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School Closings: Challenges for Students, Communities, and Litigators
By Katherine Gladson – October 3, 2016

Mass school closings have torn through urban districts across the country for over a decade, and for years, law firms and legal aid organizations have attempted to stop or stall these closings. However, one question seems to haunt litigation over this issue—what is the harm? How will closing a school hurt students? How will it hurt communities? Why should courts intervene to stop this?

Despite the number of school closings nationwide, formal research on this issue—specifically, research regarding the effects that closings have on students—remains very limited. For the past two years, I have represented students who were displaced or otherwise adversely affected by school closings and other forms of school district restructuring in Chicago, Illinois, through an Equal Justice Works Fellowship sponsored by the Mansfield Family Foundation. Our work has revealed information about how school closings affect students, schools, and communities. This article aims to capture the legal and practical implications of school closing decisions for affected students and to answer, at least in part, that repeated question—what is the harm and what approaches can help individual students who are forced to leave one school and move to another?

A Quick Primer on School Closings
The first step in understanding how school closings affect students and communities is understanding the rationale and procedures behind them. State laws and local policies have applied different rationales and followed different procedures for executing closures, but there are several commonalities.

Why are districts closing schools—and which schools are being closed? School districts nationwide have generally offered two main reasons for closing schools: (1) low academic performance or (2) underutilization of school building space, or a combination of low academic performance and underutilization. Applying these two bases has consistently resulted in schools from low-income communities (rather than those from middle- or upper-income communities) being disproportionately closed or restructured.

- Low academic performance. Federal law has required states and local governments to have academic performance policies, previously through the No Child Left Behind Act (NCLB) and currently through the Every Student Succeeds Act (ESSA). Academic performance measures may include a variety of academic metrics but usually rely heavily on standardized test scores. While these performance measures apply to all schools, research has consistently shown that
standardized achievement tests unfairly disadvantage minority students and students from low-income families.

- Underutilization. Closing schools based on space utilization rates has become commonplace for school districts struggling with declining enrollment and budget issues—even though there is relatively minimal cost savings associated with closings. In many cities, there has been a strong correlation between underutilization of neighborhood schools and the decreasing availability of public housing and the proliferation of charter schools. Reducing the number of public housing units has led to fewer children in many neighborhoods; charter schools located in low-income neighborhoods have often attracted students who would otherwise attend neighborhood schools.

On the surface, each of these policies seems to have neutral goals—conserve resources and provide improved academic opportunities for students. But each has had a disparate impact on communities that serve low-income and minority students.

Who makes the decision to close? School boards are typically the authority that makes the final determination regarding school closings—sometimes with input from other governmental sources (such as city governing body or mayor) and often following an opportunity for public input regarding school closing decisions. Most school districts and municipalities have recognized that community input is important and necessary for this type of decision, and most districts have formally requested public commentary in writing or through public hearings (or both) at some point in the school closure process. But it is debatable whether the public’s comments are genuinely considered by local decision makers. Even though community input should be highly persuasive, many affected communities—especially those that have dealt with year after year of closures—have reported that, from their perspective, school districts have already made a final decision by the time public input is requested. The disconnect between district personnel and school communities has also has an impact on the effectiveness of district efforts to support communities after closings are approved. If school districts have not collected meaningful information from school communities about the risks associated with a particular closing or the specific needs of the school community, then attempts to provide transition support will likely be insufficient.

When are closing decisions made? The time frame for closures is another similarity across jurisdictions. The school closing process is typically initiated and completed during one school year (started in the fall or winter, and schools are closed over the summer). This short period of time has caused significant disruption for schools that are considered and selected for closure. More specifically, there is limited time for parents to find new schools for their students, limited time for school districts to reassign staff, limited time for individualized education program (IEP) teams to ensure that all students with disabilities will have appropriate services at their new school—and limited time for any organized efforts to challenge these decisions.
This quick timeline creates a challenge for litigation contesting school closings. Once a district starts this process, things can move very quickly. On the other hand, lawsuits filed before a school closing decision is final may be vulnerable to challenge regarding the ripeness of the decision. See, e.g., Smith v. Henderson, 944 F. Supp. 2d 89, 94–95 (D.C.C. 2013).

What Researchers Have Found about the Impact of School Closings
Quantitative research regarding the effects of school closings is very limited. However, there are certain findings and conclusions that researchers have been able to agree on. First, the primary way that students may actually benefit from a school closing is if displaced students are reassigned to a significantly higher performing school. See Marisa de la Torre & Julia Gwynne, When Schools Close: Effects on Displaced Students in Chicago Public Schools (Univ. of Chicago Consortium on Chicago School Research 2009); John Engberg, Brian Gill, Gema Zamarro & Ron Zimmer, “Closing Schools in a Shrinking District: Do Student Outcomes Depend on Which Schools Are Closed?,” 71 J. Urban Econ. 189 (March 2012). Unfortunately, going to a significantly higher performing school rarely happens, and the quality of the receiving school is often negatively affected by the pressures of supporting a significant influx of new students. See De la Torre & Gwynne, supra, at 5, 11; Deven Carlson & Stephane Lavertu, School Closures and Student Achievement: An Analysis of Ohio’s Urban District and Charter Schools 21 (2015). Second, researchers have found that school closings have a disparate impact on low-income students, students with disabilities, and minority students. See Carlson & Lavertu, supra, at 2; Journey for Justice Alliance, Death by a Thousand Cuts: Racism, School Closures, and Public School Sabotage 1–2 (2014). Last, student mobility rates—which can negatively affect achievement levels, graduation rates, etc.—have also been found to increase after a school closing (excluding the initial displacement via closings). In other words, students who have been displaced by a school closing are more likely to transfer schools again after the closing process is complete. See De la Torre & Gwynne, supra, at 20–21.

Issues Displaced Students Have Faced
Our individual legal representation has shown that displaced students face a variety of unique challenges after school closings. These clients have experienced a wide range of educational harms—from having their school records lost to having initial special education evaluations delayed (sometimes for more than a year), to having special education services disrupted or inappropriately decreased (or both). At the individual student level, the harm is dependent on a number of factors, including the quality of the receiving school, whether the student has a disability, the student’s support system outside of school. However, at a school district level, there are consistent trends and commonalities in the harmful effects of school closings for purposes of litigation.

Special education issues. Students with disabilities are especially vulnerable to the educational harms associated with school closings. Under the Individuals with Disabilities Education Act (IDEA) and the Americans with Disabilities Act, students with disabilities have the right to receive the specific services and supports required by their IEPs and section 504 plans. The individualized nature of special education directly
clashes with the large-scale disruption of school closings. Among the Legal Assistance Foundation’s school closing cases, there were common special education issues that students experienced.

- **Inappropriate evaluations.** To receive or continue receiving special education services, students must be evaluated. The failure of a school district to provide thorough or timely evaluations directly affects the student’s ability to receive appropriate educational services. The announcement of school closings can cause disorganization at the district and school level—making it more likely that evaluations will be delayed or rushed. In addition, the decision to evaluate a student for the first time may be delayed if the student and his or her teachers are displaced by closing. Generally, school staff members prefer to get to know a student and gather data before approving an initial special education evaluation. When schools are closed, this process is disrupted, and there is a higher likelihood that the student’s initial evaluation will be delayed as new staff gathers data and reconsiders whether to refer the student for evaluation.

- **Failure to implement and reduction of special education services.** Once a student has an IEP or section 504 plan, school districts have an obligation to implement the services included in those plans. Generally, a student’s educational needs drive the services that the student should be receiving at school. Financial constraints, programmatic changes, or other dysfunctional issues within a school district should not disrupt a student’s special education services. However, implementation problems can occur when students from closing schools are assigned to receiving schools that may not have the resources to implement their IEPs. In such cases, a prolonged failure to implement the IEP can occur—a clear violation of IDEA. In other situations, it may lead to attempts by IEP teams at the closing or receiving school to reduce or eliminate services that students need—another violation of IDEA.

- **Lost records.** Maintaining accurate school records for students with disabilities is critical. Teachers need immediate access to current student IEPs and 504 plans, current evaluations, medical records, previous IEPs and 504 plans, etc. Unfortunately, during the school closing process, student records have not always been properly maintained or transferred to a student’s receiving school. Without access to accurate records, schools may fail to provide appropriate support to students with disabilities and to timely refer students for evaluations.

**Community and school culture issues.** As noted above, school closing policies have consistently had a disparate impact on communities that serve low-income and minority students. Even though academic performance and space utilization may seem somewhat unconnected, both of these bases consistently result in closing schools that serve the district’s most vulnerable student populations. In many low-income communities, neighborhood schools are long-standing anchors and support systems. Closing
neighborhood schools disrupts and further destabilizes communities that are already burdened with other forms of instability. Moreover, at a community-wide level, these policies led to repeated schools closings in low-income communities. Disrupting the educational experience of any student can be harmful. Repeating that process with schools and communities that are overburdened and underserved only exacerbates the harm to students.

There have also been issues with combining different school communities into one attendance center after a closing. One concern that has been raised in response to school closings in different cities is that new school boundary lines and receiving school assignments crossed gang lines and historical neighborhood divides. Pew Charitable Trusts, Closing Public Schools in Philadelphia: Lessons from Six Urban School Districts 13 (2011). In Chicago, during the 2013 school closing process, parents and community members testified about the real and imminent threats that students would face during the proposed school transitions. A review of the hearing officer opinions from those public hearings demonstrates that the more concrete and specific that challengers (e.g., parents, community members, students) are when explaining this threat at a hearing, the better. For example, in 2013, Chicago Public Schools proposed closing Manierre Elementary and assigning its students to Jenner Elementary. At the public meetings and hearings for this proposal, there was persuasive testimony from students, parents, teachers, and community members about the long-standing gang rivalry between the communities that these schools served. Ultimately, Manierre was one of 4 schools—out of 4 proposed closings—to avoid closing. As community witnesses have pointed out, students will not be available for learning if they are afraid for their own safety, and without proper consideration and planning for affected communities, school closing decisions have raised significant safety concerns.

What Courts Have Said
School closing cases have been litigated in state and federal courts across the country. Despite the issues described above, the vast majority of cases challenging closings have been unsuccessful. Similar to social science research, case law is relatively limited at this time, but growing. Cases challenging closings have included the following claims:

• **Equal protection.** Given the disparate impact that school closings have had on minority students, many complaints have raised equal protection claims on the basis of race. To date, an equal protection claim has not defeated a proposed closing, and in most cases, challengers struggled to establish discriminatory intent on behalf of the school district. See Smith v. Henderson, 944 F. Supp. 2d 89 (D.D.C. 2013). Individual states may also have civil rights statutes that prohibit discrimination on the basis of race or disability.

• **Procedural due process.** Challengers have also raised procedural due process claims, but courts have generally found that students do not have a property or liberty interest in attending a particular school—rendering these claims largely unsuccessful. See Mullen v.
• **Individuals with Disabilities Education Act (IDEA).** IDEA claims have been largely unsuccessful in challenging school closing decisions. Generally, to reach federal court with an IDEA claim, a plaintiff must exhaust his or her administrative remedies (i.e., request an administrative due process hearing). Given the limited amount of time between the proposal and final approval of school closing decisions, establishing exhaustion is particularly challenging. Even if a plaintiff can establish exhaustion or an exception to this requirement, IDEA provides only for individualized relief. See *Smith*, 944 F. Supp. 2d at 103–4. Thus, the relief available under IDEA would not be ideal for impact litigation that aims to stop or stall a closing or closings—which would affect the educational experience of hundreds of students.

• **Section 504 of the Rehabilitation Act.** The same issues identified above for IDEA claims—exhaustion and individualized relief—apply to section 504 claims in school closing cases. See *Charlie F. by Neil F. v. Bd. of Educ. of Skokie Sch. Dist. 68*, 98 F. Supp. 3d 989 (7th Cir. 1991) (reasoning that 20 U.S.C. § 1415(f) requires any student seeking “relief that is available under” the IDEA to use the IDEA administrative system, before invoking other federal statutes); *Smith*, 944 F. Supp. 2d at 105–07.

• **Americans with Disabilities Act (ADA).** ADA claims may be the most viable option for impact litigation regarding disability discrimination in this area. To establish a claim under Title II of the ADA, a qualified individual with a disability must allege the denial of “meaningful access” to an education or to special education programs. See *Smith*, 944 F. Supp. 2d at 104–5; *Raymond*, 2013 WL 3816565 at *22–23. Pursuant to Title II, public entities must make reasonable accommodations in their rules, policies, and practices when necessary to avoid discriminating against a person on the basis of disability. If a proposed receiving school does not offer the services or programs that students with disabilities need, there may be a strong ADA claim against the proposed closing.

• **State statutes for school closings.** Some states, such as New York and Illinois, have statutes that substantively and procedurally address the school closing process. The outcomes of cases alleging violations of state school closing statutes have varied. In New York, the president of the United Federation of Teachers joined with members of the National Association for the Advancement of Colored People and community members to successfully stop the closing or restructuring of 20 neighborhood schools in 2010. *Mulgrew v. Bd. of Educ. of City Sch. Dist. of N.Y.*, 902 N.Y.S. 2d 882 (N.Y. App. Div. 2010). Conversely, there have been several lawsuits filed against Chicago Public Schools to stop school closings based on Illinois’s statute—without any success.

In addition to the likelihood of success on the merits, plaintiffs have struggled to establish the harm necessary for injunctive relief. Requests for injunctive relief, based on any of the claims above, have generally been defeated by difficulties establishing how the closing will cause harm.
to students when balanced against the optimistic predictions of a district that a new school will provide better results.

On a more positive note, the Department of Education’s Office for Civil Rights (OCR) recently resolved a complaint regarding the discriminatory nature of school closing decisions in Newark, New Jersey. The Resolution Agreement specifically required the district to assess the academic impact on displaced students, the facilities and pupil capacities of receiving schools, and the provisions of special education services to students with disabilities. Then, considering the assessments listed above, the district must remediate any identified hardships, and remediation may include providing students with compensatory education services. There are at least two more discrimination complaints pending with OCR’s Chicago Office regarding Chicago Public School closings.

**What Advocates Can Do**

Finally, what the section above does not capture is the important impact that individual advocacy on behalf of affected students can have. Enforcing the rights of individual students—through IDEA due process hearings, section 504 due process hearings, state compliance complaints, and the like—can effectively address some of the challenges that displaced students face before and after a closing. While establishing harm within the context of impact litigation has been hard, establishing and remedying the harm to individual students has been much more straightforward and successful. In Chicago, we have been able to secure a variety of relief for students who were adversely affected by school closings, including compensatory education services, changes in IEP placement, new educational evaluations, and increased related services. Anticipating the common issues described above and informing parents and communities about their rights when a school closing is proposed can help to avoid or mitigate the harmful effects of the school closing process for students. Even if impact litigation in this area is difficult right now, there is still a lot that advocates can do for individual students.

**Next Steps**

Given the financial challenges facing many urban school districts across the country, the pattern of closing neighborhood schools will likely continue. Here are ways to address future closings:

- **Advocacy for affected students.** There should be increased focus by advocates on students who are forced to leave closing schools. This advocacy should concentrate on special education, enrollment, and transfer of records issues.

- **Community engagement.** Advocates should also collaborate with affected communities to ensure that parents, students, and community members understand the risks and their legal rights associated with school closings.

- **More research.** We still need more social science research regarding this issue—specifically, longitudinal data regarding student outcomes focused on the same student population as opposed to school-wide performance measures.
"Pushing courts." School districts enjoy significant discretion in the eyes of most courts. Moving forward, advocates should consider the challenges that other litigants have faced and push courts to better understand how students and school communities can be harmed during the school closing process.

**Keywords:** litigation, children’s rights, school closings, special education, students with disabilities, Individuals with Disabilities Education Act, IDEA, Rehabilitation Act section 504, Americans with Disabilities Act, ADA, impact litigation

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Should Juveniles Be Charged as Adults in the Criminal Justice System?

By Nicole Scialabba – October 3, 2016

In June, a 14-year-old boy was arrested after he threw a rock at police during a political rally in New Mexico. Prosecutors stated that the boy, who was charged with two felonies, would be tried as an adult. A police spokesperson stated, “We don’t want to make an example out of a 14-year-old boy. We want to guide him and lead him in the right direction.” The boy’s attorney disagreed, however, asserting that trying his client as an adult “would indicate a completely different scenario than one where they’re not trying to destroy this child.” See Candace Hopkins, “14-Year-Old Charged with Felony after Throwing Rocks at Police in Trump Rally,” *KRQE 13 News*, June 3, 2016.

This story highlights an important aspect of our criminal justice system: the legal construction of juvenile crime. We now operate with the understanding that a juvenile’s action may not be the same as an adult’s—and, instead, that the juvenile might merit unique consideration under the law—and that punishment should perhaps be tailored to development and reform. However, there is lack of uniformity in how we define a “juvenile” and the process by which the law addresses a juvenile’s actions. Jurisdictions have struggled to navigate the line between “leading a juvenile in the right direction” and “destroying the child.” This struggle is not new to our criminal justice system.

**Evolution of the Juvenile Court System in the United States**

In the 1700s, laws did not distinguish between juveniles and adults within the criminal justice system. According to a PBS *Frontline* online article, “Child or Adult? A Century Long View,” children as young as seven years of age were charged, tried, and sentenced in adult criminal courts. This posed many problems, given that there were typically no distinctions made between age, gender, and mental illness, so prison and jail populations were mixed with juveniles and adult criminals. See Center on Juvenile & Criminal Justice, “Juvenile Justice History.”

Progressive reformers of the penal system sought to change this, and the Society for the Prevention of Juvenile Delinquency founded the New York House of Refuge in 1825, an institution specifically for juvenile delinquents. “Child or Adult? A Century Long View,” supra. The idea was to educate and rehabilitate juveniles so as to attack what were believed to be the roots of juvenile delinquency—a lack of moral education and standards. *Id.* These institutions proliferated across other cities and states, followed by the first juvenile court being established in Cook County, Illinois, in 1899. *Id.* Juvenile courts were designed to provide not only rehabilitative functions but also protective supervision for youth. “Juvenile Justice History,” supra.

Problems with these early juvenile courts emerged. Judges had broad discretion over their cases without formal hearings, resulting in wide disparities in treatment of juvenile offenders. “Child
or Adult? A Century Long View,” supra; “Juvenile Justice History,” supra. In the 1960s, a series of cases made their way to the U.S. Supreme Court, establishing procedures and due process rights for individuals in the juvenile court system. Id. Ultimately, these decisions led Congress to pass the Juvenile Justice and Delinquency Prevention Act in 1974, which still governs the juvenile justice system. “Child or Adult? A Century Long View,” supra. Through the act, states were offered grants to develop community-based programs as alternatives to institutionalization.

In the 1970s and 1980s, media reports began highlighting an upward trend in violent crime rates, which in turn shifted the political emphasis to being “tough on crime.” As a result, sweeping reforms were passed in many states to make it easier to try juveniles in adult criminal courts, and more punitive juvenile justice laws were passed. “Child or Adult? A Century Long View,” supra.

Violent crime rates and juvenile crime have been in a steady decline over the past 20 years; however, reforms to restore the juvenile court system to its original vision have not been as swift. U.S. Dep’t of Justice, Office of Juvenile Justice & Delinquency Prevention, Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting (Juvenile Offenders and Victims, Nat’l Report Series Bulletin, Sept. 2011). If the point of juvenile courts is to deter and rehabilitate juveniles so that they can succeed as adults, then it is important to evaluate the success of that mission when a juvenile is charged as an adult in the criminal justice system.

**Being “Transferred” to Adult Court versus “Aging Out” of Juvenile Court**

There are significant differences between states’ treatment of juveniles within their court systems. All states have an “upper age of majority,” by which one is considered eligible for juvenile court jurisdiction. If a juvenile is beyond that age, they are automatically within the jurisdiction of adult criminal court, regardless of the offense charged. This is to be distinguished from cases that can originate in juvenile court but whose jurisdiction can be “waived” to adult criminal court by judicial waiver, prosecutorial discretion, or statutory rule.

Every state determines at what age an adolescent is no longer considered a “juvenile” and becomes an “adult” for criminal justice purposes. Once the “juvenile” reaches the statutorily defined age and is accused of a crime, that individual will automatically be charged in the adult criminal system. According to Juvenile Justice Geography, Policy Practice & Statistics (GPS) information from 2015, the overwhelming majority of jurisdictions (41 states and the District of Columbia) define age 17 as the highest age that an individual can have a case originate in juvenile court. Juvenile Justice, Geography, Policy, Practice & Statistics, “Jurisdictional Boundaries.” Seven states use age 16 as the upper age for juvenile court jurisdiction (Georgia, Louisiana, Michigan, Missouri, South Carolina, Texas, and Wisconsin).

In only two states—New York and North Carolina—age 15 is considered the upper age of majority for juvenile court. In these states, if a juvenile is age 16 or 17, and gets charged with any criminal offense, the case is originated and tried in adult criminal court. However, in 2014, New York Governor Andrew Cuomo announced the formation of a state task force to evaluate and design a plan to reform the justice system in New York to raise the age. Jeffrey A. Butts &
John K. Roman, *Line Drawing: Raising the Minimum Age of Criminal Court Jurisdiction in New York* (Feb. 2014). In North Carolina as well, there have been attempts to raise the age in the legislature, though no measures have passed to date. Rose Hoban, “*Advocates Try Again to ‘Raise the Age’,*” *N.C. Health News*, Apr. 1 2015.

In addition, according to the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, all states have laws that allow the transfer of a juvenile court case to the adult criminal court, typically under certain circumstances and within certain ages. Thus, the juveniles can be younger than the “age of majority” for juvenile court and still be transferred to adult court. *Trying Juveniles as Adults, supra.* There are three typical ways that a case can be transferred from juvenile court jurisdiction to adult court: judicial waiver laws, prosecutorial discretion or concurrent jurisdiction laws, and statutory exclusion laws.

Both the Juvenile Justice GPS and report from the Office of Juvenile Justice and Delinquency Prevention explain that in a judicial waiver, the juvenile court judge has the responsibility of waiving jurisdiction, thereby sending the case to adult court. The judge will evaluate the waiver based on a variety of factors that typically include the juvenile’s age and alleged crime. There are some circumstances where the waiver is presumed, but discretion ultimately rests with the juvenile court judge to make the waiver. *Id.; “Jurisdictional Boundaries,” supra.* A formal hearing and guidelines are in place to assist the judicial waiver process.

In prosecutorial discretion or concurrent jurisdiction laws, there is a class of cases that could be brought before either a juvenile or adult court. It is typically within the prosecutor’s discretion to determine which court will initiate the criminal charges. Some states have formal standards, but there may not be any statutory standards articulated that a prosecutor must follow when using his or her discretion. “*Jurisdictional Boundaries,” supra; Trying Juveniles as Adults, supra.* There has been a rise in prosecutorial discretion laws.

With statutory exclusion laws, the legislature has typically granted the adult criminal court exclusive jurisdiction over certain types of cases involving juvenile offenders. When a case falls under one of the statutory exclusion laws, it is mandated that the case be filed in adult court rather than in juvenile court. “*Jurisdictional Boundaries,” supra; Trying Juveniles as Adults, supra.*

In addition, the Office of Juvenile Justice and Delinquency Prevention’s 2011 report found that states may have additional kinds of transfer laws. Some jurisdictions abide by a “once an adult, always an adult” rule, meaning that if a juvenile has been criminally prosecuted as an adult in the past, any future crimes will be automatically filed in adult court rather than juvenile court, regardless of the seriousness of the alleged offense. *Trying Juveniles as Adults, supra.* Some may have reverse waiver laws that allow juveniles who are charged in adult court to petition that court to have the case transferred to juvenile court; in these cases, the burden is on the juvenile to prove why the case should be transferred to juvenile court. *Id. Last, there could be a blended sentence law under which juvenile courts have discretion to impose adult sentences or adult courts have discretion to impose juvenile dispositions. *Id.*
Impact on Juveniles Sentenced in Adult Criminal Court

The increase in laws that allow more juveniles to be prosecuted in adult court rather than juvenile court was intended to serve as a deterrent for rising youth violent crime. As such, it is important to evaluate what happens to juveniles who go through the adult court system to determine if they are “deterred” from future crime. A comprehensive literature review was completed by the University of California, Los Angeles (UCLA) School of Law’s Juvenile Justice Project in July 2010 that reviewed the impact of juvenile cases prosecuted in adult court. The report, *The Impact of Prosecuting Youth in the Criminal Justice System: A Review of the Literature*, ultimately found that there has been little to no deterrent effect on juveniles prosecuted in adult court, and in many states, recidivism rates have actually increased.

Statistics compiled from 15 states revealed that juveniles prosecuted in adult court and released from state prisons were rearrested 82 percent of the time, while their adult counterparts were rearrested 16 percent less. *Id.* Meanwhile, studies have shown that juveniles prosecuted in juvenile court benefit from the services made available to them through that process, as juvenile institutions provide programs and resources specifically designed for juvenile development. *Id.* Juveniles in adult court often do not have the opportunity to acquire critical skills, competencies, and experiences that are crucial to their success as adults; rather, they are subject to an environment in which adult criminals become their teachers. *Id.*

“As a crime control policy, placing more young people in criminal court appears to symbolize toughness more than it actually delivers toughness, and that symbol may have a high price.” *Line Drawing, supra.* The effects of being “tough on crime” mean that there is likely to be longer delays in the court process, longer time spent in pre-incarceration, exposure of juveniles to adult offenders, problems with controlling prison populations, and denial of needed services to juveniles. *Id.*

The Office of Juvenile Justice and Delinquency Prevention report evaluated a study of outcomes for juveniles prosecuted in adult court rather than in juvenile court and found that there were counter-deterrent effects of transfer laws. *Trying Juveniles as Adults, supra.* A summary of six studies found that there was greater overall recidivism for juveniles prosecuted in adult court than juveniles whose crimes “matched” in juvenile court. *Id.* Juveniles in adult court also recidivated sooner and more frequently. *Id.* These higher rates of recidivism can be attributed to a variety of reasons, including lack of access to rehabilitative resources in the adult corrections system, problems when housed with adult criminals, and direct and indirect effects of a criminal conviction on the life chances of a juvenile. *Id.*

Conclusion

The reason that juvenile courts were originally created in the nineteenth century was because society recognized that juveniles did not have the cognitive development that adults had, would benefit more from rehabilitative services to prevent recidivism, and needed more protections. Sociological and political shifting of attitudes caused legislators to believe they needed to be “tough on crime,” and transfers of juveniles to adult court became more frequent. Results of
those policies demonstrate that they have failed as recidivism rates for juveniles increased when prosecuted in adult court versus juvenile court.

Reforms need to occur just as swiftly as the reforms to prosecute more juveniles in adult court began, so that the emphasis can shift back to focusing on the best interests of the child when juveniles are charged with crimes. Juveniles need resources to equip them to succeed when they are released from juvenile facilities, rather than face the devastating effects of being housed in adult prison systems. Juveniles should be treated as juveniles in the court justice system, with a focus on rehabilitating rather than simply punishing.

**Keywords:** litigation, children’s rights, juvenile crime, juvenile court, adult court, recidivism, court reform

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The White House Foster Care & Technology Hackathon

By Frank P. Cervone – October 3, 2016

The White House Foster Care & Technology Hackathon engaged the challenge of using computer technology and the Internet to solve complex legal and social service problems facing children, families, and professionals in the child welfare system. Hosted by the Administration on Children and Families (ACF), the child welfare arm of the U.S. Department of Health and Human Services (HHS), the gathering convened more than 150 lawyers, techies, and former foster youth at the White House for two intense days of brainstorming, software design, and information sharing. The sessions were held at the White House and the Reagan Federal Office Building on May 26–27, 2016, and were led by ACF Commissioner Rafael Lopez, White House Policy Advisor Molly Dillon, and HHS Chief Technology Officer Susannah Fox.


ACF Commissioner Lopez challenged the group to imagine trying “something dramatically different to change a system we know does not yield better results for children and families in the system. How do we engage, across multiple sectors, the kind of talent and creativity that we need to rethink and reimagine foster care in America?”

The Obama administration has prioritized digital access to help fill gaps in knowledge and service in a wide variety of fields, while promoting cross-disciplinary and international participation in creative web-based problem solving. Other hackathons have engaged civic activists, technology experts, and entrepreneurs to build tools that help others in their own neighborhoods, experimenting with alternative ways to engage citizens in civic discourse. The 2016 White House Foster Care & Technology Hackathon featured more than 20 former foster youth and foster parents and also included a software development team from Romania. With tools such as digital information lockers and all-new software platforms, workgroups “hacked” on topics that included substance-exposed newborns, homeless youth, foster family recruitment, youth empowerment, and preventing unplanned teen pregnancy.

Inside the larger group, about 20 lawyers met for a “Legal Hackathon” to explore the legal challenges to applying technology in child welfare. Angela Vigil, pro bono partner at Baker & McKenzie and leader of the Legal Hackathon, observed that

information about and related to children and families in the child welfare system is sometimes shared that should have been protected, and information is sometimes held that should have been shared in the child welfare system. These failures must be
addressed in order to better serve the children the child welfare system was designed to serve.

Key stakeholders include children, biological parents, siblings and relatives, foster parents, courts, caseworkers, and both lawyer and non-lawyer advocates for children and their caregivers.

Vigil added that “a principled framework should govern the access, protection, and flow of information among and between these parties. Yet, no such holistic framework exists—although there are certainly laws that aim to govern some of this information access and protection.”

Seeking a legal and ethical framework to govern the flow of information between and among the stakeholders in the child welfare system, the Legal Workgroup drafted a “Bill of Rights for Information-Sharing in Child Welfare.” The following are among its key tenets:

• Children in care are entitled to access to and control, protection, and preservation of their information. (For example, it should be a rebuttable presumption that children have access to full information about their siblings in a developmentally appropriate and trauma-informed way.)

• The sharing of electronic information between agencies is authorized and expected where it is necessary to serve the children’s interests well.

• Caregivers need the information necessary to parent effectively. States need to be transparent about rules of sharing information with caregivers.

• Caseworkers need unlimited access to accurate information in all categories electronically, in real time and across sectors.

• Courts must have access to all relevant information necessary to make decisions about the children before them. Courts must insist on stakeholders bringing them everything they need.

Ira Lustbader, legal director of Children’s Rights, Inc., and cochair of the Section of Litigation’s Children’s Rights Litigation Committee, recalled that “in every single reform campaign or civil rights lawsuit” that he had been part of, “these issues of data and tech have been sources of profound frustration and profound potential to solve problems.” He said that “information on kids should be accessible across sectors, because it will lead to better outcomes. There’s a web of state and federal legal barriers, along with technological ones, that constrain the open access of information for kids across sectors. Some states have MOUs [memoranda of understanding] and other approaches to break down barriers” that we can promote and learn from.

The Legal Workgroup plans to continue its efforts in a series of conference calls and other work together over the next six months. The group has also recently completed another hackathon, at the National Association of Counsel for Children Conference in Philadelphia in August 2016. Over the next few months, members of the group will invite comment and improvement by experts and advocates across the nation. The result will be a platform on which local, state, and
federal law development might be guided to better serve the children and other stakeholders in
the child welfare system in the United States.

Below are links to video recordings of the proceedings:

[White House Foster Care & Technology Hackathon, May 26, 2016](#)
[White House Foster Care & Technology Hackathon, May 27, 2016](#)

**Keywords:** litigation, children’s rights, White House Foster Care & Technology Hackathon,
Legal Hackathon, Bill of Rights for Information-Sharing in Child Welfare

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Criminalizing Poverty Through Fines, Fees, and Costs
By Monica Llorente – October 3, 2016

On June 20, 2016, a distinguished panel of experts discussed how fines, fees, and costs in our justice system are criminalizing poverty by burying people unable to pay under ever-growing mountains of debt and imposing on the poor more severe punishments for failure to pay. This free CLE webinar, Criminalizing Poverty: Debtor’s Prison in the 21st Century, was presented by the American Bar Association Commission on Homelessness & Poverty, Section of State and Local Government Law, Criminal Justice Section, Section of Litigation Children’s Rights Litigation Committee, and the Center for Professional Development.

The program was moderated by Lourdes Rosado, chief of the Civil Rights Bureau of the New York State Office of the Attorney General, and prominently featured the following panelists:

• Alexes Harris, associate professor, Department of Sociology, University of Washington

• Chiraag Bains, senior counsel to the assistant attorney general, U.S. Department of Justice, Civil Rights Division

• Jessica Feierman, associate director, Juvenile Law Center

• Danielle Elyce Hirsch, assistant director of the Civil Justice Division, Administrative Office of the Illinois Courts

• Nick Allen, staff attorney, Columbia Legal Services

Legal Financial Obligations: What Are They?
There are many different terms used interchangeably across the country—such as monetary sanctions, legal financial obligations (LFOs), and assessments (e.g., in Illinois)—to describe the different fines, fees, and costs associated with offenses and the courts. For the sake of simplicity, in this article, we will use the term “LFO” whenever possible to refer to such fines, fees, and costs.

In the program on criminalizing poverty, Dr. Harris identified four systems of justice or “layers of legal debt” in which LFOs are imposed on people: traffic and misdemeanor, juvenile, felony, and federal. Then, within each of these layers of legal debt, there are types or “buckets” of LFOs. Dr. Harris has identified through her research the following buckets of LFOs:

• **Fines related to the offense.** These fines range from an undefined amount (Delaware) to $500,000 (Kansas). Examples are a discretionary $1,000 drug conviction LFO for a first conviction and $2,000 for a second conviction (Washington).

• **Court-imposed user fees for processing.** Examples are a mandatory $500 victim penalty assessment per felony (Washington), a $100 fee per felony (Washington), a $100
criminal cost fee (Indiana), a $193 felony docket fee (Kansas), and a $300 jury trial fee (Maine).

- **Surcharges for court and non-court-related costs.** These are fees on top of the base charges, and they range from 0 to 83 percent. In Arizona, 10 percent of an 83 percent surcharge goes to a clean elections fund even though people with felony convictions paying this surcharge cannot vote; in Delaware, a 50 percent surcharge on fines goes to a transportation fund.

- **Collection costs and interest on unpaid balances.** These directly create a two-tier system of justice by punishing those who are unable to pay with additional costs such as interest and penalties. Examples are 4.75 percent interest (Florida), 7 percent interest (Georgia), 12 percent interest (Washington), a 15 percent penalty on unpaid balances and a 30 percent collection fee (Illinois), and a 19 percent collection fee for delinquent payments and a $35 fee (Arizona).

- **Restitution for victim compensation.** Restitution is the money owed to victims by offenders to compensate for the offender’s actions.

While the webinar focused on specific examples of these buckets from Illinois, Ferguson, and Washington to demonstrate how the issues play out, Dr. Harris made clear that “these fines, fees, and practices exist across the United States.” More examples from each state can be found in Dr. Harris’ book, *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor* (Russell Sage Found. 2016).

**Spotlight on Restitution LFOs**

At the webinar, Nick Allen delved into this last bucket of restitution LFOs and the issues they present.

Allen explained that, in the state of Washington, as in other states, restitution is an LFO that is part of the actual judgment, and for felony offenses, restitution is mandatory. “The court has no discretion to consider the defendant’s ability to pay when setting restitution,” emphasized Allen.

Allen recognized restitution as something that needed to be imposed. However, he clearly outlined some of the primary problems with how restitution is currently being used:

- **Victim compensation takes years or never happens.** A defendant often owes, for example, $3,000 in restitution but can only afford to pay $10 per month. At that rate, the victim cannot be compensated for 25 years. If that amount is increased to $25 per month, then it is 10 years, without accounting for interest or a penalty.

- **Where there is no ability to pay, there is no way to complete restitution.** If there is no ability to pay, there is no way to get out from under restitution or any other LFO, which leaves the offender bound to the system, forced into more serious debt, and suffering further from collateral consequences in employment, housing, etc.
• **There are no options for relief from restitution.** In many states, such as Washington, once the judgment is entered, the only relief is making a payment. Restitution is almost impossible to undo and will never expire.

• **Laws implementing restitution create barriers.** There are laws, as in Washington, that require collection of restitution before any other LFO. In some jurisdictions, this could mean that restitution has to be collected first per case. So, if there are three cases, the victim in the third case will not receive restitution until the first two cases are paid off.

• **Annual collection fees are assessed first.** Court clerks and superior courts can charge an annual collection fee of $100 per year. This is not considered an LFO, so they collect this fee before paying out on the underlying LFO, including the restitution.

Best practices and ideas on how to change our restitution system are emerging from across the country, and they include taking into account the person’s ability to pay, allowing for conversion of restitution to community service, looking to more restorative justice approaches, imposing restitution rather than other fines, imposing statutes of limitations on restitution, allowing for modification of restitution, and making it a civil collection and taking it out of the criminal and juvenile justice systems. There has to be a better balance struck between making the victim and community whole again without putting a terrible burden on the offender.

**How Do LFOs Affect People Who Are Unable to Pay?**

Nick Allen presented the negative consequences that stem from the imposition of LFOs in Washington and nationally. These consequences are especially problematic for people who are unable to pay:

• **Interest penalty.** This penalty is imposed on those who cannot immediately pay off LFOs. In Washington, this is 12 percent per year from the date of judgment, even during the entire period of incarceration, when a defendant will have a limited source of income.

• **Sanctions for failure to pay.** Sanctions include a warrant, time in jail, and the like. A defendant cannot be incarcerated unless the failure to pay is “willful.” But, as Allen noted, the “interpretation of concepts like willfulness and indigence are inconsistent, and so this results in indigent people being incarcerated for failure to pay.”

• **Deductions ordered by the court or the Department of Corrections.** Examples are garnishment and orders of payroll deduction. These can take up to 25 percent of a person’s income and can take away from money needed for basic living expenses, particularly for someone already living in poverty.

• **Lifelong ties to the system.** LFOs do not expire in Washington for felony convictions, which means that people can be brought back into the system, cannot vacate their record, or recover their full civil rights until their LFOs are paid in full.
When it comes to LFOs, we do not seem to have an appreciation for the serious impact that poverty has on a person and his or her ability to meet an LFO. Allen best described it when he shared that “$500 or $600 for someone who has no ability to pay may as well be $1 million.” Multiply that by the various convictions that some people have and you are left with people who, no matter what their intentions or how hard they try to rectify the situation, are sentenced to harsher punishments and an even more devastating poverty from which they can never emerge.

Allen gave examples of Columbia Legal Services clients to explain how LFOs truly work against people who are unable to pay from the very start. One of the clients had LFOs from three different convictions in the early 2000s. The first LFO was for $1,600 and is now close to $3,500 because of interest. The second LFO was $500 and became $1,319 before it was sent to collections in 2012. Once in collections, a 23 percent interest was added, so that LFO is now over $1,600. The third LFO started as $1,300 plus interest, which the client could also not afford to pay, so it was turned over to collections, where 50 percent was added to the outstanding balance, as allowed by Washington statute. On the third LFO, he owes $3,500 in principal and $3,300 in interest. He got a job, but the collection agency will not accept less than $200 per month, so he still cannot pay. He is in his mid-50s, has children to take care of, and is trying to find other ways to pay. Twenty-five percent of his income is taken out, so he can’t cover basic living expenses. “What started off as $3,400 in principal that he already lacked the ability to pay has now ballooned over $12,000 in LFOs, and there is really no end in sight because of the interest and because they are not going to expire,” Allen points out.

**Spotlight on the Juvenile Justice System**

As Dr. Harris outlined at the beginning of the program, one of the four systems of justice in which LFOs are imposed is the juvenile justice system. Jessica Feierman explained how the Juvenile Law Center kept hearing stories from its clients about all the different costs, fines, and fees involved, so the center took the time to do a 50-state statutory review to get a sense of the problem nationally and to look at what can be done. According to Feierman, the JLC found that the problem is “widespread and highly problematic.” The report outlines the types of costs imposed:

- **Court costs (27 states).** Examples are single fees, witness fees, transportation costs, prosecution costs, court operations, depositions, and transcripts.

- **Evaluation and testing (31 states).** Examples are drug and alcohol, general, mental health, and DNA—a wide variety.

- **Probation and supervision (20 states).** It is common for courts to find a violation because the defendant couldn’t pay costs.

- **Diversion programs (22 states).** The defendant avoids formal processing, but if the defendant can’t pay the fee, he or she is formally processed.

- **Cost of care (45 states).** Lumped together are a large number of costs: for example, paying for the cost of incarceration, GPS, and monitoring.
• **Fines (44 states).** Fines may be imposed on youth and families.

• **Expungement (13 states).** Defendants are sometimes required to pay a fee to expunge their records; other times, they are not allowed to seek expungement until they have paid off other costs.

• **Cost of counsel.** JLC is still determining how many states have such a cost. Even if determined indigent, the defendant may have to pay a fee for counsel or reimburse counsel expenses later.

• **Restitution (50 states and the District of Columbia).** Restitution is different from other costs, but when the costs are added together, restitution is part of how it makes it difficult for young people to pay everything back.

To supplement the 50-state statutory review and get a sense of what was really happening on the ground, JLC surveyed 180 individuals in 41 states. These individuals included lawyers, other professionals, family members, and young people with experience in the juvenile justice system. JLC found that the practices were widespread. In fact, Feierman noted, there are local practices “to impose fees, costs, and fines even when there is no statute on the ground—that’s particularly true for probation, informal adjustment, and expungement.”

JLC reached out especially to families to collect stories about what happens to young people and their families as a result of LFOs. Feierman gave the example of E.B., who faced a truancy fine in Arkansas. E.B. had heard that the fine was $500. Neither he nor his mother could afford to pay the fine. E.B. told the JLC: “My mind was set to where I was just like forget it, I might as well just go ahead and do the time because I ain’t got no money and I know the [financial] situation my mom is in. I ain’t got no money, so I might as well just go and sit it out.” No lawyer or family member was present at the hearing, and the judge imposed a three-month sentence in a secure facility. After looking up the fine, JLC discovered that it could be up to $500, and it was discretionary. As to how young people perceive these costs, JLC found that E.B. was really concerned about how his mom perceived him because of his own shame. E.B. shared: “I didn’t want [my mom] to see me the way I was looking. I didn’t want her to see her son being in the situation he was in. . . .” Feierman shared that E.B. did not realize in the moment that an adult may have been able to help him through these problems and that how his adolescent brain worked may have contributed tremendously to this situation. E.B. told JLC that after being in jail, he couldn’t see himself as a good kid again.

JLC is finding that LFOs undermine the goal of the juvenile justice system of giving young people a second chance. In researching the penalties imposed on young people for not paying LFOs, JLC is discovering that they include civil contempt, criminal contempt, incarceration, further fines, license suspension, violations of probation, violations of informal adjustment, civil judgment, and misdemeanors. The different LFOs and penalties assessed by juvenile justice systems across the country are forcing young people and their families to go deeper into debt and become further entrenched in the court system with devastating results, as in the case of E.B.
Recent Findings and Emerging Best Practices: Illinois; Ferguson, Missouri; Washington

During the program, the panelists highlighted the new findings from Illinois, Ferguson, and Washington to give specific examples of LFOs and their effects. In addition, they discussed the best practices and reform possibilities emerging from this research and these jurisdictions.

**Illinois.** Danielle Elyce Hirsch presented the findings of the Illinois Statutory Court Fee Task Force. The report from this task force, *Illinois Court Assessments* (June 1, 2016), covers the circuit courts but not the administrative and municipal courts. Hirsch clarified that, in Illinois, LFOs are referred to as “assessments.”

To give us some background first, Hirsch explained that, in the process of exploring the idea of adding a filing fee to fund civil legal aid services and an ambitious civil Gideon pilot, Illinois decided to create a bipartisan task force composed of all the relevant stakeholders to analyze assessments and make recommendations. The task force issued a report with findings and recommendations for the civil and criminal sides and several different audiences. First, the task force identified the types of civil and criminal court assessments present in Illinois circuit courts, from filing to mandatory arbitration fees. Next, Hirsch shared that they “tried to take a step back” and “did a schoolhouse rock—who touches how an assessment becomes law?” They found all the different stakeholders that were involved in the process. Next, they analyzed data from across the state and made four findings: (1) costs are increasingly passed on to court users; (2) assessments are constantly increasing and outpacing inflation; (3) there is extreme diversity in assessment amounts from one county to another (e.g., driving under the influence conviction assessments: $327 in Knox County but $1742 in McLean County); and (4) low- and moderate-income Illinois residents are severely and disproportionately affected.

The Illinois report recommends the following five core principles:

- Courts should be funded from general government revenue, not user taxes.
- There must be a relationship between an assessment and access to the courts because, if we keep increasing assessments, we could be impeding access and creating a barrier to reentry.
- Assessments should be simple, easy to understand, and uniform.
- There needs to be a nexus between an assessment and its rationale.
- There should be periodic review of assessments.

The Illinois report proposes four legislative actions and draft language: a civil assessment act with all assessments, an expansion of the fee waiver provision, a criminal and traffic assessment act similar to the civil one proposed, and a new criminal fee waiver provision.

**Ferguson, Missouri.** Chiraag Bains explained that, shortly after Michael Brown was shot on August 19, 2014, the U.S. Department of Justice (DOJ) opened two investigations into the police department of Ferguson: one into Michael Brown’s shooting and a second one,
covered in this webinar, into the practices of the police department. On March 4, 2015, the DOJ released a report on its investigation into the police department, which included an analysis of the Ferguson Municipal Court and fees assessed because, unlike in other jurisdictions, in Ferguson “the police essentially exercised supervision over the courts.” For example, the court clerk reported to the police chief, and the court was physically located within the police department. See also Press Release, U.S. Dep’t of Justice, Justice Department Announces Findings of Two Civil Rights Investigations in Ferguson, Missouri (Mar. 4, 2015). During this webinar, Bains focused on the findings pertaining to the court.

The DOJ found that the courts were violating the due process and equal protection rights of the people appearing before them. Bains noted that “the court routinely imposed excessive fines and ordered the arrest of low-income residents for failure to appear or to make payments, sometimes despite inadequate notice and also without inquiring into their ability to pay. And we also found that there was the use of unlawful bail practices resulting in unnecessary and unconstitutional incarceration.”

One of the most serious problems was that the court issued municipal arrest warrants for missed appearances. In 2013, in a city of about 21,000 people, the court issued more than 9,000 municipal arrest warrants relating to cases of minor violations, traffic tickets, and housing code violations. Bains also emphasized how Ferguson did not allow for a license suspension to be lifted until all fines had been paid in full, which was a stricter standard than was called for by Missouri law, and additional fines were imposed in these cases. One man who owed the city close to $1,000 in fines wrote to the city that he wanted to pay what he owed and was trying to put together what he could, but it was hard to get work with the warrants. The clerk still issued a warrant then for his arrest, even though he had made efforts and demonstrated inability to pay. Bains noted that the LFOs kept people “trapped in poverty,” especially taking into account the mounting debt and collateral consequences of repeated imprisonment, employment, housing, etc.

The DOJ found disparate impact motivated by racial bias. In Ferguson, African Americans were 68 percent less likely to have their cases dismissed, more likely to have cases last longer and have more court encounters, and 50 percent more likely to have an arrest warrant issued against them. Explicit evidence, such as messages and memoranda, established that the court was operating as a revenue generator, to the point that police shifts, changes in employment, and decisions relating to the enforcement of laws were made from the perspective of increasing revenue. Ferguson court revenues increased tremendously from $1.38 million in 2010 to the budgeted $3.09 million in 2015 that the city was on track to meet before Michael Brown was shot.

Bains noted that many police officers did not like what was happening in Ferguson and expressed that “they had not signed up to be collection agents, essentially, for the courts . . . and that this kind of activity was actually making it harder for them to gain the
The Ferguson case is now in the settlement phase. The DOJ reached a federal consent decree entered on April 19, 2016.

In response to a growing national concern over LFO issues, the DOJ convened, on December 2, 2015, a diverse group of court administrators, judges, lawmakers, affected individuals, and others. On December 3, the DOJ and the White House cosponsored an event on these issues. See Press Release, U.S. Dep’t of Justice, Fact Sheet on White House and Justice Department Convening—A Cycle of Incarceration, Imprisonment, and Debt (Dec. 3, 2015). The DOJ released a Dear Colleague letter on March 14, 2016, clarifying that, based on Bearden v. Georgia, courts must determine whether a person can pay before imprisoning them for fines. Bains urged us to review and use the DOJ Dear Colleague letter, which provides specific information on the legal challenges available (e.g., due process, equal protection), alternatives to incarceration, access to a hearing, notice and right to counsel, warrants, license suspension, bail practices, and responsibilities of court staff and private contractors. Legal challenges have focused on the Fourteenth Amendment, but there are many cases in the pipeline now to develop Eighth Amendment case law.

Bains shared best practices gathered by the DOJ and learned from Ferguson: ensure policing and court enforcement are not driven by revenue but by public safety, consider a comprehensive amnesty program to forgive cases and warrants before a certain date, eliminate unnecessary fees, define warrant practices to comply with due process, increase court transparency, and work closely with judges because many of them are willing to speak out and take action.

**Washington.** Dr. Harris’s research found that Ferguson is actually not an outlier. Her research looked at national statutes, but the quantitative and qualitative data came from the state of Washington. The following are among her findings after eight years of research and interviews:

- Monetary sanctions are regularly imposed nationally.
- Legal debt is usually substantial in relation to expected earnings.
- Non-legal factors (such as gender, race, and ethnicity) significantly influence the amount of LFO imposed.
- Monetary sanctions reduce family income and create long-term debt.
- LFOs lead to financial constraint especially because of cost increases with interest.
- LFOs create family stress and relationship strains affecting children.
- A cumulated disadvantage is generated—accessing food, housing, employment, and medication, and avoidance of police and other institutions.
• LFOs bring more emotional strain and delegitimizing of the justice system.

The Laura and John Arnold Foundation is committed to funding ongoing research involving primarily an eight-state (California, Georgia, Illinois, Minnesota, Missouri, New York, Texas, and Washington), five-year study of monetary sanctions led by Dr. Harris, which is currently in the first year. One item that is missing is national, systematic court data that would allow us to assess who is being sentenced, who is paying what, and what is the amount outstanding. In one county in Washington, for example, over $750 million is outstanding, but the average annual payment is $39 (again, the first $100 go to the collection fee).

A best practice identified by Dr. Harris’s research is a practice by a judge in Washington who gives credit and reduces a person’s debt if the person receives a General Educational Development certificate. Dr. Harris has also found other courts nationally that are more restorative and allow people to pay off their debt by attending programs that lead to better reintegration into their community. A much talked about best practice is the concept of day fines, which is like a sentencing grid, so the amount of the LFO is proportionate to the offense and what the defendant is able to pay. Some states, such as Ohio and Washington, have issued bench cards outlining what is mandatory and what is discretionary. New court rules (e.g., requiring individualized indigence assessment) and statutes (establishing clear legal criteria for indigence and eliminating non-restitution LFOs) are also changing the landscape of LFOs throughout the country.

There are also a number of best practices in litigation and legislation emerging from Washington. The American Civil Liberties Union (ACLU) of Washington recently settled a case with a county that had some of the most egregious LFO practices, and the Washington State Supreme Court has issued helpful decisions to be cited. The Washington legislature has passed two pieces of legislation with provisional restoration of voting rights (House Bill 1517) and more interest relief options (Senate Bill 5423). Recent Washington legislative efforts include highlighting the disproportionate effects on the poor and communities of color, reducing the 12 percent interest rate, defining terms (criteria for indigence, ability to pay, types of evidence defendants can provide, willful nonpayment), establishing clear alternatives, making LFOs discretionary, and establishing statewide consistency. A comprehensive bill died in 2015 and 2016 in the Washington Senate because of fiscal concerns (erroneous data to persuade legislators) and ideological differences (such as the view that people are choosing not to pay or interest is an incentive to payment or LFOs hold defendants accountable).

What Can You Do?
Here are suggestions of what you can do to make a difference on these issues:

• Watch the Criminalizing Poverty webinar, available at no cost, and reach out to the speakers.

• Share information so court actors and others understand their obligations.
• Work with community groups to educate the public.

• Conduct more research or coordinate with someone who can conduct more research. Having the data gives you the numbers and the power to put behind a movement to change how the system works. Advocates in Washington have used Columbia Legal Services and ACLU reports to push for further reform. The Juvenile Law Center is creating a database to search for LFOs in the juvenile justice system by state, and Harvard Law School’s Criminal Justice Policy Program is examining and seeking to change the adult system.

• Use the media.

• Continue your representation in post-sentencing.

• Provide advice to individuals about LFOs, as Columbia Legal Services has done.

• Challenge these practices in the courtroom when fines are imposed, especially when discretionary.

• Bring constitutional challenges and use the DOJ’s Dear Colleague letter.

• Propose policy and legislative change. Alameda County in California found no benefit to the county of juvenile courts fees, which helped the county pass a moratorium on these fees. Be active on the legislative level also to oppose bills being introduced.

Keywords: litigation, children’s rights, legal financial obligations, court fines, restitution, interest, juvenile court

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PRACTICE POINTS

The Price of Juvenile Crime
By Cathy Krebs – September 2, 2016

The Juvenile Law Center has released a report outlining a 50-state (and D.C.) study of the laws that allow for the imposition of juvenile court costs, fines, fees, or restitution on youth or their families. These costs can be imposed for services ordered for youth including probation, an attorney (even if they were appointed a free attorney based on indigence), mental health evaluations, the costs of incarceration, treatment, or restitution payments. The report, *Debtors’ Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System*, reveals that these practices fall particularly hard on minority youth, they actually increase recidivism and they can trap youth in poverty. The center has also created a national map that outlines both these practices and the consequences of these practices by state. Finally, the report outlines alternatives to these harmful practices.

Cathy Krebs is the committee manager for the ABA Section of Litigation's Children's Rights Litigation Committee in Washington, D.C. She is also the newsletter editor for the committee.

Access to Justice for Children in Washington State
By Sharon McCartney – August 22, 2016

The University of Washington School of Law has released the report “Defending Our Children: A Child’s Access to Justice in Washington State” which underscores the importance of legal representation for children in foster care and the injustice of "justice by geography." For most youth in state care, access to legal representation in the state of Washington depends largely on the county in which the youth is in foster care. The inequity of this approach is obvious. No youth should have to rely on the serendipity of location for the benefits of legal counsel. The state is represented by legal counsel and the parent(s) have access to legal counsel. The child, too, must be represented. All foster youth in the custody of the state of Washington deserve equal access to legal representation. With 414,000 children in foster care nationwide, legislators, attorneys, policy makers, and the public must realize that the rights of children demand legal representation in foster care court proceedings. Representation is not just a nice thing—it is a justice thing. Representation of youth in state care should be mandated in and across all states.

Sadly, the irony of endorsing the Sixth Amendment right to counsel for adult criminal defendants while denying that same right to children in foster care is missed. No one would question that a victim of neglect and abuse removed from their family and placed under state custody would treasure the guidance and support of a highly trained attorney. In the upheaval, separation, and
emotional desolation that is a part of any youth's journey in foster care, a child needs someone literally on their side. Only by guaranteeing competent and effective legal representation for all youth in foster care can we ensure that the legal rights of all foster children are protected.

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