee.<sup>17</sup> From these figures, we can estimate that New York courts imposed roughly \$284,097,500 in court fees for misdemeanors and \$109,012,125 for felonies – more than \$393 million charged to New Yorkers over the ten-year period from these three court fees alone, or roughly \$39 million per year.

Detailed court fee data from our FOIL request, while limited in scope, can be used as a guide to draw further inferences from these statewide figures. Using the ten courts with the highest number of fees imposed as a sample, about 37% of the convictions reported are for misdemeanors and 63% are

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<sup>16</sup> N.Y. Penal Law § 60.35(1)(a)(i)-(ii).

<sup>17</sup> See *id.*; N.Y. Penal Law § 60.35(1)(a)(v); N.Y. Executive Law § 995(7). DNA databank fees are imposed for all misdemeanors and felonies except for certain convictions related to sex work or where a court determines that the defendant's participation in the offense was the result of having been a victim of sex trafficking. For purposes of this analysis, we assume that a negligible fraction of misdemeanor and felony convictions are exempt from the DNA databank fee.

for infractions or violations, either under the Penal Law or the Vehicle and Traffic Law. The dataset lists each fee as “collected” or “to be collected,” with a small fraction left unlabeled. An analysis of the data reveals an overall collection rate of 58% for fees associated with violations and just 26% for misdemeanors.

These percentages can be applied to statewide conviction data to estimate statewide collection totals. If the collection rate for misdemeanors in the sample is roughly representative of the rates statewide for misdemeanors and felonies, it would mean that only about \$102,208,503 over a recent ten-year period – a little more than \$10 million per year – were actually collected in court fees from New Yorkers.

The statewide conviction data available for this analysis includes only misdemeanors and felonies. To project fees from violations, the ratio of fees associated with violations to fees associated with misdemeanors calculated from the FOIL response can be applied to the statewide estimate for fees associated with misdemeanor and felony convictions discussed earlier. Assuming the ratio of violations to misdemeanors in the sample is roughly representative of the ratio statewide, an estimated \$483,733,581 in court fees associated with violations were imposed on New Yorkers from 2010 through 2019 – a little more than \$48 million per year. At a collection rate of 58%, that would result in only \$28 million being collected from violation-related fees on an annual basis.

In sum, we estimate that about \$38 million dollars are collected from New Yorkers annually from mandatory surcharges, crime victim assistance fees, and DNA databank fees attached to misdemeanors, felonies, and violations.

### **Unanswered questions: The data that’s still missing.**

Through a multi-tiered analysis, this paper aims to calculate estimates of the fiscal impact of court fees in New York – an attempt to make up for New York State’s failure to meaningfully account for the imposition and collection of these fees. While we believe these estimates are a valuable contribution to understanding the state’s reliance on court fees and offer more complete view than the bare data published by the state, there are several factors that limit the reach of our analysis.

The data used for the bulk of our analysis includes the three most common types of court surcharges – the mandatory surcharge, crime victim assistance fee, and DNA databank fee. However, it does not account for fees such as the sex offender registration and supplemental sex offender registration fee. We also believe that the underlying data used for this analysis may be missing information related to lower-level traffic convictions (including parking violations), which may be handled by different courts in different parts of the state, and often have different fee amounts. With respect to fee collections, the FOIL data provided to the NYCLU does not appear to account for instances where a fee was partially paid in the large majority of cases, and it is not clear how courts throughout the state handle partial payments or record them. These omissions may undercount the totals of fees imposed or collected.

Finally, as with any analysis that relies on raw government data, the data relied on for this analysis contains occasional errors, inconsistencies, or unclear markers. Such aberrations are not uncommon in government datasets, and we do not believe they are numerous enough to significantly affect our analysis.



## **Conclusion and recommendations: Court fees impose a severe financial burden on individual New Yorkers while failing to provide meaningful revenue to the state.**

New York's decades-old system of funding government services on the backs of defendants has failed to provide any financial benefit to the state while causing significant hardship for the individuals saddled with court debt. The state's failure to track and publicize precise information on how courts impose and collect mandatory surcharges and fees makes it difficult to measure the precise impact they have on the state. However, our analysis strongly suggests that the revenue resulting from these fees is minimal, particularly when considered alongside their impact to individuals.

The cost of court fees from a single interaction with the criminal legal system can have lasting consequences for those saddled with court debt. Nearly 14% of New Yorkers live below the poverty threshold, meaning they survive on less than \$13,788 per person, or \$27,740 for a household of four.<sup>18</sup> Black and Latino residents experience poverty at twice the levels of white residents,<sup>19</sup> and are also disproportionately represented in the criminal legal system.<sup>20</sup> A single misdemeanor conviction for a single adult living at the poverty line would result in a combined \$250 from mandatory surcharges, crime victim assistance fees, and DNA databank fees – more than a fifth of their monthly income.

Comparatively, the benefit to the state of maintaining these fees is trivial. Our analysis estimates that about \$38 million is collected from the three most common court fees annually. Even without attempting to quantify the administrative costs of collecting these fees, this would represent a tiny fraction of New York State's massive annual budget – less than one-one-thousandth of the \$121.1 billion in tax revenue that New York collected in the fiscal year 2021-22.<sup>21</sup>

A system that attempts to extract revenue from fees charged to criminal defendants who often cannot afford to pay them in the first place is an ineffective and regressive means of funding government services. New York can more than afford to provide services to crime victims and fund other related court services with other revenue streams. New York should pass the End Predatory Court Fees Act, which would allow for a fairer system of providing government services.

The End Predatory Court Fees Act would eliminate the most common court surcharges that attach to criminal and traffic convictions, ending the backwards and counterproductive practice of charging defendants to cover the cost of government services, and removing incentives for law enforcement to use ticketing and arrests as a way to raise revenue. The bill would also end the abhorrent practice of jailing people for failure to pay court fees and fines, give judges discretion to adjust fines based on a person's economic circumstances.

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18 NYS Office of the Comptroller, *New Yorkers in Need: A Look at Poverty Trends in New York State for the Last Decade*, Dec. 2022, pp. 4-5, available at <https://www.osc.state.ny.us/files/reports/pdf/new-yorkers-in-need-poverty-trends.pdf>.

19 *Id.* at p. 17.

20 NYS Division of Criminal Justice Services, *NYS Adult Arrests and Prison Sentences by Race/Ethnicity in 2020*, <https://www.criminaljustice.ny.gov/crimnet/ojsa/comparison-population-arrests-prison-demographics/2020%20Population%20Arrests%20Prison%20by%20Race.pdf> (showing that Black and Hispanic residents made up 15% and 18% of the adult population but 38% and 23% of arrests, respectively).

21 See DiNapoli: State Fiscal Year 2021-22 Tax Revenues \$3.3 Billion Over Final Projections, April 15, 2022, <https://www.osc.state.ny.us/press/releases/2022/04/dinapoli-state-fiscal-year-2021-22-tax-revenues-33-billion-over-final-projections>.

So long as New York continues to extract revenue from court fees, the state must also be more transparent about how those fees are relied upon. Publicly available data on the imposition and collection of court fees is entirely inadequate. The analysis put forward in this paper attempts to partially make up for that shortcoming, but it is ultimately the state’s job to accurately track and report these figures. State officials must undertake their own accounting of revenue from court fees, as already contemplated by state law, and make those findings public.

**Table 1: Courts for which fee data was obtained.**

Albany City Criminal Court	Jamestown City Court	Peekskill City Court
Albany City Traffic Court	Johnstown City Court	Plattsburgh City Court
Amsterdam City Court	Kings Criminal Court	Port Jervis City Court
Auburn City Court	Kingston City Court	Poughkeepsie City Court
Batavia City Court	Lackawanna City Court	Queens Criminal Court
Beacon City Court	Little Falls City Court	Rensselaer City Court
Binghamton City Court	Lockport City Court	Richmond Criminal Court
Bronx Criminal Court	Long Beach City Court	Rochester City Court
Buffalo City Court	Mechanicville City Court	Rome City Court
Canandaigua City Court	Middletown City Court	Rye City Court
Cohoes City Court	Mount Vernon City Court	Salamanca City Court
Corning City Court	Nassau District Court	Saratoga Springs City Court
Cortland City Court	New Rochelle City Court	Schenectady City Court
Dunkirk City Court	New York Criminal Court	Sherrill City Court
Elmira City Court	Newburgh City Court	Suffolk 1st District Court
Fulton City Court	Niagara Falls City Court	Syracuse City Court
Geneva City Court	North Tonawanda City Court	Tonawanda City Court
Glen Cove City Court	Norwich City Court	Troy City Court
Glens Falls City Court	Ogdensburg City Court	Utica City Court
Gloversville City Court	Olean City Court	Watertown City Court
Hornell City Court	Oneida City Court	Watervliet City Court
Hudson City Court	Oneonta City Court	White Plains City Court
Ithaca City Court	Oswego City Court	Yonkers City Court