

Criminal Justice Debt Reform Builder

Definitions and Methodology

About the Criminal Justice Debt Reform Builder

The Criminal Justice Debt Reform Builder makes more accessible state statutory authority governing fees and fines. For each state, CJPP drew upon the same sources of law: state statutes (typically the general laws, criminal code, and code of criminal procedure), case law from a state's supreme court or highest criminal court, rules promulgated by the state's court agency or chief justice, and attorney general opinions. For this first beta release, the traffic code is not included for all states; CJPP will be adding this in the coming months. Further, this project does not include civil court fees or penalties, local laws about criminal justice debt, or on-the-ground practice.

Users will research state laws governing fines and fees in the Law Explorer. In addition to the statutory language, CJPP has provided analysis of the law. In many places, users are able to facet searches based on this additional information. For example, for any financial penalty, CJPP has included information about who imposes the penalty and whether it is mandatory. Users can search by the answers to these questions.

Before explaining the various data points you will find in the Law Explorer, a few guiding principles are worth noting.

Guiding Principles

In many places, we have coded the law's applicability. Criminal justice debt laws may apply based on the court in which the case is heard, the type of financial penalty, or the level of the offense. Facets on the left of the Law Explorer allow for narrowing searches based on these factors.

For example, we have signified whether the law would apply in municipal courts as well as in state courts. If it is unclear, we code the law as applying in all courts. The reason for this is that the Law Explorer search function is purposely over-inclusive so that users will be aware of the authority and can then conduct further research. We cannot provide legal analysis but have developed curated searches to make your work easier. The same is true for all applicability coding.

Similarly, in five tabs (fees and fines, ability to pay, poverty penalties and poverty traps, revenue flow, and transparency) the Law Explorer has a See Related Provisions option. Based on the coding about a law's applicability, the site will conduct searches to bring up other provisions you may want to see. Additional research and analysis would be required to know for sure whether

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these laws are relevant to your question. The site is designed to make searching and connecting this area of law easier.

Definitions: General

- *Criminal Justice Policy Program* or *CJPP*: We will refer to our program throughout the site as CJPP. For additional information about our work please visit <http://cjpp.law.harvard.edu>.
- *CJPP Policy Guide* or *CJPP Guide* or *Policy Guide*: We use these terms to reference our publication, *Confronting Criminal Justice Debt: A Guide for Policy Reform*. The full text is available here: <http://cjpp.law.harvard.edu/assets/Confronting-Criminal-Justice-Debt-Guide-to-Policy-Reform-FINAL.pdf>.
- “*Fees and fines*” or “*Fines and fees*” or “*criminal justice debt*” or “*legal financial obligations*”: These terms are used interchangeably to refer collectively to all of the financial penalties individuals may face as a result of involvement in the criminal justice system.
- *Description/Statute Name*: This field is the statute name or other short description.
- *Type of court*: Allows faceting laws based on which courts they apply to.
 - *State court*: Court of general jurisdiction.
 - *Municipal court*: Court of limited jurisdiction. Limited jurisdiction courts, sometimes called inferior courts, handle lesser crimes that are classified as low-level misdemeanors, violations, or infractions. Jurisdiction will vary by state.
 - *Traffic court*: Traffic courts are one type of court of limited jurisdiction.
- *Level of offense*: Fees and fines often vary by the level of offense. The data is tagged into the following categories: felony, misdemeanor, traffic, and other. Violations and infractions are coded as misdemeanors.
- *Type of financial obligations*: Terminology for the different types of criminal justice debt.
 - *Fines*: Financial obligations imposed as a penalty after a criminal conviction or admission of guilt.
 - *Fees* or *user fees* or *costs*: Financial obligations imposed as a way for jurisdictions to recoup costs of the “use” of the criminal justice system, including, but not limited to, costs associated with public defenders, GPS monitoring, and court proceedings.
 - *Surcharges*: Financial obligations imposed as a flat fee or percentage added to a fine to fund a particular government function or a general fund.
 - *Restitution*: Refers to financial obligations intended to compensate victims of a crime for their actual losses. Restitution is typically understood to consist of money actually transmitted to individual victims of crime, but in some instances it is in fact paid to reimburse government agencies or insurance companies.
 - *Supervision fees*: User fees that are imposed to recoup the cost of parole or

probation supervision.

Definitions: Law Explorer

Below are definitions and explanations to understand the fields in the Law Explorer.

Fees and Fines Tab: This section includes state laws that authorize legal financial obligations.

- *Amount:* Dollar amount or range for the financial penalty. Includes narrative description, e.g. “cost of collection,” if relevant.
- *Mandatory:* Explains whether or not imposition of the financial penalty is required. Ability to pay language may qualify this finding.
- *Imposed by:* Entity that imposes the fees and fines.
- *Delegation of authority:* Explains if the statute authorizes the imposing entity to delegate a different entity to charge individuals. For example, the court may be able to delegate to a supervision agency.

Ability to Pay Tab: This tab includes state laws that govern inquiry into an individual’s ability to pay fees and fines.

- *Definition of ability to pay:* Free form text field describing any test or definition of ability to pay in the law. For example, the law may include factors to consider in assessing ability to pay, or presume that individuals earning 300% of the poverty line or less are unable to pay.
- *Timeline:* Explains when the ability to pay inquiry would occur and who has the burden of initiating the inquiry. CJPP selected one of the following options.
 - *Before imposition of fine or fee:* Selected if there would be an inquiry without the defendant’s initiation before the financial penalty is imposed.
 - *At defendant's request before imposition of fine or fee:* Selected if the defendant may request an inquiry in to ability to pay before the amounts are imposed.
 - *At enforcement of fine or fee:* Selected if an inquiry is conducted upon non-payment before consequences are imposed.
 - *At defendant's request at enforcement:* Selected if a defendant must take the initiative to request an inquiry at the enforcement stage.
 - *Not provided for:* Selected if the law was silent on the question.
- *Burden of proof:* CJPP selected from these options about the burden of proof.
 - *Burden on government to show ability to pay*
 - *Burden on defendant to show inability to pay*
 - *Not provided for*
- *Method of determination:* CJPP selected the following options about how the ability to pay inquiry would occur.

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- *Determined by judge without hearing*: Court determines ability to pay without a hearing, perhaps through review of a form.
- *Determined by judge after hearing*: Suggests a more formal hearing process to solicit information about ability to pay.
- *Administrative decision*: An entity other than the court assesses ability to pay. Examples include the Department of Corrections of a supervision agency.
- *Other*
- *Mandatory*: Yes or No field about whether the ability to pay inquiry is mandatory.
- *Remedies if unable to pay*: Free text field about what the law dictates occurs if the individual is found unable to pay. For example, fines may be waived, reduced, or converted to community service. It may be that the law is silent on the question.

Poverty Penalties and Poverty Traps Tab: Includes authority about mechanisms the state is able to use to collect criminal justice debt.

- *Type of poverty penalty or poverty trap*:
 - *Collection fee/interest*: State authorizes additional financial penalties for collections, often for late or deferred payment options.
 - *Incarceration*: State authorizes use of incarceration to enforce non-payment. Includes use of warrants upon non-payment or failure to appear on payment matters, pay or appear proceedings, pay or stay laws, contempt, incarceration as punishment for non-payment, and other avenues through which individuals may end up facing incarceration because of an inability to pay.
 - *Community service*: Authority to convert financial penalties to community service is included here as an enforcement mechanism.
 - *Wage/bank account garnishment*: State laws that allow for wages, bank accounts, or tax refunds to be garnished to satisfy criminal justice debt.
 - *Condition or extension of supervision*: Laws that make payment a condition of parole or probation or extend supervision to monitor payment.
 - *Work program/jail industry program*: Work programs that apply wages towards criminal justice debt.
 - *Driver's license suspension/impoundment*: State statutes about the revocation or suspension of driver's licenses for non-payment. Also includes laws that call for impounding or withholding registration.
 - *Suspension of professional license*: State laws that suspend, revoke, or prevent individuals from obtaining professional licenses if they do not pay criminal justice debt.
 - *Property liens*: State laws that allow for liens on individuals' property.
 - *Civil judgment*: Laws that convert debts to civil judgments against the individual.
 - *Increased fine*: Base fine is increased as an enforcement mechanism.
 - *Payment plan/installment plan*: The option of deferred payment, while not always a poverty penalty or poverty trap, is included here.

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- *Mandatory*: Yes or No field about whether use of the poverty penalty or poverty trap is required.

Revenue flow tab: This tab includes laws that govern who collects criminal justice debt, and what the money funds.

- *Who collects* and *Who receives*: Both include the following entity options. The list may grow as other actors are identified.
 - *All courts*
 - *Private actors*
 - *State/statewide agency*
 - *Municipal court*
 - *State courts*
 - *County*
 - *Traffic Court*
 - *Local jurisdiction*
 - *Law enforcement*
 - *Supervision agency*
 - *Department of Motor Vehicles*
 - *Clerk*
 - *Municipality/municipal agency*
 - *Prosecutor*
 - *Other*
- *Other beneficiaries*: Includes details in a free text field if there is more than one recipient.

Transparency Tab: This tab includes laws about the openness of criminal justice debt systems.

- *Type of obligation*: CJPP selected from the following options of the function of the criminal justice debt transparency law.
 - *Obligation to collect or record*: This option was selected when the law covers a government entity collecting or recording data related to criminal justice debt.
 - *Obligation to report/conduct analysis*: This option was selected for laws governing any reporting or analysis about criminal justice debt. For example, local courts may owe reports of amounts collected to the state court administrator.
 - *Obligation to respond to public records requests*: These laws cover courts' obligation to respond to public records requests.
- *Actor*: Selected the actor that one would learn about through the transparency requirement. The list may grow as other actors are identified.
 - *All courts*
 - *Private actors*
 - *State/statewide agency*
 - *Municipal court*

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- *State courts*
- *County*
- *Traffic Court*
- *Local jurisdiction*
- *Law enforcement*
- *Supervision agency*
- *Department of Motor Vehicles*
- *Clerk*
- *Municipality/municipal agency*
- *Prosecutor*
- *Other*

Structure of Courts Tab: This tab explains the structure, jurisdiction, and funding of courts in the state.

- *Court/legal body:* This is a free form text field that provides the entity type as it is known in that state.
- *Type of court:* This field is one in which CJPP standardized the responses from *Court/legal body* into the following options.
 - County court
 - Municipal court
 - State court
 - Traffic court
 - Other
- *Function:* CJPP chose from the following options that describe the purpose of the law.
 - *Jurisdiction of the courts:* The authority defines the jurisdiction of the court.
 - *Creation of the courts:* The law concerns how courts may be created.
- *Funding:* This is a free form field that includes any information the statute has about how the court is funded.

Collections Infrastructure Tab: This tab includes statutory law about entities that have a role in collections. For example, laws may authorize private actors to collect.

- *Who may collect:* CJPP selected from the following list. The list may grow as other actors are identified.
 - *All courts*
 - *Private actors*
 - *State/statewide agency*
 - *Municipal court*
 - *State courts*
 - *County*
 - *Traffic Court*

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- *Local jurisdiction*
- *Law enforcement*
- *Supervision agency*
- *Department of Motor Vehicles*
- *Clerk*
- *Municipality/municipal agency*
- *Prosecutor*
- *Other*

Non-Statutory Law: Case Law, Attorney General Opinions, and Court Rules Tabs: CJPP has included case law, attorney general opinions, and court rules about criminal justice debt questions.

- *Case Law:* Includes authority from the state's highest court or highest criminal court.
 - *Question:* Research question being answered by the case.
 - *Brief Answer:* Summary of the holding.
 - *When does this apply:* This field tells users what criminal justice debt topic is covered. CJPP selected from the following:
 - *Ability to pay*
 - *Enforcement*
 - *Fines and fees*
 - *Revenue flow*
 - *Transparency*
- *Attorney General Opinions:* Includes relevant attorney general opinions.
 - *Question:* Research question being answered by the case.
 - *Brief Answer:* Summary of the holding.
 - *When does this apply:* This field tells users what criminal justice debt topic is covered. CJPP selected from the following:
 - *Ability to pay*
 - *Enforcement*
 - *Fines and fees*
 - *Revenue flow*
 - *Transparency*
- *Court Rules:* Includes rules promulgated by the state's highest relevant court or state court agency. In some instances, a state's legislature may promulgate court rules.
 - *When does this apply:* This field tells users what criminal justice debt topic is covered. CJPP selected from the following:
 - *Ability to pay*
 - *Enforcement*
 - *Fines and fees*
 - *Revenue flow*

- *Transparency*

State Analysis Snapshot Calculation Explanations

- *Fines and fees state summary*
 - *Number of fees and surcharges*: This statistic captures the number of separate fees (including fees related to supervision) and surcharges authorized under state statutory law. While this number does not tell the full story about whether a particular state has high legal financial obligations, it is one relevant data point.
 - *Required charge for parole or probation*: This tells you whether a state has a charge imposed to recoup for the cost of supervision that is said to be mandatory. Researchers should check to see whether any Ability to Pay authority provides for reduction or waiver of this penalty.
- *Poverty Penalties and Poverty Traps*
 - *Required driver's license revocation*: This entry tells us whether or not the state has a law that makes it mandatory for an individual's license to be suspended for non-payment. Additional states may provide this as an optional enforcement mechanism.
 - *Individuals do/do not face supervision consequences for non-payment*: This will explain whether there is a mandatory parole or probation consequence for an individual's inability to pay such as an extension of revocation of supervision.
- *Ability to Pay*
 - *Does/does not have any law that requires an ability to pay determination before imposition*: This snapshot fact reports whether any law in the state requires an inquiry in to an individual's ability to pay before a financial penalty is imposed.
 - *Does/does not have mandatory fees or surcharges*: This statistic tells us whether the state has any mandatory financial obligations. It may be that ability to pay language qualifies this, yet the fee or surcharge is written as mandatory.