



**DISCUSSION DRAFT, \*NOT FOR CITATION\*, 5-15-19**

## **Justice Index Fines & Fees Project: Introducing Typology Concept and Categories**

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### **Introduction**

The Justice Index, [justiceindex.org](http://justiceindex.org), is an online resource created by the National Center for Access to Justice at Fordham Law School that uses data, transparency and competition to support justice system reform. The Justice Index relies on expert opinion and on research to identify selected best policies, highlights those policies in its online matrix, and then ranks the states, compared to one another, on whether they have those policies in place or not. The Justice Index has proven to be an effective tool for prompting reform. It works by introducing reformers to the importance of specific policies, empowering those reformers to champion the policies, and inspiring officials to adopt the policies. It is an effective tool for learning about which states are leading, and which are trailing, in the effort to make their state justice systems more just.

With support from Arnold Ventures, the NCAJ in 2018 and 2019 will be extending the Justice Index to incorporate into its coverage a set of best policies for controlling excessive reliance on “fines and fees” to finance government. The policy phenomenon of fines and fees has become better known in recent years. In the Ferguson Report, the US Department of Justice documented a pervasive and oppressive practice in Ferguson, Missouri, in which law enforcement officials coordinated efforts with prosecutors and judges to impose fines and fees on vulnerable minority populations as a means of raising revenue to pay for the functions of government. Reliance on fines and fees as a substitute for needed tax revenue has emerged as a practice that imposes substantial debt and multiple harms, including unwarranted incarceration, in communities across the country.<sup>2</sup> For these reasons, information about fines and fees policies is important to include in any indexing presentation, such as the Justice Index, that reports on the performance of state justice systems in the United States.

In NCAJ’s Justice Index Fines and Fees Project, NCAJ will consult with fines and fees experts to identify selected best policies for controlling fines and fees, highlight those policies in the Justice Index, and rank the performance of the states on whether they have adopted those policies. As with other elements of the Justice Index, NCAJ will rely on a substantial pro bono initiative to carry out the research needed to uncover the fines and fees policies that are present in states across the country. NCAJ will also partner closely with allied organizations to incorporate

established research findings into the Justice Index. More information about the Justice Index's overall methodology is available in [Introduction to the Justice Index](#) and in [the Justice Index, itself](#).

As part of the Justice Index Fines and Fees Project, NCAJ is developing a "typology" that relies on a set of categories to organize the "problems and solutions" that define the "field of fines and fees reform" into an upstream, mid-stream, and downstream framework. Starting upstream with the need to finance government and the creation of fines and fees, the typology then shifts its focus to midstream with coverage of the role of law enforcement officers, prosecutors, defenders, and judges, before, then, arriving downstream where its focus is on collection, privatization of collection, distribution of revenue, accountability, and data.

While the Justice Index can track and rank states based on the presence (and absence) of policies at the state or local level, one of its strengths to date has been its fronting of state level justice system policies. Policies with statewide application are important in increasing the visibility of the issues they regulate and the accountability of the officials responsible for implementing the policies. Because fines and fees are regulated at all levels of government (including through courts with statewide jurisdiction as well as courts with local jurisdiction), NCAJ is interested in examining with experts and stakeholders the important questions about which fines and fees policies are best if adopted at state v. local levels of government.

In this discussion draft, we invite reformers to consider the fines and fees policy landscape as a whole. At this time, NCAJ is specifically inviting comments on the provisional categories below. If you might be interested in receiving a fuller version of the draft, setting forth its provisional set of problems and solutions, we would welcome your inquiry, please send an email to David at [dudell@fordham.edu](mailto:dudell@fordham.edu).

### **Typology Categories**

- I. Insufficient Funding
- II. Creation of Fines & Fees
- III. Police
- IV. Prosecutors and Defenders
- V. Judges
- VI. Consequences
- VII. Alternative Sanctions
- VIII. Collection
- IX. Privatized Collection
- X. Distribution of Revenue
- XI. Oversight
- XII. Data
- XIII. Appendix – Additional Problems & Solution

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<sup>1</sup> These “typology” is a draft document that NCAJ intends to revise in 2019 based on consultation with experts and with other stakeholders interested in fines and fees problems and solutions. Contact David Udell, [dudell@fordham.edu](mailto:dudell@fordham.edu), with questions and suggestions, or to receive .

<sup>2</sup> Sources cited throughout this outline, noting here their abbreviations and acronyms, and providing links below to the underlying documents, are:

- i) Alicia Bannon, Mitali Nagrecha, and Rebekah Diller, Brennan Center, “Criminal Justice Debt: A Barrier to Reentry” (2010)(“[Brennan Barrier](#)”);
- ii) Rebekah Diller, Brennan Center, “The Hidden Costs of Florida’s Criminal Justice Fees,” (2010)(“[Brennan Florida](#)”);
- iii) Roopal Patel and Meghna Philip, Brennan Center, “Criminal Justice Debt: A Toolkit for Action” (2012)(“[Brennan Toolkit](#)”);
- iv) Conference of State Court Administrators, “The End of Debtors’ Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations” (2015-2016)(“[COSCA](#)”);
- v) Harvard Law School Criminal Justice Policy Program, “Confronting Criminal Justice Debt: A Guide for Policy Reform” (September 2016)(“[CJPP](#)”);
- vi) US Department of Justice, Office of Civil Rights, Dear Colleague Letter (March 16, 2016)(“[DOJ/Dear Colleague](#)”);
- vii) Arizona Courts, “Justice for All” (2016)(“[AZ Task Force](#)”)
- viii) Fair and Just Prosecution, “Issues at a Glance: Fines, Fees, and the Poverty Penalty” (2017)(“[Fair and Just Prosecution](#)”);
- ix) The Financial Justice Project, “San Francisco Fines and Fees Task Force: Initial Findings and Recommendations (2017)(“[SF Task Force](#)”);
- x) U.S. Commission on Civil Rights, “Targeted Fines and Fees Against Communities of Color (September 2017)(“[US CCR](#)”);
- xi) National Center for State Courts, National Task Force on Fines, Fees and Bail Practices, “Principles on Fines, Fees, and Bail Practices”(December 2017)(“[NCSC](#)”);
- xii) New Jersey Courts, Report of the Supreme Court Committee on Municipal Court Operations, Fines, and Fees (2018)(“[NJ Courts](#)”);
- xiii) American Bar Association, “Ten Guidelines on Court Fines and Fees” (August 2018)(“[ABA](#)”);
- xiv) Abby Shafroth, National Consumer Law Center, “Criminal Justice Debt in the South: A Primer for the Southern Partnership to Reduce Debt” (December 2018)(“[NCLC](#)”);
- xv) Fair and Just Prosecution, Brennan Center, and The Justice Collaborative, “21 Principles for the 21<sup>st</sup> Century Prosecutor” (2018)(“[21 Principles](#)”);
- xvi) Priya Raghavan, Brennan Center, “Criminal Justice Solutions: Model State Legislation” (2018)(“[Brennan Leg.](#)”);
- xvii) New York City Bar, Report, “New York Should Re-Examine Mandatory Court Fees Imposed on Individuals Convicted of Criminal Offenses and Violations” (November 2018)(“[NYC Bar](#)”);
- xviii) Brian Highsmith, National Consumer Law Center, “Commercialized (In)Justice (2019)(“[NCLC, Commercialized Injustice](#)”);
- xix) Harvard Law School Criminal Justice Policy Program, Day Fines DRAFT (Draft 2019) (CJPP Day Fines DRAFT).