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The Growing and Broad Nature of Legal Financial Obligations: Evidence from Alabama Court Records

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In 2010, Harriet Cleveland was imprisoned in Montgomery, Alabama for failing to pay thousands of dollars in fines and fees stemming from routine traffic violations. More than thirty years after a series of Supreme Court rulings outlawed debtor's prisons, Ms. Cleveland's case brought national attention to both the sheer amount of legal financial obligations (LFOs) that could be accrued, even in cases without a criminal conviction, and the potential consequences of non-payment. But it has been nearly impossible to know how common Ms. Cleveland's experience is because of a general lack of individual-level data on the incidence and payback of LFOs, particularly for non-felonies. In this vein, we gather about two hundred thousand court records from Alabama over the last two decades to perform the most comprehensive exploration of the assessments and payback of LFOs to date across an entire state. Consistent with conventional wisdom, we demonstrate that the median LFOs attached to a case with a felony conviction nearly doubled between 1995 and 2005, after which it has remained roughly steady. But a felony-centric view of criminal justice underestimates the extent of increasing LFOs in the United States. Our systematic comparison of LFOs in felony, misdemeanor, and traffic cases across Alabama demonstrates how the significant debt Ms. Cleveland accumulated for a series of minor traffic offenses is not such an aberration. We show that only a minority of LFOs are assessed in cases where someone was convicted of a felony and incarcerated. Rather, most LFOs are assessed in cases without an imposed sentence, in cases with a misdemeanor or traffic violation, or even in cases that did not result in a conviction at all. These case records also reveal substantial heterogeneity in the assessment of LFOs—both within and across local judicial districts—even in cases in which defendants were convicted on exactly the same charge.

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The Growing and Broad Nature of Legal Financial Obligations: Evidence from Court Records in Alabama

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I. INTRODUCTION

Although monetary sanctions have been used as criminal punishments since the dawn of the American state,¹ the size and scope of these financial sanctions have increased dramatically in recent years. While there are no comprehensive data on the total amount of monetary sanctions that courts across the country have assessed defendants, the U.S. General Accounting Office estimates that outstanding criminal debt rose from \$260 million to over \$13 billion between 1985 and 2001.² Using a different method of accounting, the U.S. Department of Justice estimated that outstanding criminal debt continued to rise from roughly \$20 billion³ to roughly \$100 billion⁴ between 2001 and 2014.

These monetary sanctions, which are also known as legal financial obligations (LFOs), include victim restitution, criminal fines, and court fees. Restitution is a payment made by an offender to compensate a victim for damages caused by the crime.⁵ Although restitution was assessed in only about one-fifth of felony state court convictions in 2004,⁶ increases in

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¹ TERRENCE D. MIETHE & HONG LU, PUNISHMENT: A COMPARATIVE HISTORICAL PERSPECTIVE 88–90 (2005).

² U.S. GEN. ACCOUNTING OFFICE, GAO-01-664, CRIMINAL DEBT: OVERSIGHT AND ACTIONS NEEDED TO ADDRESS DEFICIENCIES IN COLLECTION PROCESSES 9 (2001), <http://www.gao.gov/new.items/d01664.pdf> [https://perma.cc/XR9E-BLXD].

³ EXEC. OFFICE FOR U.S. ATTORNEYS, U.S. DEP'T OF JUSTICE, UNITED STATES ATTORNEYS' ANNUAL STATISTICAL REPORT: FISCAL YEAR 2001, at 99 tbl.12C (2001), <https://www.justice.gov/sites/default/files/usao/legacy/2009/06/08/01statrpt.pdf> [https://perma.cc/BS2F-M3YV].

⁴ EXEC. OFFICE FOR U.S. ATTORNEYS, U.S. DEP'T OF JUSTICE, UNITED STATES ATTORNEYS' ANNUAL STATISTICAL REPORT: FISCAL YEAR 2014, at 39 tbl.8E (2014), <https://www.justice.gov/sites/default/files/usao/pages/attachments/2015/03/23/14statrpt.pdf> [https://perma.cc/MXA5-8ZVE].

⁵ R. Barry Ruback & Valerie Clark, *Economic Sanctions in Pennsylvania: Complex and Inconsistent*, 49 DUQ. L. REV. 751, 756 (2011).

⁶ See Matthew R. Durose, *State Court Sentencing of Convicted Felons, 2004—Statistical Tables*, BUREAU JUST. STAT. (July 25, 2007), <http://www.bjs.gov/content/pub/html/scscf04/tables/scs04109.tab.cfm> [https://perma.cc/NJ96-FMYR] (noting that approximately eighteen percent of felony state

restitution resulting from the Mandatory Victims Restitution Act of 1996 are thought to be responsible for a substantial portion of the recent increase in criminal debt.⁷ The use of fines and fees has been increasing as well.⁸ A fine is a monetary penalty for a crime.⁹ Fines were assessed in about one-third of felony state court convictions in 2004,¹⁰ and historically fines have been more likely to be assessed in misdemeanor than felony sentences.¹¹ Thus, while comparable data on the use of fines in misdemeanor convictions are currently lacking, there is a general belief that fines have been more likely to be attached to misdemeanor convictions over time.¹² Fees refer to court-imposed orders to reimburse governments for the “administrative cost of operating the criminal justice system.”¹³ In many states, a defendant convicted of a crime is also assessed a vast array of fees to help defray the costs to entities within the criminal justice system, including courts, prosecutors, public defenders, prisons and jails, probation and parole services, and other forms of court ordered supervision like drug testing and therapy.¹⁴

court convictions included an additional penalty of restitution).

⁷ See Matthew Dickman, *Should Crime Pay? A Critical Assessment of the Mandatory Victims Restitution Act of 1996*, 97 CALIF. L. REV. 1687, 1706 (2009) (“In 1991, five years prior to the MVRA’s enactment, 11.5 percent of probation violators reported having a revocation hearing for failure to pay economic sanctions. Though no similar study has been conducted since the MVRA came into effect, the number of probationers who fail to pay their economic sanctions has increased drastically since the passage of the Act.”).

⁸ See Alexes Harris et al., *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 AM. J. SOC. 1753, 1769 fig.1 (2010) (showing a continual increase in fees assessed to convicted persons between 1991 and 2004); see also ALICIA BANNON ET AL., BRENNAN CTR. FOR JUSTICE, CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY 1 (2010), <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> [<https://perma.cc/RM23-39BM>] (stating that in many states fees are often imposed without considering a convicted person’s ability to pay them, and “poverty penalties” attach additional fees to convicted persons who cannot pay their debt all at once).

⁹ Ruback & Clark, *supra* note 5, at 753.

¹⁰ Durose, *supra* note 6.

¹¹ SALLY T. HILLSMAN ET AL., U.S. DEP’T OF JUSTICE, FINES IN SENTENCING: A STUDY OF THE USE OF THE FINE AS A CRIMINAL SANCTION 7–8 (1984), <https://www.ncjrs.gov/pdffiles1/Digitization/96334NCJRS.pdf> [<https://perma.cc/NRS7-YNAN>] (stating that fines are used relatively infrequently in most felony-only courts and that heavy fine use reported in certain cases is consistent with the data found in studies dealing with the sentencing process in misdemeanor courts).

¹² See Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 1313, 1326 (2012) (noting that fines, costs, and other economic penalties levied against misdemeanor defendants have increased).

¹³ Ruback & Clark, *supra* note 5, at 755.

¹⁴ See BANNON ET AL., *supra* note 8, at 7 (stating that in fifteen surveyed states, individual fees accrued repeatedly throughout the criminal process, ultimately leaving poor defendants with heavy debt burdens); see also Harris et al., *supra* note 8, at 1758–59 (citing a number of studies concluding that the total number and types of fees and monetary sanctions imposed on those accused and convicted of crimes has increased substantially and continues to proliferate).

A number of commentators have expressed concern about the negative welfare consequences that stem from the assessment of LFOs.¹⁵ While the high burden of LFOs exacerbates the problems associated with reintegration for people exiting incarceration,¹⁶ it also disrupts the lives of people who experience less consequential contact with the criminal justice system. Because payment of LFOs is usually a condition of parole and probation, those who fall behind on LFO payments may find it more difficult to secure shelter or employment.¹⁷ LFOs can also crowd out investment in human capital, such as occupation licenses or schooling, which could improve long-run employment options.¹⁸ Others caution that an overly zealous enforcement strategy may encourage people to participate in the underground economy in order to pay LFOs, increasing their risk of recidivism.¹⁹ Finally, those assessed LFOs often find the assessment process confusing and unfair, particularly when economic hardship makes it difficult for them to pay.²⁰ This threatens to further erode

¹⁵ Traci R. Burch, *Fixing the Broken System of Financial Sanctions*, 10 CRIMINOLOGY & PUB. POL'Y 539, 543 (2011) (arguing that the central problem of LFOs lies in the severity of penalties for nonpayment and the unrealistic burden LFOs place on offenders); SpearIt, *Shackles Beyond the Sentence: How Legal Financial Obligations Create a Permanent Underclass*, 1 IMPACT 46, 46–47 (2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2628977 [<https://perma.cc/K5QS-82XF>] (arguing that LFOs help create a permanent underclass, make the poor pay for failing criminal justice policy, and represent a modern iteration of state and local fundraising for the continued reliance on mass imprisonment); Travis Stearns, *Legal Financial Obligations: Fulfilling the Promise of Gideon by Reducing the Burden*, 11 SEATTLE J. FOR SOC. JUST. 963, 978 (2013) (noting how LFOs can “undermine reentry prospects, pave the way back to prison or jail, and result in yet more costs to the public (citing BANNON ET AL., *supra* note 8, at 1)); *see also* Katherine Beckett & Alexes Harris, *On Cash and Conviction: Monetary Sanctions as Misguided Policy*, 10 CRIMINOLOGY & PUB. POL'Y 509, 509–10 (2011) (claiming that the assessment of LFOs is incompatible with policy efforts to enhance reintegration and raises justice and fairness concerns); BANNON ET AL., *supra* note 8, at 13–15, 17 (describing the negative consequences arising from the administration of criminal justice fees, including a lack of fee waivers, unworkable payment plans, a dearth of viable community service alternatives, and a system of poverty penalties, all of which compound personal debt and benefit private entities).

¹⁶ *See* Kirsten D. Levingston & Vicki Turetsky, *Debtors' Prison—Prisoners' Accumulation of Debt as a Barrier to Reentry*, 41 CLEARINGHOUSE REV. J. POVERTY L. & POL'Y 187, 191–92 (2007) (noting that individuals leaving jail with criminal financial obligations will see their lower wages reduced further by state governments seeking to recover outstanding debts).

¹⁷ *See* BANNON ET AL., *supra* note 8, at 27 (noting that in many states, criminal justice debt and the reporting of such debt damage housing prospects by severely affecting individuals' credit scores, which consequently limits employment prospects).

¹⁸ *See* Harris et al., *supra* note 8, at 1780 (noting that the inability of their interview subjects to pay off legal debts limited their “efforts to receive further education, keep necessary licenses, or otherwise improve their occupational situation”).

¹⁹ *See* RACHEL L. MCLEAN & MICHAEL D. THOMPSON, U.S. DEP'T OF JUSTICE, REPAYING DEBTS 8 (2007), https://csgjusticecenter.org/wp-content/uploads/2012/12/repaying_debts_full_report-2.pdf [<https://perma.cc/J8P9-4KRM>] (“Financial pressures and paycheck garnishment resulting from unpaid debt can increase participation in the underground economy . . .”).

²⁰ *See* R. Barry Ruback et al., *Perception and Payment of Economic Sanctions: A Survey of Offenders*, FED. PROBATION, Dec. 2006, at 26, 30 (stating that a lack of money to pay economic

the already low levels of social capital and trust in government among the population that comes into contact with the criminal justice system.²¹

An important question in the discussion of LFO policymaking is what sanctions government should have at its disposal to collect unpaid debt. *Williams v. Illinois*²² and *Bearden v. Georgia*²³ established that indigent people could not be incarcerated for their inability to make good on their LFOs. But state and local governments are increasingly pushing the legal boundaries on their collection practices as the costs of maintaining a system of mass incarceration have exploded²⁴ and a substantial portion of LFOs often remain unpaid, even many years after their initial assessment.²⁵ As the costs of maintaining a system of mass incarceration have exploded,²⁶ governments are increasingly pushing the legal boundaries on their collection practices. Courts lack a common understanding of what constitutes indigence and apply many punitive sanctions besides incarceration to encourage payment. These sanctions include tacking on additional collection fees,²⁷ revoking driver's licenses,²⁸ and potentially holding people in contempt of court or revoking probation because of unpaid LFOs.²⁹ Such practices have prompted a number of legal and

sanctions was related to offenders' perception of the procedures used to determine the sanctions, and that respondents claiming trouble with making monthly payments believed the sanctions were less fair).

²¹ See Vesla M. Weaver & Amy E. Lerman, *Political Consequences of the Carceral State*, 104 AM. POL. SCI. REV. 817, 826 (2010) (providing multivariate data to demonstrate that involvement with criminal justice significantly depressed a person's trust in government).

²² 399 U.S. 235, 240–41 (1970) (ruling that incarceration could not be extended beyond the statutory maximum because of unpaid court fines and costs).

²³ 461 U.S. 660, 661–62 (1983) (holding that subjecting a defendant to imprisonment solely because of his inability to pay LFOs violates principles of due process and equal protection).

²⁴ See TRACEY KYCKELHAHN, U.S. DEP'T OF JUSTICE, JUSTICE EXPENDITURES AND EMPLOYMENT, FY 1982–2007—STATISTICAL TABLES, at 1, 5 tbl.1 (2011), <http://www.bjs.gov/content/pub/pdf/jee8207st.pdf> [<https://perma.cc/9KD6-V2Q9>] (analyzing the total percent change of total justice expenditures between 1982 and 2007 and indicating that costs increased by 170.6% between 1982 and 2002).

²⁵ See Harris et al., *supra* note 8, at 1775 (estimating that the median LFO debt in 2008 held by someone convicted of a felony in the state of Washington in 2004 was \$5,254).

²⁶ See TRACEY KYCKELHAHN, U.S. DEP'T OF JUSTICE, JUSTICE EXPENDITURES AND EMPLOYMENT, FY 1982–2007—STATISTICAL TABLES 1, 5 tbl.1 (2011), <http://www.bjs.gov/content/pub/pdf/jee8207st.pdf> [<https://perma.cc/9KD6-V2Q9>] (analyzing the total percent change of total justice expenditures between 1982 and 2007 and indicating that costs increased by 170.6% between 1982 and 2002).

²⁷ Mary Fainsod Katzenstein & Mitali Nagrecha, *A New Punishment Regime*, 10 CRIMINOLOGY & PUB. POL'Y 555, 556–61 (2011).

²⁸ See generally John B. Mitchell & Kelly Kunsch, *Of Driver's Licenses and Debtor's Prison*, 4 SEATTLE J. FOR SOC. JUST. 439, 439–71 (2005) (analyzing the problems with the system of revoking driver's licenses of low-income people because of their inability to pay traffic fines in Washington state).

²⁹ Beckett & Harris, *supra* note 15, at 524.

popular commentators to suggest that the United States is returning to an era of de facto debtors' prisons, despite the precedent of *Bearden*.³⁰

LFOs have been subject to critical media attention fueled by recent litigation challenging the sanctions used to collect outstanding debt.³¹ This has brought to light stories of unpaid fines and fees being converted into a jail sentence. For example, Harriet Cleveland accrued a substantial amount³² of LFOs to the City of Montgomery, Alabama in 2008 and 2009 after receiving multiple traffic tickets for driving without insurance.³³ She contended that she could not afford to pay for insurance at the time because she had been unable to secure full-time employment after being laid off from her previous job.³⁴ Montgomery turned the job of collecting the debt over to the private probation firm Judicial Correction Services (JCS), which charged Ms. Cleveland an additional monthly supervision fee of \$40.³⁵ Eventually, Alabama suspended her driver's license because of

³⁰ Mitchell & Kunsch, *supra* note 28, at 439–40; see Devon King, *Towards an Institutional Challenge of Imprisonment for Legal Financial Obligation Nonpayment in Washington State*, 90 WASH. L. REV. 1349, 1349–52 (2015); Ann K. Wagner, *The Conflict over Bearden v. Georgia in State Courts: Plea-Bargained Probation Terms and the Specter of Debtors' Prison*, 2010 U. CHI. LEGAL F. 383, 383–84, <http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1466&context=ucfl> [<https://perma.cc/RC8K-6PB4>]; AM. CIVIL LIBERTIES UNION, IN FOR A PENNY: THE RISE OF AMERICA'S NEW DEBTORS' PRISONS (2010), https://www.aclu.org/files/assets/InForAPenny_web.pdf [<https://perma.cc/UJ5G-PLGH>]; BANNON ET AL., *supra* note 8, at 1; Whitney Bennis & Blake Strode, *Debtors' Prison in 21st-Century America*, ATLANTIC (Feb. 23, 2016), <http://www.theatlantic.com/business/archive/2016/02/debtors-prison/462378/> [<https://perma.cc/3M8A-7WRF>]; Joseph Shapiro, *As Court Fees Rise, the Poor Are Paying the Price*, NPR (May 19, 2014), <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor> [<https://perma.cc/WG3A-UC3T>].

³¹ See Radley Balko, *A Debtors' Prison in Mississippi*, WASH. POST BLOG (Oct. 21, 2015), <https://www.washingtonpost.com/news/the-watch/wp/2015/10/21/a-debtors-prison-in-mississippi/> [<https://perma.cc/D7UN-2AAE>] (noting that private probation companies have an incentive to keep low-income people on probation longer because the probationers fund the company's work); Van Jones & Jessica Jackson, *Are Debtors' Prisons Returning?*, CNN (Dec. 4, 2015), <http://www.cnn.com/2015/12/04/opinions/jones-debtors-prisons/> [<https://perma.cc/H9A9-6FBM>] (reporting that many jurisdictions in the United States have made it a standard practice to charge low-income people for their time in the criminal justice system); Campbell Robertson, *Judge Offers Giving Blood as Option to Jail Time*, N.Y. TIMES, Oct. 20, 2015, at A13 (reporting the outrage of health and legal experts against a judge, who gave offenders in his courtroom the ultimatum of “give some blood or go to jail”); Sarah Stillman, *Get Out of Jail, Inc.*, NEW YORKER (June 23, 2014), <http://www.newyorker.com/magazine/2014/06/23/get-out-of-jail-inc> [<https://perma.cc/9X44-YACP>] (evaluating the use of state penalties to collect funds as corrupt and an “inherent conflict of interest”); *The New Debtors' Prisons*, ECONOMIST (Nov. 16, 2013), <http://www.economist.com/news/united-states/21589903-if-you-are-poor-dont-get-caught-speeding-new-debtors-prisons> [<https://perma.cc/QR8E-WQUL>] (likening debtors' prison to “a judicially sanctioned extortion racket”).

³² See Stillman, *supra* note 31 (reporting that Ms. Cleveland's total court costs and fines were \$4,713, which included more than \$1,000 in private probation fees).

³³ Amended Complaint at 1, *Cleveland v. City of Montgomery*, No. 02:13-cv-00732 (M.D. Ala. Nov. 12, 2013), ECF No. 10.

³⁴ *Id.* at 6.

³⁵ *Id.* at 5.

the unpaid debt,³⁶ though she continued to drive and accrued additional LFOs for driving on a suspended license.³⁷ Ms. Cleveland was eventually brought before a City of Montgomery municipal court judge and ordered to either pay \$1,554 immediately or serve a thirty-one day jail sentence.³⁸ She served ten days before being discharged.³⁹

Ms. Cleveland's case underscores a number of important features about the current state of LFO policy in the United States. First, her original offense was not a felony, or even a misdemeanor, but a traffic infraction. This accords with the findings of the U.S. Department of Justice's report on Ferguson, Missouri, which noted that traffic violations are often used as a substantial source of funding for local government.⁴⁰ Second, her situation spiraled after the City of Montgomery unsuccessfully used sanctions like the revocation of her driver's license and third-party collection to get her to pay her original LFO debt. Importantly, the decision to use these tactics was made at the local, rather than state, level.⁴¹

It is nearly impossible to know how common Harriet Cleveland's story is because there is so little individual-level data on the incidence and payback of LFOs. The fragmented nature of criminal justice policy in the United States means that multiple levels of government may apply many different fines and fees to the same criminal conviction.⁴² Once collected, these fines and fees are often dispersed to different governmental bodies, such that no single governmental entity knows either the total amount that originally was assessed or the defendant's remaining balance.⁴³ This also

³⁶ *Id.* at 1.

³⁷ *Id.*

³⁸ *Id.* at 2.

³⁹ *Id.*; *SPLC Lawsuit Closes Debtors' Prisons in Alabama Capital*, S. POVERTY L. CENTER (Aug. 25, 2014), <https://www.splcenter.org/news/2014/08/26/splc-lawsuit-closes-debtors-prison-alabama-capital> [<https://perma.cc/PR5P-H5HB>].

⁴⁰ U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 3 (2015), http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [<https://perma.cc/M7G4-S9AV>].

⁴¹ See Robertson, *supra* note 31; see also Complaint ¶ 23, Reynolds v. Judicial Corr. Servs., No. 2:1-CV-00161-MHT-CSC (M.D. Ala. Mar. 12, 2015) ("Defendant JCS first contracted with Defendant City of Clanton on February 9, 2009. Under the contract, JCS collects payments of fines, costs, fees, and restitution assessed by the Clanton Municipal Court . . ."); HUMAN RIGHTS WATCH, PROFITING FROM PROBATION: AMERICA'S "OFFENDER-FUNDED" PROBATION INDUSTRY 51 n.134 (2014), https://www.hrw.org/sites/default/files/reports/us0214_ForUpload_0.pdf [<https://perma.cc/DS7T-T4N5>] (referencing how private probation companies contract with courts and local governments).

⁴² See Ruback & Clark, *supra* note 5, at 764–67 (finding that 2,629 different economic sanctions were applied to criminal convictions in Pennsylvania between 2006 and 2007, and that most of those sanctions were applied by counties).

⁴³ CARL REYNOLDS ET AL., COUNCIL OF STATE GOV'TS JUSTICE CTR., A FRAMEWORK TO IMPROVE HOW FINES, FEES, RESTITUTION, AND CHILD SUPPORT ARE ASSESSED AND COLLECTED FROM PEOPLE CONVICTED OF CRIMES 23–24 (2009), <https://csgjusticecenter.org/wp-content/uploads/2013/07/2009-CSG-TXOCA-report.pdf> [<https://perma.cc/6T5A-HVNA>].

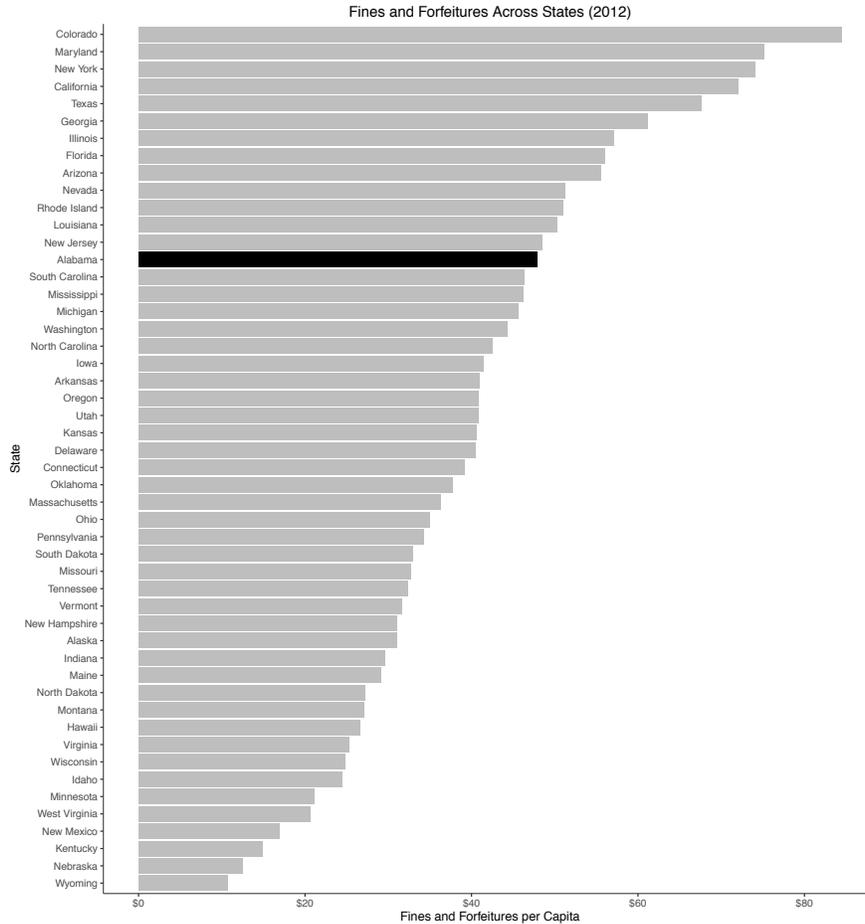
makes it hard for researchers to compile a systematic understanding of the determinants of the assessment and payback of LFOs.

To begin to fill this gap in the literature, we contribute a case study on the current state of LFO policy in Alabama. As we detail in the next Part, LFOs have long been an important source of revenue for the Alabama court system. Figure 1.1 illustrates that governments in Alabama generated slightly more revenue from fines and forfeitures per capita (\$48) than the average state in 2012, although there are a number of states that generated more.⁴⁴ Alabama was also the site of a substantial amount of recent litigation—including Ms. Cleveland’s—that challenged the constitutionality of its LFO collection practices and the collateral consequences that follow when LFOs go unpaid.⁴⁵ Most importantly, we were able to secure access to databases of Alabama court records that provide extremely detailed information on both the assessment and payback of LFOs. These data allow us to not only assess the LFOs attached to felony convictions that result in incarceration, but also LFOs from felony convictions that do not result in incarceration, misdemeanor convictions, and convictions that occur in municipal court. These data allow us to perform the most comprehensive exploration of the assessments and payback of LFOs to date across an entire state.

⁴⁴ See U.S. CENSUS BUREAU, ANNUAL SURVEY OF STATE AND LOCAL GOVERNMENT FINANCES AND CENSUS OF GOVERNMENTS, http://www2.census.gov/pub/outgoing/govs/special60/_IndFin_1967-2012.zip (last visited Feb. 3, 2016). The Census of Governments surveys about eight thousand governmental entities every five years, including counties and municipalities. Each government entity was asked to record their total revenue from fines and forfeitures. This is defined as “[r]eceipts from penalties imposed for violations of law; civil penalties (e.g., for violating court orders); court fees if levied upon conviction of a crime or violation; court-ordered restitutions to crime victims where government actually collects the monies; and forfeits of deposits held for performance guarantees or against loss or damage (such as forfeited bail and collateral).” *Federal, State, and Local Governments*, U.S. CENSUS BUREAU, https://www.census.gov/govs/www/class_ch7_misc.html [<https://perma.cc/U54L-4U34>] (last visited Apr. 29, 2016). All government entities within a state were summed to produce a state-level aggregate total. This total was divided by the total state population in 2010, as measured by the Census.

⁴⁵ See, e.g., *Cleveland v. City of Montgomery*, No. 02:13-CV-732-MHT, 2014 WL 6461900, at *1 (M.D. Ala. Nov. 17, 2014); Complaint ¶¶ 1–3, *Foster v. City of Alexander City*, No. 3:15-cv-657-wkw (M.D. Ala. Sept. 8, 2015).

FIGURE 1.1



Note: The data come from 2012 Census of Governments: State & Local Finances, collected by the U.S. Census Bureau. Fines and forfeits (code US30) are defined as "revenue from penalties imposed for violations of law; civil penalties (e.g., for violating court orders); court fees if levied upon conviction of a crime or violation; court-ordered restitutions to crime victims where government actually collects the monies; and forfeits of deposits held for performance guarantees or against loss or damage (such as forfeited bail and collateral)." It excludes "penalties relating to tax delinquency; library fines; and sale of confiscated property."

We first show that the LFOs assessed as part of a felony conviction have increased over time in Alabama. While previous work demonstrates that offenders are more likely to report that they were assessed some form of LFOs over time, there is no previous evidence on the magnitude of this change. Our data show that the median amount of LFOs stemming from a felony conviction doubled in Alabama from just under \$1,000 in 1995 to about \$2,000 in 2005.

Our next set of analyses shows that most LFO revenue is generated by misdemeanor criminal and traffic violations, many of which are adjudicated in municipal courts. We make this point in a number of steps. First, we show that a substantial portion of LFOs assessed in state court are

a result of either misdemeanor convictions or felony convictions without any imposed supervision. Second, we show that there are a substantial number of LFOs assessed in cases that do not result in a conviction. Third, we demonstrate that looking only at state court cases misses the large number of LFOs assessed for criminal and traffic violations that are adjudicated in municipal courts. Consequently, solely focusing on the LFOs assessed to incarcerated felons captures only a small portion of the total LFOs.

Our final set of analyses highlights the importance of county and municipal governance in determining LFO policy. We show that the amount of revenue generated through fines and forfeiture varies substantially by county. While there are likely many reasons why this is the case, we focus on two sources of this variation. First, local jurisdictions often have substantial discretion to assess LFOs. To illustrate this, we show that different jurisdictions assess substantially different LFOs on people who were convicted of the same charge. Second, local jurisdictions enact different sanctions to punish those people who do not pay back their LFOs. Using data from the City of Montgomery, we present suggestive evidence that collection practices play an important role in determining both the share of assessments that are paid back and the share of people who are punished for non-payment.

II. THE (LACK OF) CONSTITUTIONAL PROTECTIONS FROM LFOs

Monetary sanctions have been a part of the criminal justice system throughout American history, as both a complement and substitute for conventional imprisonment. Fines, in particular, have long been used as a form of criminal punishment,⁴⁶ though fees—fines’ non-punitive counterparts—are a relatively recent phenomenon dating back to the rise of the penitentiary system.⁴⁷ During periods of expansion, the criminal justice system became more reliant on those who “use” it to pay for its operation.⁴⁸ Although “user fees” are often discussed today as a

⁴⁶ See R. Barry Ruback & Mark H. Bergstrom, *Economic Sanctions in Criminal Justice: Purposes, Effects, and Implications*, 33 CRIM. JUST. & BEHAV. 242, 242 (2006).

⁴⁷ See AM. CORR. ASS’N, A STUDY OF PRISON INDUSTRY: HISTORY, COMPONENTS, AND GOALS 3 (1986), <https://s3.amazonaws.com/static.nicic.gov/Library/004194.pdf> [<https://perma.cc/G9R8-WS24>] (“By 1828 the Auburn and Sing Sing inmates were ‘paying’ for their own confinement.”). *But see* Harris et al., *supra* note 8, at 1757 (advocating for the treatment of LFOs as one group, including monetary sanctions for both criminal and civil penalties, because legislatures justify fees under penological aims, and any subsequent effects on social inequality are based on the total amount assessed, rather than their purpose).

⁴⁸ See Mary Fainsod Katzenstein & Maureen R. Waller, *Taxing the Poor: Incarceration, Poverty Governance, and the Seizure of Family Resources*, 13 PERSP. ON POL. 638, 641 (2015) (positing that states now seize resources from indigent families of persons in the criminal justice system in order to fund projects of poverty governance).

phenomenon of the contemporary era of mass incarceration, they can be traced back to the first imprisonment boom of the mid-nineteenth century.⁴⁹

The feasibility of relying on LFOs as a source of revenue depends on the tools governments have at their disposal to coerce payment. The fact that many offenders are poor⁵⁰ constrains the collection of monetary sanctions.⁵¹ As late as the mid-twentieth century, many states incentivized payment by incarcerating people for failure to pay. Yet even when debtors were faced with incarceration, many LFOs remained unpaid. Some studies estimate that roughly half of the incarcerated population in the United States in the mid-twentieth century resulted from failure to pay fines.⁵² This limited collection, despite the consequence of incarceration, suggests that many individuals simply did not have the resources to pay their LFOs.

Policymakers have long faced decisions about how to balance a defendant's ability to pay LFOs with a government's ability to collect them. This decision has important implications for governments' choice to levy LFOs in the first place, as it affects how much revenue can be generated. Historically, there were few constraints on what the state could do to coerce the payment of LFOs. Convicts, for example, could be compelled into labor for non-payment, regardless of their lack of financial resources. In the post-bellum South,⁵³ convict leasing was used as a way for courts to successfully collect LFOs, which were likely to otherwise go

⁴⁹ See Lauren-Brooke Eisen, *Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause*, 15 LOY. J. PUB. INT. L. 319, 319 (2014) (noting that the first correctional fee was instituted in 1846).

⁵⁰ See DALE PARENT, U.S. DEP'T OF JUSTICE, RECOVERING CORRECTIONAL COSTS THROUGH OFFENDER FEES 1 (1990), <https://www.ncjrs.gov/pdffiles1/Digitization/125084NCJRS.pdf> [<https://perma.cc/3VXM-WBKP>] (explaining that from the mid-nineteenth to the late twentieth century, "correctional fees . . . were actually collected only rarely, because few confined offenders had the ability to pay"); see also Derek A. Westen, *Fines, Imprisonment, and the Poor: "Thirty Dollars or Thirty Days"*, 57 CALIF. L. REV. 778, 779, 788 (1969) (noting that "[i]n 1910 [incarceration for failure to pay fines] accounted for 58 percent of all persons in prisons. In 1956 the percentage was 67.5" and that "today possibly as many as 40 to 60 percent of all individuals confined in county jails are imprisoned for inability to pay their fines").

⁵¹ See George F. Cole, *Monetary Sanctions: The Problem of Compliance*, in SMART SENTENCING: THE EMERGENCE OF INTERMEDIATE SANCTIONS 142, 143–44 (James M. Byrne et al. eds., 1992); COUNCIL OF ECON. ADVISERS, FINES, FEES, AND BAIL 5 (2015), https://www.whitehouse.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf [<https://perma.cc/KX76-R7PW>] ("As States have increasingly relied on fees and fines that do not take into account ability to pay, they have faced very low rates of collection on debt. For example, Florida and Maryland collected 14 percent and 17 percent of certain types of fees assessed, respectively.")

⁵² See SOL RUBIN ET AL., THE LAW OF CRIMINAL CORRECTION 252–53 (1963) (citing various statistics demonstrating incarceration rates for failure to pay fines during this time period).

⁵³ The practice, however, did not originate in the South, but instead, can be traced to 1798, when Massachusetts began leasing some of its prisoners to private contractors. E.T. Hiller, *Development of the System of Control of Convict Labor in the United States*, 5 J. AM. INST. CRIM. L. & CRIMINOLOGY 241, 253 (1914).

unpaid by the overwhelmingly destitute population of ex-slaves that they were often imposed upon.⁵⁴ When individuals were unable to immediately pay their court fines and fees, willing local contractors would pay off the individual's debt in exchange for their contracted labor.⁵⁵

As the system of convict leasing expanded as a source of cheap labor, states and counties began charging companies directly for contracted labor.⁵⁶ Courts converted outstanding LFOs into additional time served, which they tacked on to the original sentence, often causing it to exceed the statutory maximum.⁵⁷ This removed what little incentive there was to reduce the assessment of LFOs; the longer firms could contract for a man's labor, the more revenue the court collected. Because imprisonment no longer imposed a cost on the state, extending the sentences of individuals for their inability to pay LFOs translated directly into government revenue.⁵⁸

Alabama leaned on a long list of piecemeal fees to become the most profitable "prison" system in the country at the turn of the century: fees generated six percent of the state's revenue in 1890.⁵⁹ An 1881 case in the Alabama Supreme Court detailed how a defendant came to be assessed \$124.60 for fees (in 1881 dollars): a sheriff's fee for feeding the defendant, \$37.50; fees for the prosecution's witnesses, \$19.40; fees for the defense witnesses, \$10; clerk's fees, \$8.85; and the sheriff's fees, excluding the cost of feeding the defendant, \$18.85. At the rate of 40 cents per day, this

⁵⁴ See DAVID M. OSHINSKY, "WORSE THAN SLAVERY": PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE 41–42 (1996) ("In practice [convict leasing] applied to those who could not pay the fines and court costs that accompanied almost every trial. The end result was a stream of black bodies to the county chain gangs and local plantations.").

⁵⁵ See *id.* at 21 (explaining that when individuals were arrested for vagrancy and were unable to pay their fines and fees, preference would be given to their "old master").

⁵⁶ The imposition of LFOs was a key factor in this transformation. Because the majority of those leased were county convicts and hence sentenced only to misdemeanors, their sentences were relatively short and thus, useless for industries that required laborers to be skilled or transported long distances. See MARY ELLEN CURTIN, BLACK PRISONERS AND THEIR WORLD, ALABAMA, 1865–1900, at 98–99 (2000) (explaining that in Alabama, "[d]uring the 1880s companies paid \$18.50 per month for a first-class man"); ALEX LICHTENSTEIN, TWICE THE WORK OF FREE LABOR: THE POLITICAL ECONOMY OF CONVICT LABOR IN THE NEW SOUTH 57–58 (1996) (explaining that the state of Georgia received \$50 per convict in 1872); OSHINSKY, *supra* note 54, at 70 (providing information that Florida leased convicts at the annual rate of \$200 per convict).

⁵⁷ See OSHINSKY, *supra* note 54, at 77 (explaining that, in Alabama, court costs commonly ranged from \$15 to \$100). "The convict paid off these 'costs' by serving additional 'jail time' at the rate of 30 to 40 cents a day. Thus, a person sentenced to six plus \$50 could expect to spend a full year at hard labor—and sometimes more." *Id.*

⁵⁸ See *id.* at 80 ("Convict leasing generated about 6 percent of the state's total revenue in these years, giving Alabama the most profitable prison system in the country."); see also ALLEN JOHNSTON GOING, BOURBON DEMOCRACY IN ALABAMA 1874–1890, at 179 (1972) ("[I]n 1890 the returns to [Alabama] from the penitentiary system amounted to \$111,133 . . .").

⁵⁹ OSHINSKY, *supra* note 54, at 80.

translated into a 311-day sentence of hard labor, helping the Alabama courts reap an average profit of over \$164 per leased convict.⁶⁰

The conversion of unpaid LFOs into prison sentences remained a feature of collection practices well into the mid-twentieth century. To incentivize payment, many states applied the “thirty days or thirty dollars” doctrine, where someone unable to pay a fine would be required to serve as many days in jail as dollars that went unpaid.⁶¹ Over time, however, the public became increasingly concerned about imprisoning people simply because they lacked the resources to pay their debts. As U.S. Supreme Court Justice Arthur Goldberg remarked, “[t]he ‘choice’ of paying [a] \$100 fine or spending 30 days in jail is really no choice at all to the person who cannot raise \$100. The resulting imprisonment is no more or no less than imprisonment for being poor, a doctrine which I trust this Nation has long since outgrown.”⁶²

Today, courts can no longer impose prison sentences solely because offenders have outstanding LFOs. One of the first major cases to address this issue was *Williams v. Illinois*,⁶³ in which the Supreme Court ruled that incarceration could not be extended beyond the statutory maximum because of unpaid court fines and costs. The 1983 case *Bearden v. Georgia*⁶⁴ expanded the *Williams* precedent to the revocation of probation. The *Bearden* Court held that subjecting a defendant to imprisonment solely because of their inability to pay violates principles of due process and equal protection, regardless of sentencing limits.⁶⁵

Bearden, however, was decided almost a decade after the Court had upheld the practice of assessing defendants a fee for the use of a public defender, even when a court-appointed attorney signaled that a defendant could not afford private representation. In other words, while *Bearden* was a significant step toward ending the most punitive collection practices, the Supreme Court in *Fuller v. Oregon*⁶⁶ allowed the assessment of LFOs to

⁶⁰ See *id.* at 77 (providing the rate); see also GOING, *supra* note 58, at 179 (providing the average profit).

⁶¹ See Westen, *supra* note 50, at 778–79 (explaining that courts had the power to imprison indigent defendants unable to pay fines by terms of imprisonment based on a day for each dollar of fine unpaid).

⁶² Arthur J. Goldberg, *Equality and Governmental Action*, 39 N.Y.U. L. REV. 205, 221 (1964).

⁶³ 399 U.S. 235, 239–41 (1970).

⁶⁴ 461 U.S. 660, 667–69 (1983).

⁶⁵ *Bearden* was convicted under the Georgia First Time Offender Act, which allowed him to avoid having his guilty plea entered and instead be sentenced to probation with the condition that he pay a \$500 fine and \$250 in restitution. However, when *Bearden* was unable to pay the \$750 in full, the trial court revoked his probation, entered a judgment of guilt, and sentenced him to prison. *Id.* at 660.

⁶⁶ 417 U.S. 40, 50 (1974). Courts still have virtually no responsibility to inquire about indigent status before LFO assessment, even when they have reason to believe an offender is indigent. See, e.g., *People v. Jackson*, 769 N.W.2d 630, 633 (Mich. 2009) (overturning the requirement set by *People v. Dunbar*, 690 N.W.2d 476, 486 (Mich. Ct. App. 2004), that courts must “conduct an ability-to-pay analysis before imposing a fee for a court-appointed attorney, and [holding] that such an analysis is

continue unimpeded, without respect to indigency. While sympathetic judges could still choose to take a defendant's financial situation into account, doing so is difficult because judges often do not have access to a defendant's complete financial record.⁶⁷ Claims of indigency can be properly raised once the collection process has begun, though it remains unclear whether courts or defendants are responsible for initiating these inquiries,⁶⁸ and, when there is an established definition of indigency, collection is largely a question of judicial discretion.⁶⁹ If an outstanding debt is found to be the result of willful non-payment—rather than indigency—imprisonment remains a constitutional method of coercion.

Human Rights Watch has alleged that some courts do not even attempt to inquire about indigency status, as if the *Bearden* precedent does not exist.⁷⁰ Recent cases also highlight the slippage between *Bearden*'s protection and the potential punishments available to the court. For example, *State v. Nordahl* found that probation could be revoked for failure to pay LFOs where paying LFOs was a condition of a plea agreement.⁷¹ A public defender may be crucial in these proceedings, but whether one is provided largely depends on whether incarceration is potentially at stake.⁷²

required only once the imposition of the fee is enforced"). *Jackson* also states that in the absence of a constitutional requirement, "*Dunbar*'s ability-to-pay rule frustrates the Legislature's legitimate interest in recouping fees for court-appointed attorneys from defendants who eventually gain the ability to pay those fees." *Id.* at 641.

⁶⁷ See Ruback & Bergstrom, *supra* note 46, at 263.

⁶⁸ See, e.g., *Garcia v. City of Abilene*, 890 F.2d 773, 776–77 (5th Cir. 1989) (upholding the practice of imprisoning indigent people for nonpayment of fines if they do not appear in court to raise the claim); *De Luna v. Hidalgo County*, 853 F. Supp. 2d 623, 645 (S.D. Tex. 2012) ("[T]here is no precise language in these cases stating that a petitioner has or does not have the burden to tell the sentencing court that he cannot pay a fine before the court inquires into indigency . . .").

⁶⁹ See Ruback & Bergstrom, *supra* note 46, at 263 ("Judges' single biggest complaint with regard to setting economic sanctions is that at sentencing, they lack complete information about offenders' economic circumstances . . ."); see also Margaret A. Gordon & Daniel Glaser, *The Use and Effects of Financial Penalties in Municipal Courts*, 29 CRIMINOLOGY 651, 673 (1991) ("Perhaps the inconsistent availability of [offenders' financial information] prevents judges from making reliable evaluations of an individual's ability to pay financial penalties.").

⁷⁰ See BANNON ET AL., *supra* note 8, at 19–20; HUMAN RIGHTS WATCH, *supra* note 41, at 4.

⁷¹ See *State v. Nordahl*, 680 N.W.2d 247, 250, 253 (N.D. 2004) (holding probation could be revoked for failure to pay restitution as a condition of a plea bargain agreement); see also *United States v. Mitchell*, 51 M.J. 490, 490–91, 494 (C.A.A.F. 1999) (holding defendant's probation could be revoked because it was part of a plea-bargain, and broken plea agreements can be used as evidence that a defendant's non-payment was willful or that he or she behaved recklessly thereafter). See generally Wagner, *supra* note 30, at 391–92 (offering a more detailed discussion of plea-bargaining's relationship to *Bearden*).

⁷² See *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 25 (1981) ("The pre-eminent generalization that emerges from this Court's precedents on an indigent's right to appointed counsel is that such a right has been recognized to exist only where the litigant may lose his physical liberty if he loses the litigation.").

States can also impose a litany of collateral consequences beyond supervision that make it more difficult to live with unpaid debt.⁷³ For example, unpaid debt can result in the suspension of a driver's license and the loss of the right to vote.⁷⁴

The limited protections afforded to the indigent are not considerably improved by constitutional restrictions on the imposition of LFOs in general. Although the Eighth Amendment bars the imposition of "excessive fines," it has been largely ineffectual in limiting the large sums of LFOs assessed in some cases.⁷⁵ Courts have used a proportionality standard to assess whether fines are excessive compared to the crime being punished. But fees have been excluded from the "excessive fines" restriction by reasoning they are not connected to punishment and instead simply reflect an offender's cost to the system, which cannot be disproportionate.⁷⁶ There has been some success in challenging specific court-ordered fees under due process requirements of unbiased imposition,⁷⁷ but there have been no successful constitutional challenges to the accumulation of fees.⁷⁸

III. DATA

We collected four different data sets pertaining to the assessment and payback of LFOs: (1) a sample of Alabama circuit court cases from 1995, 2000, and 2005–11; (2) a census of all court cases that originated in Alabama district court in 2013; (3) a census of all Montgomery municipal court criminal cases from January 2013 and January 2015; and (4) a census of all Montgomery municipal court traffic cases from January 2013 and January 2015. We first outline the jurisdiction of each of these courts and then discuss how we collected each data set and our resulting observations.

⁷³ See BANNON ET AL., *supra* note 8, at 28–29.

⁷⁴ *Id.*; Marc Meredith & Michael Morse, Discretionary Disenfranchisement: The Case of Legal Financial Obligations (July 21, 2015) (unpublished manuscript), <http://scholar.harvard.edu/files/morse/files/lfos.pdf?m=1437593284> [<https://perma.cc/KUS4-RZGR>].

⁷⁵ See Eisen, *supra* note 49, at 332, 336–38 (describing how the Third Circuit held that fines in the thousands of dollars are not excessive if they are not out of proportion with the maximum fine available for the offense committed); see also Wayne A. Logan & Ronald F. Wright, *Mercenary Criminal Justice*, 2014 U. ILL. L. REV. 1175, 1204 (citing *United States v. Bajakajian*, 524 U.S. 321, 324 (1998), in which the Court decided a civil forfeiture payment was invalid because the amount was "grossly disproportionate" to the crime).

⁷⁶ See Eisen, *supra* note 49, at 334–35 (citing *Tillman v. Lebanon County Correctional Facility*, 221 F.3d 410, 413 (3d Cir. 2000), in which Tillman "accumulated a debt exceeding \$4,000" after being assessed a daily fee of \$10 while in jail).

⁷⁷ See Logan & Wright, *supra* note 75, at 1209 ("Caselaw also fails to account for the cumulative effect of LFOs. Challenges typically evaluate LFOs in isolation."); see also *Tillman*, 221 F.3d at 420–21 (holding \$4,000 was not excessive compared to the potential fine of \$100,000 for the crime).

⁷⁸ See Logan & Wright, *supra* note 75, at 1209; see also *Tillman*, 221 F.3d at 416, 420–21.

A. *Jurisdiction of Alabama Courts*

Circuit courts have jurisdiction to prosecute all cases involving a felony charge and appellate jurisdiction over cases originating in district and municipal courts.⁷⁹

District courts are presumed to have original jurisdiction to prosecute all misdemeanors and traffic infractions, except those prosecuted by municipalities in municipal courts and those prosecutions that also involve a felony.⁸⁰ While district courts do not have jurisdiction over any crime in which an indictment has been returned by a grand jury, they can exercise original jurisdiction concurrent with the circuit court to receive guilty pleas for any felony not punishable by death.⁸¹

Municipal courts have original jurisdiction over violations of a city or town's municipal code.⁸² These can include traffic offenses, violations, and misdemeanors that are adopted from the state code into the municipal code.⁸³ The municipal court shares concurrent jurisdiction with the district court for all violations of state law committed within the police jurisdiction of the municipality, which may be prosecuted as breaches of municipal ordinances.⁸⁴ All cases are tried in front of a judge and without a jury.⁸⁵

B. *Alabama Circuit Court Sample*

We collected a sample of Alabama circuit court records from 1995, 2000, and 2005–2011 through an online interface known as Alacourt.⁸⁶ Alacourt is a relatively comprehensive database of case records for all trial court cases in Alabama state courts going back to at least the mid-1990s. Although many people convicted of a felony never serve time in a prison or other correctional facility, most people convicted of a felony in Alabama will have a record in circuit court, which has jurisdiction over all felony criminal prosecutions.⁸⁷

Figure 3.1 shows a sample case record downloaded from Alacourt. A typical court record includes the defendant's name, date of birth, gender, race, and whether they used a public defender. It also lists the criminal charge and the court action. Many other details, such as the terms of

⁷⁹ ALA. CODE § 12-11-30(3) (Westlaw through 2016 Reg. Sess.).

⁸⁰ *Id.* §§ 12-12-32(a), 12-12-51.

⁸¹ *Id.* § 12-12-32(b)(1), (2).

⁸² *Id.* § 12-14-1.

⁸³ *Id.* § 12-1-3.

⁸⁴ *Id.* § 12-14-1(c).

⁸⁵ *Id.* § 12-14-6.

⁸⁶ “Year” in this context refers to the filing date of the case.

⁸⁷ The exceptions are people who pled guilty to a felony in Alabama district court, or people who were convicted of a felony in Alabama circuit court, but who have subsequently had their record expunged. ALA. CODE § 12-11-30(2) (Westlaw).

confinement and the period of probation, are also observed, but not shown in Figure 3.1.

FIGURE 3.1

ALABAMA SJIS CASE DETAIL


 County: **63** Case Number: [REDACTED] Court Action: **GUILTY PLEA**
 Style: **STATE OF ALABAMA V.** [REDACTED] Name

Real Time

Case

Case Information

County: **63-TUSCALOOSA** Case Number: [REDACTED] Judge: **MBA-M. BRADLEY ALMOND**
 Defendant Status: **JAIL** Trial Type: [REDACTED] Charge: **THEFT OF PROP 1ST**
 Related Cases: [REDACTED] Court Action: **GUILTY PLEA**
 Probation Office #: [REDACTED] Probation Office Name: [REDACTED] DL Destroy Date: [REDACTED]
 Jury Demand: **True** Traffic Citation #: [REDACTED] Previous DUI Convictions: **000**
 Grand Jury Court Action: [REDACTED] Inpatient Treatment Ordered: [REDACTED]

Case Initiation

Case Initiation Date: **03/15/2005** Case Initiation Type: **ARREST** Offense Date: [REDACTED]
 Filing Date: **03/15/2005** Agency ORI: [REDACTED] Arresting Agency Type: **COUNTY**
 Arrest Date: **03/15/2005** Arresting Officer: **JACOBS** City Code/Name: **00**
 Indictment Date: **03/09/2005** Grand Jury: **05-321** Domestic Violence: **NO**

Defendant Information

Name: [REDACTED] Alias 1: [REDACTED] Alias 2: [REDACTED]
 Address 1: [REDACTED] Address 2: [REDACTED]
 City: [REDACTED] State: **AL** Zip: [REDACTED] Country: [REDACTED]
 DOB: [REDACTED] SSN: **XXX-XX-X802** Phone: **0**
 Driver License #: **AL** State ID: **AL000000000** Eyes/Hair: **BRO/BLK**
 Height: **5'09"** Weight: [REDACTED] Race/Sex: **B/M**
 Youthful Date: [REDACTED]
 AL Institutional Service Num: **000000**

Attorneys

Number	Attorney Code	Type of Counsel	Name	Email	Phone
Prosecutor 1	HAR092		HARGETT CHRISTOPHER WARRE	WHARGETT@HOTMAIL.COM	(205) 339-8628
Attorney 1	PUB001	A-APPOINTED	PUBLIC DEFENDER'S OFFICE		(205) 349-8200

Figure 3.2 shows that for each case, we observe the fines, fees, and restitution assessed to the defendant, the amount paid, and the remaining balance.⁸⁸

⁸⁸ Unless otherwise noted, we exclude records where the amount due in the Enforcement section is less than the bail fee of \$35. The minimum statewide docket fee in district court is \$111 (traffic), \$144 (misdemeanor), and \$217 (felony). The Case Summary (not pictured), which includes free-form notes on the progress of each case, provides evidence that an LFO this small might be due to incomplete reporting.

FIGURE 3.2

Enforcement			
Payer:	D001	Enforcement Status:	ACTIVE - PERMITS MAILERS RECEIPTING OR DA TURNOVER
Amount Due:	\$4,117.10	Amount Paid:	\$2,422.00
Due Date:	07/22/2013	Balance:	\$1,695.10
Over/Under Paid:	\$0.00	Frequency:	\$0.00
PreTrial:	YES	TurnOver Amt:	\$0.00
Delinquent:	YES	PreTrial Terms:	YES
Warrant Mailer:	YES	DA Mailer:	YES
Comments:		Last Update:	05/19/2014
		Updated By:	TEP

We collected our sample using Alacourt’s case number search query, seen in Figure 3.3. This query returns the court records associated with a specific case number. A case number in Alabama consists of a county, case year, and judicial division, plus a six-digit identifying number and a two-digit extension.⁸⁹ Cases are sequentially numbered in each judicial division in a case year. Thus, the first case in a judicial division in a given year is number 1, the second case of the year is number 2, and so forth.

FIGURE 3.3

Case Lookup

County: Select a county. (required)

Division: Select a division. (required)

Case Year: Four digit case year. (required)

Case Number: Ext Six digit Case Number. (required)

Number of Cases: Select a number to return subsequent cases. (optional)

Case Number: - - - .

We used systematic sampling to collect our sample of circuit court cases. We drew a random integer, $X_{j,y}$, which is uniformly distributed between 1 and 51, for a given judicial division j and case year y . In judicial division j and case year y , we downloaded the case record associated with case numbers $X_{j,y}, X_{j,y} + 51*1, X_{j,y} + 51*2, \dots$ until we reached a k such that $X_{j,y} + 51*k$ was larger than the highest case number in judicial

⁸⁹ The Alabama court system uses case extensions to differentiate between types of hearings. We collected only the initial case with a “.00” extension, and did not collect subsequent hearings, such as those concerning probation revocation, with different case extensions.

division j and case year y . In total, we collected 8,904 case records. Our analysis of these data focused on the 3,650 cases that contained at least one felony conviction.

C. *Alabama District Court Census*

We collected a census of court records for cases that originated in every district court in 2013. We first enumerated all of the case numbers in a judicial division's district court for 2013. We then downloaded the case record associated with each of these case numbers using Alacourt's case number search query.

District courts can hold preliminary hearings with respect to felonies, which are then continued in a related case in that jurisdiction's circuit court. In order to observe the final disposition of such cases, we also collected the related case data.

In total, we collected 135,564 district court cases and 36,473 circuit court cases. People were convicted of a misdemeanor in 34,388 of these cases and a felony in 19,559 of these cases.⁹⁰

D. *Montgomery Municipal Court*

We collected a census of criminal court records for cases that originated in the City of Montgomery Municipal Court in 2013 and January of 2015. As in Alacourt, case numbers are sequential, starting with 1. We first enumerated all potential case numbers, which we matched to an infraction by searching for that case number on a website where individuals can pay their LFOs online.⁹¹ For case numbers that matched, we then downloaded court records for that case number using the court's case number search query shown in Figure 3.4.⁹²

⁹⁰ Cases with both a misdemeanor and a felony conviction are classified as a felony conviction.

⁹¹ *Pay Tickets Online*, MONTGOMERY MUN. CT., <https://www.ncourt.com/x-press/x-onlinepayments.aspx?juris=1cbb3ad0-7f8d-4f83-b461-8474288aff11> [<https://perma.cc/Q3GR-V3LW>] (last visited Feb. 8, 2016).

⁹² *Case Search*, MONTGOMERYAL.GOV, <http://ecourt.montgomeryal.gov/benchmarkweb/> [<https://perma.cc/75U6-J6UK>] (last visited Feb. 8, 2016).

FIGURE 3.4

Case Search

Search Options

Name Case Number Citation Number Citation Vehicle Tag Number

Case Number must be in format YYYY case type plus six digit sequence number (2012TRT000123)

Advanced Options

We downloaded a total of 4,300 criminal misdemeanor cases for 2013 and 381 for January 2015. For each case, we downloaded a web page, which includes information regarding the parties, hearings associated with the case, and a description of events and legal actions. Specifically, we observed the charge, filing date, disposition, total LFOs assessed, and an itemized list of payments and associate dates.⁹³ A sample of such a page is shown in Figure 3.5.

⁹³ Unless otherwise noted, we exclude records where the amount due minus an applicable bail fee of \$35 is zero, as this might be due to inaccurate reporting.

FIGURE 3.5

Case Details - Summary						
2013CRA000341						
CITY OF MONTGOMERY vs. [REDACTED]						
Summary Additional Cases						
SUMMARY - PAY BALANCE ONLINE						
Judge:	MUNICIPAL JUDGE	Case Type:	Misdemeanor	Status:	OPEN	
Case Number:	2013CRA000341	Uniform Case Number:		Status Date:	1/24/2013	
Clerk File Date:	1/24/2013			Total Fees Due:	365.00	
SAO Case Number:		Agency Report #:		Booking #:		
Agency:	MONTGOMERY POLICE	Custody Location:				
PARTIES						
TYPE	PARTY NAME	ATTORNEY				
COMPLAINANT	[REDACTED]					
DEFENDANT						
PLAINTIFF	CITY OF MONTGOMERY					
CHARGES						
COUNT	DESCRIPTION	LEVEL	DEGREE	PLEA	DISPOSITION	DISPOSITION DATE
1	THEFT OF PROPERTY 3 (13A-6-5)					01/20/2013
EVENTS						
DATE	EVENT	JUDGE	LOCATION	RESULT		
6/24/2013 8:00 AM	COMPLIANCE	MUNICIPAL JUDGE	MAIN COURTROOM			
3/20/2013 1:00 PM	TRIAL	MUNICIPAL JUDGE	MAIN COURTROOM	CONTINUED		
2/13/2013 8:00 AM	CRIMINAL ARRANGMENT	MUNICIPAL JUDGE	MAIN COURTROOM	CONTINUED		
CASE BOCKETS						
DATE	ENTRY					
3/20/2013	THE DEF WAS REPRESENTED BY ATTY BEN SCHOETTKER					
3/20/2013	VALUE CLASS					
3/20/2013	CG; DEF IS ORDERED TO VALUE CLASS AND MUST DO 10 HOURS OF COMMUNITY SERVICE PER JUDGE WESTRY					
3/20/2013	CONTINUANCE					
3/20/2013	COMPLIANCE COURT SET FOR 06/24/2013 AT 8:00 AM IN MAIN COURTROOM					
3/20/2013	DEFENDANT ENTERED PLEA OF SEQ 1					
3/20/2013	CONDITIONAL GUILTY SEQ 1					
3/20/2013	CONTINUANCE					
3/20/2013	DAILY COURT SET FOR 03/20/2013 AT 8:00 AM IN MAIN COURTROOM					
2/13/2013	SUBPOENA STATUS SET TO SERVED ON 02/13/2013					
2/17/2013	PAYMENT 336.00 RECEIPT #2013014271					
2/13/2013	SUBPOENA ISSUED					

Using the same procedure, we also collected a census of traffic cases originating in January 2013 and January 2015. We downloaded 6,166 cases from 2013 and 5,247 cases from 2015.

IV. RESULTS

A. Evidence of LFO Assessments Increasing over Time

Many researchers claim that LFOs have been increasing in recent years.⁹⁴ This assertion fits into a larger narrative that tracks the growth of

⁹⁴ See Alan Rosenthal & Marsha Weissman, *Sentencing for Dollars: The Financial Consequences of a Criminal Conviction* 15 (Justice Strategies, Working Paper, 2007), <http://www.communityalternatives.org/pdf/financial%20consequences.pdf> [https://perma.cc/6AF7-XQ4Q] (“States . . . have both increased the number and kinds of financial penalties and also exposed more people to these sanctions.”); see also Beckett & Harris, *supra* note 15, at 512 (“Although monetary sanctions are not new, legislatures have authorized many new fees and fines in recent years, and criminal justice agencies increasingly impose them.”); Natapoff, *supra* note 12, at 1326 (“Fines, costs, and other economic penalties assessed against misdemeanor defendants have also ballooned”); Leah A. Plunkett, *Captive Markets*, 65 HASTINGS L.J. 57, 67 (2013) (arguing LFOs have become the norm

the carceral state and the concomitant budgetary strains on the criminal justice system.

Criminal justice budgets swelled in the last four decades as the U.S. incarceration rate began its steep seven-fold increase.⁹⁵ In 1982, total justice expenditures across federal, state, and local governments were about \$85 billion.⁹⁶ In the following twenty years, expenditures more than doubled to about \$225 billion, though growth has been flat since.⁹⁷ While a majority of this spending relates to police protection and corrections, judicial and legal services represented about \$50 billion in 2007, with about 80% coming out of state and local budgets.⁹⁸ Criminal caseloads in state courts have also generally increased along with the rise in incarceration—from approximately 10 million in 1984 to 20 million in 2009.⁹⁹

These trends are evident in Alabama, where the expenditures of the state’s Unified Judicial System (UJS) doubled from approximately \$95 million in 1995 to about \$180 million in 2013.¹⁰⁰ During this time, the state’s total caseload increased dramatically from 1997 to 2010—particularly in district court filings¹⁰¹—though it has fallen off in recent years.¹⁰²

rather than the exception due to the expansion of economic sanctions since the 1970s); SpearIt, *supra* note 15, at 47 (stating that the imposition of financial obligations on criminals is a growing trend).

⁹⁵ MARIE GOTTSCHALK, *THE PRISON AND THE GALLOWES: THE POLITICS OF MASS INCARCERATION IN AMERICA* 5 (2006).

⁹⁶ KYCKELHAHN, *supra* note 26, at 5 tbl.1.

⁹⁷ *Id.*; see also COUNCIL OF ECON. ADVISERS, *supra* note 51, at 5 (“Despite their goal of increasing revenue to fund local criminal justice expenditures, in many cases, the costs of collection may exceed revenues from fines and fees due to the high direct costs of collecting debt and the low rate of collection. Direct costs of administering the program can be substantial, including staffing collectors, locating offenders, and administering collections.”).

⁹⁸ KYCKELHAHN, *supra* note 26, at 5 tbl.3.

⁹⁹ These data come from multiple reports of the Court Statistics Project, which detail criminal filings in state courts of limited and general jurisdiction. For figures from 1984 to 1995, see BRIAN J. OSTROM & NEAL B. KAUDER, COURT STATISTICS PROJECT, EXAMINING THE WORK OF STATE COURTS, 1995: A NATIONAL PERSPECTIVE FROM THE COURT STATISTICS PROJECT 51–52 (2006), <https://www.ncjrs.gov/pdffiles1/Digitization/164865NCJRS.pdf> [<https://perma.cc/8MYB-63XG>].

For the 2009 figures, see *State Court Caseload Statistics*, CT. STAT. PROJECT, <http://www.courtstatistics.org/other-pages/statecourtcaseloadstatistics.aspx> [<https://perma.cc/42ZB-2UYR>] (follow “Civil and Criminal—National Caseloads” hyperlink) (last visited Feb. 8, 2016). For tables and figures comparable to the 1984–1995 data for the period of 2004–2010, see COURT STATISTICS PROJECT, EXAMINING THE WORK OF STATE COURTS: AN OVERVIEW OF 2013 STATE COURT CASELOADS 4–8 (2015), http://www.courtstatistics.org/~media/Microsites/Files/CSP/EWSC_CSP_2015.ashx [<https://perma.cc/BGL7-Q56R>].

¹⁰⁰ PUB. AFFAIRS RESEARCH COUNCIL OF ALA., PARCA COURT COST STUDY 6 chart 1 (2014), <https://www.alabar.org/assets/uploads/2015/03/PARCA-Court-Cost-Study-FINAL-3-5-15.pdf> [<https://perma.cc/2JJM-DUZZ>].

¹⁰¹ In district courts in Alabama, there were approximately 650,000 cases filed in 1997 and 1,000,000 cases filed in 2010. ALA. ADMIN. OFFICE OF COURTS, THE UNIFIED JUDICIAL SYSTEM OF ALABAMA: 2001 ANNUAL REPORT 15 (2001), <http://www.alacourt.gov/Annual%20Reports/2001AOC>

This expansion in the court system has generated budgetary pressure and left many state courts feeling inadequately funded,¹⁰³ a view that has likely only increased as the recession further reduced the funding of most states' court systems by 10–15% between 2008 and 2012.¹⁰⁴

In Alabama, the recent state court budgets have remained constant, but the source of the revenue has shifted. In 2008, the UJS relied on the state's General Fund for about 85% of its appropriations, a little more than half of which came from revenue that the judicial system itself collected and contributed.¹⁰⁵ By 2013, almost all revenue from the General Fund was generated by the courts themselves.¹⁰⁶ In lieu of legislative appropriations—which fell off from about \$68 million to less than \$3 million in a period of six years—the UJS handled the budget pressure by turning to other revenue sources, including creating additional LFOs.¹⁰⁷

In 2012, when local court officials across Alabama realized that a significant increase in funding from the state coffers was unlikely to come to fruition, they instead began to lobby legislators for a statewide increase in docket fees.¹⁰⁸ Court clerks became “frequent visitors to the State House . . . to urge lawmakers” to increase court fees.¹⁰⁹ One clerk threatened layoffs, telling local reporters “if the bill does not pass, we’re

AnnualReport.pdf [https://perma.cc/G5AA-E8SP] [hereinafter ALA. AOC, 2001 ANNUAL REPORT]; ALA. ADMIN. OFFICE OF COURTS, ALABAMA UNIFIED JUDICIAL SYSTEM: FISCAL YEAR 2013 ANNUAL REPORT AND STATISTICS 156 (2013), <http://www.alacourt.gov/Annual%20Reports/2013AOCAnnualReport.pdf> [https://perma.cc/4BKJ-HS2L] [hereinafter ALA. AOC, 2013 ANNUAL REPORT].

¹⁰² ALA. AOC, 2001 ANNUAL REPORT, *supra* note 101, at 15; ALA. AOC, 2013 ANNUAL REPORT, *supra* note 101, at 163.

¹⁰³ See Daniel J. Hall & Thomas Clarke, *Delivering Judicial Services in Hard Times*, in FUTURE TRENDS IN STATE COURTS 2008, at 64 (2008), http://www.ndrc.org/sites/default/files/future_trends_2008.pdf [https://perma.cc/364G-JMRP] (“[A NCSC] survey shows that court administrators are already beginning to deal with looming shortfalls as 34 state courts have begun to take measures to deal with pending budget shortages.”).

¹⁰⁴ Peter T. Grossi, Jr. et al., *Crisis in the Courts: Reconnaissance and Recommendations*, in FUTURE TRENDS IN STATE COURTS 2012, at 83 (2012), <http://ncsc.contentdm.oclc.org/cdm/ref/collec tion/financial/id/181> [https://perma.cc/8DMK-NFUA].

¹⁰⁵ PUB. AFFAIRS RESEARCH COUNCIL OF ALA., *supra* note 100, at 10 chart 4.

¹⁰⁶ See *id.* at 11 (stating that “[a]s a result of these actions, UJS appropriations from other, earmarked sources rose to \$52 million or 30% of the total in FY13,” including highway revenues).

¹⁰⁷ *Id.* at 10.

¹⁰⁸ The establishment of Alabama's Unified Judicial System in 1973 meant that all courts—state and local—would be governed by the same rules, including a standardized system of fines and fees. This had the effect of limiting any given locality from having full control over setting the court fees it charges. *Id.* at 2 (“The underlying goal of the 1973 reform was to create an adequately-supported, independent judiciary and a statewide judicial system with a predictable, transparent and uniform set of rules . . .”).

¹⁰⁹ Bob Johnson, *Bill Promotes Court Fees Increase: Legislature to Discuss Raising Fees to Ease Budget Cuts from Alabama's Court System*, TUSCALOOSA NEWS (May 12, 2012), <http://www.tuscaloosanews.com/article/20120512/NEWS/120519972?p=2&tc=pg&tc=ar> [https://perma.cc/8PNP-WKBB].

looking at losing around 500 jobs.”¹¹⁰ The final version of the bill increased the docket fee by \$40 for all criminal cases and \$26 for traffic cases.¹¹¹

This recent Alabama episode mirrors cases in other states in which the judiciary has advocated for budget increases, often through user fees. In Maine, for example, a recent round of budget cuts “prompted the judges to threaten a moratorium on civil and criminal trials.”¹¹² Likewise, a spokesman for the Kansas Judicial Branch noted that a 2011 bill that increased court fees would prevent judicial employees from having to take “extreme cost-saving measures,” such as furloughs for judiciary employees.¹¹³ More broadly, the National Center for State Courts recommends that judicial administrators focus their efforts on improving existing relationships with state legislatures in their attempts to deal with court budget shortfalls.¹¹⁴

However, the empirical, rather than anecdotal, evidence documenting this increase is limited.¹¹⁵ Testing the claim requires longitudinal data, but the best empirical evidence on LFO assessment is cross-sectional.¹¹⁶ The longitudinal evidence that does exist comes from a pair of national surveys that asked whether respondents were assessed any LFOs. The Survey of Inmates in State and Federal Correctional Facilities reports that the likelihood of being assessed at least one monetary sanction increased from 25% to 66% between 1991 and 2004.¹¹⁷ Likewise, sentencing statistics from the Bureau of Justice Statistics show that the percentage of convicted felons assessed a fine grew from less than 20% in 1986 to over 30% by

¹¹⁰ *Id.*

¹¹¹ Act of May 22, 2012, § 1(a)(2), 2012 Ala. Acts 1582, 1583.

¹¹² Ari Shapiro, *Budget Cuts, Bigger Work Load Cramp State Courts*, NPR (Mar. 27, 2008), <http://www.npr.org/templates/story/story.php?storyId=89140782> [<https://perma.cc/F2VM-MNBM>].

¹¹³ Kevin Hardy, *Court Fees Increasing—Pushing Up Cost of Traffic Tickets, Marriage Licenses and More*, HUTCHINSON NEWS, July 9, 2011, NewsBank, No. 138614010E3B3BF8.

¹¹⁴ See Hall & Clarke, *supra* note 103, at 5 (“Courts should continue to pursue traditional options like better legislative relations and new fees to protect existing sources of funding where possible.”); see also Daniel J. Hall et al., *Balancing Judicial Independence and Fiscal Accountability in Times of Economic Crisis*, JUDGES’ J., Summer 2004, at 5, 9 (“Judges and court administrators should . . . assume a more active role in the legislative process on matters affecting court operations and governance . . . and actively educate the other branches and the media about the judiciary’s adjudicative and administrative functions.”).

¹¹⁵ See SpearIt, *supra* note 15, at 47 (noting the growing trend in imposing financial penalties, even though research in the area is limited).

¹¹⁶ See, e.g., Harris et al., *supra* note 8, at 1753, 1755–56 (focusing on felony cases in Washington State during the first two months of 2004); Ruback & Clark, *supra* note 5, at 753 (examining cases sentenced and adjudicated in Pennsylvania in 2006 and 2007).

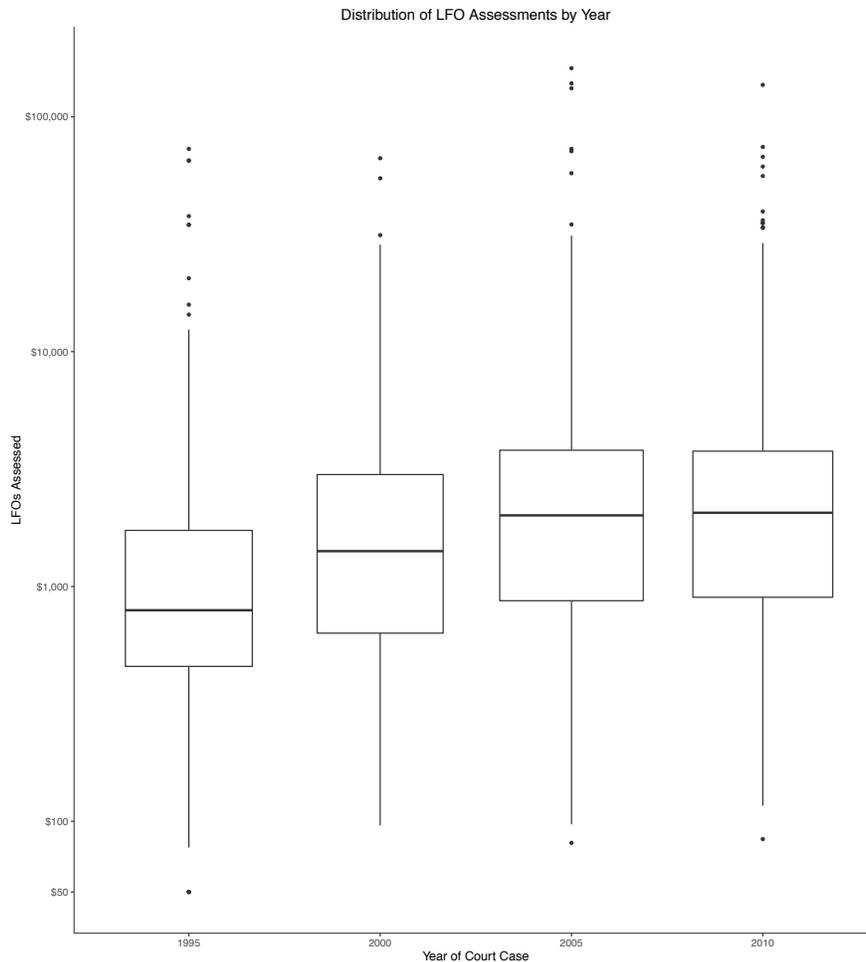
¹¹⁷ Harris et al., *supra* note 8, at 1769.

2004.¹¹⁸ But no previous work documents how the magnitude—rather than the use—of monetary sanctions varies over this time period.

Our longitudinal sample of Alabama felony circuit court cases in 1995, 2000, and 2005–2011 allows us to build on this concept and explore how the assessment of LFOs has evolved over the past twenty years in cases with at least one felony conviction. Figure 4A.1 shows a box plot of the total fines, fees, and restitution accrued by cases in 1995, 2000, 2005, and 2010, confirming the upward trend in the amount of total LFOs over time. However, this increase is somewhat obscured by the rightward skew in the distribution, which is the result of a small number of cases in which defendants accrued tens of thousands of dollars in LFOs.

¹¹⁸ JOHN M. DAWSON, U.S. DEP'T OF JUSTICE, FELONS SENTENCED TO PROBATION IN STATE COURTS, 1986, at 3 tbl.3 (1990), <http://www.bjs.gov/content/pub/pdf/fspsc86.pdf> [<https://perma.cc/7R EW-ZF24>] (showing eighteen percent of felony convictions entailed a fine); *State Court Sentencing of Convicted Felons, 2004—Statistical Tables*, BUREAU JUST. STAT., <http://www.bjs.gov/content/pub/html/scscf04/tables/scs04109tab.cfm> [<https://perma.cc/M3XS-8C8K>] (last visited Apr. 30, 2016) (showing thirty-three percent of felons incur a fine as an additional penalty).

FIGURE 4A.1

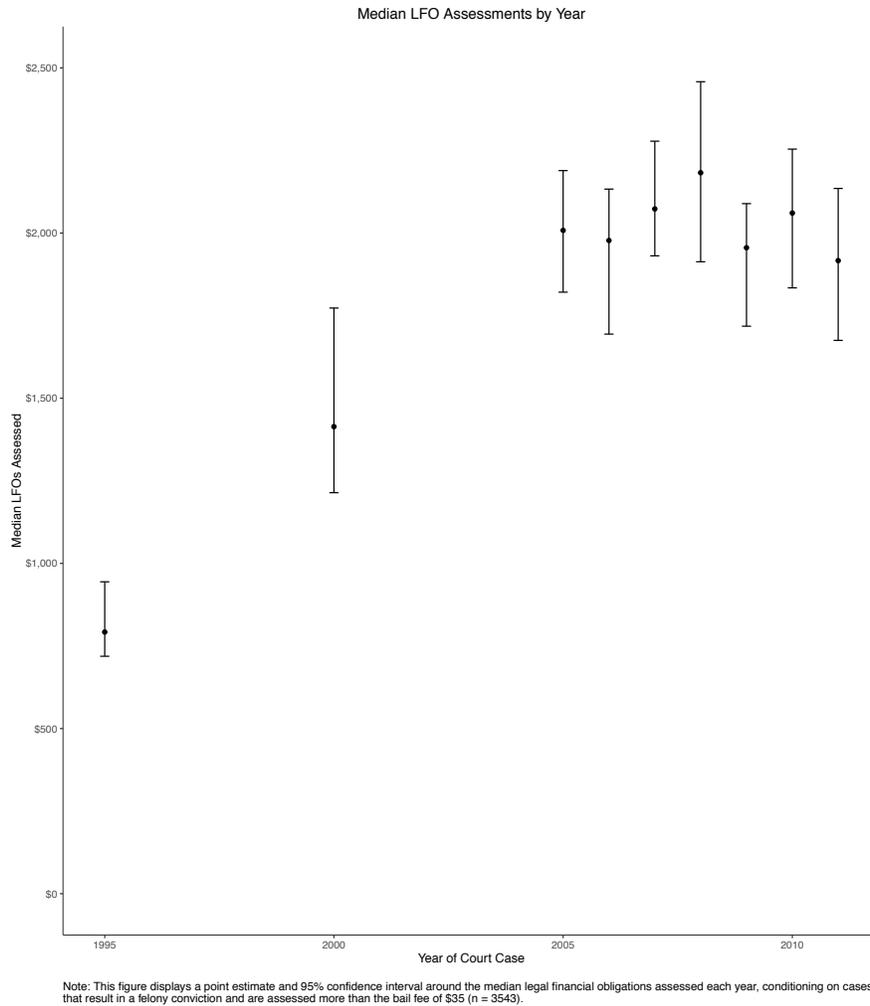


Note: This box plot displays the total legal financial obligations assessed in cases that result in a felony conviction and are assessed more than the bail fee of \$35 (n = 3,543). The y-axis is log-scaled.

The upward trend in LFOs is more clearly illustrated by Figure 4A.2, which plots the median amount of LFOs accrued by case and year. Figure 4A.2 shows the median amount of LFOs doubled from just under \$1,000 in 1995 to about \$2,000 in 2005, where it has remained since. While this increase may not seem that dramatic, it is quite a substantial change relative to the average income of the convicted felon population. Using the National Longitudinal Survey of Youth, Bruce Western estimates that the average annual income of the formerly incarcerated population was about

\$9,000 in 2004.¹¹⁹ A convenience sample survey of convicted felons in Alabama reports a similar figure in 2014.¹²⁰ This implies that the increase in the median LFO assessment in a felony case in Alabama is equal to more than ten percent of expected annual income.

FIGURE 4A.2



¹¹⁹ BRUCE WESTERN, PUNISHMENT AND INEQUALITY IN AMERICA 120 (2006).

¹²⁰ See FOSTER COOK, THE BURDEN OF CRIMINAL JUSTICE DEBT IN ALABAMA: 2014 PARTICIPANT SELF-REPORT SURVEY 4 (2014), https://www.uab.edu/medicine/substanceabuse/images/The_Burden_of_Criminal_Justice_Debt_in_Alabama-Part_1_Main_Report.pdf [<https://perma.cc/Q74A-GEHV>] (reporting a median income of \$8,000 and mean income of \$10,894.00).

B. *Underestimating the Extent of Legal Financial Obligations*

While the previous subpart focused on felony convictions in Alabama, a felony-centric view of criminal justice will underestimate the extent of increasing LFOs in the United States. As LFOs have increased, they have become embedded in the modern administration of criminal justice,¹²¹ extending not just to felony cases but to misdemeanor and traffic cases, too. Approximately eighty percent of the caseloads in state courts are misdemeanors.¹²² Moreover, the sole punishment associated with a traffic violation is often the assessment of an LFO.

Relatedly, many of these monetary sanctions are tied to sentences that do not include incarceration, the most common of which is community supervision. Those under supervision include people sentenced to probation, who may have been found guilty or given a conditional sentence.¹²³ While nearly seven million people are under some form of correctional control on any given day, only a little more than two million are in prison or jail.¹²⁴

Alabama's Sentencing Commission, which was created in 2000 in response to the "skyrocketing costs" of incarceration and "prison overcrowding,"¹²⁵ endorsed these alternatives to incarceration, transforming sentencing from a traditional scheme to a "continuum of punishment options"¹²⁶ that stressed judicial discretion and greater flexibility.¹²⁷ The resulting legislative bill underlines the need to incorporate these dispositions into studying the growth of monetary sanctions.

The bill outlines twenty-nine intermediate punishments, which cover a wide range of alternatives to incarceration, including community service, drug or alcohol testing, drug court programs, educational and job readiness programs, pretrial diversion programs, and residential community-based

¹²¹ See Katzenstein & Nagrecha, *supra* note 27, at 555 (addressing the new criminal punishment regime of fees and fines).

¹²² Natapoff, *supra* note 12, at 1315 (citing SEAN ROSENMERKEL ET AL., U.S. DEP'T OF JUSTICE, FELONY SENTENCES IN STATE COURTS, 2006—STATISTICAL TABLES 3 (2009), <http://www.bjs.gov/content/pub/pdf/fssc06st.pdf> [<https://perma.cc/45A8-6MS2>]). See generally Gordon & Glaser, *supra* note 69, at 651–54 (discussing the centrality of fines in misdemeanor courts).

¹²³ For more on conditional sentences, see Michael Tonry & Mary Lynch, *Intermediate Sanctions*, 20 CRIME & JUST. 99, 100–03 (1996).

¹²⁴ LAUREN E. GLAZE & SERI PALLA, U.S. DEP'T OF JUSTICE, PROBATION AND PAROLE IN THE UNITED STATES, 2003, at 1 (2004), <http://www.bjs.gov/content/pub/pdf/ppus03.pdf> [<https://perma.cc/YP87-QJS5>]; see also Ruback & Bergstrom, *supra* note 46, at 243 (emphasizing the importance of cases that do not end in incarceration, because "although the number of prisoners has jumped from 218,205 at year-end 1974 . . . to more than 1.3 million at year-end 2000 . . . imprisonment is now less likely than it was 10 years ago").

¹²⁵ ALA. R. CRIM. P. 26.8.

¹²⁶ ALA. CODE § 12-25-32 (Westlaw through 2016 Reg. Sess.).

¹²⁷ ALA. R. CRIM. P. 26.8.

punishment programs.¹²⁸ Intermediate punishments can be combined in a single sentence. For example, one intermediate punishment, termed a split sentence, refers to the particular combination of imprisonment followed by a period of probation.¹²⁹ The Alabama Rules of Criminal Procedure now recommends what it terms a “reverse split” sentence, deeming it a “judicial innovation.” A split sentence is reversed by ordering the period of probation before the period of incarceration, allowing a defendant to potentially avoid confinement, though not their LFOs.¹³⁰

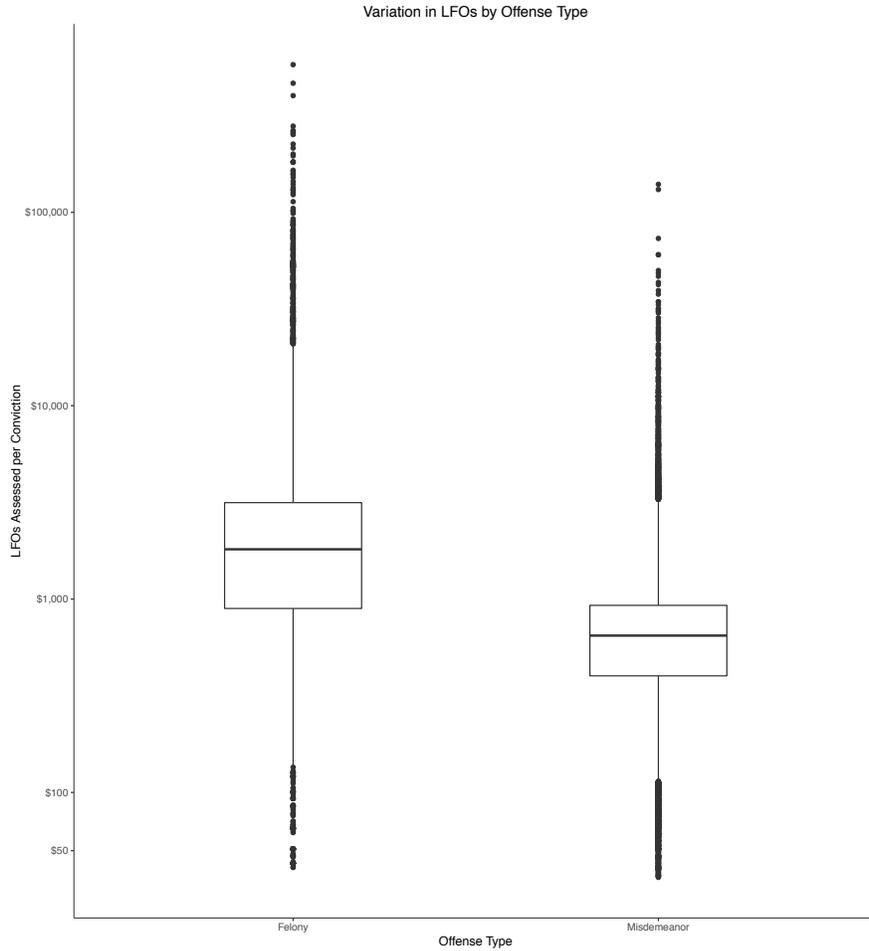
Our empirical analysis in this subpart begins by analyzing the state court system, which is often the focus of our inquiry because of its centralized records. Our cross-sectional collection of case records initiated in Alabama district court in 2013 helps to illustrate the complexity of estimating the extent of LFOs. Figure 4B.1 presents a box plot of the total LFOs assessed in cases with a misdemeanor and felony conviction. In cases with a felony conviction, we observe the median LFO assessment was \$1,808, with an interquartile range of \$893 to \$3,150. LFOs are less in cases with a misdemeanor conviction, with a median LFO assessment of \$646, and an interquartile range of \$400 to \$927. In 6,502 of the 30,858 cases with a misdemeanor conviction, we observe an LFO assessment of over \$1,000.

¹²⁸ ALA. CODE § 12-25-32 (Westlaw).

¹²⁹ *Id.* § 15-18-18.

¹³⁰ ALA. R. CRIM. P. 26.8.

FIGURE 4B.1



Note: This box plot displays the total legal financial obligations assessed, comparing cases with at least one felony conviction to cases with at least one misdemeanor conviction and no felony convictions, conditioning on cases in which more than the bail fee of \$35 is assessed (n = 18,458 for felonies, n = 30,858 for misdemeanors). The y-axis is log-scaled.

Table 4B.2 illustrates the importance of fully accounting for LFOs assessed in cases with less serious offenses. This table presents the aggregate amount assessed in cases initiated in Alabama district court in 2013 based on a defendant’s type of offense and whether or not the court imposed a period of incarceration on the defendant. Felony convictions with an imposed period of incarceration constituted only 41.8% of the total amount assessed in cases initiated in 2013. The importance of accounting for LFOs in misdemeanor cases is highlighted by the fact that the state courts assessed more than \$25 million in LFOs in misdemeanor convictions.

TABLE 4B.2

No. of Cases	Total Due (\$)	Disposition
11,942	37,912,200	Felony Conviction, Sentence Imposed
6,068	20,995,700	Felony Conviction, No Sentence Imposed
2,343	2,699,760	Misdemeanor Conviction, Sentence Imposed
28,434	23,691,700	Misdemeanor Conviction, No Sentence Imposed
8,780	5,332,340	Dismissed Case, But Positive LFO Assessment
<p>“Felony Conviction, Sentence Imposed” captures all cases with a felony conviction and a positive imposed sentence in months.</p> <p>“Felony Conviction, No Sentence Imposed” captures all cases with a felony conviction but zero imposed sentence in months.</p> <p>“Misdemeanor Conviction, Sentence Imposed” captures all cases with a misdemeanor conviction but no felony conviction and a positive imposed sentence in months.</p> <p>“Misdemeanor Conviction, No Sentence Imposed” captures all cases with a misdemeanor conviction but no felony conviction and zero imposed sentence in months.</p> <p>“Dismissed Case, But Positive LFO Assessment” captures all cases in which all charges are dismissed but the LFO assessment was greater than zero.</p>		

Focusing only on cases with a conviction, however, does not account for all LFOs that are assessed. A non-zero amount of LFOs are assessed in cases that are either dismissed or *nolle prosequi*. Sometimes the disposition explicitly notes that the case was dismissed with conditions, while other times nothing is noted except the LFO assessment. The final row of Table 4B.2 shows that there were 8,780 such cases in our data that generated about \$5.3 million in LFO assessments.¹³¹

Our census of cases initiated in district court underestimates the extent that LFOs are assessed in misdemeanor cases, as a substantial number of misdemeanors are adjudicated in independent municipal courts that dot the state rather than in the UJS.¹³² Filings in municipal court represented 45% of all filings in 1997 and 40% of all filings in 2014.¹³³

To illustrate this point, we next compare LFO assessments made in the Montgomery County District Court to those made in the City of Montgomery Municipal Court in 2013. Table 4B.3 shows that the total amount of LFOs assessed for misdemeanors is larger in the City of

¹³¹ See THOMAS HARVEY ET AL., ARCHCITY DEFENDERS: MUNICIPAL COURTS WHITE PAPER 7–9 (2014), <http://03a5010.netsolhost.com/WordPress/wp-content/uploads/2014/11/ArchCity-Defenders-Municipal-Courts-Whitepaper.pdf> [<https://perma.cc/8TZ8-R8UL>] (demonstrating that in Missouri, for example, if an individual pays the LFOs and attorney fees on a traffic offense, which can range from \$200 to \$300, either the charge is downgraded or the offender is not convicted—however, for offenders who are unable to pay, they are at risk for suspension of their license and are still liable to pay the LFOs assessed).

¹³² This is not a concern for felony convictions, which cannot be adjudicated in municipal courts.

¹³³ See ALA. ADMIN. OFFICE OF THE COURTS, ALABAMA UNIFIED JUDICIAL SYSTEM: FISCAL YEAR 2014 ANNUAL REPORT AND STATISTICS 144, 156, 163 (2014), www.alacourt.gov/Annual%20Reports/2014AOCAnnualReport.pdf [<https://perma.cc/L42K-5Q7C>]; ALA. ADMIN. OFFICE OF THE COURTS, THE UNIFIED JUDICIAL SYSTEM OF ALABAMA: 2001 ANNUAL REPORT 15 (2001), <http://digital.archives.alabama.gov/cdm/singleitem/collection/adah/id/763/rec/11> [<https://perma.cc/RL7R-7V4Y>].

Montgomery Municipal Court than in Montgomery County District Court, largely because it adjudicates more cases. This suggests that Table 4B.2 substantially understates the relative share of LFO assessments in Alabama that are derived from misdemeanor convictions relative to felony convictions.

TABLE 4B.3

No. of Cases	Total Due (\$)	Disposition
353	2,661,880	Felony Guilty Montgomery County
444	442,014	Misdemeanor Convicted Montgomery County
354	32,197	Not Convicted Montgomery County
2,224	777,500	Misdemeanor Convicted Criminal City of Montgomery
66	19,171	Not Convicted Criminal City of Montgomery
4,286	805,113	Convicted Traffic LFOs Jan. 2013 City of Montgomery
396	100,422	Convicted Criminal LFOs Jan. 2013 City of Montgomery
<p>This table considers the total amount of legal financial obligations assessed across a range of cases in Montgomery. To compare county cases to municipal cases, we first limited the county cases to those with only one criminal charge, as the municipal data only has one charge per conviction. The cases are not restricted by LFO balance—a potentially excess number of zero assessments will not affect the total due, but will affect the number of cases presented. We chose to not drop data because of the different data standards between the county and municipal court. “Not Convicted Montgomery County” includes all types of cases, including felonies, misdemeanors, violations, and others.</p>		

Even after accounting for misdemeanor cases—in both state court and municipal court, among both convictions and dismissals—our emerging picture of the assessment of LFOs does not include people like Harriet Cleveland, whose story began with a traffic ticket.¹³⁴ The final two rows of Table 4B.3 show that omitting traffic LFOs would lead us to miss a crucial piece of the LFO puzzle. These two rows compare the total criminal and traffic LFOs assessed in the City of Montgomery Court in January of 2013. These rows demonstrate that about eight times more LFOs were assessed for traffic violations than for misdemeanors. If the amount of LFOs assessed for traffic violations in January is roughly comparable to the amount of LFOs assessed for traffic violations in other months of the year, this means that more LFOs are assessed in traffic violations than all criminal assessments in the Montgomery County District Court, Circuit Court, and the City of Montgomery Municipal Court combined.

C. Legal Financial Obligations in County and Municipal Politics

The Balkanized nature of the criminal justice system means that not only states, but also the local governments within them, are important actors in the assessment of LFOs. One consequence is the inconsistent manner in which LFOs are applied, which parallels other vagaries in

¹³⁴ See *supra* text accompanying notes 32–39 (describing the Harriet Cleveland case).

criminal justice policy more generally.¹³⁵ In this vein, a number of commentators have highlighted examples of people who received dramatically different LFO assessments despite being convicted of nearly identical crimes.¹³⁶

Previous work shows that county LFO policy is an important source of this heterogeneity.¹³⁷ Prior to 1973, Alabama had a system of locally set court costs with a centralized, statewide administration.¹³⁸ In that year, Alabama passed a constitutional amendment¹³⁹ that attempted to standardize the administration of justice across county lines by becoming one of the first states to establish a unified judicial system.¹⁴⁰ Over time, however, subsequent constitutional amendments have returned power to individual counties to specify additional local court costs, re-establishing “the kinds of local variation and complexity that the 1973 reform sought to eliminate.”¹⁴¹

Over the last four decades, the state legislature of Alabama has approved more than 400 local acts establishing varying court costs and fees in different counties.¹⁴² These increases in LFOs are often responding to local needs. Some are related to a local need to fund particular criminal justice programs. For example, the Alabama State Bar reported that Lamar County chose to levy additional court costs on misdemeanor drug convictions to fund the sheriff’s canine unit.¹⁴³ Others satisfy multiple constituencies, some more related to the court system than others. Madison County uses additional revenue to fund pay raises, both for deputies and

¹³⁵ See Beckett & Harris, *supra* note 15, at 514 (describing cases in which similar defendants incurred different LFOs); Burch, *supra* note 15, at 541 (positing that administrative confusion leads to disparities in the fines imposed on offenders); Ruback & Clark *supra* note 5, at 764–70 (concluding based on data collected across the counties of Pennsylvania that the fines imposed vary across counties and individuals); see also BANNON ET AL., *supra* note 8, at 14 (commenting on the lack of clear standards for imposing fines on offenders and suggesting factors to be considered in constructing such standards).

¹³⁶ See KATHERINE A. BECKETT ET AL., WASH. STATE MINORITY & JUSTICE COMM’N, THE ASSESSMENT AND CONSEQUENCES OF LEGAL FINANCIAL OBLIGATIONS IN WASHINGTON STATE 24 (2008), http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf [<https://perma.cc/8JEE-H9VP>] (presenting data that illustrates the variation in LFO assessments across cases with similar legal characteristics).

¹³⁷ See Ruback & Clark, *supra* note 5, at 767 (finding that there were more than two thousand distinct economic sanctions applied in Pennsylvania, the majority of which were created by particular counties).

¹³⁸ PUB. AFFAIRS RESEARCH COUNCIL OF ALA., *supra* note 100, at 2.

¹³⁹ See ALA. CONST. art. IV, § 96 (“The legislature shall not enact any law not applicable to all the counties in the state, regulating costs and charges of courts, or fees, commissions or allowances of public officers.”).

¹⁴⁰ PUB. AFFAIRS RESEARCH COUNCIL OF ALA., *supra* note 100, at 2.

¹⁴¹ *Id.* at 3.

¹⁴² *Id.*

¹⁴³ *Id.* at 12.

also for county employees,¹⁴⁴ while Lawrence County directed its additional revenue to the county historical commission.¹⁴⁵ The Census of Governments illustrates the importance of considering local practices. In 2012, it asked each jurisdiction to report how much revenue it collected in fines and forfeitures.¹⁴⁶ Figure 4C.1 shows that while some counties collected upwards of \$30 per resident, others collected less than \$5.¹⁴⁷ The median county collected about \$12 per person.

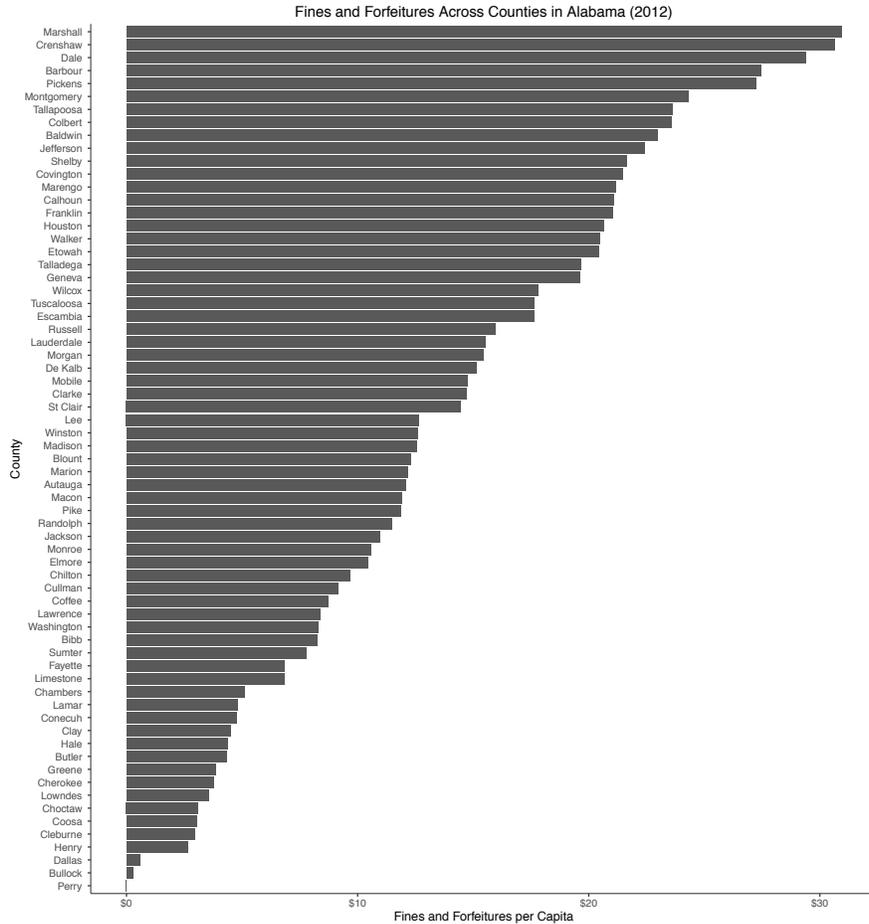
¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *See supra* note 44 and accompanying text.

¹⁴⁷ *See id.* Figure 4C.1 aggregates the revenue collected by municipal, district, and circuit courts within a county by summing the total revenue from fines and forfeitures of all jurisdictions reporting data in the county.

FIGURE 4C.1



Note: The data comes from 2012 Census of Governments: State & Local Finances, collected by the U.S. Census Bureau. Fines and forfeits (code U30) are defined as "revenue from penalties imposed for violations of law; civil penalties (e.g., for violating court orders); court fees if levied upon conviction of a crime or violation; court-ordered restitutions to crime victims where government actually collects the monies; and forfeits of deposits held for performance guarantees or against loss or damage (such as forfeited bail and collateral)." It excludes "penalties relating to tax delinquency; library fines; and sale of confiscated property."

This variation in revenue could stem from a number of factors. We consider whether it is driven by differences in assessment, either because statutory sanctions differ across jurisdictions, as evidenced above, or because the decision to assess them does. There are substantial differences in the docket fees assessed in each of the seventy-three district courts. A felony defendant in Alabama’s UJS faces docket fees of \$225 if taken to court in Marengo County, as compared to \$459 if taken to court in Madison County.¹⁴⁸

¹⁴⁸ PUB. AFFAIRS RESEARCH COUNCIL OF ALA., *supra* note 100, at 17.

These financial obligations, however, are not always assessed. Instead, judges have considerable discretion in choosing whether or not to apply a given sanction.¹⁴⁹ Previous research suggests that judges may favor certain types of defendants over others,¹⁵⁰ including when deciding which LFOs are assessed.¹⁵¹ It may also be the case that certain judges are generally more punitive or sympathetic when imposing these financial obligations, regardless of the defendant.¹⁵²

To examine the extent to which the assessment of LFOs varies across individuals convicted of a crime in Alabama, we again draw on our census of Alabama court records of all criminal cases initiated in Alabama district court in 2013. For the purpose of examining variation in LFOs over counties, a useful feature of these data is the sheer number of cases that we are able to observe. Not only do we observe a substantial number of convictions within all counties, but in some of our larger court districts we even observe a relatively large number of people who were all convicted on a single count of the exact same charge. This allows us to compare variation both within and across counties in the LFOs assessed to people who were convicted on the same charge.

We first look at the extent to which judicial districts differ in the median amount of LFOs assessed per conviction. Figure 4C.2 shows the median LFO assessed on a misdemeanor case in descending order in each of the seventy-three district courts in Alabama. This figure highlights the substantial variation over judicial districts in LFO assessment. For example, the median assessment in Calhoun County is \$978, which is more than double the \$428 median assessment in DeKalb County.

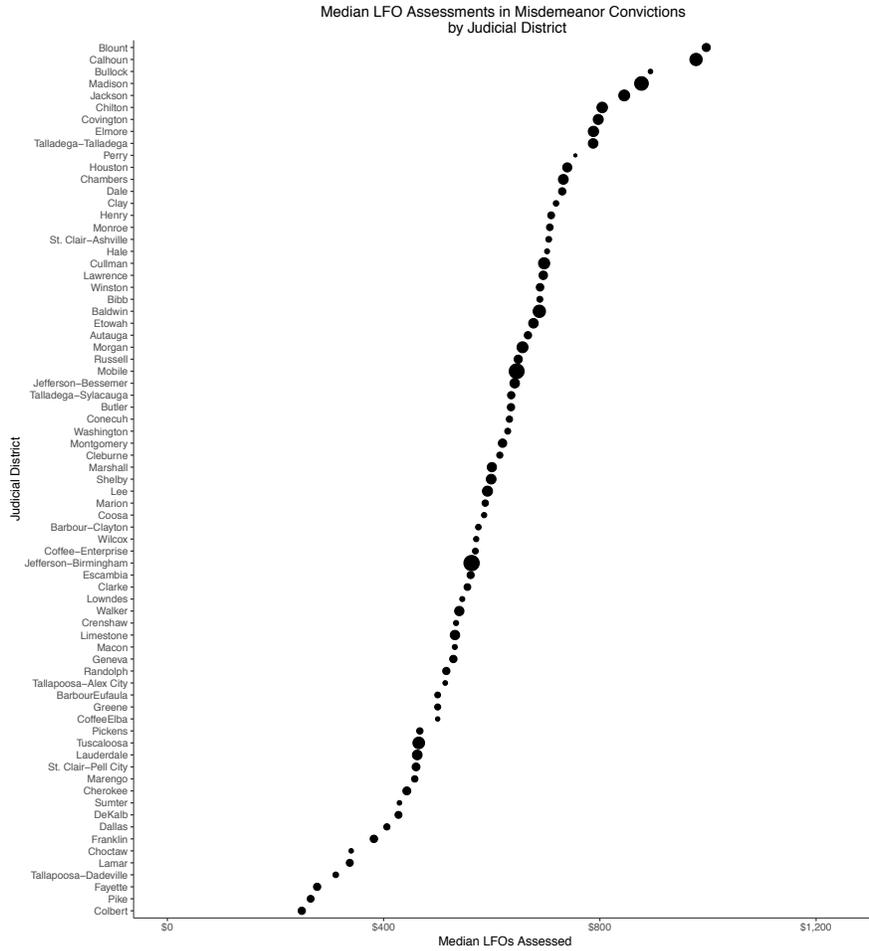
¹⁴⁹ See Bridget McCormack, *Economic Incarceration*, 25 WINDSOR Y.B. ACCESS TO JUST. 223, 227–28 (2007) (“Judges levy fines and costs pursuant to statute, but the authorizing statutes provide few guidelines and enormous discretion.”). Alternative sentencing programs often rely on judicial discretion. *Cf., e.g.*, ALA. CODE § 12-25-31 (Westlaw through 2016 Reg. Sess.). Supplemental analysis of the data suggests that a substantial source of the variation comes from the assessment of fines (ALA. CODE §13A-12-281), fees (ALA. CODE §15-23-17), and a thirty-percent collection fee (ALA. CODE §12-17-225.4).

¹⁵⁰ See Robert J. Smith et al., *Implicit White Favoritism in the Criminal Justice System*, 66 ALA. L. REV. 871, 887 (2015) (discussing empirical research that illustrated a white-over-black preference among judges).

¹⁵¹ See KATHERINE A BECKET ET AL., WASH. STATE MINORITY & JUSTICE COMM., THE ASSESSMENT AND CONSEQUENCES OF LEGAL FINANCIAL OBLIGATIONS IN WASHINGTON STATE 2 (2008), https://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf [<https://perma.cc/7T92-FWEM>] (explaining that defendants with Hispanic and Asian surnames receive higher and lower fines and fees than similarly situated whites, respectively).

¹⁵² See Burch, *supra* note 15, at 541 (“In Michigan, the ACLU notes that courts vary across the state according to their sensitivity to indigent defendants’ ability to pay; as a result, some areas of the state are more lenient in assessing fees than others.” (referencing AM. CIVIL LIBERTIES UNION, IN FOR A PENNY: THE RISE OF AMERICA’S NEW DEBTORS’ PRISONS 37 (2010), https://www.aclu.org/files/assets/InForAPenny_web.pdf [<https://perma.cc/9ZQN-XER4>])).

FIGURE 4C.2

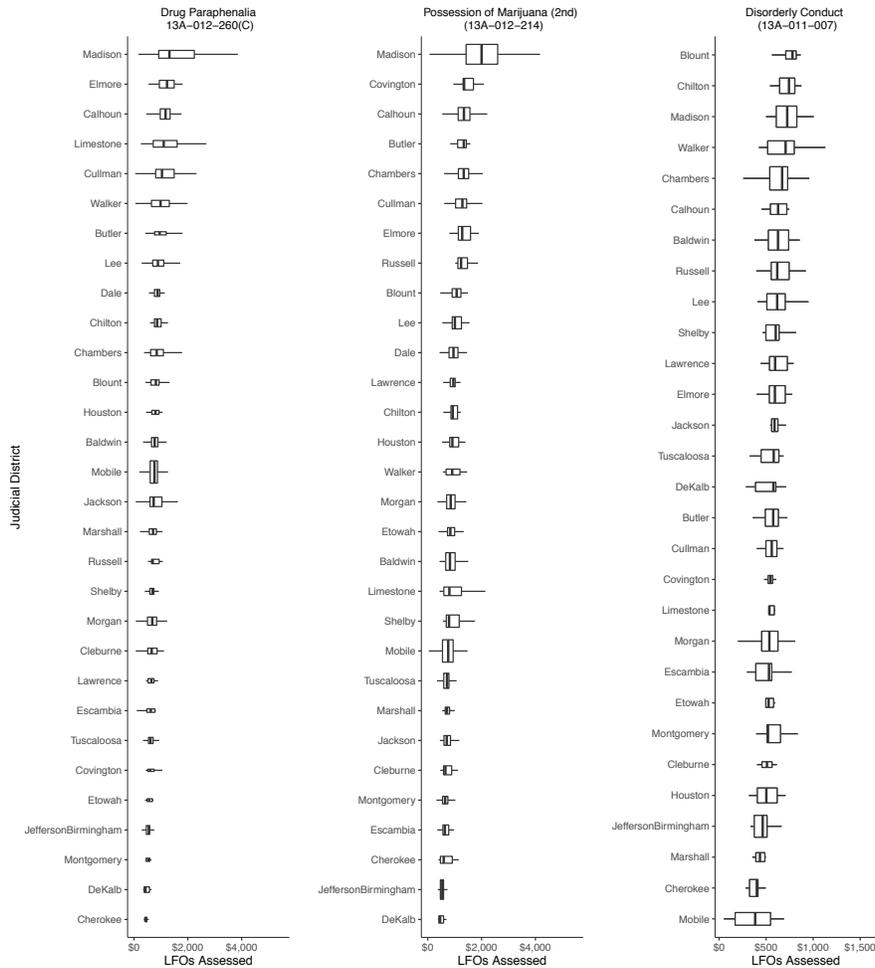


Note: This figure plots the median legal financial obligations assessed in 30,858 total convictions, including 27,182 district court cases and 3,676 circuit court cases. Any case with a felony conviction is not included, nor is any case with less than the bail fee of \$35 in assessments. Each point is scaled by the number of cases observed, from 61 in Perry to 2,046 in Jefferson-Birmingham.

One explanation for the substantial heterogeneity in the median LFO assessment over these judicial districts is that the mix of cases may differ across counties. If certain types of misdemeanors tend to have higher LFO assessments than others, then this could lead to differences over judicial districts in the median LFO assessment, even though they are assessing LFOs in a similar manner. To check whether differences persist across judicial districts when the crime of conviction is fixed, Figure 4C.3 compares the distribution of LFOs by judicial district for three of the most common crimes of conviction in our data set: misdemeanor use or possession of a controlled substance, misdemeanor possession of marijuana in the second degree, and misdemeanor disorderly conduct.

When performing this analysis, we consider only cases in which this was the only charge of conviction.

FIGURE 4C.3



Note: This figure plots the distribution of LFOs assessed in cases that result in only one conviction and are assessed more than the bail fee of \$35. The box plots are scaled by the number of cases within each misdemeanor crime panel. Outliers are not shown in the figure.

Figure 4C.3 shows that some judicial districts assess substantially more LFOs than others to individuals who were convicted of the same crime. The center panel of Figure 4C.3 shows that the median LFO assessment for a possession of a controlled substance conviction is \$1,345 in Calhoun County, as compared to \$460 in DeKalb. Similar large gaps are observed between these two counties on the other two types of cases. More generally, Figure 4C.3 shows substantial variation both within and across judicial districts in LFO assessments for those convicted of the same crime.

We observe a similar distribution of LFOs on comparable charges between the Montgomery County District Court and the City of Montgomery Municipal Court. Despite having similar assessments, only the City of Montgomery has had a class-action lawsuit brought against it over its LFO practices in recent years.¹⁵³ To understand why this occurred, we conclude this Part by examining differences in collection practices over jurisdictions.

The variation in court costs across judicial districts in Alabama leads to a variation in the amount of revenue collected, not just because of differential assessments but because each jurisdiction is in charge of its own debt collection. For example, while Covington County collected 47% of its assessed court costs in 2012, Montgomery County collected just 28%.¹⁵⁴

Some jurisdictions, such as Ferguson, Missouri, enforced the collection of outstanding LFOs by issuing warrants for the arrest of people behind on their payments. This tactic has been recently challenged as a violation of *Bearden*.¹⁵⁵ The complaint also alleges that Ferguson used the deplorable conditions of its local jail as a further incentive to coerce payment.¹⁵⁶

Many other jurisdictions contract with private companies to collect LFOs. These companies take over collections at no direct cost to taxpayers.¹⁵⁷ Instead, they charge “supervision fees” to offenders who owe LFOs.¹⁵⁸ In order for courts to utilize the services of these companies, they must impose sentences under which individuals can at least nominally be said to require some form of supervision.¹⁵⁹ This has resulted in the growth of what is euphemistically referred to as “pay-only” probation.¹⁶⁰ Nevertheless, failing to pay off all outstanding LFOs thus becomes a violation of probation.¹⁶¹ In some cases, these third parties threaten to jail those who have not paid, and, in some cases, have even been given authority to prepare arrest warrants.¹⁶²

¹⁵³ See First Amended Class Action Complaint, *Mitchell v. City of Montgomery*, No. 2:14-cv-186-MEF (M.D. Ala. May 23, 2014), <http://equaljusticeunderlaw.org/wp/wp-content/uploads/2014/07/Complaint> [https://perma.cc/KH6V-ZW73].

¹⁵⁴ PUB. AFFAIRS RESEARCH COUNCIL OF ALA., *supra* note 100, at 21.

¹⁵⁵ Class Action Complaint, *Fant v. City of Ferguson*, 107 F. Supp. 3d 1016 (E.D. Mo. 2015) (No. 4:15-CV-00253-AGF), 2015 WL 510270.

¹⁵⁶ *Id.*

¹⁵⁷ HUMAN RIGHTS WATCH, *supra* note 41, at 15.

¹⁵⁸ *Id.*

¹⁵⁹ *But see* Amended Complaint at 5, *Cleveland v. City of Montgomery*, No. 02:13-cv-00732 (M.D. Ala. Nov. 11, 2013), ECF No. 14 (detailing eight cases that were disposed of either payment of the fine or jail time).

¹⁶⁰ HUMAN RIGHTS WATCH, *supra* note 41, at 27.

¹⁶¹ *Id.* at 16.

¹⁶² *See id.* at 5 (explaining that although these warrants require a judge’s signature, judges do not always inquire into the facts behind a probationer’s alleged violation).

In Alabama, the district and circuit courts of the UJS do not rely on these third-party services. Instead, each district attorney is responsible for collection of their LFOs, but they can collectively rely on the state's correctional services.¹⁶³

Municipalities, on the other hand, operate independent courts that lack the same infrastructure necessary to collect on increasingly large amounts of debt. In 2015, over one hundred municipalities had contracted with the private probation company Judicial Correction Services (JCS).¹⁶⁴ One of these municipalities was the City of Montgomery. In March 2014, a class action lawsuit, *Mitchell v. City of Montgomery*, was filed, alleging, among other things, that using a third party with a financial stake in the outcome of a judicial proceeding as a supposedly neutral probation official violated the right to due process.¹⁶⁵ The case eventually settled later that year, with one of the provisions of the settlement being that Montgomery would not use any private probation company for at least three years.¹⁶⁶ The settlement also established a standard for determining indigency.¹⁶⁷

To assess the effect of these changes in collection practices on payback, Table 4C.4 compares the assessment and payback of LFOs in Montgomery in January 2013, when JCS was still operating, and January 2015, after it exited. The top half of the table shows that the payback of criminal LFOs declined only slightly between 2013 and 2015. In 2013, about 20% of the assessed LFOs were paid within 180 days of the disposition date, as compared to about 13% in 2015. The bottom half of the table shows a bigger change in the payback of traffic LFOs between 2013 and 2015. In 2013, about 75% of traffic LFOs were paid within 180 days of the disposition date, whereas in 2015, only about 54% were paid over the same time period.

¹⁶³ See PUB. AFFAIRS RESEARCH COUNCIL OF ALA., *supra* note 100, at 21 (“Alabama law provides for the clerk to turn over accounts in default to the district attorney . . .”).

¹⁶⁴ Kent Faulk, *Private Probation Company Once Called ‘Judicially Sanctioned Extortion Racket’ Leaving Alabama*, AL.COM (Oct. 19, 2015) http://www.al.com/news/birmingham/index.ssf/2015/10/judicial_correction_services_i.html [<https://perma.cc/H884-H8ZM>].

¹⁶⁵ First Amended Class Action Complaint, *supra* note 153, at 43.

¹⁶⁶ Agreement to Settle Injunctive and Declaratory Relief Claims at 5, *Mitchell v. City of Montgomery*, No. 2:14-cv-186 (M.D. Ala. Nov. 17, 2014), <http://equaljusticeunderlaw.org/wp/wp-content/uploads/2014/07/Final-Settlement-Agreement> [<https://perma.cc/LLD6-S5ZK>].

¹⁶⁷ *Id.* at 11. Specifically, the court will apply a presumption of indigence when the defendant's income is below 125% of the Federal Poverty Level.

TABLE 4C.4

Year	Type	No. of Cases	Assessed Less Bail Fee	Total Within:			Payback Within:		
				30 Days	90 Days	180 Days	30 Days (%)	90 Days (%)	180 Days (%)
2013	CRIM	134	71,129	2,695	7,658	14,560	3.79	10.77	20.47
2015	CRIM	140	80,212	3,287	7,303	10,214	4.10	9.10	12.73
2013	TRA	3,912	803,328	561,253	575,512	599,882	69.87	71.64	74.67
2015	TRA	2,995	643,877	302,967	331,346	343,651	47.05	51.54	53.37

This table looks at criminal and traffic convictions in the first month of 2013 and 2015 in the Montgomery municipal court, conditional on a case having a positive LFO assessment minus an applicable bail fee. To calculate the payback rate, we compare the date of each court case to the date of each payment received.

The patterns in Table 4C.4 demonstrate the moral hazard that is present when communities enter into offender-funded probation programs. The results in Table 4C.4 show about an eight percentage point drop in the payback of criminal LFOs and a twenty-one percentage point drop in the payback of traffic LFOs after the City of Montgomery stopped using JCS and adopted clearer standards of indigency. While we cannot rule out that there may have been other secular changes between 2013 and 2015 that also affected payback, the magnitude of this change suggests that more aggressive collection practices could have generated Montgomery hundreds of thousands of dollars in more revenue in 2013. More broadly, JCS advertised on its website that every jurisdiction that contracted with JCS increased its LFO collection.¹⁶⁸

However, the patterns in Table 4C.4 also highlight the hidden costs of these aggressive collection practices. In 2013, nearly 25% of traffic LFOs and 80% of criminal LFOs assessed by the City of Montgomery were not paid within 180 days. This occurred despite the fact that JCS was charging people with unpaid LFOs a \$50 monthly fee.¹⁶⁹ Moreover, Montgomery was following through on its threat to send people with substantial debt to jail to serve out their unpaid LFO debt at the rate of \$50 per day.¹⁷⁰ Many offenders, particularly in criminal cases, failed to pay their debt despite the threat posed by JCS. This suggests that the assessment is too burdensome. And it is not clear that jurisdictions are assessing the costs that these aggressive collection practices impose on this population when making their choices about collection practices.

¹⁶⁸ HUMAN RIGHTS WATCH, *supra* note 41, at 15.

¹⁶⁹ First Amended Class Action Complaint, *supra* note 153, at 11.

¹⁷⁰ *Id.* at 1.

V. CONCLUSION

Many have called for reforms of how LFOs are assessed and collected. Alexes Harris and Katherine Beckett, for example, recently urged the complete abolishment of all fines and fees.¹⁷¹ The ubiquity of LFOs, though—which we document across all levels of the criminal justice system in Alabama—underscores how difficult it will be to implement such a reform legislatively. As Mary Katzenstein notes, the norm that offenders should compensate the state for the cost of their own supervision has become institutionalized.¹⁷²

Thousands of county and municipal governments have come to depend on these LFOs to fund their court systems, with little public scrutiny. But, at least in Alabama, these same courts have compiled a terrific bounty of electronic case records that promise to bring increased transparency to their assessment and collection practices. The records we gathered—a preliminary effort at best—are by no means a complete accounting of the burden that LFOs impose. They do not inform us about a defendant's ability to pay, or a family's ability to cope, or disruptions to the larger community. But court records do offer an opportunity to show how a decentralized system of justice affects the lives of so many people as LFOs pile up without regard to ability to pay.

Data gathered from court records can link people to policies and encourage a more comprehensive analysis of the issue. For example, legislators need to appreciate the cumulative effect of all of the other LFOs that are already in place when assessing the efficacy of a given LFO. Judges could also more easily assess the burden of the total amount of LFOs when assessing ability to pay.¹⁷³ And while current case law tends to consider the constitutionality of an LFO in isolation,¹⁷⁴ there is a possibility of generating new standards that consider monetary sanctions as a whole.

An emerging coalition of criminal justice reformers—stretching across the aisle—has begun to focus on the importance of addressing LFOs in the dismantling of mass incarceration. One difficulty that might be raised is public opinion. Traci Burch, for example, finds Harris and Beckett's proposal to eliminate fines and fees “unlikely,” pointing to several surveys revealing the public's support for punitive LFO practices.¹⁷⁵

¹⁷¹ Beckett & Harris, *supra* note 15, at 528 (“[T]he imposition of discretionary and nongraduated monetary sanctions should be abolished.”).

¹⁷² Katzenstein & Nagrecha, *supra* note 27, at 555–66.

¹⁷³ See Ruback & Bergstrom, *supra* note 46, at 260 (“[J]udges in many state systems rarely have information about the offender's ability to pay. This lack of information may result in fines that are too high . . .”).

¹⁷⁴ Logan & Wright, *supra* note 75, at 1209.

¹⁷⁵ See Burch, *supra* note 15, at 539 (“[A]lthough little public opinion exists on this issue, the few studies that are available suggest that the public overwhelmingly supports the notion that offenders, particularly prisoners, should help pay for the cost of their punishment.”).

The public, though, might be thinking of a Willie Horton being slapped with court costs instead of a Harriet Cleveland. Our systematic comparison of LFOs in felony, misdemeanor, and traffic cases across Alabama demonstrates how the significant debt Ms. Cleveland accumulated for a series of minor traffic offenses is not such an aberration. We show that only a minority of LFOs are assessed in cases where someone was convicted of a felony and incarcerated. Rather, most LFOs are assessed in cases without an imposed sentence, in cases with a misdemeanor or traffic violation, or even in cases that did not result in a conviction at all.
