

The Cost of the Justice System in Rhode Island

For years, a convoluted system of court fees and debt has kept ex-offenders mired in the criminal justice system. A movement for reform is trying to do away with it.



Photo illustration: Getty Images and Emily Rietzel.

Nichole McLaughlin sat in the halls of justice, hands in her lap, her four-month-old daughter asleep in a carriage behind her. All of the tension was there in her fingers, curling and uncurling, as she steeled herself to explain \$6,108.25 in Superior Court debt to the judge.

Like a lot of female ex-offenders, McLaughlin had suffered from a drug addiction that set her on a merry-go-round of using and criming, criming and using, paused by brief stints of incarceration. She had never told her whole story to anyone — from her days at the Rhode Island Training School to her last thirteen-month bid at the Adult Correctional Institutions for robbery and selling crack cocaine — and she did not relish the thought.

The big moment never came. In fact, everything about the hearing was small. The courtroom was an office at Black Lives Matter Rhode Island in downtown Pawtucket barely big enough for the desk; Associate Justice Luis Matos was a three-by-two-inch quadrant on a laptop screen; and the whole thing was three questions about her current financial condition. Then he rendered his decision, the clerk handed her a piece of paper with the adjusted amount, and she was on the other side of the office door.

This November afternoon, fifty-three formerly incarcerated people drifted in and out of BLM RI in hopes of lifting themselves out of a financial hole. The state courts' community-based ability-to-pay events run about once a month. Organized by the Center for Health and Justice Transformation, eight hearings have been held since November 2021 at different nonprofit social welfare organizations, such as the Nonviolence Institute and Direct Action for Rights and Equality. These hearings are the result of

legislation developed by the judiciary and passed by the General Assembly last summer to eliminate court costs, fees and assessments for indigent defendants, for those defendants sentenced to serve thirty days or more on any count, and for any other defendant a judge deems appropriate for financial relief.

Most people calculate an offender's debt to society as the loss of liberty multiplied by time. But arrest, conviction and incarceration impose billions of dollars in actual financial debt upon those who enter the system. In 1833, Congress outlawed actual debtors' prisons — facilities established to hold debtors — and the United States Supreme Court has ruled that jailing citizens for the inability to pay debt is unconstitutional.

But between the 1970s and the present, three trends converged to build de facto debtors' prisons via a tower of court fees: mass incarceration under "law and order" political campaigns that criminalized more activities and exacted harsher penalties; the Reagan administration-era cuts of federal aid to the states; and the 2008 recession. With a prison population that burgeoned by 400 percent between 1970 and 2000, according to the Vera Institute of Justice, fewer federal dollars to offset state expenditures and a major decline in tax revenue, policy makers increasingly shifted the financial burden of the system onto the offenders themselves — disproportionately affecting extremely low-income citizens and people of color. Defendants served time for the failure to pay court debts, or for failure to appear at a payment hearing, because they could not pay a court debt.

Nationally, these charges range from fines and restitution to fees for DNA and drug testing, jail booking and using a public defender, to name a few. Some jails and prisons charge pretrial per-diems, and charge for phone calls and food. A 2021 list compiled by the Rhode Island Center for Justice listed charges levied in Rhode Island, among them assessments related to prostitution, child molestation, drug use, expungement fees, bench warrant fees, fees to reinstate a driver's license and a fee for a justice of the peace to set bail. The Department of Corrections fee schedule includes inmate charges for medical care, ankle monitors and nonelectronic probation and parole supervision.

"This problem is invisible to most people in positions of power who have the money to pay a fine and never really think about going through the criminal justice system without money," says Joanna Weiss, co-founder and co-executive director of the Fines and Fees Justice Center, a national organization and information clearinghouse that advocates for ending the "unjust harms" caused by fines and fees.

More than two years ago, Rhode Island Supreme Court Chief Justice Paul A. Suttell saw what he called an "unprecedented" opportunity to promote racial justice in the aftermath of the deaths of George Floyd and Breonna Taylor. He convened a Committee on Racial and Ethnic Fairness in the Rhode Island Courts — a dozen judicial officers representing each court, charged with reviewing the system's biases, blind spots and practices.

Since its inception, the committee has conducted a wide range of activities — assessing and upgrading its data collection, holding diversity training and presenting its costs and fees initiative to national and local audiences. One of the first things the committee did was listen to court users. The conversation shocked everyone: Ex-offenders couldn't believe that judges actually wanted to hear what they had to say, and judges were nonplussed by the descriptions of fees, fines and bench warrants for failure to appear at a payment hearing as a net that kept them permanently entangled in the criminal justice system.

"A lot of times they might have known they had warrants and were afraid to walk in the door because they were afraid to go to prison or jail, and sometimes they just couldn't get to court because of transportation or child care or working jobs where they don't have the luxury of saying, 'Hey, I need time off for a court hearing,'" says committee member and District Court Associate Judge Pamela Woodcock-Pfeiffer.

The elimination of criminal justice debt is a national movement, embraced by “people on the left, people on the right, and everyone in-between,” Weiss says. The Center’s unlikely coalition includes the American Civil Liberties Union and the conservative Americans for Prosperity.

“In just four years, twenty-one more states have moved on this issue,” Weiss says. “There’s a general agreement among many people that what we are doing just doesn’t make sense. Our system is too big, and it’s costing more than it’s yielding, because it’s very expensive to get money from people who don’t have any. We are not making our communities safer. Instead, we make it impossible to pay the debt, and we are entrenching community poverty.”

Rhode Island was once a leader in this area of criminal justice reform. In 2008, the Providence Family Life Center published a report showing that 17 percent of all imprisonments were attributed to the failure to pay court debt or to appear for a payment hearing. In response, the legislature passed measures that, among other things, limited the time debtors could be imprisoned and required judges to consider ability to pay at adjudication. Individuals jailed for court debt were credited \$150 for each night spent there.

But did the laws actually make a difference?

In 2016, Brown University public policy student Rachel Black analyzed the impact in a thesis paper that claimed judges rarely considered a defendant’s ability to pay in assessing costs, and rarely waived fees. Three years later, a nine-member investigative team of student journalists at the *College Hill Independent*, a publication written by students from Brown University and the Rhode Island School of Design, published a news article affirming Black’s conclusions. Interviews, many hours in Providence courtrooms and a data analysis of a year’s worth of online court payment records documented the debt that the judicial officers came to fully understand as the committee did its work.

“It’s about bridging that trust gap,” says District Court Associate Judge Melissa DuBose, another committee member. “I do feel the committee’s work in public outreach has done a tremendous amount of good in redefining that relationship between the judge and the litigants who appear before us. I’m so bullish on this committee and on the work we’ve done, but there is still so much more to do.”

Among the changes they might consider is eliminating driver’s license suspension as a punitive measure for failure to pay court debt. Rhode Island is among twenty-seven states and the District of Columbia that suspends, revokes or refuses to renew driver’s licenses for unpaid traffic and court fines and fees, according to the Fines and Fees Justice Center. In January 2019, the state had 149,042 unresolved suspensions for failure to pay or failure to appear, affecting 83,077 drivers, according to the Rhode Island Department of Revenue. Nationally, Rhode Island had the second-highest rate of unresolved suspensions in 2019 — 178.8 unresolved suspensions per 1,000 people of driving age.

“We heard about the incredible burden a license suspension has on a person,” says Rhode Island Traffic Tribunal Magistrate Alan Goulart, who also serves on the Committee on Racial and Ethnic Fairness in the Rhode Island Courts. “People can’t get to work, they can’t get to court, they can’t pay the debt because they can’t get to work. Then they drive anyway, get another ticket, then their license is suspended — not because they are terrible drivers, but because they didn’t pay the fine.”

In the last two years, the courts have been chipping away at this fortress of uncollectible debt. The District Court quashed 5,564 ability-to-pay bench warrants, remitting nearly \$2 million on 7,048 cases. A total of 638 Superior and District Court hearings (mostly the former) have wiped out another \$2,051,100.64 in court costs, fees and assessments. Goulart has been holding virtual license reinstatement appointments to inform individuals of the steps to get their licenses back and work out a payment plan.

“I look at this as an inflection point,” says Matos, a committee member who jokes about his ambition to become the lonely Maytag repairman of the courts. “Addressing costs and fees will become so routine and automatic that it will no longer cause this stress for people.”

That November afternoon, he reduced McLaughlin’s bill to zero, and she choked back a sob as all of her anxiety let go. She had been working hard to move on from a life of struggle and failure. She had been in recovery for more than a year, and her daughter has motivated her to keep clean, to get back her driver’s license, and enroll in an Amos House program for ex-offenders who are mothers.

“It’s a vicious cycle, and every time you go back — to the ACI, the lifestyle — it gets worse, so there’s no going back. This saves me money and saves me from warrants,” McLaughlin says.

She gestures to her daughter. “If I get arrested on a warrant, where is she going to go?”

Ellen Liberman is an award-winning journalist who has commented on politics and reported on government affairs for more than two decades.