

RAISE the AGE | NY

August 19, 2020

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, New York 12224

Dear Governor Cuomo:

The Raise the Age-NY campaign brought together organizations and individuals from across New York, including formerly incarcerated youth and their families, child advocates, service providers, faith leaders, legal services groups, and unions. We worked with you to pass the Raise the Age law to end the practice of automatically charging all 16- and 17-year-olds as adults in New York. Today, we stand with allies from across the state embracing a broad vision for youth justice.

The Raise the Age campaign strongly supports S3457 (Montgomery) / A5045 (Davila), which promotes financial justice for youth by allowing judges to waive some court fees and surcharges for young people under age 21 and relieves young people whose convictions have been replaced by youthful offender findings of the burden of a mandatory court surcharge. We urge you to sign this critical legislation.

THE IMPACT OF FINES AND FEES ON JUSTICE-INVOLVED YOUTH

Recent research has documented the ways that criminal justice fees push low income people who have been arrested and prosecuted further into poverty and undermine their successful reentry.¹ For youth, these impacts are even more severe, because young people lack access to resources to pay their fines and fees.² Such fees therefore lead to profound impacts on entire families and worsen outcomes for youth who have come into contact with the system.³ Notably, this contributes to increased rates of recidivism for youth who face financial penalties.⁴ In the juvenile justice system, fines and fees further worsen already-existing racial disparities.⁵

¹ See, e.g., Alexes Harris, *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor* (2016).

² Jessica Feierman, Naomi E. S. Goldstein, Emily Haney-Caron, & Jaymes Fairfax-Columbo, *Debtors' Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System* (Juvenile Law Center, 2016), available at <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf>; Jeffrey Selbin & Stephanie Campos, *High Pain, No Gain: How Juvenile Administrative Fees Harm Low-Income Families in Alameda County, California* 15-17 (2016), available at http://papers.ssrn.com/sol3/pa-pers.cfm?abstract_id=2738710.

³ *Id.*

⁴ See generally 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 and Juvenile Justice* 325 (2017), available at <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-criminology-study-2016.pdf>.

⁵ *Id.*

In New York State, mandatory fees attach to every conviction, even for non-criminal violations, which carry a surcharge of \$95 and an additional \$25 crime victim assistance fee, even when there is no crime victim.⁶ The mandatory court surcharge cannot be waived, even in cases of clear financial hardship. Misdemeanor convictions carry a mandatory surcharge of \$175 and felony convictions carry a mandatory surcharge of \$300, even when such convictions have been *vacated* and replaced by a youthful offender finding.⁷ Incarcerated youth can have their commissary accounts—which they rely on to purchase food, hygiene products, and other essential items—involuntarily garnished to repay mandatory surcharges.⁸

In 2019, the New York City Bar Association and New York City Comptroller each published reports documenting the harms of criminal justice fees on low-income New Yorkers. The Bar Association report argues that “Mandatory surcharges and fees are a fundamentally unfair burden often directly at odds with the aims of the criminal justice system -- they tend to make reentry more difficult and recidivism more likely, particularly for those whose crimes stem from poverty. These harms also disproportionately fall upon people of color.”⁹ The Comptroller’s analysis of existing data on criminal justice fees “reveals the harsh collateral consequences of failing to pay at each stage of criminal justice involvement and the many ways in which the system contributes to economic and racial inequality in New York City.”¹⁰

The Bar Association report found that, based on existing research, “[y]outhful defendants should not be saddled with excessive, long-term financial consequences when accepting responsibility for youthful mistakes. Accordingly, the statute should exempt all offenders under twenty-one years old from the imposition of a mandatory surcharge and crime victim assistance fee.”¹¹ New York court fees make it more difficult for young people to succeed, and an inability to pay can result in incarceration or in civil judgments that ruin a young person’s credit history from the moment they enter adulthood.¹² As a result, youth who face such costs may be unable to secure housing, employment, or the other foundations necessary to survive and to contribute to society.¹³

⁶ C.P.L. § 60.35(1)

⁷ C.P.L. § 60.35(10).

⁸ New York City Department of Correction, “Rikers Island Central Cashier Directive” (May 23, 2011), https://www1.nyc.gov/assets/doc/downloads/directives/1506_RikersIsland_Central_Cashier_RICC_11_15.pdf.

⁹ New York City Bar Ass’n, Committee Report: New York Should Re-Examine Mandatory Court Fees (2019), at 3, available at <https://s3.amazonaws.com/documents.nycbar.org/files/2018410-MandatorySurchargesCriminalCharges.pdf>.

¹⁰ New York City Comptroller Scott Stringer, *Fees Fines and Justice Fees, Fines and Fairness: How Monetary Charges Drive Inequity in New York City’s Criminal Justice System* (September 2019), at 4, available at <https://comptroller.nyc.gov/wp-content/uploads/documents/Fees-and-Fines-in-the-Criminal-Justice-System.pdf>.

¹¹ *Supra* note 9, at 12.

¹² *Supra* note 9, at 5.

¹³ Alan Rosenthal, Center for Community Alternatives, *Sentencing for Dollars: The Financial Consequences of a Criminal Conviction*, (2007), <http://www.communityalternatives.org/pdf/financial%20consequences.pdf>; Gary Rivlin, *The Long Shadow of Bad Credit in a Job Search*, New York Times (May 11, 2013), <http://www.nytimes.com/2013/05/12/business/employers-pull-applicants-credit-reports.html>.

NEW YORK'S LEADERSHIP IN PROTECTING YOUTH FROM FINANCIAL BURDENS OF JUSTICE INVOLVEMENT

New York has the potential to be a national leader in protecting youth and communities from the negative impact of justice system fines and fees. A 2016 report analyzing juvenile justice fines and fees across the country found that New York was the only state to impose *no* financial burden on juvenile justice-involved youth other than restitution.¹⁴ However, New York continues to impose mandatory court fees on individuals involved in the adult criminal justice system, including adolescents and young adults who are processed in criminal court, even when their convictions have been vacated and replaced by youthful offender findings.¹⁵

For young New Yorkers, the financial burden of justice involvement amounts to hundreds of dollars, imposed regardless of a youth's ability to pay.¹⁶ Under current law, the judge sentencing a youth has no discretion to waive surcharges, and may waive the much smaller crime victim assistance fee only in cases where a young person has received youthful offender treatment.¹⁷ These fees hurt youth and impact their communities. The above-referenced legislation addresses this problem by allowing judges to evaluate fees on a case by case basis and to waive them in cases of financial hardship or when doing so would support the state's goal of promoting successful reentry. It also eliminates mandatory surcharges for youthful offender findings, a common-sense measure given that youthful offender adjudications are not convictions and that their statutory purpose is to relieve eligible youth of the onus of a criminal record.¹⁸ The legislation provides an opportunity for young people to recover from past mistakes and enter adulthood on more solid financial footing. In enacting it, New York would position itself as a leader not just in *juvenile* justice, but in improving the chances of success for *all* youth involved in the justice system.

In light of the documented harms to youth, the stated purpose of New York's mandatory surcharges to raise revenue¹⁹ is profoundly unjust. In light of young people's vulnerability, and the disproportionate representation of low-income youth of color in our criminal justice system, the imposition of these fees and surcharges work significant hardships on historically

¹⁴ See *Debtors' Prison for Kids*, JUVENILE LAW CENTER, <https://debtorsprison.jlc.org>.

¹⁵ *Supra* note 4.

¹⁶ *Id.*

¹⁷ C.P.L. §420.35. This is so unless the young person is adjudicated a youthful offender (YO), in which case a financial hardship waiver is available for only the crime victim assistance fee. See C.P.L. § 420.35(2). Youth granted YO are still required to pay the mandatory surcharge.

¹⁸ C.P.L. § 720.20(1).

¹⁹ *People v. Guerrero*, 12 N.Y.3d 45, 48-49 (2009) (quoting Legislative Mem in Support, Bill Jacket, L. 1982, ch. 55, at 6) ("Section 60.35 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.'"); *id.* at 48-49 (2009) (internal quotation marks and citations omitted) ("[T]he Legislature did not intend the surcharge or fee to be an additional punishment component of a sentence").

marginalized communities with the fewest resources. The vast majority of court-involved youth cannot afford to pay a mandatory surcharge.²⁰

We strongly urge you to sign this legislation into law. Eliminating mandatory fees for justice-involved youth will help such youth be more successful, contribute to reduced recidivism, and alleviate burdens on impacted families and communities—all goals that are more important than ever as New York faces a nearly unprecedented crisis. Because indigent youth have no means to pay imposed court fees, this legislation will not result in a meaningful loss of revenue. Additionally, because the impact of court fees falls disproportionately on youth of color, this legislation will help to address the racial disparities that permeate New York’s justice system.

Sincerely,

Children’s Defense Fund-New York
Citizens’ Committee for Children
Families Together
Youth Represent

²⁰ K. Babe Howell, *Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing*, 33 N.Y.U. REV. L. & SOC. CHANGE 271, 296-97 (2009), at 326.