Applying a racial equity lens to fines and fees in the District of Columbia

By Kathryn Zickuhr | April 22, 2019

In recent years, jurisdictions across the country have increasingly turned to fines and fees[1] both as a policy mechanism and as a way to generate much-needed revenue, especially after the budget crunch from the Great Recession.[2] However, unlike taxes, fines and fees are usually the same for everyone, regardless of their income or ability to pay. In practice, this means these amounts are relatively larger for low-income people than for higher-income people; a $100 fine is a greater burden for someone earning $30,000 per year than someone earning $100,000 per year. They can also be interconnected, such as when the inability to pay a fee can lead to a fine, further devastating household budgets.

Fixed fines and fees can disproportionately harm families of color, both due to discriminatory practices in issuing fines and fees and in the systemic issues of income and wealth inequities that make it more difficult for these families to pay. These underlying inequities also mean that families of color are disproportionately likely to experience serious consequences of paying—or failing to pay—these costs. Furthermore, because these debts are owed to the government, fines and fees can often lead to more specific **interlocking and compounding problems**. Not only do the pressures of debt and the stress of financial shocks have immediate economic impacts on individuals and their families, but they can also lead to additional debt and increased involvement with the criminal justice system. The result, as sociologist Alexes Harris **argues**, is a two-tiered system of justice, where residents can experience vastly different outcomes solely as a result of their income level.

The District of Columbia does not have some of the more damaging **practices** that have been uncovered in some areas of the country, and has recently passed legislation ending the practice of suspending driver licenses due to debt. However, there are still potential consequences for residents who are unable to pay traffic fines or other debts to the District government that can lead to the eventual loss of a license, as well as rising late fees, vehicle impoundment, and other negative outcomes that are disproportionately likely to affect people of color in D.C. There is also

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[1] Fines are generally punishments or deterrents of some kind, such as a speeding ticket or fine charged to a business for a noise violation, while fees are typically a payment for some type of service, even if that service is being found guilty in court or filing for personal bankruptcy.

[2] For instance, see examples in Missouri and California. For more on the national context of fines, fees, and bail issues, see the Council of Economic Advisors December 2015 issue brief, Fines, Fees, and Bail: Payments in the Criminal Justice System That Disproportionately Impact the Poor.

much we don't know about the reach of fines and fees in D.C., including a comprehensive view of who pays them and what the impacts of nonpayment are, both in its policies and in practice. As D.C. begins to apply a racial equity lens to new and existing practices, it should also consider whether and how to incorporate more flexible and creative approaches, such as scaling financial penalties to an individual's ability to pay.

I. Fines and fees compound existing inequities

Racial inequities by income in D.C. and the surrounding metro area are large, but racial inequities in terms of overall household wealth are even greater—and have troubling implications for the economic stability of families of color, even those with high incomes.[3] According to the report ***The Color of Wealth in the Nation's Capital***, the typical white household in the D.C. metro area has a net worth that is 81 times greater than that of Black households ($284,000 versus $3,500). The drivers of the racial wealth gap are **grounded in historical practices**, from the enslavement of Black Americans though the violence of the Jim Crow era, but are perpetuated and deepened by ongoing practices today. Public and private practices limiting homeownership by Black communities and other communities of color have been a major source of racial inequities in wealth, with effects that reverberate through each new generation.

Not only are Black and Latinx families less likely than white families to have significant wealth and other assets that can provide a cushion in lean times, but they are also disproportionately more likely to be experiencing debt, another consequence of poverty with long-term and far-reaching effects. ***The Color of Wealth in the Nation's Capital*** found that Black households in the D.C. metropolitan area are more likely to have credit card debt, student loan debt, and medical debt than white households. A separate **Urban Institute study** found that 45 percent of D.C. residents of color have debt in collections, compared with 12 percent of white residents.

While government-issued fines and fees are not necessarily the primary driver of overall debt for most families, understanding the role of debt is important for understanding the challenges of economic insecurity that so many families of color experience. Debt further stresses a strained household budget, exacerbating financial instability and ongoing personal stress, and **contributing** to poor mental and physical health. And finally, debt is persistent. It can curtail future opportunities through long-term effects on credit scores and background checks, making it more difficult to secure quality employment or housing, and increasing the likelihood that future

[3] The median income for white households in D.C. ($123,000) is three times greater than the median income for Black households ($41,000) and twice that of Latinx households ($61,000.)

financial shocks[4] will be met with other types of unsecured debt, such as payday lenders or credit cards.

It's important to consider household wealth, debt, and income together because they all contribute to a family's economic stability. An often-cited 2016 Federal Reserve report found that 54 percent of all U.S. adults say they either could easily pay for an emergency $400 expense, and low-income adults were generally less likely than high-income adults to say they would be able to handle the expense.[5] However, the report also found that Black and Latinx respondents were less likely to say they could handle the financial shock than white respondents, a pattern that could be found across income levels.[6] And the effects of a sudden financial shock can be severe: In Richmond, for example, where one in five renter households were threatened with eviction in 2016, the **median amount owed** by evicted households was less than $700; the median amount owed on public housing evictions here was $328.

Revenue from fines and fees can lead to misaligned incentives for cities

Governments fine individuals and businesses to discourage and punish behaviors that can harm their communities, such as driving dangerously or dumping trash illegally. Meanwhile, many types of fees, such as business license fees, driver's license fees, and court fees, instead function as "user fees" originally designed to offset the costs to the city of providing that service. Parking-related fees (and fines for improper parking) are a tool to discourage driving and encourage residents to use public transit and other car-free modes of transportation, and late fees create a strong incentive for someone to pay a fine on time.

Fines and fees often seem like an efficient and uncontroversial approach to generating revenue, as they only affect people who are guilty of an infraction or who have made use of a particular government service. But conflicts of interest arise when a court or other government entity uses

[4] A national survey by the Pew Trusts found that 60 percent of American households experienced a significant financial shock in the past year, generally due to major car repair, home repair, a medical emergency, or a pay cut due to the loss of a job or a change in hours.

[5] "Just over half (54 percent) report that they could fairly easily handle such an expense, paying for it entirely using cash, money currently in their checking/savings account, or on a credit card that they would pay in full at their next statement." Among those who could not pay it easily, "38 percent would use a credit card that they pay off over time and 31 percent simply could not cover the expense. Over a quarter would borrow from friends or family, and smaller fractions would either sell something, use a payday loan, bank overdraft, or bank loan." Board of Governors of the Federal Reserve System, Report on the Economic Well-Being of U.S. Households in 2015 (May 2016), 22.

[6] Among low-income families earning less than $40,000 per year, 40 percent of white respondents said they would be able to handle such an emergency expense, but only 20 percent of Black respondents and 27 percent of Latinx respondents said the same. Even among middle-income families earning between $40,000 and $100,000, white respondents were notably more likely to say they would be able to handle a $400 emergency expense (66 percent) compared with Black (53 percent) and Latinx families (46 percent). Ibid., 23.

fines and fees to generate revenue, because that entity is incentivized to issue more or higher fines or fees. These misaligned incentive structures are particularly worrisome when a government agency or department is allowed to apply its own revenue to its operations and services, although it can still be an issue when the revenue goes to general funds. An infamous examples of this comes from the U.S. Justice Department's 2015 **Investigation of the Ferguson Police Department**, which found that "city and police leadership pressure officers to write citations, independent of any public safety need, and rely on citation productivity to fund the City budget."[7] This pattern of behavior is not confined to Ferguson; a **study of policy departments** in over 9,000 U.S. cities found that cities with higher proportions of Black residents are more likely to use fines as a revenue source than cities with relatively fewer Black residents.

Research suggests that local and state governments have **increasingly** turned to fines and fees because they can raise revenue quickly and without the political friction of increasing taxes. Traffic- and court-related revenue are common targets. In 2006, for example, then-Councilmember Adrian Fenty **pledged** not to raise taxes if elected mayor; in 2009, after the crest of the Great Recession and facing a revenue shortfall of $800 million, Mayor Fenty signed a final fiscal year (FY) 2010 budget that included a **substantial increase** in fees in order to help close the gap. Mayor Fenty also implemented emergency executive orders to increase driver's license and learner's permit **application fees**, **traffic fines**, and **business permits fees** in order to balance the budget.

While raising fines and fees for the explicit purpose of bridging budget gaps may help a city's fiscal projections, in practice they may have at most a minor effect on actual revenue—but in either case, they can still have a severe negative effect on debt for low-income residents. As ProPublica **reported** earlier this year, Chicago recently raised the price of a ticket for not having a required car sticker, from $120 to $200. While this change did not lead to more individuals purchasing car sticks and had only a moderate impact on revenue, it did dramatically increase the amount of debt owed to the city—and therefore increased the likelihood that low-income residents will experience the consequences of being unable to pay. ProPublica found that thousands of drivers—mostly Black drivers—filed for bankruptcy due to ticket debt.

[7] In one example, the City's Finance Director wrote to the City Manager, "'Court fees are anticipated to rise about 7.5 percent. I did ask the Chief if he thought the PD could deliver 10 percent increase. He indicated they could try.'" This incentive structure contributed to a reliance on unconstitutional and racially discriminatory over-policing, which had a disparate impact on the city's Black community.

II. The short- and long-term impacts of fines and fees

In FY 2017, D.C. **collected** $167,385,000 in fines and forfeitures, with the majority—over 70 percent—of this amount coming from **automated speed cameras**.[8] D.C. also collected $92,549,000 in licenses and permits and $81,371,000 in charges for services. It is difficult to understand the full extent to which these fines, fees, and other costs fall on D.C. residents of color, as public entities that collect fines and fees in D.C. do not generally collect demographic information on who experiences these costs, and few, if any, regularly provide reports on the race or income of residents who experience them.

Given the vast racial inequities in income, wealth, and economic security in the District of Columbia, fines and fees can have a disproportionate impact on low-income families of color as an additional debt or financial shock. However, because they are owed to the D.C. government, unpaid fines and fees can often lead to more specific interlocking and compounding problems, potentially leading to growing cycles of debt, financial and housing insecurity, and increased involvement with the criminal justice system.

Criminal justice debt

Extensive national evidence shows that people of color are disproportionately likely to pay various types of fines and fees—especially those related to the criminal justice system.[9] This is due to both the increased likelihood of being arrested or incarcerated (and therefore having to pay any associated court fees and, if convicted, penalties), and the racial inequities in income and wealth that make it harder to meet these financial costs.

Racial inequities in **criminal justice involvement** have a long history, as documented by **Michelle Alexander** and **Ibram X. Kendi**, as well as researchers at the **Vera Institute**, the **Sentencing Project**, the **Equal Justice Initiative**, and many others. These structural inequities exist in the District of Columbia as well. That people of color in D.C.—especially Black residents—are disproportionately likely to become involved in the criminal justice system has been well-

[8] This is a 4.2 percent drop from FY 2016, and revenue from fines are projected to continue to decrease over the next five years. Previously, D.C.'s revenue from fines—including booting, towing, and impoundment fees, traffic hearings, red light revenue and other traffic fines—increased between FY 2010 and FY 2014, in part due to higher traffic fees and greater automated traffic enforcement.

[9] See, for instance, Alexandra Natapoff, *Punishment Without Crime: How Our Massive Misdemeanor System Traps the Innocent and Makes America More Unequal* (2018), Karin D. Martin, Sandra Susan Smith and Wendy Still, *Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-Entry They Create* (January 2017), Alexes Harris*, A Pound of Flesh: Monetary Sanctions as a Punishment for the Poor (2016),* and the Criminal Justice Policy Program at Harvard Law School's Confronting Criminal Justice Debt: A Guide for Policy Reform (September 2016).

documented: An **analysis of MPD data** by the Washington Lawyers' Committee for Civil Rights and Urban Affairs found that more than eight in ten people arrested in D.C. from 2009 to 2011 were Black, with over 95 percent of arrests for nonviolent offenses.[10]

Court fees

People who are arrested may face various court fees and repayment of court-related costs, such as **public defender fees**. However, in practice, judges can waive these costs for those who are unable to pay; according to the Public Defender Service for the District of Columbia, court-appointed counsel is **frequently** provided free of charge to the defendant, and fees appear to be waived for a large share of defendants for this reason. However, there does not appear to have been a systematic and comprehensive examination of D.C.'s courts' practices that can show how often (and for which defendants) fees are actually assessed, in how many cases ability to pay is considered, and what consequences—if any—may be experienced by defendants who are unable to pay.

Nationally, many justice advocates have argued that court fees should be eliminated altogether, both because courts are a general service that the government provides the public, and because low-income people and people of color are disproportionately likely to be involved in the criminal justice system in the first place.[11] San Francisco recently eliminated all local criminal justice administrative fees. According to **an issue brief** from the San Francisco Treasurer's Office and the Financial Justice Project, fees disproportionately affected low-income families, created barriers for returning citizens post-incarceration, and were determined to be "counterproductive, ineffective and anemic sources of revenue."[12] If in fact court fees are not currently being collected for most in D.C., eliminating the option may not have a significant fiscal impact—but would prevent future policy shifts at the discretion of judges, should current practices change.

Criminal fines

[10] Another report found that "although African-Americans make up less than 48% of the city's population, over 92% of those sentenced by the DC Superior Court in 2012 were African-Americans." Washington Lawyers' Committee citing the D.C. Sentencing and Criminal Code Revision Commission's 2012 Annual Report.

[11] An analysis by the Prison Policy Initiative found that "in 2014 dollars, incarcerated people had a median annual income of $19,185 prior to their incarceration, which is 41 percent less than non-incarcerated people of similar ages," with the largest gaps between incarcerated incomes and non-incarcerated incomes for Black and Latinx residents.

[12] See "Criminal Justice Administrative Fees: High Pain for People, Low Gain for Government A Call to Action for California Counties" (May 2018) and "San Francisco just got rid of unfair criminal justice fees. Other counties should do the same" (June 2018). Over $15.69 million in outstanding debt was owed by over 20,000 individuals from fees charged between 2012 and 2017 alone, of which probation fees accounted for around $12 million.

Fines are often used in the criminal justice system to deter or punish violent or unwanted behavior, or to provide restitution to victims of crimes. However, many are issued for actions that are ultimately connected to poverty, or enforced in ways that further existing inequities around income and race; as Alexandra Natapoff writes, "a host of petty offenses punish people for their inability to pay for things like car registration or insurance or for lacking key resources that the law says they should have, such as a place to sleep."[13] One example is when cities have laws again vagrancy or loitering, or other "quality of life" laws that can adversely affect **people experiencing homelessness**, (in D.C., **88 percent** of adults experiencing homelessness are Black). D.C. law also allows fines of up to $500 for **panhandling**, for sleeping **on a sidewalk or in a building entrance**, or for **public urination**.

Some of these laws, such as D.C.'s ban on "**incommoding**" sidewalks, parks, or alleys, can also be used to police the presence of people of color in public spaces, as the Washington City Paper **documented** in 2015. WCP notes that "a vast majority" of these incommoding charges end with the accused individual simply paying the fine, without any legal counsel or determination of whether the charge was warranted. The Office of Police Complaints **reported** in 2017 that it was "[concerned] that MPD officers use of the Blocking Passage statute is disproportionally discriminating against specific groups of individuals," and recommended that the D.C. Council "review the current statute and weigh the legislative intent against its effects on community trust."

If convicted of any criminal offense, individuals may be required to pay a fine (known as an **assessment**), typically $50 for a misdemeanor or traffic[14] offense, and $100 for a felony offense.[15] If someone is unable to pay this assessment at the time of their sentencing, this amount can be withheld from their eventual wages when they do find work. D.C. law also states that the Board of Parole should take unpaid assessments into account when determining whether an incarcerated individual is eligible for parole, and that if someone does not pay any of these court-ordered fines, they can be **imprisoned** for up to a year. However, as with court fees, it is unclear how often these effects of nonpayment are felt, to and what the downstream effects of criminal debt may be for D.C. residents who are unable to pay their assessments or other financial penalties.

Traffic fines and driver license access

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[13] Natapoff, 119.

[14] Traffic violations handled by the D.C. Courts include driving without a permit, having an unregistered car, driving on a suspended or revoked license, and driving while intoxicated. Minor traffic offenses, such as speeding tickets, are handled by the D.C. Department of Motor Vehicles.

[15] Individuals who are convicted of a violent crime can also be required to pay up to $25,000 to the crime victim fund.

Potential sources for traffic debt in D.C. include fines from moving violations,[16] as well as parking fines from parking in the wrong location or after a meter has expired.[17] In D.C., as in many other jurisdictions, the amount of traffic and parking fines issued to drivers has risen dramatically in the past decade, due to increased coverage of automated speed cameras and increases in fines per offense.

Traffic fines, such as those from speeding tickets, have been shown to have a clear role in discouraging dangerous driving and punishing people who drive irresponsibly—but for low-income residents of color, who are especially likely to rely on cars for their commutes and access to jobs,[18] they can also lead a sudden and rising amount of debt. Unpaid traffic fines double after 30 days, and are sent to collections after 90 days, at which point they are subject to an additional 20 percent surcharge. As DCFPI has **noted**, this means that an initial $150 ticket for running a red light can soon cost the driver $360 if they are unable to pay the initial amount. In effect, this means that not only do low-income drivers pay a proportionally larger amount of their income for the same fine as higher-income drivers, they are effectively charged more than twice as much in absolute terms if they are unable to pay[19] within three months.

For D.C. residents, if the traffic fines are not paid within this 90-day time period, the Department of Motor Vehicles can request the Office of Tax and Revenue withhold the owed amount (now more than doubled from late fees) from the resident's **income tax returns**. Residents with outstanding traffic or parking debt may also find that their car has been booted or towed, and must be able to pay all new and outstanding fines and fees—including boot or tow fees and storage fees—in order to retrieve their vehicle.[20]

[16] In D.C., unlike in many other states and jurisdictions, almost all moving violations are now issued through automated traffic enforcement, such as red light cameras and speed cameras. Such automation reduces potential for human bias, though it does not eliminate the potential for bias overall. More research is needed to understand whether Black residents in particular are more likely to live in neighborhoods with conditions that do not discourage speeding, or more likely to experience automated enforcement overall.

[17] In previous years, revenue from traffic and parking fines used to go to the general fund, but since fiscal year 2018, parking and pedestrian fines will now go to dedicated funds under the control of the Department of Motor Vehicles to support the systems' ticket processing, adjudication, hearing, information technology, and support staff costs. See: The Automated Traffic Enforcement System Fund Establishment Act of 2017, the Moving Violation Enforcement Fund Establishment Act of 2017, and the Parking, Standing, Stopping and Pedestrian Violation Enforcement Fund Establishment Act of 2017.

[18] See the Urban Institute's Driving to Opportunity: Understanding the Links among Transportation Access, Residential Outcomes, and Economic Opportunity for Housing Voucher Recipients (March 2014) and D.C. Policy Center Fellow Randy Smith's analysis Where it's easiest to live car-free in D.C. (October 2017).

[19] It is also not only the lowest-income households who may have difficulty paying unexpected fine or fees: As the Federal Reserve data cited earlier shows, a disproportionate share of Black and Latinx families earning more than $40,000 per year are still unable to meet emergency expenses of just $400.

[20] If residents are unable to pay parking or traffic tickets, they may also find that their car has been booted or towed, resulting not only in the sudden loss of their car, but additional boot/tow and storage fees that must be paid in addition to the original fines. For cars that have been towed, this debt will increase by $20 per day if the driver is unable to travel to the impoundment lot and pay all new and outstanding fines and

Legal experts and advocates across the country have been particularly concerned about the downstream effects driving-related fines and fees can have for low-income residents because this debt often leads—directly or indirectly—to the loss or suspension of a driver's license, which disproportionately affects **people of color**. Lacking a current driver's license can make it extremely difficult for low-income residents of color to get to their jobs consistently and on-time, and many may be forced to choose between losing their source of income[21] and driving with an expired license—increasing the likelihood that they could face **additional debt** or even **imprisonment**.

Until very recently, the D.C. DMV automatically suspended driving licenses for unpaid traffic debt, suspending over 126,000 licenses for this reason **between 2010 and 2017**, according to data obtained through a FOIA request by Tzedek DC. According to the Washington Lawyers' Committee, "between 2011 and 2016, **80 percent of D.C. drivers who lost their license** for failure to pay were African-American"; the Committee has also reported that almost seven in ten people arrested for traffic offenses in D.C. between 2009 and 2011 were Black, with even greater disparities among those arrested for driving on a suspended license.[22] Residents who drive on a **suspended or revoked license** may be jailed for up to a year or be subjected to a fine of up to $5,000.

One piece of legislation enacted in D.C. last year, the **Traffic and Parking Ticket Penalty Amendment Act of 2018**, begins to address some of these issues, most notably by ending the practice of suspending licenses for nonpayment of traffic and parking fines and restoring driving privileges that had been lost for this reason. It also provides limited access to installment plans, debt forgiveness after ten years, and a community service option for low-income residents to pay down their debts. Some parts of the legislation have already been implemented: The D.C. DMV ended the practice of suspending licenses due to debt **immediately**, and reinstated driving privileges for **over 65,000 drivers** (including over 15,000 D.C. residents) in November, although they may still have their vehicle **booted or towed** if they have two or more outstanding tickets. Other parts of the legislation, such as the provision extending the late fee period before fine double from one month to two, **cannot go into effect** until and unless the D.C. Council finds the

fees online in full. Drivers must also have current license and registration (or be able to pay to renew their registration at the time) in order to retrieve their vehicle.

[21] A 2006 study of license suspensions in New Jersey found that 42 percent of survey respondents with a history of suspension lost their jobs when they had their driving privileges suspended, including 64 percent of those with incomes below $30,000. Among all survey respondents, 45 percent of those who lost their job because of a suspension could not find another job, and among drivers who were able to find another job, 88 percent reported a decrease in income (56-57). The study also found that non-white drivers were more likely to have a history of suspension than white drivers (58).

[22] Based on Washington Lawyers' Committee analysis of MPD data. See Racial Disparities in Arrests in the District of Columbia, 2009-2011: Implications for Civil Rights and Criminal Justice in the Nation's Capital (July 2013), 18-19. Traffic offenses accounted for 23 percent of arrests in D.C. during that time (p 12).

funding—**over $125 million** over the next ten years—to make up for the lost revenue and additional costs in future budget cycles.

A second bill that was enacted in March of this year, the **Driver's License Revocation Fairness Amendment Act of 2018**, ends the practice of allowing insurance companies to have a defendant's license or driving privileges suspended as a way to pressure them to pay car-related court judgments. This has resulted in giving an additional 2,282 people the opportunity to have their licenses restored, although they will also have to pay a reinstatement fee.[23]

D.C.'s "Clean Hands" law still restricts access to licenses due to government debt

While the District no longer proactively suspends driver's licenses for traffic debt or court debt as a result of these legislative changes, residents who are unable to pay outstanding traffic or parking fines can still be prevented from renewing their licenses once they expire due to D.C.'s **"Clean Hands" law**.[24] This law prevents people with more than $100 in outstanding debt to the D.C. government from receiving a license or permit, or otherwise doing business with the D.C. government. The D.C. DMV does not track how many license applications or renewals are rejected because of outstanding traffic debts,[25] but a potentially large share of drivers who have had their debt-related license suspensions lifted are likely to lose their driving privileges again when it is time to renew their license.

The full implication of the "Clean Hands" law on driver licenses is still theoretical. Currently, the D.C. DMV only rejects driver's license applications and renewals due to unpaid traffic debts because that is the type of debt the DMV can access through its own ticket processing. However, under full implementation, residents with more than $100 in outstanding debt to the D.C. government—including traffic fines, unpaid taxes, past due water and sewage fees, and other debt from various civil infractions—should be unable to obtain or renew a driver's license, obtain a business license, or compete for government contracts, among other activities.

The main reason the law has not been fully implemented appears to be that the D.C. government currently does not have a comprehensive, centralized system that can track debts owed by individual residents across all agencies and departments (although one is **required by law**, and the procurement process to create such a system is in progress.[26]) Under full implementation of

[23] See D.C. DMV responses to 2019 Performance Oversight Questions, 55.

[24] DC Official Code §§47-2861 through 47-2866.

[25] For more on implementation, see D.C. DMV responses, 55-57.

[26] According to the D.C. DMV's oversight responses, "the OCFO's Office of Finance and Treasury has been working on procuring a system that would allow the office to collect all outstanding debt to the city and

the "Clean Hands" law, however, the DMV will also reject license applicants who have other types of outstanding debts to the D.C. government as well, such as past due taxes or water fees. It is likely that an even greater number of D.C. residents will then be unable to renew their driver licenses due to their inability to pay government debts.

As the District considers the impact of debt to the government on low-income and low-wealth residents, and the disproportionate impact of this debt and its downstream effects on residents of color, it's important to remember that the full effects of the existing "Clean Hands" law have not been felt, and that we do not have a clear sense of how many residents may be affected.

III. Paths to racial equity in fines and fees

Our current system of fines and fees has inequitable impacts on people of color. People of color—especially Black residents—are disproportionately likely to encounter certain types of fines and fees, such as criminal justice costs. Furthermore, families of color tend to have lower levels of income and wealth than white families, due to centuries of explicit and systemic racism, ongoing discrimination, and the compounding effects of intergenerational transfers of wealth. Due to these systems, families of color are also more likely to already be experiencing debt, and to be negatively affected by a sudden financial shock. Fixed fines and fees are therefore more likely to have a greater impact on people of color than on white residents; people of color are also more likely to see their overall fee amounts increase over time due to late fees, and are more likely to experience severe secondary effects such as job loss or eviction.

Fines and fees often serve specific policy goals, from public safety to environmental protection. But racial equity should also be a policy goal—and these goals do not need to be in conflict. Systemic racism often leaves communities of color in the position of having to choose between two negative outcomes, but we should seek policy solutions that advance justice and economic stability for *all* residents. In the case of traffic debt, for instance, this might mean investing in public transit and pedestrian- and bike-friendly infrastructure in tandem with evaluations of traffic fines so that cities do not lean exclusively on enforcement, while more effectively pursuing policies that move residents away from car-based transportation. Thanks to the renewed research and activism around ways that existing policies and practices create and compound racial inequities, we have a clear opportunity to rethink how governments collect revenue and pursue policy goals through a racial equity lens.

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provide it to the agencies for full implementation of the Clean Hands law" (D.C. DMV responses, 55-56). See also the OFCO's 2017-2021 Strategic Plan.

An individual's race should not be a predictor of the likelihood that they will have to pay a government-mandated fee, or fall into debt due to a traffic ticket. Residents should have the same ability to access government services—and the same experience of the criminal justice system—regardless of their income level or family wealth. Applying a racial equity lens to fines and fees in the District of Columbia requires shining a spotlight on mechanisms that are often invisible, and asking: Is the impact on residents the same regardless of race?

Racial Equity Impact Assessments and the need for data

A natural first step is to collect data on who is paying fines and fees in D.C.; currently, policymakers lack even the data necessary to determine whether there are racial disparities in who experiences fines and fees, as well as downstream impacts such as debt, wage garnishment, bankruptcy, or license suspension, among others.

Increasingly, local and state governments are using **Racial Equity Impact Assessment (REIA)**frameworks in order to evaluate the potential impact of policies and proposals. REIAs specifically look at the overall outcomes of a decision, and whether there will be disproportionate impacts to people of color. Here, this means evaluating the impact of fines and fees where there is already or data or evidence available, and determining whether people of color are disproportionately likely to be affected—or likely to be more severely affected—by new and existing laws and regulations in practice.[27] For punitive fines, all residents should face the same severity of punishment or deterrent, regardless of race or income, and no resident should experience a different level of access or cost for government services.

However, in order to implement detailed racial equity impact assessments, or otherwise more fully understand the relative impact of existing and proposed policies and practices on people of color in D.C., the D.C. government also needs to collect, code, and analyze the requisite data. As mentioned earlier, agencies and departments often do not collect demographic data on who pays fines and fees, or who is affected by debt-related practices (such as denying driver license renewals or business licenses under the "Clean Hands" law.) In some cases, the relevant data may already be collected by an agency or department, but has not been shared with other agencies or the public, due to technological limitations, broad privacy concerns, or organizational inertia. As D.C. explores the effect of existing laws, it should also compare the potential impact of laws and policies as they are written to the effects of current practices, and consider whether we

[27] It is also important to consider the potential impacts of fines and fees—as well as the consequences for nonpayment—well before they are implemented. Once fines and fees are established, it is naturally more difficult for a city government to part with that revenue by scaling back or eliminating them. Making changes to existing fines and fees is even more difficult in the District of Columbia, as the projected loss in revenue must be paid for elsewhere in the budget.

should continue to rely solely on judicial discretion or technological friction to mitigate their effects on low-income residents of color.

One model for this action comes from San Francisco, which launched a **Financial Justice Project** "to assess and reform how fees and fines impact our city's most vulnerable residents." As a result of this focused **research** and policy reform, San Francisco has repealed or substantially lowered many types of fees and financial penalties, and also created other avenues to reduce residents' government debt, such as making it easier for residents to access and use payment plans.

D.C. has already used data to end some types of practices that effectively criminalize poverty and disproportionately harm people of color. In addition to the recent legislation ending the practice of driver license suspension for traffic or court debt, the D.C. Council also recently **approved** the "**Fare Evasion Decriminalization Act of 2017**," in large part to address **racial inequities** in enforcement and impact: Black residents make up less than half of D.C.'s population, but account for 91 percent of fare evasion citations or summons.[28] The number of citations or summons for fare evasion had grown dramatically in recent years, from 283 in January 2016 to 1,400 in January 2018; this **increase in enforcement** was driven in part to **increase revenue**. The bill reclassifies fare evasion—along with many other actions, such as consuming food or playing music on public transit—as a civil offense, and reduces the maximum fine amount from $300 to $50.[29] (Before decriminalization, fare evasion could also be punished with imprisonment, or lead to arrest for other charges; these stops led to **over 2,000 arrests** between January 2016 and February 2018.)

As cities and states explore these issues, they may decide to reduce or eliminate some types of fines or fees altogether, as some jurisdictions have **done** or are **considering** for court costs. But in cases where they are still deemed necessary—such as with fines that are meant to have a deterrent or punitive effect—scaling the amount of the fines may be one path to more equitable effects.

Scaling financial penalties to one's ability to pay is an intriguing policy tool

At present, a handful of states require that courts determine whether someone is able to pay a fine or fee,[30] a measure that is the first step in preventing severe financial harms to very low-

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[28] Washington Lawyers Committee for Civil Rights and Urban Affairs, Unfair: Disparities in Fare Evasion Enforcement by Metro Police (September 2018), 6.

[29] Unfair, 3-4.

[30] For an overview, see Discriminatory Driver's License Suspension Schemes, an issue brief by Danielle Conley and Ariel Levinson-Waldman for the American Constitutional Society (March 2019), 6-7.

income residents. But even this approach does not address the relative impact that a flat fine or fee has on residents of different wealth and income levels, and the broader racial inequities at play. A deeper approach that may help address systemic inequities and governments' revenue concerns is the use of proportional fines (and possibly fees, in some cases), which can be scaled to an individual's ability to pay instead of being set at a fixed amount.

The idea of proportional or "**structured**" fines grew out of the concept of **day fines**, an approach that sought to reduce incarceration by converting individuals' sentences (as measured in days) to the equivalent in their daily wages for that amount of time. Day fines have been used in **Finland** since the 1920s, among other European countries, and was piloted in the U.S. in experiments in **Staten Island and Milwaukee** in the 1980s. Today, many legal experts are **exploring** day fines as an alternative to fixed fines and fees in order to address the disproportionate impacts these regressive approaches can have on low-income (and low-wealth) families, particularly low-income families of color.

Scaling fines to an individual's ability to pay is an intriguing policy tool because of its potential impacts in terms of equity and justice, and also in its potential to help governments effectively pursue other policy goals. From a behavioral standpoint, the regressive nature of most fines means that they won't have the same disincentivizing impact on wealthier residents. While simply having any level of fine for a behavior will have some deterring effect, fixed fines are likely to be a stronger deterrent for drivers with lower incomes and lower levels of household wealth than drivers with greater financial resources. As noted in an earlier **analysis**, research has found that higher-income drivers are more likely to engage in illegal and dangerous practices while driving, including speeding,[31] driving while under the influence of alcohol,[32] and driving through crosswalks without yielding to pedestrians.[33]

A key part of this approach will include researching what implementation of proportional fines would require in the District. Finland is able to implement day fines in part because it has a comprehensive and centralized system of administrative data collection and sharing, meaning that the government entity in charge of administering fines is able to access information about individuals' income and assets, and set the amounts accordingly. This is not the case in D.C., or in the United States more broadly.[34] However, with a growing interest in proportional fines in

[31] National Highway and Traffic Safety Administration, 2011 National Survey on Speeding Attitudes and Behaviors (NSSAB), 18.

[32] Natapoff, 123.

[33] Paul K. Piff et al, Higher social class predicts increased unethical behavior. PNAS Proceedings of the National Academy of Sciences of the United States of America, 109(11) 109(11): 4086–4091.

[34] For more, see Elena Kantorowicz-Reznichenko, Day Fines: Reviving the Idea and Reversing the (Costly) Punitive Trend, in the American Criminal Law Review (Spring 2018), 367-370

jurisdictions across the U.S., cities and states have an opportunity to experiment with new models and pilot programs, and share and learn from the results.

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About the D.C. Policy Center

Established in 2016, the D.C. Policy Center is a non-partisan, independent think tank focused on advancing policies for a vibrant and growing economy in the District of Columbia. The D.C. Policy Center is dedicated to providing objective, targeted, and high-quality data analyses to support a productive policy debate in the District of Columbia. Learn more at **dcpolicycenter.org/about**.

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