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As we begin a new year, the need is clear for reforming how the criminal justice system responds to low-level misdemeanor offenses. While there is a growing body of research that focuses on how an arrest record negatively impacts a person for life, there is little research on how prosecuting low-level offenders contributes to funding criminal courts. There is no argument that equal access to courts is a foundational precept of our civil and criminal justice systems. How the court system is funded, however, is complex with various functions within the system vying for allocated tax revenue as well as revenue collected from court ordered fines and fees. The four documents in this packet from the U.S. Department of Justice, Florida TaxWatch, the Conference of State Court Administrators, and the Center for American Progress provide varying perspectives on issues surround court-generated revenue and the cost of our criminal justice system.

The U.S. Department of Justice's investigation into the justice system in Ferguson Missouri found low-level offenders were being viewed as a revenue source for the local court and city law enforcement.

There are several specific areas within the report that are relevant to the subject of revenue:

- Ferguson has allowed its focus on revenue generation to fundamentally compromise the role of Ferguson's municipal court. (Page 3)
- ...the court primarily uses its judicial authority as the means to compel the payment of fines and fees that advance the City's financial interests. This has led to court practices that violate the Fourteenth Amendment's due process and equal protection requirements. The court's practices also impose unnecessary harm, overwhelmingly on African-American individuals, and run counter to public safety. (Page 3)
- Minor offenses can generate crippling debts, result in jail time because of an inability to pay, and result in the loss of a driver's license, employment, or housing. (Page 4)
- City officials have consistently set maximizing revenue as the priority for Ferguson's law enforcement activity. Ferguson generates a significant and increasing amount of revenue from the enforcement of code provisions. (Page 9)
- The prosecutor noted that "[t]his is done to ensure that a proper resolution to all cases is being achieved and that the court is maintaining the correct volume for offenses occurring within the city." Notably, the "correct volume" of law enforcement is uniformly presented in City documents as related to revenue generation, rather than in terms of what is necessary to promote public safety. (Page 11)

- The Ferguson municipal court handles most charges brought by FPD, and does so not with the primary goal of administering justice or protecting the rights of the accused, but of maximizing revenue. (Page 42)

On a much broader scale, during 2009 Florida TaxWatch conducted a study of Florida's court system and the collection and allocation of court-related revenue. Their findings included:

- To fund the court-related functions, the Legislature enacted laws requiring the clerks to “fund their offices using revenues derived from fines, fees, service charges and court costs assessed in both civil and criminal proceedings.” Thus, clerks’ budgets, unlike other entities in the judicial system, are based on their projected revenue, not appropriated by the Legislature through the appropriations process. (Page 3)
- In addition to the revenues used to fund their annual operations, clerks are required to share the revenue they collect with a number of state and local entities according to statutory earmarks.... “In Fiscal Year 2005-06, clerks of court remitted \$93.7 million in court-related collections to the state after funding their own operations. These funds offset 23 percent of the \$405.4 million cost of the state courts system during that year.” (Page 3)
- Based on the comparison of unit costs across the clerks, and given that unit costs are a proxy measure of cost efficiency, Florida TaxWatch concludes that there is wide variation in efficiency within the current system. (Page 8)
- Specifically, the (OPPAGA - added) analysis found that there was “considerable variability among the clerks in the percentage of these assessments [i.e., fines, fees, service charges, and court costs] they were able to collect. Collection rates range from a high of 90% to a low of 36%...” (Page 9)
- Florida TaxWatch concludes that the level of transparency of how court-related revenues are expended for specific court-related functions under the current system is deficient. (Page 12)
- Florida TaxWatch finds the current system of providing court functions through the clerks to be deficient in providing appropriate incentives to operate cost efficiently. (Page 25)
- Florida TaxWatch concludes that the current system actually has incentives to operate inefficiently. (Page 28)
- Florida TaxWatch concludes that the Legislature should reconsider the formula and method of allocating court-related revenues, with the state funding of both the clerks and the trial courts

determined under the system of checks and balances by the Legislature through the appropriations process. (Page 33)

The U.S. Department of Justice investigation revealed how a local court system can be misused as a way to generate revenue. From the Florida TaxWatch perspective, it appears Florida's court system and the way clerks of the court process court-generated revenue has significant room for improvement. The TaxWatch study was published in 2009 and unless a follow-up study is conducted it is not known if the areas of deficiency pointed out by TaxWatch have been addressed.

The third report in this packet of information is a policy paper developed by the Conference of State Court Administrators. The paper recommends guiding principles that should be used to administer court systems within the U.S. The principles that relate directly to revenue collection and allocation include:

- Courts should be substantially funded from general governmental revenue sources, enabling them to fulfill their constitutional mandates. Court users derive a private benefit from the courts and may be charged reasonable fees partially to offset the cost of the courts borne by the public-at-large. Neither courts nor specific court functions should be expected to operate exclusively from proceeds produced by fees and miscellaneous charges. (Page 7)
- Fees and miscellaneous charges should be simple and easy to understand with fee schedules based on fixed or flat rates, and should be codified in one place to facilitate transparency and ease of comprehension. (Page 10)
- The proceeds from fees, costs and fines should not be earmarked for the direct benefit of any judge, court official, or other criminal justice official who may have direct or indirect control over cases filed or disposed in the judicial system. (Page 11)

The fair and effective administration justice is costly. However, allowing the prosecution of low-level misdemeanor offenders to become seen as a way to generate court revenue, certainly violates the tenants of justice being fair and equal. The "One Strike and You're Out" report by the Center for American Progress includes data related to the overall cost of our criminal justice system and the impact criminal records have on the nation's economy.

- When (costs of incarceration - added) combined with other crime-related expenditures— such as policing, legal, and judicial services—total spending rises to more than \$260 billion annually. The lion's share of these expenditures falls at the state and local levels, placing great fiscal burdens on states. (Page 5)
- And the Federal Bureau of Investigation estimates that U.S. law enforcement has made more than one-quarter of a billion arrests in the past 20 years. Many arrests never lead to conviction;

for example, just half—and in some years, fewer than half—of adult misdemeanor arrests made in New York City from 2009 to 2013 resulted in conviction. (Page 5)

- Moreover, the challenges associated with having a criminal record come at great cost to the U.S. economy. Estimates put the cost of employment losses among people with criminal records at as much as \$65 billion per year in terms of gross domestic product. (Page 2)

While the reports in this packet document deficiencies, they also provide recommendations for improvement. The Civil Citation Network is committed to advocating for the continued improvement of our justice system through alternatives to arrest for individuals who commit low-level misdemeanor offenses and who are not a threat to public safety.

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