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## Wasco County District Attorney Monetary Sanction Policy

### Introduction

Monetary sanctions harm Wasco County individuals and families, generate little or no revenue for local government, and fail to make survivors of crime whole. National data suggest that like other types of punishment, monetary sanctions fall most heavily on Latinx, Black, Native, low income, rural people, and people of color. Fees are designed only to generate revenue, while fines are intended to punish. Neither are evidence-based practices for rehabilitating, deterring, or even meaningfully achieving retribution for crime. This policy simply formalizes the Wasco County District Attorney's practice of declining to seek monetary sanctions and minimizing the collateral consequences of legal system involvement—its goal is to limit the financial burdens on system-involved Oregonians and bring best practices to the District Attorney's office.

### **I. Monetary sanctions, and the collateral consequences they bring, are harmful, discriminatory, and serve no purpose for the state.**

The debt from fees and fines strains family budgets and relationships, while adversely affecting the mental and physical health of those the courts place in debt.<sup>1</sup> These economic burdens also correlate to increased recidivism and prolonged criminal system involvement.<sup>2</sup> Even after official system involvement

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<sup>1</sup> SEE AMERICAN PUBLIC HEALTH ASS'N, THE IMPACTS OF INDIVIDUAL AND HOUSEHOLD DEBT ON HEALTH AND WELL-BEING (2022); LESLIE PAIK & CHIARA PACKARD, IMPACT OF JUVENILE JUSTICE FINES AND FEES ON FAMILY LIFE: CASE STUDY IN DANE COUNTY, WI (2019), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-dane-county.pdf>.

<sup>2</sup> Alex R. Piquero & Wesley G. Jennings, Research Note, *Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE & JUV. JUST. 325

has ended, monetary sanctions can keep Oregonians from accessing expungements to which they are otherwise entitled, exposing them to ongoing barriers to employment, housing and other opportunities.

*a. Imposing debt and denying expungement for court debt is harmful.*

Fees and fines undermine the financial and emotional wellbeing of individuals and families, and disproportionately burden people of color.<sup>3</sup> Black and Native men, and Native women, in particular, are overrepresented in Wasco County’s criminal system, and thus more often exposed to fees and fines.<sup>4</sup> One Black Oregonian reported, “I have struggled to pay fines and fees for almost 20 years . . . I can't ever spend the money on things I need now or for the future. It feels like I can never get ahead.”<sup>5</sup> Monetary sanctions crush people who are unable to pay and merely inconvenience those who have the means, creating a two-tiered system based on income—this inequality is amplified when it comes to expungement.<sup>6</sup> Similarly, “linking record clearing (or any form of record relief) to the ability to pay court debt and application-related fees—as most states do—creates a system that favors the rich and punishes

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(2016), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-criminology-study-2016.pdf>; JESSICA FEIERMAN ET AL., JUVENILE LAW CENTER, DEBTORS’ PRISON FOR KIDS? THE HIGH COST OF FINES AND FEES IN THE JUVENILE SYSTEM (2016), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf>.

<sup>3</sup> See generally Kate K. O’Neill, Ian Kennedy, Alexes Harris, *Debtors’ Blocks: How Monetary Sanctions Make Between-neighborhood Racial and Economic Inequalities Wors*, 8 SOCIOLOGY OF RACE AND ETHNICITY 43 (2022); See Alex R. Piquero, *Disproportionate Minority Contact*, 18 JUV. JUST. 59, 59-61 (2008) (discussing disproportionate punishments, including monetary sanctions, for youth of color in state juvenile systems); FRANK EDWARDS & ALEXES HARRIS, AN ANALYSIS OF COURT IMPOSED MONETARY SANCTIONS IN SEATTLE MUNICIPAL COURTS, 2000-2017 (2020), <https://www.seattle.gov/Documents/Departments/CivilRights/SMC%20Monetary%20Sanctions%20Report%207.28.2020%20FINAL.pdf> (finding that, in Seattle, court debt falls most heavily on people of color); see also Rep. Leslie Herod, *Eliminating juvenile-justice fees means better justice for juveniles*, COLO. SUN (May 23, 2021) <https://coloradosun.com/2021/05/23/eliminating-jvenile-justice-fees-opinion/> (showing rural youth in Colorado were charged more juvenile fees than urban youth).

<sup>4</sup> CRIMINAL JUSTICE COMMISSION STATISTICAL ANALYSIS CENTER, 2015-2019 RACE, ETHNICITY, AND GENDER DEMOGRAPHIC DASHBOARD, <https://www.oregon.gov/CJC/SAC/Pages/equity-dashboard.aspx>.

<sup>5</sup> Survey data on file with Portland Community College’s CLEAR Clinic.

<sup>6</sup> See, e.g., Board of Governors of the Federal Reserve System, Report on the Economic Well-Being of U.S. Households in 2018, Washington, DC: Federal Reserve Board, 2019, <https://www.federalreserve.gov/publications/report-economic-well-being-us-households.htm> (according to the Federal Reserve, 40% of Americans could not afford a \$400 emergency expense).

the poor.”<sup>7</sup> But ability-to-pay processes are insufficient to address racial inequity, and may even deepen it—they also require invasive inquiries into Oregonians’ lives and waste court resources.<sup>8</sup>

The collateral consequences of having a criminal record affect every aspect of a person’s life. Nine in 10 employers, 4 in 5 landlords, and 3 in 5 colleges and universities use criminal background checks to make eligibility determinations.<sup>9</sup> Background checks can keep Wasco County residents from accessing the resources needed to promote stability for themselves, their families, and their communities-- therefore, it is imperative that criminal records exist only when absolutely necessary. One Oregonian says, “as long as I have an outstanding fine I cannot expunge my record and . . . cannot find a good job to support my family.”<sup>10</sup> Wasco County cannot afford to keep people saddled with criminal records for no reason when they could be contributing to society.<sup>11</sup> Finally, incarceration is one of the harshest sanctions available and should never be imposed for a low-level offense like failure to pay.<sup>12</sup>

*b. Fees and fines serve no governmental interest and undermine public trust.*

Fees and fines serve no purpose for the government and undermine many of the goals of the District Attorney’s office. Current research shows that fines are not an effective deterrent, and monetary sanctions have never been an evidence-based method of addressing harm.<sup>13</sup> In addition to increasing

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<sup>7</sup> NATIONAL CONSUMER LAW CENTER, THE HIGH COST OF A FRESH START: A STATE-BY-STATE ANALYSIS OF COURT DEBT AS A BAR TO RECORD CLEARING (2022), <https://www.nclc.org/images/pdf/criminal-justice/Report-High-Cost-of-Fresh-Start.pdf>.

<sup>8</sup> Theresa Zhen, (Color)Blind Reform: How Ability-to-Pay Determinations Are Inadequate to Transform a Racialized System of Penal Debt, 43 N.Y.U. REV. L. & SOC. CHANGE 177 (2019).

<sup>9</sup> Rachel West et al., News You Can Use: Research Roundup for Re-Entry Advocates (2016), <https://www.americanprogress.org/issues/poverty/reports/2018/04/05/448711/news-can-use-research-roundup-re-entry-advocates/>.

<sup>10</sup> Survey data on file with Portland Community College’s CLEAR Clinic.

<sup>11</sup> See Colleen Chien et al., Estimating the Earnings Loss Associated with a Criminal Record and Suspended Driver’s License, \_\_ Ariz. L. Rev. \_\_ (forthcoming 2022) (estimating the cost of felony convictions, and the economic benefit of expungement).

<sup>12</sup> See Aeon Video, A Debtor’s Prison: Debilitating Cycles of Incarceration in the US (2018), <https://www.youtube.com/watch?v=9RfOnp1kVbc> (discussing individual and communal harms of incarceration).

<sup>13</sup> See, e.g., R. Barry Ruback & Mark H. Bergstrom, *Economic Sanctions in Criminal Justice Purposes, Effects, and Implications*, 33 Crim. Just. & Behav. 242-73 (2006); OFFICE OF JUVENILE JUST. & DELINQ. PREV., *Studying Deterrence Among High-Risk Adolescents* (2015) <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248617.pdf> (studying effectiveness of certain sanctions on youth).

recidivism, fees and fines have been shown to net little revenue for courts—some schemes actually cost more to administer than they bring in.<sup>14</sup> For example, before juvenile fees and fines were abolished, the Oregon Youth Authority spent \$866,000 to collect \$864,000 from families in 2019.<sup>15</sup> Incarcerating people—one of the most expensive sanctions a court can order—for nonpayment of fees and fines only wastes more money.

Pursuing fees and fines strains relationships between the community and government. In jurisdictions where law enforcement pursues monetary sanctions aggressively, police have been shown to close more serious cases at a lower rate.<sup>16</sup> Such low clearance rates, as well as high debt burdens, reduce public trust in police and in government as a whole, especially where draconian punishments like incarceration are on the table.<sup>17</sup> Funding the judiciary on the backs of poor people further undermines public trust by creating a clear conflict between judges' interest in court budgets and the impartial administration of justice.<sup>18</sup>

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<sup>14</sup> See POL'Y ADVOCACY CLINIC, BERKELEY L., UNIV. OF CAL., MAKING FAMILIES PAY: THE HARMFUL, UNLAWFUL, AND COSTLY PRACTICE OF CHARGING JUVENILE ADMINISTRATIVE FEES IN CALIFORNIA 18 (2017) <https://www.law.berkeley.edu/wp-content/uploads/2015/12/Making-Families-Pay.pdf>.

(showing Santa Clara County spent \$450,000 to collect \$400,000 in fees); MATTHEW MENENDEZ ET AL., BRENNAN CTR. FOR JUST., THE STEEP COSTS OF CRIMINAL JUSTICE FEES AND FINES 5, 9 (Nov. 21, 2019), [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf) (showing some counties spend as much as \$1.17 for every dollar they generate in fine and fee revenue).

<sup>15</sup> OR. DEP'T OF JUST., DIV. OF CHILD SUPPORT, CHILD SUPPORT INFORMATION RELATED TO OREGON YOUTH AUTHORITY 5 (2020), <https://berkeley.box.com/s/5mgugtq1ritzrvj86rylezbfm5yt9an> (showing that the Oregon Division of Child Support *spent* \$866,000 to *collect* \$864,000 in juvenile fees in 2019).

<sup>16</sup> See Rebecca Goldstein et al., *Exploitative Revenues, Law Enforcement and the Quality of Government Service* 3-4 (2017), [http://www.law.nyu.edu/sites/default/files/upload\\_documents/YOU\\_policing.pdf](http://www.law.nyu.edu/sites/default/files/upload_documents/YOU_policing.pdf); see also Alicia Bannon et al., Brennan Center for Justice, *Criminal Justice Debt: A Barrier to Reentry* 30 (2010), <https://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> (pursuing fees and fines redirects probation officers from other duties).

<sup>17</sup> See generally U.S. DEP'T OF JUST., CIV. RTS. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 15 (2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

<sup>18</sup> See, e.g., *People v. Cameron*, 504 Mich. 927, 929 N.W.2d 785, 786 (2019) (CJ McCormack, concurring in denial of certiorari) (“No matter how neutral and detached a judge may be, the burden of taxing criminal defendants to finance the operations of his court, coupled with the intense pressures from local funding units (and perhaps even from the electorate), could create at least the appearance of impropriety. Assigning judges to play tax collector erodes confidence in the judiciary and may seriously jeopardize a defendant's right to a neutral and detached magistrate.”); *Cain v. White*, (5th Cir 2019) (finding that directing fees and fines into a general revenue fund created an unavoidable conflict of interest for judges).

Monetary sanctions are bad for government, but more importantly they are bad for Oregonians—imposing debt and denying expunction disproportionately harms BIPOC, low-income, and rural communities, and undermines community safety.

**II. Where Oregon law allows, this office will not pursue monetary sanctions and will seek to minimize the collateral consequences of court debt.**

The District Attorney will not seek to impose any discretionary fees and fines and will object if the Court or any other party seeks to impose them, with an exception for compensatory fines, which are meant to go to victims. Most fees and fines authorized in statute are discretionary, meaning this office need not seek to impose them and can object to their imposition (see Appendix for more information). However, this policy does not affect mandatory fees, such as interest, or mandatory minimum fines. District attorneys cannot decline to pursue fees and fines required by statute.

This office will further seek to minimize the burden of fees and fines by supporting petitions for expungement even where the petitioner owes the court and objecting to incarceration where the only charge is failure to pay court debt. Under ORS 137.225, there is no requirement fees and fines be paid before a petition for record sealing is granted.<sup>19</sup> Before 2022, the guidance from the Oregon Judicial Department suggested that expungement should not be granted if applicants owed fines or fees to the court, but the updated guidance after SB 397 refers only to unpaid victim restitution as a potential barrier to set-aside.<sup>20</sup> There is no legal (or rational) basis to deny expungement based on court debt. And unpaid

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<sup>19</sup> The statute only requires that the applicant have “fully complied with and performed the sentence of the court.” ORS 137.225(1)(a).

<sup>20</sup> Compare. Restoration of Rights Project, Oregon Restoration of Rights & Record Relief (“must not owe money associated with criminal cases to the courts (restitution, court ordered fines, probation fees, etc.”) (citing Judicial Department’s 2021 set aside instructions), <https://ccresourcecenter.org/state-restoration-profiles/oregon-restoration-of-rights-pardon-expungement-sealing-2/> with Oregon Judicial Department, Criminal Set-Aside (Adult Cases) (2022), [https://www.courts.oregon.gov/forms/Documents/CriminalSetAside\\_AdultCases.pdf](https://www.courts.oregon.gov/forms/Documents/CriminalSetAside_AdultCases.pdf) (requiring applicants “have fully complied with and completed all elements of your sentence including restitution, post-prison supervision, and probation”).

court debt simply cannot justify incarceration: the U.S. Supreme Court has limited this practice for almost forty years.<sup>21</sup>

To the extent possible and in the interest of justice, Deputy District Attorneys should move to waive court debt entirely when motions to set aside a record of arrest or criminal conviction come before the court. Deputy District Attorneys may refer to this memo and any of the research contained herein when objecting to the imposition of discretionary fees and fines or supporting expungement petitions.

### **Conclusion**

For the reasons listed above, the Office of the Wasco County District Attorney will never seek to impose discretionary fees and fines in criminal cases, with an exception for compensatory fines, and will object to their imposition wherever possible. We will not use unpaid fees and fines as a reason to object to an expungement motion, and will always object to the use of incarceration as a punishment for nonpayment. This policy only formalizes the established practice of this office, and recognizes that common sense, economic reality, and decency demand that we not attempt to fund the legal system on the backs of vulnerable Oregonians.

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<sup>21</sup> See *Bearden v. Georgia*, 461 U.S. 660 (1983) (finding incarceration for inability to pay court debt violated due process).

## Appendix A: Fees and Fines

Generally, it is the policy of the District Attorney’s office to seek no fees and fines, or to argue for minimal fees and fines where assessment is mandatory. Specific offenses may carry different minimum and maximum fines, and there may be additional fees authorized in statute, administrative regulations, and judicial branch regulation, but the list below is a starting point:

Statute	Description	Discretionary?
Or. Rev. Stat. § 137.286(1)	\$100 fine for misdemeanor, unless otherwise specified.	Yes. Court can waive or set fine amounts at its discretion. Discretionary fines are not to be sought under this policy.
Or. Rev. Stat. § 137.286(2)	\$200 fine for felony, unless otherwise specified.	
Or. Rev. Stat. § 161.625(1)(a)	\$0-\$500,000 fine for murder or aggravated murder.	
Or. Rev. Stat. § 161.625(1)(b)	\$0-\$375,000 fine for Class A felony.	
Or. Rev. Stat. § 161.625(1)(c)	\$0-\$250,000 fine for Class B felony.	
Or. Rev. Stat. § 161.625(1)(d)	\$0-\$125,000 fine for Class C felony.	
Or. Rev. Stat. § 161.625(2)	Fine for unclassified felony.	
Or. Rev. Stat. § 161.625(3)	Alternative fine based on defendant's pecuniary gain from felony.	
Or. Rev. Stat. § 161.635(1)(a)	\$0-\$6,250 fines for Class A misdemeanor.	
Or. Rev. Stat. § 161.635(1)(b)	\$0-\$2,500 fines for Class B misdemeanor.	
Or. Rev. Stat. § 161.635(1)(c)	\$0-\$1,250 fines for Class C misdemeanor.	
Or. Rev. Stat. § 161.635(2)	Fines for unspecified misdemeanor.	

Or. Rev. Stat. § 161.635(3)	Alternative fine based on defendant's pecuniary gain from misdemeanor.	
Or. Rev. Stat. § 137.101	Compensatory fine (separate from restitution).	Yes. The office will discretionarily use compensatory fines when appropriate to compensate victims, agencies, and organizations. These fines will not go to the State.
Or. Rev. Stat. § 161.665(2); Or. Rev. Stat. § 151.487(1); Or. Rev. Stat. § 151.505(1)-(2)	Fees for public defense services.	Yes. Not to be sought under this policy.
Or. Rev. Stat. § 423.570(1)-(3)	Fees for probation, parole, or post-prison supervision.	Yes. Not to be sought under this policy.
Or. Rev. Stat. § 138.527	\$100 attorney's fee for frivolous petition or response.	Yes. Not to be sought under this policy.
Or. Rev. Stat. § 144.102	\$5 maximum fee for probation programming.	Yes. Not to be sought under this policy.
Or. Rev. Stat. § 137.183	Interest on judgments.	No. Unaffected by this policy.
Or. Rev. Stat. § 137.540(7)	\$100 fee for court-supervised probation.	No. Unaffected by this policy.
Or. Rev. Stat. § 137.540(11)	\$25 fee for probation violation.	No. Unaffected by this policy.
Or. Rev. Stat. § 137.533(1)	\$100 "voluntary" fee for probation without entering judgment of guilt.	No. Unaffected by this policy.