

# Debt and Democracy: How the Collection of Civil Fees and Fines Contributed to the Unrest in Ferguson



RACIAL JUSTICE &  
EQUAL ECONOMIC  
OPPORTUNITY PROJECT  
NATIONAL CONSUMER LAW CENTER

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**Thomas Harvey**, Arch City  
**Charles Lowery, Jr.**, NAACP  
**Odette Williamson**, National Consumer Law Center  
**David Seligman**, National Consumer Law Center

**Lauren Mahoney**

National Consumer Law Center

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This webinar is part of a series on “Rebuilding Wealth and Economic Opportunity in Communities of Color” sponsored by NCLC’s initiative on Racial Justice & Equal Economic Opportunity.

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# Racial Justice and Equal Economic Opportunity



The project on Racial Justice and Equal Economic Opportunity seeks to address the abusive and exploitative practices in the marketplace that have decimated the finances of communities of color.

<http://www.nclc.org/issues/racial-justice.html>

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## Presenter – Karin Martin

- Karin is a member of the faculty at John Jay College of Criminal Justice. Previously, she was a post-doctoral scholar in the psychology Department at UCLA.
- Her area of expertise is crime policy with an emphasis on institutional interpretations of criminal behavior and the role of “extra-legal” factors throughout the justice system. Karin is a graduate of Stanford University and she earned the MPP and Ph.D. in public policy at the University of California, Berkeley.





## Presenter – Thomas Harvey

- Thomas Harvey is the co-founder and executive director of ArchCity Defenders, an organization providing criminal and civil legal services to the homeless and working poor in the St. Louis Region.
- He is an attorney at the law offices of Thomas B. Harvey, where he has represented hundreds of clients since beginning practice in 2009.
- Harvey is a graduate of Saint Louis University School of Law holding his JD in International and Criminal Law.





## Co-Sponsor – NAACP Charles Lowery, Jr.

- Charles is the Director of Fair Lending and Inclusion at the NAACP where he oversees compliance with the NAACP's Responsible Mortgage Lending Principles and coordinates the role of the NAACP regarding national issues in the mortgage lending and consumer financial services arenas.
- His career includes over 30 years of public service including positions with D.C. Government, federal government, and legal services and he has been a resident of DC for over 25 years.





## Moderator – David Seligman

- David Seligman is a staff attorney at the National Consumer Law Center whose focus includes forced arbitration, alternative payment systems, and auto finance.
- David was previously a Harvard Law School Irving Kaufman Fellow at NCLC.
- Before law school, he was a New York City Urban Fellow in the New York City Police Department. David is a graduate of Harvard Law School.





## Moderator – Odette Williamson

- Odette has been a staff attorney at NCLC since July, 1999. Prior to this she was an Assistant Attorney General in the Massachusetts Office of the Attorney General.
- She attended Tufts University and Boston College Law School. She is co-author of NCLC's Foreclosures, and Foreclosure Prevention Counseling.



# THE COSTS & CONSEQUENCES OF CRIMINAL JUSTICE FINANCIAL OBLIGATIONS

Karin D. Martin, PhD

*John Jay College of Criminal Justice*

*The Graduate Center*

*City University of New York*



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# Criminal Justice Financial Obligations

- CJFO's are the fines, restitution, surcharges, fees, costs, and any other monetary liability that accompany involvement in the criminal justice system
  - fines: part of a sentence
  - restitution: identifiable victim, specific bodily or property harm
  - fees: surcharges, civil penalties, court costs, supervision fees, etc.

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## Why are CJFO's cause for concern?

- ❑ Incur substantial social costs
  - ❑ Punitive effects beyond the debtor
  - ❑ Great potential to undermine efficiency and equity
  - ❑ Unlike consumer debt, no beneficial "offset" in terms of goods or services
-

# National Trend: Increasingly Common

- Since 2010, **47** States have increased civil and/or criminal fees
- Of 15 states with the largest prison population, **ALL**:
  - impose fees that attach upon conviction
  - impose parole, probation or other supervision fees
  - have laws authorizing the imposition of jail or prison fees (Bannon, Nagrecha, & Diller, 2010)
- In 1994, seven jurisdictions allowed for up-front collection of fees for *indigent* criminal defense...now **43** jurisdictions do, ranging from \$10 to \$400 (Wright & Logan, 2006)

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## National Trend: CJFO's as Revenue

- In Texas, probation fees made up 46% of the Travis County Probation Department's \$18.3 million budget in 2006
  - Administrative assessments on citations fund nearly all of the Administrative Office of the Court's budget in Nevada
  - In Ferguson, MO, 20 percent of the city's \$12 million budget is paid through fines
-

# Alternative to Prison/Jail?

- Some jurisdictions allow offenders to “choose” prison instead of paying a monetary sanction, which some people actually do prefer (Nieto, 2006; Wood & May, 2003)
- Many states re-arrest for failure to pay, although in *Bearden v. Georgia* (461 U.S. 660, 1983) the Supreme Court ruled this cannot be the basis of probation revocation or re-incarceration
- A study of CJFO’s in 11 states “found an average of \$178 million per state in uncollected court costs, fines, fees, and restitution” (McLean & Thompson, 2007)

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## CJ Debt has many problematic consequences

- CJFO debt undermines many post-incarceration reentry goals such as securing stable housing, transportation, and employment (Bannon et al., 2010; Harris, Evans, Beckett, 2010)
    - driver's license suspension
    - extended supervision (probation, parole)
    - warrants
    - liens, wage garnishing, tax rebate interception
    - civil judgment → public information → credit agencies
      - employment, housing
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## The Case of New York: same trend

In New York, the initiation and/or increase of CJFO's includes:

"mandatory surcharge, crime victim assistance fee, designated surcharge and additional designated surcharge, incarceration fee, DNA Databank fee, parole and probation supervision fees, sex offender registration fee, supplemental sex offender victim fee, driver responsibility assessment, reimbursements, and disciplinary surcharge"  
(Rosenthal & Weissman, 2007)

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# The Case of New York: Mandatory Surcharges

AMOUNT	APPLIES TO	STATUTE
\$250	VEH. & TRAF. LAW § 1192 DWI felony	VEH. & TRAF. LAW § 1809(1)(b)(i)
\$140	VEH. & TRAF. LAW § 1192 DWI misdemeanor	VEH. & TRAF. LAW § 1809(1)(b)(ii)
\$25	VEH. & TRAF. LAW Article 9 infraction	VEH. & TRAF. LAW § 1809(1)(a)
\$45	Selected VEH. & TRAF. LAW offenses	VEH. & TRAF. LAW § 1809(1)(c)
\$25	Surcharge for any conviction under VEH. & TRAF. LAW § 1192	VEH. & TRAF. LAW § 1809-c
\$250	Felony surcharge	PENAL LAW § 60.35(1)(a)(i)
\$140	Misdemeanor surcharge	PENAL LAW § 60.35(1)(a)(ii)
\$75	Violation surcharge	PENAL LAW § 60.35(1)(a)(iii)
\$5	Proceeding in town or village	VEH. & TRAF. LAW § 1809(9)
5%-10% of total restitution	Designated surcharge paid to agency collecting restitution for collection and administration	PENAL LAW § 60.27(8)

Rosenthal, A; Weissman, M. (2007). Sentencing for Dollars: The Financial Consequences of a Criminal Conviction. Center for Community Alternatives, Justice Strategies. Working Paper.



# The Case of New York: Fees

AMOUNT	APPLIES TO	STATUTE
\$20	Felony offense Crime Victims' Assistance Fee (CVAF)	PENAL LAW § 60.35(1)(a)(i)
\$20	Misdemeanor offense CVAF	PENAL LAW § 60.35(1)(a)(ii)
\$20	Violation CVAF	PENAL LAW § 60.35(1)(a)(iii)
\$20	For VEH. & TRAF. LAW § 1192 felony offense CVAF	VEH. & TRAF. LAW § 1809(1)(b)
\$20	For VEH. & TRAF. LAW § 1192 misdemeanor offense CVAF	VEH. & TRAF. LAW § 1809(1)(b)
\$5	For VEH. & TRAF. LAW Art 9 traffic infraction CVAF	VEH. & TRAF. LAW § 1809(1)(a)
\$5	VEH. & TRAF. LAW offenses covered by 1809(1)(c) CVAF	VEH. & TRAF. LAW § 1809(1)(c)
\$50	DNA Databank fee: a person convicted of a designated offense as defined in Executive Law § 995(7) shall, in addition to a mandatory surcharge and crime victim assistance fee, pay a DNA databank fee	PENAL LAW § 60.35(1)(a)(v)
\$50	Sex offender registration fee (SORA): a person convicted of a sex offense as defined in Correction Law § 168-a(2) or a sexually violent offense as defined in Correction Law § 168-a(3)	PENAL LAW § 60.35(1)(a)(iv)
\$10	SORA change of address fee	CORRECTION LAW § 168-b(8)
\$50	Termination of license revocation fee. If driver's license is revoked – application for re-issuance	VEH. & TRAF. LAW § 503(2)(b)
\$100	Termination of license revocation fee. If driver's license is revoked for an alcohol-related offense and driver is under 21	VEH. & TRAF. LAW § 503(2)(b)
\$25	Termination of license suspension fee	VEH. & TRAF. LAW § 503(2)(j)
\$100	Termination of license suspension fee – Zero Tolerance. If driver is under 21, license is suspended for an alcohol-related offense	VEH. & TRAF. LAW § 503(2)(j)
\$35	Termination of license suspension fee where suspension is for failure to appear, pay fine, penalty, or mandatory surcharge	VEH. & TRAF. LAW § 503(2) (j-1)(i)
\$30/month	Fee for parole supervision	EXEC. LAW § 259-a(9)(a)
\$30/month	Fee for probation supervision (DWTI - related)	EXEC. LAW § 257-c
\$1/week	Incarceration Fee: The commissioner may collect from the compensation paid to a prisoner for work performed while housed in a general confinement facility an incarceration fee.	CORRECTION LAW § 189(2)
\$1,000	Supplemental Sex Offender Victim Fee	PENAL LAW § 60.35(1)(b)

Rosenthal, A; Weissman, M. (2007). Sentencing for Dollars: The Financial Consequences of a Criminal Conviction. Center for Community Alternatives, Justice Strategies. Working Paper.

# The Case of New York: Civil Penalties

AMOUNT	APPLIES TO	STATUTE
\$125	Zero Tolerance Law: For offenders under age 21 for alcohol-related offense	VEH. & TRAF. LAW § 1194-a(2)
\$750	Operating with no insurance or underinsured	VEH. & TRAF. LAW § 319(5)
\$500	Chemical test refusal	VEH. & TRAF. LAW § 1194(2)(d)(2)
\$550	Chemical test refusal – commercial vehicle	VEH. & TRAF. LAW § 1194(2)(d)(2)
\$750	Second Chemical test refusal with alcohol within 5 years	VEH. & TRAF. LAW § 1194(2)(d)(2)
\$750	Chemical test refusal with prior VEH. & TRAF. LAW § 1192 convictions within 5 years	VEH. & TRAF. LAW § 1194(2)(d)(2)

Rosenthal, A; Weissman, M. (2007). Sentencing for Dollars: The Financial Consequences of a Criminal Conviction. Center for Community Alternatives, Justice Strategies. Working Paper.

# The Case of New York: many CJFO's

- Every conviction mandates a surcharge, exclusive of any court-imposed fines
  - e.g. \$250 for "DWI felony", \$250 "felony surcharge"
  - fees for crime victims' assistance (\$20)
  - parole (\$30/month)
  - probation supervision (\$30/month)
  - incarceration (\$1/week)
- Restitution for a felony offense in New York is \$15,000 (N.Y. Penal Law § 60.27(5)(a))
- New York law stipulates, "if a defendant fails to pay a fine, restitution, or reparation, he or she must be imprisoned until the debt is satisfied" (N.Y. Crim. Proc. Law. § 420.10(3))

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# The Case of New York: revenue

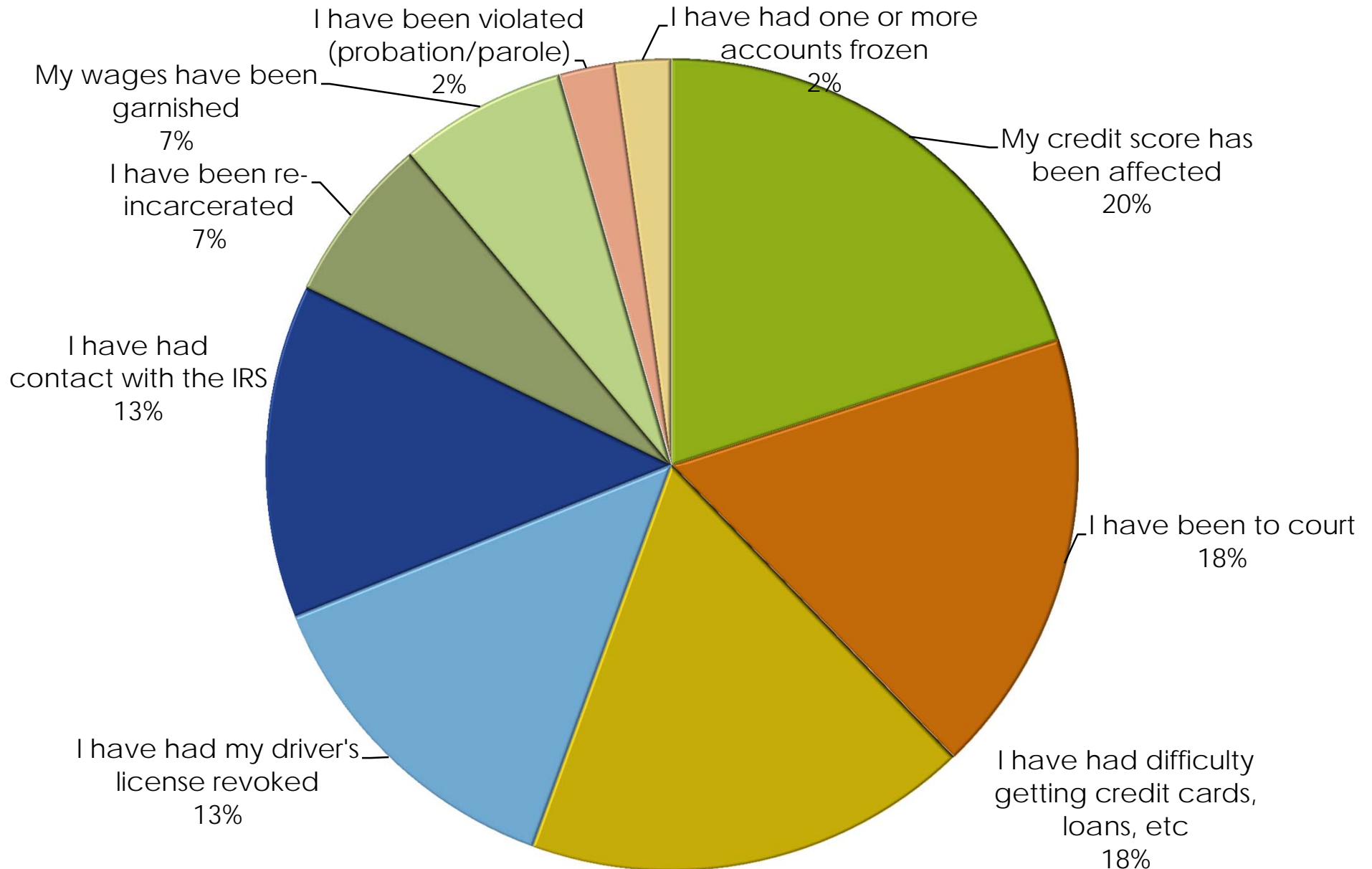
- New York metropolitan area, fines generate 47% of criminal court revenue
    - split between New York City and New York State (each receives approximately \$14,000,000)
  - Total revenue for New York (City) Criminal Courts was \$31,196,723 in 2013, of which revenue from fines comprised \$12,594,744
  - More than \$300,000,000 is owed for criminal debts for Federal offenses in New York (southern region) (US Attorneys, 2012)
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# The Case of New York: debtors

- ▣ What is the experience of having CJ debt?
- ▣ On-going research project exploring social costs of CJFO's
  - ▣ effect on debtors and their families
  - ▣ actual financial cost to the state (administration, collection, etc.)

# AS A RESULT OF MY CRIMINAL JUSTICE DEBT:

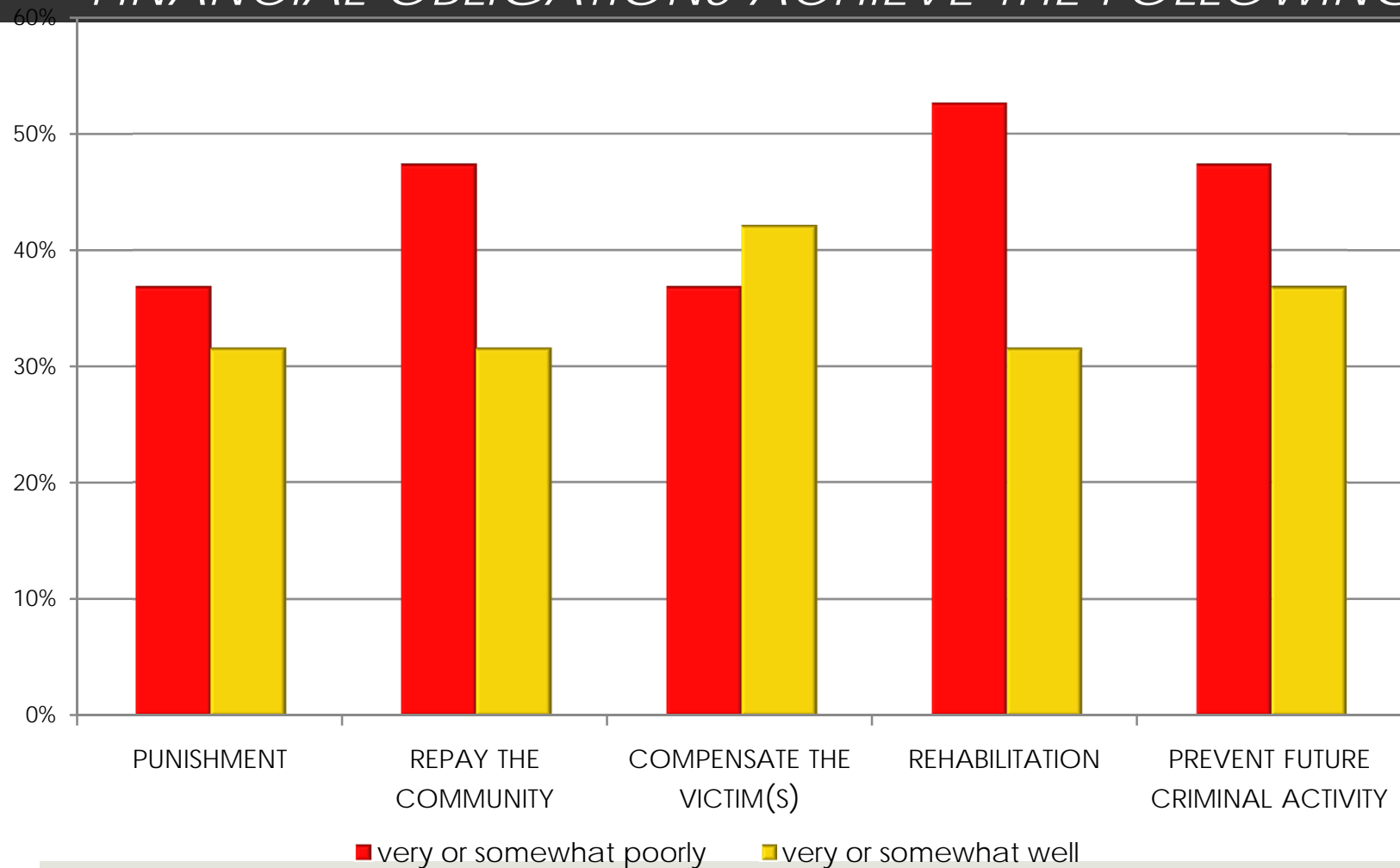


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# The Effect of CJ Debt

- "It has been very stressful to keep up with the demands of the criminal justice debt."
  - "It's like I'm being extorted by the system."
  - "How am I able to pay if I'm labeled as a career criminal, employers will not hire me? So in time I will revert back to what I know best: selling drugs to pay my fines."
-

*HOW WELL DO YOU THINK OFFENSE-RELATED FINANCIAL OBLIGATIONS ACHIEVE THE FOLLOWING:*





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# Cost to the State

■ Unknown!

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# Reforms

- ❑ Consolidated debt
  - ❑ Improved tracking & communication
  - ❑ PROPORTIONAL FINES
    - ❑ Reflect an **offender's financial situation** *and* severity of the offense
    - ❑ Equal Protection Clause of the Fourteenth Amendment implications: treating people differently, based solely on economic status, in the imposition of criminal penalties
    - ❑ Fourth Amendment; Right to Privacy
    - ❑ Requires judicial support
-

# Precedent for Offense Severity: Fines in the Federal System

Fine Table (from §5E1.2 (Fines for Individual Defendants))

<u>Offense Level</u>	<u>A Minimum</u>	<u>B Maximum</u>
3 and below	\$100	\$5,000
4-5	\$250	\$5,000
6-7	\$500	\$5,000
8-9	\$1,000	\$10,000
10-11	\$2,000	\$20,000
12-13	\$3,000	\$30,000
14-15	\$4,000	\$40,000
16-17	\$5,000	\$50,000
18-19	\$6,000	\$60,000
20-22	\$7,500	\$75,000
23-25	\$10,000	\$100,000
26-28	\$12,500	\$125,000
29-31	\$15,000	\$150,000
32-34	\$17,500	\$175,000
35-37	\$20,000	\$200,000
38 and above	\$25,000	\$250,000.

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# Conclusions

- Legislation and practice in New York demonstrate the complexity of CJFO's.
  - Enormous capacity to undermine equity and efficiency demands careful weighing of the costs and benefits of the current system.
  - Current focus on revenue threatens the balance between justice and fairness that CJFO's are meant to achieve.
  - A shift toward proportional fines would increase fairness, but they entail fundamental legal concerns.
-

# References & Further Reading

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# Thank You!

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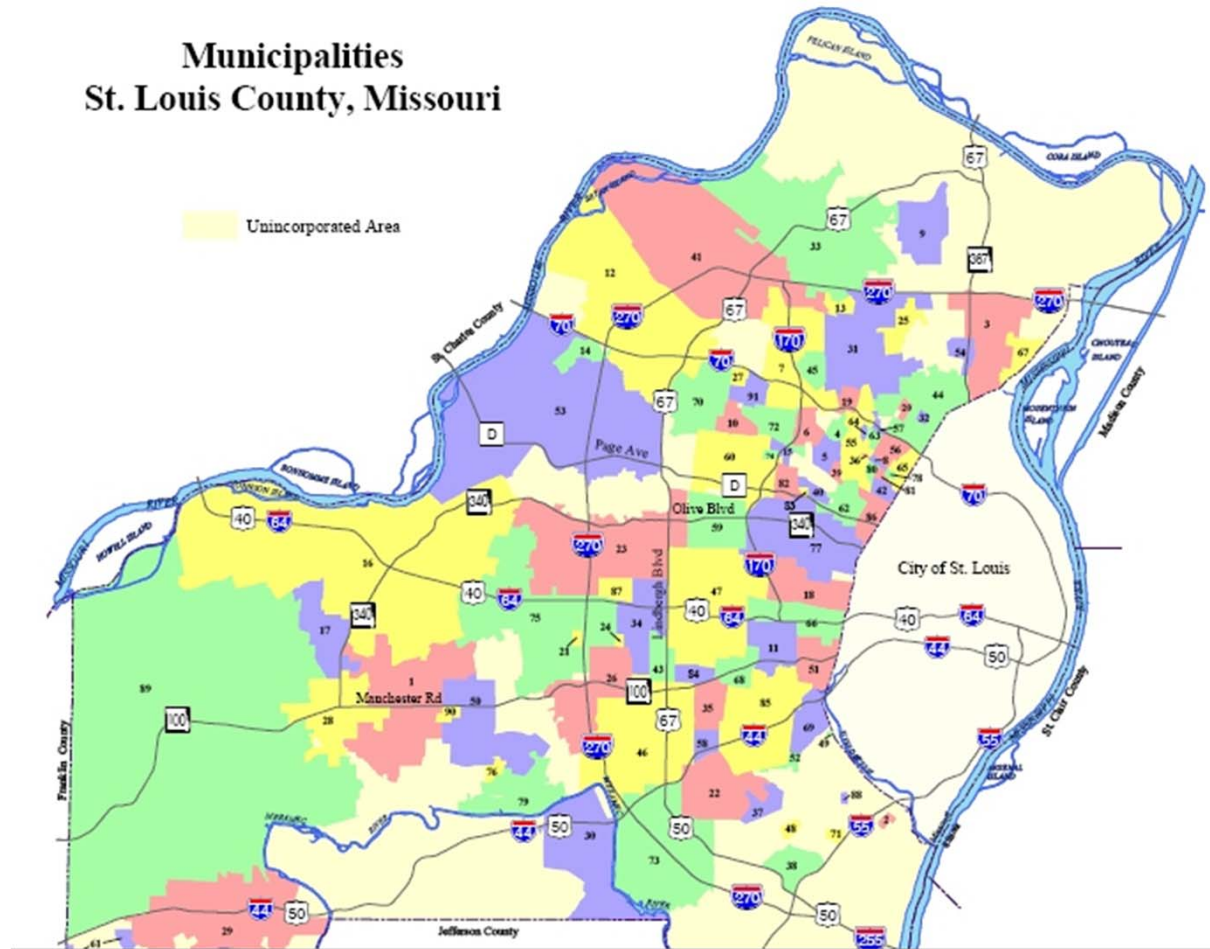
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# How Municipal Courts Violate Constitutional Rights & Erode Trust To Raise Revenue: What Is Happening and What Can Be Done About It



[WWW.ARCHCITYDEFENDERS.ORG](http://WWW.ARCHCITYDEFENDERS.ORG)

# Municipal Divisions in Missouri



91 Municipalities in St. Louis County



# Municipal Divisions in Missouri

In 2009:

- \$ **83,898,331.00** collected in fines
- \$ **10,962,300.00** collected in court costs
- \$ **7,605,549.00** collected in fees (jail costs)
- \$ **3,503,161.00** collected in Bond Forfeitures

# Justice Related Debt & Consequences

- 24 year old Charles Anthony Chatman Jr. hanged himself in March 2013
  - Held on traffic warrants in Jennings, Left unmonitored for an hour after being placed in solitary confinement. Was found dead 45 minutes later.
  - Chatman had paid \$750 in bail to two municipalities but needed \$850 more to be released
- Jenny Newman, 37, found unconscious in the Des Peres jail in September 2014, died three days later.
  - Newman was found unconscious an hour after arrest on traffic warrants

[http://www.stltoday.com/news/local/crime-and-courts/jennings-hanging-attempt-is-latest-in-series-of-area-jail/article\\_a62642ad-141b-5b5c-9881-6ec2a67290f8.htm](http://www.stltoday.com/news/local/crime-and-courts/jennings-hanging-attempt-is-latest-in-series-of-area-jail/article_a62642ad-141b-5b5c-9881-6ec2a67290f8.htm)

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# Justice Related Debt & Consequences

- Bernard Scott, 44 years old, was found with a shoestring around his neck in a Pine Lawn holding cell September 2014
  - Scott was taken to the hospital, now recovering at a rehabilitation center.
  - Scott had been held on traffic warrants
- 26-year-old Dejuan Brison attempted to hang himself in the Jennings city jail in October 2014
  - Brison was arrested on a warrant for failing to appear in court in a shoplifting case

[http://www.stltoday.com/news/local/crime-and-courts/jennings-hanging-attempt-is-latest-in-series-of-area-jail/article\\_a62642ad-141b-5b5c-9881-6ec2a67290f8.html](http://www.stltoday.com/news/local/crime-and-courts/jennings-hanging-attempt-is-latest-in-series-of-area-jail/article_a62642ad-141b-5b5c-9881-6ec2a67290f8.html)

# Our Clients

- Pregnant, single mother of two living at a local homeless shelter and about to give birth. Owed over \$8,000 in fines, fees, and other charges
  - Due to outstanding warrants for minor traffic violations in several municipalities
- Her time at shelter was ending: she and children would be on the streets
  - No access to transitional housing (Warrants for arrest for failure to pay off fines)
- ArchCity Attorney:
  - Had warrants recalled, closed 4 cases, and had approx. \$8,000 in fines and other charges to community service
- She is currently going to college, seeking employment, and her kids have a stable environment and enrolled in school.

# Our Clients

- Single mother working two jobs and going to school
  - Needs her license to keep her job
- She was homeless for a time and slept in her car
- Has “poverty crime” charges in four different municipalities
  - Recommendations total over \$5,000
- Choices: She pays or has her license suspended

# Our Clients

- Homeless veteran living in a tent encampment
- When his attorney's initial request for warrant recall was denied we demanded a hearing date and appeared before a judge to get warrant lifted
- Judge's original recommendation totaled over \$2,930.50
  - All of these charges are from **one arrest** and the rest are failure to appears
- Cannot currently afford these charges
  - Attorney currently working on discovery

# #Ferguson

- Ferguson, a city of about 21,000
- Filed 11,400 **traffic** cases in fiscal year 2013
- Chesterfield, a largely white city in the western suburbs, filed almost the exact same number -- but its population is more than twice Ferguson's

# #Ferguson

- Cases involving non-traffic ordinances, which range from loitering and trespassing to petty larceny, provide an even starker contrast, with Ferguson filing almost a **dozen times** as many per capita than Chesterfield.
- Ferguson in fiscal year 2013 filed more than 12,300 such cases, more than any other city in the county, and up from 8,800 in 2009.
- Chesterfield filed just 2,300 in 2013.

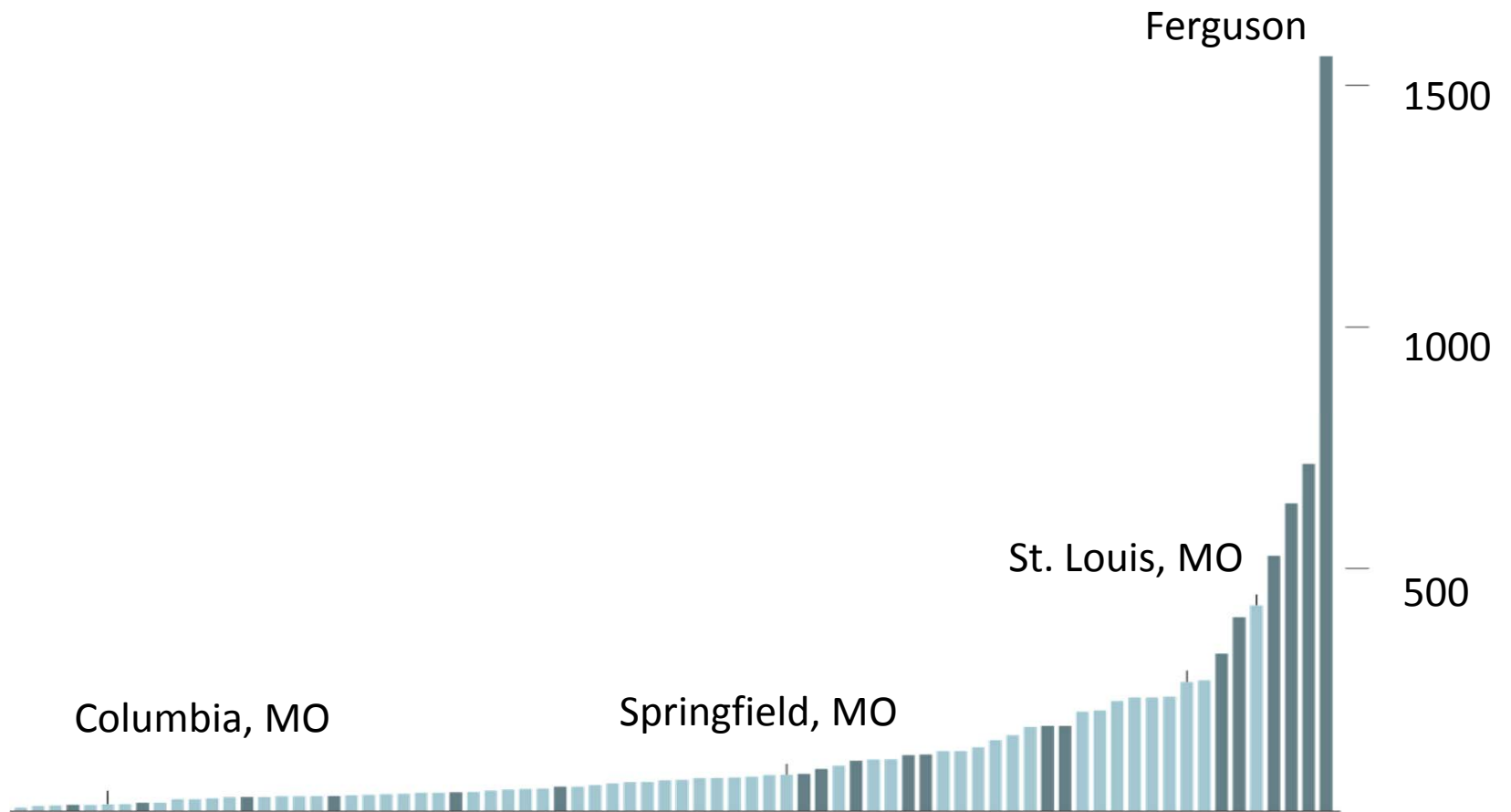


# #Ferguson

- In 2013, the municipal court in Ferguson — a city of 21,135 people — [issued 32,975 arrest warrants](#) for nonviolent offenses, mostly driving violations.
- That's 90 arrest warrants issued per day.

# #Ferguson #Outlier

Warrants Issued per 1000 residents



# \$Ferguson

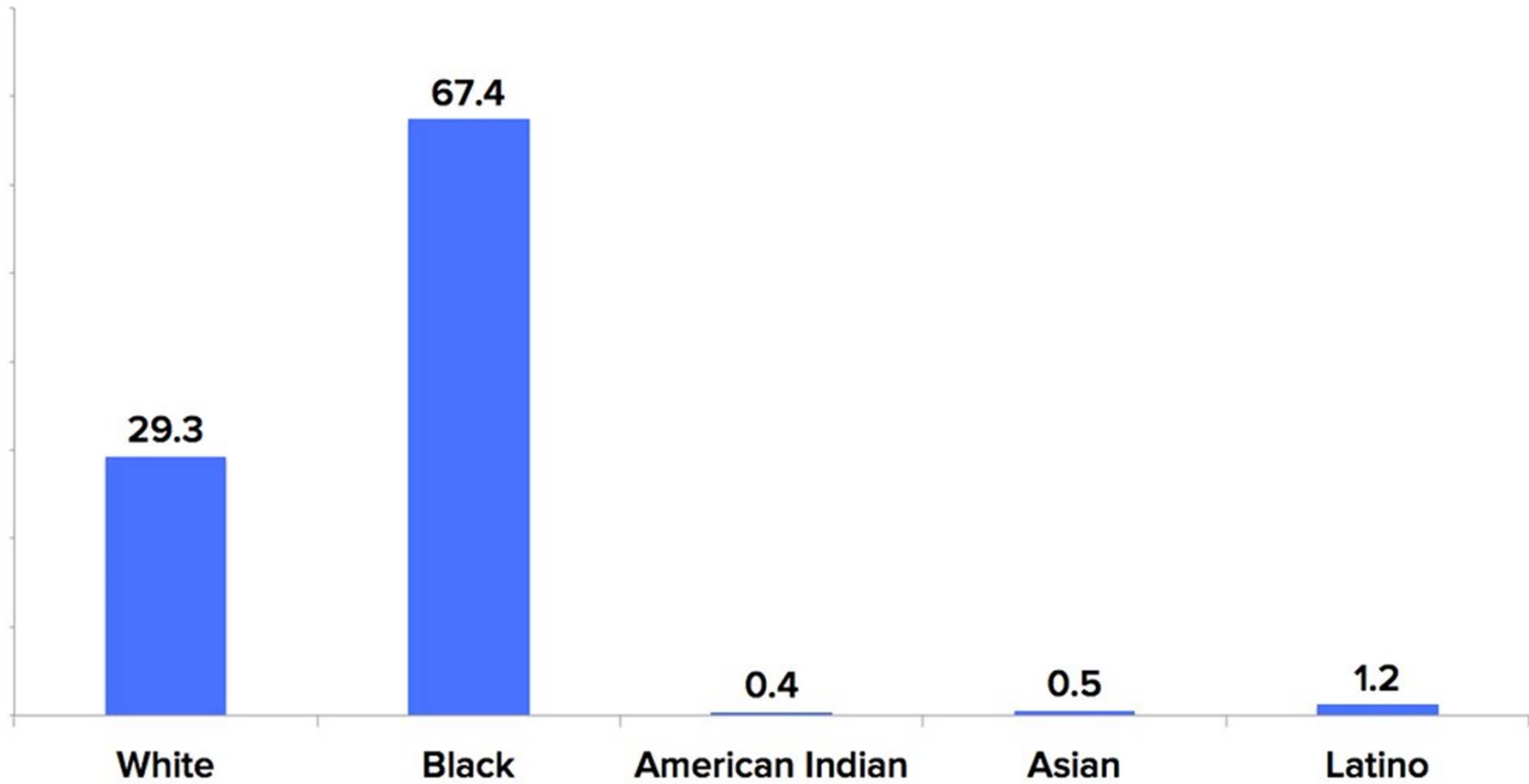
“Despite Ferguson’s relative poverty, fines and court fees comprise the **second largest** source of revenue for the city, a total of **\$2,635,400**

Budget documents show that this was an increase of more than 40 percent from 2010

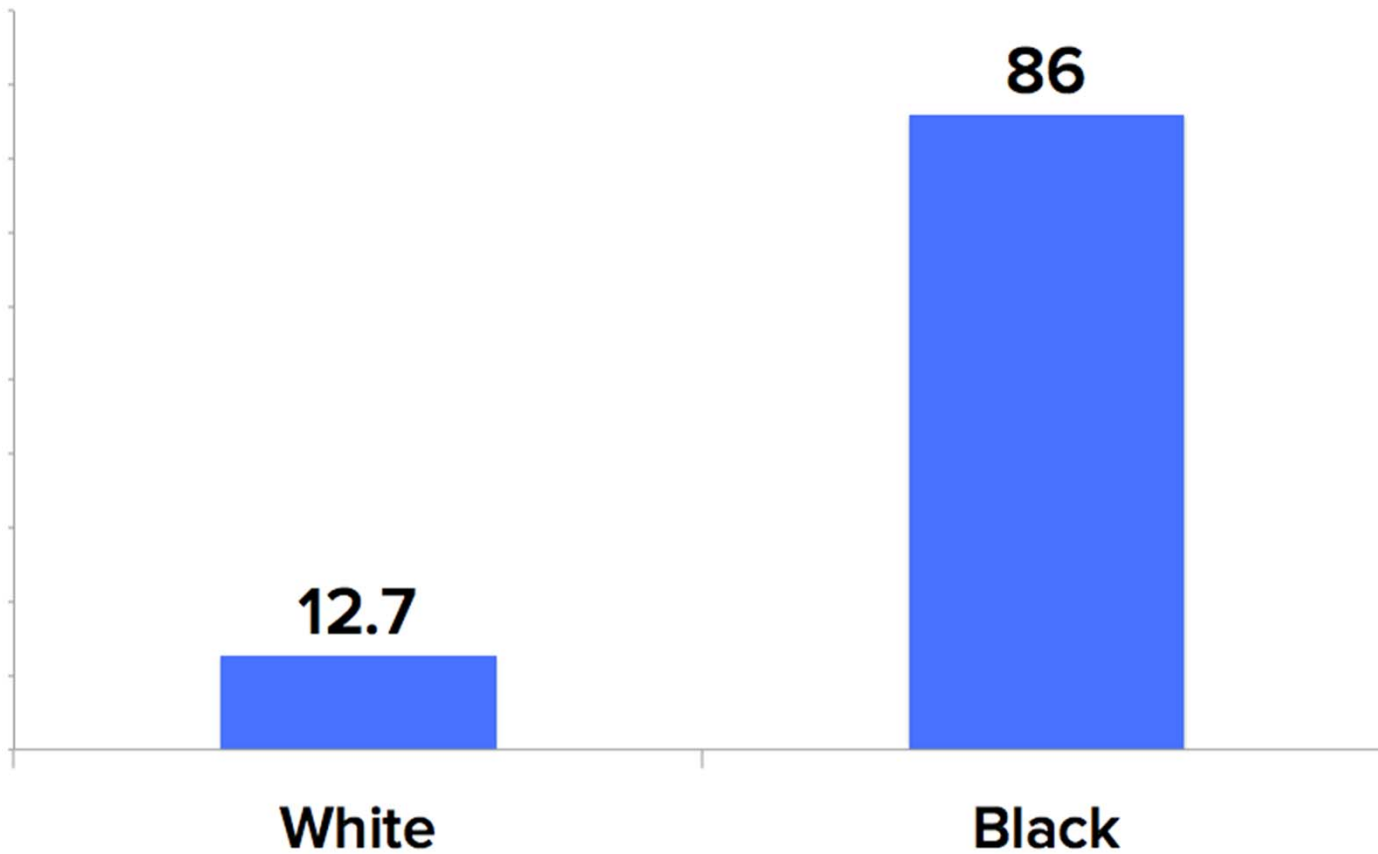
# \$Ferguson

- "You don't get \$321 in fines and fees and 3 warrants per household from an about-average crime rate. You get numbers like this from bullshit arrests for jaywalking and constant 'low level harassment involving traffic stops, court appearances, high fines, and the threat of jail for failure to pay.'"– Alex Tabarrok, a professor of economics at George Mason University

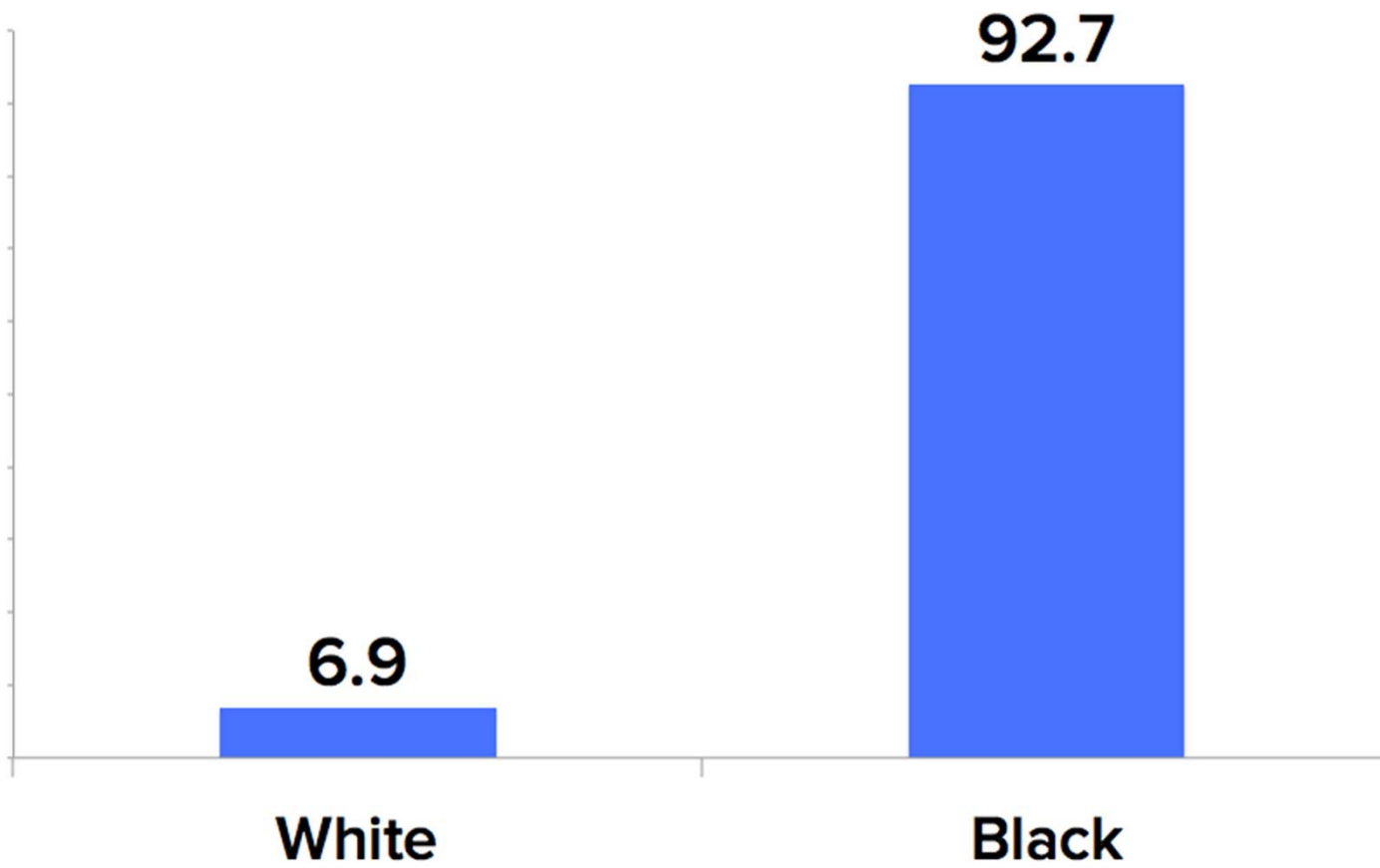
# Ferguson Population



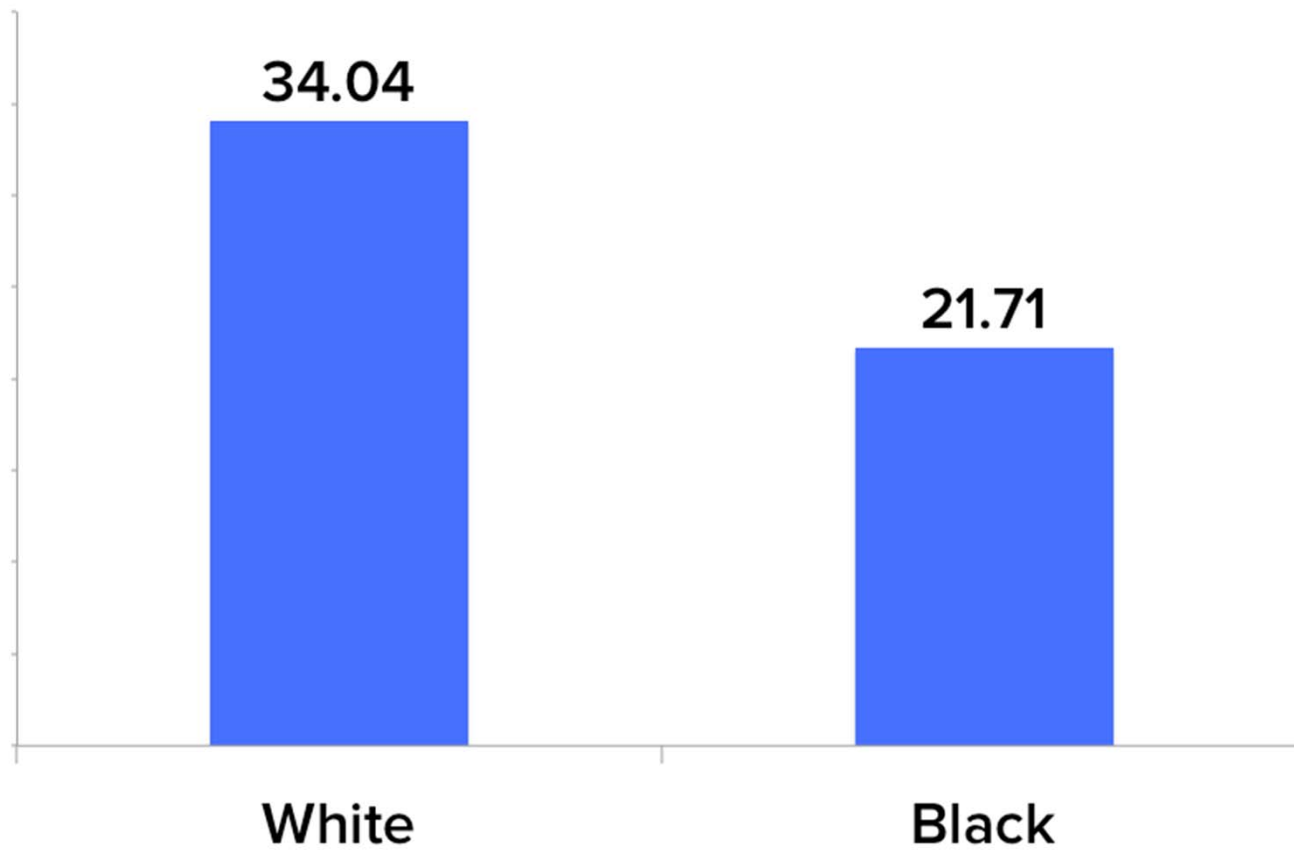
# Percent of Traffic Stops



# Percent of Arrests



# Contraband Hit Rate





Hands Up ! Don't Shoot!



# #itsnotjustFerguson

## Beverly Hills

- **Population:** 574
- **Size of town:** .09 square miles
- **Police force:** 14, which also provides services to neighboring Velda Village Hills
- **Cases filed in 2013:** 3,250 traffic tickets, 1,085 ordinance violations

# #itsnotjustFerguson

## Uplands Park

- **Population:** 445
- **Size of town:** .07 square miles
- **Police force:** Dissolved in 2012
- **Cases filed in 2013:** 1,863 traffic tickets, 122 ordinance violations

# #itsnotjustFerguson

## Calverton Park

- **Population:** 1,293
- **Size of town:** .41 square miles
- **Police force:** 7
- **Cases filed in 2013:** 5,039 traffic tickets, 2,436 ordinance violations

# #itsnotjustFerguson

## Edmundson

- **Population:** 834
- **Size of town:** .26 square miles
- **Police force:** 9
- **Cases filed in 2013:** 4,784 traffic tickets, 1,097 ordinance violations

# #itsnotjustFerguson

## Velda City

- **Population:** 1,429
- **Size of town:** .16 square miles
- **Police force:** 10, plus a canine handler and 3 reserve officers
- **Cases filed in 2013:** 4,132 traffic tickets, 1,367 ordinance violations

# What We've Done (and what you can do, too)

- Challenge Bail Every Time
- File motion for determination of indigency
- Ask that fines be proportioned to income
- Convert fines to community service
- Talk to the press frequently...seriously...about all your cases involving the poor and these fines.
- Write your own stories. Get them to public.

# What We've Done (and what you can do, too)

- Partnered with St. Louis University School of Law
- Partnered with Equal Justice Under Law
- Partnered with local “biglaw” law firms.
- Worked with local & national organizers.
- Constantly sought partners whose interests intersect with those of our clients.
  - Republican and Democrats, OBS and Tea Party



# Systemic Reform

- ACD filed suit against 7 municipalities for charging illegal fees.
- ACD has filed class action suit against towns for exceeding statutory limit for revenue derived from traffic related offenses
- Attorney General followed (after some pressure) with 13 lawsuits of his own.
- ACD is on the verge of filing federal suit against 2 more municipalities for violations of the 1<sup>st</sup>, 6<sup>th</sup>, and 14<sup>th</sup> amendments.

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- I will email you the PowerPoint and recording in a few days
- Thank you to our speakers and our audience!



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