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Fees, Fines and Fairness: How Monetary Charges Drive Inequity in New York City's Criminal Justice System



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Executive Summary

The deeply inequitable manner in which the mass incarceration system saps wealth and opportunity from communities of color has led to some important reforms recently, including most profoundly New York State's decision to eliminate cash bail in most criminal cases by 2020, thereby curbing a key driver of inequity. Left unacknowledged, however, is the full extent to which administrative fees and surcharges remain embedded in the criminal justice system, representing an all-but-hidden, secondary form of punishment with impacts that often last years beyond a formal prison term. Mandatory court surcharges, fees to write an email, to transfer money to a loved one, to have a prison job, to be released on parole -- these are just some of the ways the criminal justice system continues to extract wealth from low-income communities and ensnare individuals in a cycle of debt and obligation. These administrative fees and surcharges can fall on top of more explicit court-imposed sanctions, such as fines, restitution payments, and even incarceration.

A full accounting of these fees and other financial penalties is difficult to compile, given that much of it is hidden from public view and what is available is spread across multiple agencies at different levels of government. Yet such an accounting is critical to understanding the scope of the criminal justice system's impact on New Yorkers' economic security and must be part of any comprehensive agenda to create a system that does not disparately punish people for the simple crime of being poor. Indeed, when viewed through this broader prism, what is clear is that cash bail is but one form of inequitable monetary penalty in the criminal justice system, and that there remains a vast scaffold of other, equally pernicious charges that deserve to be examined and, in many cases, torn down in the name of not just justice, but sound fiscal practice as well.

This report by New York City Comptroller Scott M. Stringer draws from a wide range of data from city and state agencies, the New York City Criminal Court, and other available sources to offer a comprehensive review of the money that the criminal justice system takes from people accused or convicted of crimes -- often just a few pennies or dollars at a time, but in a manner that can add up to thousands of dollars over the course of a prison term. Analysis of this data reveals the harsh collateral consequences of failing to pay at each stage of criminal justice involvement and the many ways in which the system contributes to economic and racial inequality in New York City. Specifically, this report finds:

- 1. New York State imposes mandatory surcharges and fees up to \$375 on all those who plead guilty to a crime, or are convicted by trial, yet the vast majority of dollars collected by New York City criminal courts are for non-criminal violations and non-DUI traffic offenses. Nevertheless, the consequences for nonpayment are severe regardless of the charge.**
 - In total, the City's Criminal Court, excluding Supreme Court, collected about \$5.6 million in mandatory surcharges in 2017.*** Despite higher fees for more severe crimes, about 60 percent of mandatory surcharge revenue collected in New York

City Criminal Court comes from non-criminal violations and non-DUI traffic offenses.

- ***Low collection rates occur in spite of the courts' expansive means to collect court debts***, including civil judgments and incarceration. In 2017, New York City Criminal Court issued more than 103,000 civil judgments for failure to pay court fees and fines, damaging the financial futures of those affected. In 11,200 cases, courts issued a warrant for nonpayment, and ***in 161 cases, New York City defendants were ordered to be immediately incarcerated for nonpayment***.
- ***Mandatory surcharges can also lead to the involuntary garnishment of jail and prison commissary accounts***. Unless a court has deferred payment, mandatory surcharges can be collected from a person's commissary account, including funds deposited by family and friends. In FY 2018, New York City garnished ***about \$101,000 from personal jail accounts to pay mandatory surcharges***.

2. Despite recent reforms advanced by the City Council, private companies continue to profit off New York City's criminal justice system.

- The New York City Council has eliminated fees for jail phone calls and adopted legislation to end a variety of bail fees. Yet, jail and prison service providers are still able to charge exorbitant fees through city and state contracts. For instance, parolees are expected to pay a supervision fee of \$30 per month upon release, but the private company authorized to collect those fees charges "convenience fees" ranging for \$2 to \$3 for every electronic transfer.
- Private companies are even more pervasive in New York's state prisons. Unlike persons under City custody who recently gained access to free phone calls, incarcerated individuals in New York State prisons must pay \$0.043 per minute for prison phone calls. On top of call fees, family and friends must pay a \$3 fee for each credit card transaction. A recent state contract further allows a private company to offer incarcerated individuals in state prisons "free tablets" that in turn sell online content for as much as \$2.50 per song or \$7.99 for a video game.

3. New York jail and prison policies needlessly add to the financial burden on families. Beyond the basics, little is provided free of charge to incarcerated adults, forcing family and friends to transfer money into commissary accounts which can be used to purchase snacks, beverages, personal hygiene products, radios, and stamps – at a premium price.

- Friends and family transferred more than \$17.5 million into New York City jail accounts through 331,000 unique transactions in Fiscal Year (FY) 2018. But those transfers came at great costs to families, who shelled out some **\$2 million in transfer fees** along the way.
- People under custody in New York City jails spent **\$13 million at jail commissaries** in FY 2018, while incarcerated individuals across the state spent \$38 million in prison commissaries. ***In the last decade, city jail commissary revenue has grown 7 percent despite a 36 percent drop in the city jail population.***

- On top of the fees involved in transferring funds into jail and prison accounts, New York’s correctional institutions do not make it easy to have funds returned. Under a contract with a private company, the State now provides remaining funds on a debit card that is subject to *15 different fees*.
- 4. Overly burdensome financial obligations imposed by the criminal justice system perpetuate and exacerbate a cycle of debt and compromise formerly incarcerated individuals’ rehabilitation and reentry.**
- Mandatory fees impose a disproportionate burden on poor defendants, leading to tarnished financial records, involuntary sequester of jail wages and commissary deposits, and driver’s license suspensions. If a person has the means to immediately pay their fees and fines in full, the case is closed. But if payment cannot be made, the case continues, requiring regular court appearances, often monthly, to continue making payments and remain in compliance.
 - *Despite the courts’ ability to garnish prison accounts, about 45 percent of state parolees have outstanding court debt.* Outstanding fees and fines, in addition to parole supervision fees, can hobble a person’s reentry into their community and strain relationships with friends and family, who are often the ones to actually bear the financial obligations of those returning from prison.
- 5. The majority of jobs in jail pay less than \$0.40 per hour, making it all but impossible for incarcerated individuals to support themselves within the correctional system economy.**
- A “skilled” job in New York City jail, such as a cook or electrician, offers a wage of between \$0.32 and \$0.39 an hour. Unskilled jobs, including housekeeping, pay even less.
 - *In FY 2018, the City’s Department of Correction (DOC) paid \$5.9 million in wages to incarcerated individuals, the equivalent of about \$660 per person per year.*
 - State prisons offer similar wage rates. However, in addition to low pay, state prisons are authorized under state law to withhold up to \$1 per week from wages “to help defray the cost of incarceration.”

In order to address the harms perpetuated by the current regime of fees and fines, the Comptroller’s Office proposes a number of policy recommendations, which would require action by the City and State:

- 1. Break the cycle of debt and criminal justice involvement.** New York State should eliminate mandatory surcharges and forgive outstanding court debt for these financial obligations. The State should also end the practice of incarceration for unpaid court debt. Other recommendations include ending driver’s license suspensions for unpaid fines and eliminating parole and probation supervision fees.
- 2. End or amend contracts that allow exorbitant fees.** The City should take steps, through legislation and/or directly through contracts with companies that provide wire

transfer services, to eliminate money transfer fees, which can be as high as \$11.95 for one transaction and typically fall on friends or families. In addition, the State should follow New York City's lead and eliminate charges for phone calls and other forms of communication.

3. **Ensure fines are not overly burdensome.** Fines are a common form of punishment, yet the severity of the punishment is vastly disproportionate for wealthy and poor defendants. Rather than continue the current practice of basing fines solely on the offense, the Comptroller's Office recommends allowing partial or full waivers for state fines based on ability to pay. New York City should also study City-imposed fines, including demographic and geographic collection patterns, on a regular basis to identify those that may be unreasonable, ineffective, and/or disproportionately imposed.
4. **Provide more transparency.** New York State courts are required to report to the State Division of Criminal Justice Services (DCJS) on the disposition and collection of mandatory surcharges, sex offender registration fees, DNA Databank fees, and Crime Victim Assistance fees. However, this data, if it is collected, is not publicly available. DCJS should make data publicly available on at least an annual basis.
5. **Review commissary policies and ensure all incarcerated individuals have access to basic goods.** Persons under custody have a limited ability to earn wages while incarcerated and therefore depend heavily on family and friends to be able to purchase commissary items. New York State and City should review commissary policies and incarcerated individuals' access to basic goods, both with or without outside support. One proposal introduced in Albany would increase the minimum wage rate to \$3 per hour at all state and local correctional facilities. In addition, Courts should be prohibited from garnishing commissary accounts to pay court-imposed surcharges.



Introduction

Mandatory surcharges, court filing fees, treatment program fees, parole fees, jail haircuts, driver assessments. These are just some of the many ways in which involvement with the criminal justice system – even prior to a conviction – can lead to a dizzying array of financial obligations, extract wealth from low-income communities, and ensnare individuals in a cycle of debt and criminal justice involvement.

Some fees are imposed by private actors – under government authority – for services provided, such as money transfers to prison accounts. But many charges are collected by the City or the State government. The rationale for some of these charges, such as fines and restitution, is explicitly crime deterrence or victim compensation. However, others were adopted to simply raise revenue and shift funding for the criminal justice system from taxpayers to the justice-involved population.

Regardless of the stated purpose, or the ultimate beneficiary, as with all forms of financial obligations, the severity of the sentence depends on the size of your wallet. For those who can easily pay \$120 – the mandatory charge for pleading guilty to a non-criminal violation such as disorderly conduct – the charge is merely a small price to pay to settle a case and move on. For others, paying court costs means choosing between the rent and the utility bill or asking family members to sacrifice on your behalf.

Then there are those who simply cannot pay. For this group, the consequences can be uniquely severe. Failure to pay court-ordered fees and fines, even relatively small ones, can lead to additional mandated court appearances, civil judgments and tarnished financial records, driver's license suspensions, court warrants, and even jail time. The inability to afford court-ordered diversion or treatment programs can similarly lead to harsher sentences, lasting criminal records, and potentially deportation for immigrant defendants.

Court debts can remain even after a person has served time, presenting an immediate hurdle to successfully reentering society. In direct opposition to the City's and the State's goals of reducing the incarcerated population and curbing recidivism, each potential debt-related consequence presents a new stumbling block to a productive, and crime-free, life.

The burden of these financial obligations falls largely on the City's lower-income neighborhoods and communities of color. Based on current data, 55 percent of the City's jail population and 54 percent of persons in state prison who were indicted in New York City are black, more than double their representative share of the city's resident population.¹ More than 95 percent of defendants in Brooklyn cannot afford a lawyer and are deemed indigent by the court.² Because these financial costs fall largely on low-income residents, when payments are made, often the funds come from family and friends.

A Growing Movement to End Criminal Justice Debt

In recent years, numerous reports have documented the proliferation of “user fees” in the criminal justice system and the potential burden caused by even small fees.³ These costs fall largely on low-income communities that make up a disproportionate share of arrests, convictions, and the incarcerated population.

A groundbreaking 2015 U.S. Department of Justice investigation into law enforcement practices in Ferguson, Missouri further fueled calls to curb the proliferation of court-imposed financial obligations after revealing that city policies were “shaped by the City’s focus on revenue rather than by public safety needs.”⁴

In July 2018, San Francisco became the first city in the nation to eliminate all criminal justice administrative fees authorized by local government on the formerly incarcerated, including fees for probation and electronic ankle monitoring.⁵ Calling such fees “high pain for individuals and low gain for government,” a report issued in conjunction with the action found that only 17 percent of these fees were ever paid, while creating barriers to reentry and increasing recidivism. The legislation adopted in San Francisco also eliminated nearly \$33 million in outstanding debt owed by 21,000 people. More recently in June 2019, the Mayor and Sheriff of San Francisco announced a plan to make county jail phone calls free and eliminate jail commissary price markups.⁶

San Francisco’s action on jail phone calls followed similar action by the New York City Council in 2018 to eliminate such fees.⁷ Prior to implementation, the City had been collecting \$8 million per year in fees on phone calls in jail, \$5 million of which accrued to the City. In 2016, the City Council also effectively eliminated the imposition of a 3 percent fee on refunded bail for cases ending in a conviction, and more recently eliminated fees for online and credit card bail payments. In September 2018, City Councilmember Rory Lancman held a hearing on the “cost of justice,” including the exorbitant fees and fines imposed on indigent defendants.⁸

A complete accounting of financial obligations in the criminal justice system is difficult to document, as data is scattered across multiple agencies, poorly tracked, and generally not transparent. Nonetheless, by drawing from a wide range of city and state agencies, the New York City Criminal Court, and other available sources, this report attempts to quantify the total cost of these charges—that is, the amount of money that the criminal justice system takes from people accused and/or convicted of crimes and the collateral consequences of failing to pay. This report describes the potential financial consequences at each stage of the criminal justice system, from pretrial and sentencing to post-trial and post-incarceration.

Financial Penalties Imposed in New York State

While other States and localities have more numerous and more severe fines and fees, New York State imposes a sweeping range of justice-related financial obligations.⁹ According to the Criminal Justice Policy Program at Harvard Law School, New York State imposes 30 different types of criminal justice fees and surcharges, roughly in the middle of the pack for the nation.¹⁰ At the opposite ends of the spectrum, Ohio and Florida levy more than 100 different fees and surcharges, while nine states, including neighboring Pennsylvania, levy less than 15.

At all stages of the criminal justice process – pretrial, sentencing, incarceration, and post-trial/post-incarceration – financial obligations accumulate.

Pretrial

The New York City Criminal Court processed roughly 240,000 cases in 2017.¹¹ Among these cases, about one-fifth of defendants pled guilty at the first court hearing, and about 18 percent had bail set.¹² A small share were initially ordered into supervised release or committed to jail. Even at this early stage, costs can begin to mount through bail and court-related fees. Additionally, thousands of pretrial defendants are held in jail before bail is posted or their case is concluded, with pretrial jail stays lasting from a few hours to a few years. The additional costs of incarceration are discussed in the following section.

Bail

About 35 percent of criminal cases in New York City are concluded at a defendant's arraignment hearing.¹³ For cases that continue past that first hearing, a judge sets the conditions of the person's release or commits the person to custody. In more than 45,000 cases in FY 2017, judges set bail as a condition of release.¹⁴ If a defendant attends all court hearings and abides by all court orders, regardless of the outcome of the case, bail should be refunded to the person who posted bail, known as the surety.¹⁵ If a judge rules that a defendant did not follow all court orders, then the entire amount of bail may be forfeited. In FY 2017, more than 12,300 bail bonds with a total value of \$268 million were posted in City Criminal Court.¹⁶ Another \$53 million was posted in cash bail.

Under legislation passed as part of the New York State budget for 2019-20, sweeping reforms of the State's bail laws will take effect on January 1, 2020 and should substantially reduce the number of defendants subject to bail and thus pretrial incarceration.¹⁷ The law further explicitly prohibits courts from imposing any of part of the cost of release on the defendant.¹⁸ However, even with the statutory changes, judges will still maintain the option to set bail for defendants accused of violent felonies and certain other defendants who are deemed to be a flight risk.

1	<ul style="list-style-type: none"> ✓ Pretrial <ul style="list-style-type: none"> ▶ Commercial bail bond fee ▶ Online and credit card bail fees
2	<ul style="list-style-type: none"> ✓ Sentencing <ul style="list-style-type: none"> ▶ Mandatory surcharge ▶ DNA Databank fee ▶ Crime Victim Assistance fee ▶ Sex Offender Registration fee ▶ Fines ▶ Restitution ▶ Bail forfeiture ▶ Mandated treatment programs
3	<ul style="list-style-type: none"> ✓ Incarceration <ul style="list-style-type: none"> ▶ Money transfer fee ▶ Commissary ▶ Prison incarceration fee ▶ Work release fees ▶ Prison phone calls ▶ Disciplinary charges
4	<ul style="list-style-type: none"> ✓ Post-trial, post-incarceration <ul style="list-style-type: none"> ▶ Probation fee ▶ Parole fee ▶ Ignition Interlock Device fees ▶ Driver's license suspension and revocation fees ▶ Driver Responsibility Assessment ▶ Criminal History Search fee ▶ Certificate of Disposition fee

Even if a defendant meets all court requirements, posting bail can result in financial losses and hardship. If the person’s family or friends choose to use a commercial bail bond, which requires a smaller upfront payment, then the surety is subject to a nonrefundable premium. The Comptroller’s Office previously reported that commercial bail companies extracted as much as \$27 million in nonrefundable fees from New York City residents in FY 2017.¹⁹ These fees are authorized and capped under state law. Even for those who are able to avoid a commercial bond, putting together enough funds for cash bail can mean not having enough money to pay the rent or handing over the entirety of a family’s liquid assets.

\$27M	\$15M	8.0%
<i>Private Bail Bond Fees, FY17</i>	<i>Forfeited or Abandoned Cash Bail Since FY08</i>	<i>Bail Credit Card Fee (to be eliminated in 2020)</i>

Other fees apply to online and credit card bail payments, although these fees should be eliminated under legislation passed by the City Council in April 2019.²⁰ The elimination of the fee for online bail takes effect in November 2019, while credit card fees for in-person payments will be eliminated in August 2020.

Since 2018, the City has provided an online bail system operated by an outside vendor, Paymentus, who currently charges a 2.0 percent fee per transaction.²¹ A single payment cannot exceed \$2,500. Similarly, if a person wishes to post bail with a credit card at a Department of Correction (DOC) location, they must currently pay an 8.0 percent fee.²² In FY 2018, the City’s credit card vendor for bail payments collected \$20,003 on bail payments of \$250,036.²³

People also routinely experience delays in bail refunds, and hundreds of sureties every year never claim their refund. While the City states that cash bail should be returned within eight weeks, an analysis of records from the Brooklyn Community Bail Fund found that in 12 percent of cases, returns took more than six months.²⁴ In a small number of cases, court-ordered refund requests were outstanding for more than one year.

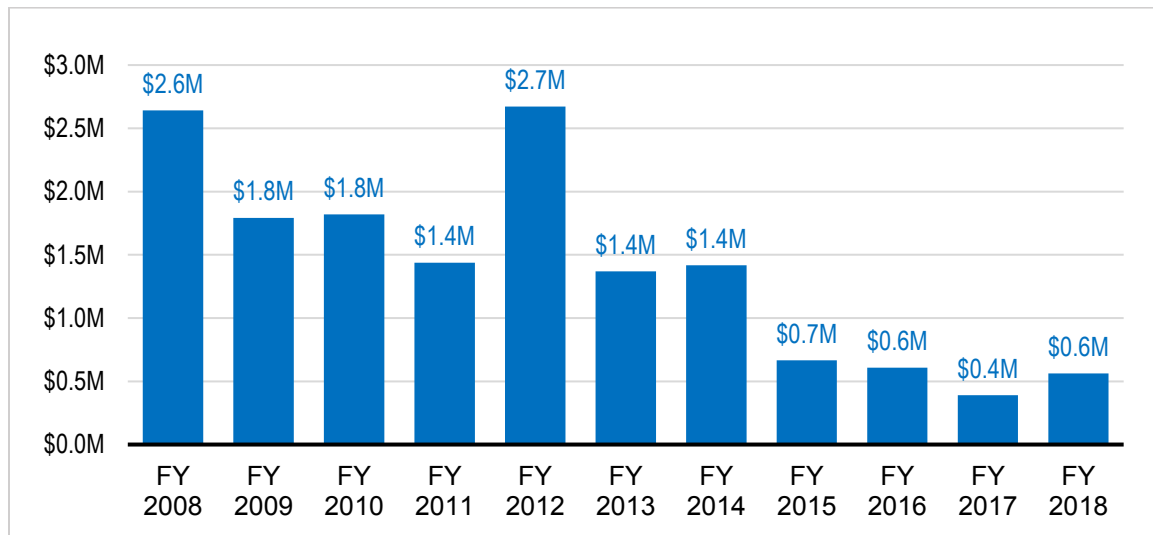
If a bail refund has not been claimed for three years, it is considered abandoned property. Since 2016, all unclaimed funds are transferred to the State’s Office of Unclaimed Funds.²⁵ Sureties may still claim these funds at a later date.

According to a listing published by the City Department of Finance (DOF) in December 2018, more than 500 cash bail refunds were set to be considered abandoned in 2019.²⁶ If these bail amounts averaged \$4,500 – the average cash bail amount posted in FY 2017 – then these New York City sureties stand to lose more than \$2 million.²⁷ Based on revenue reported by DOF, since FY 2008 more than \$15 million has been collected from forfeited or dormant cash bail. (See Chart 1.) Apart from cash bail forfeitures, New York City collected roughly \$985,000 in bail bond forfeitures in FY 2018.²⁸ Most of these forfeitures

were likely passed on to defendants' family and friends through the loss of collateral or the imposition of new charges.

Chart 1. Revenue to New York City from Forfeited or Dormant Cash Bail

(dollars in millions)



SOURCE: Office of the New York City Comptroller, City of New York Comprehensive Annual Financial Report, multiple years.

Under state law, the City may retain up to a 3 percent fee before returning cash bail.²⁹ If the case is concluded “in the favor of the accused,” that is, the case is dismissed or the person is acquitted, the fee may not be retained. One percent of the fee must be allocated to alternative to incarceration programs, under state law. However, in 2016, the City Council passed legislation allowing DOF to waive the fee, “after consideration of the budgetary impact on the city of such a waiver, the purpose of orders of bail and the equitable administration of justice.”³⁰ In early 2018, DOF adopted rules to cease collecting the fees, finding that “the small loss in revenue is far outweighed by the benefits of reducing the cost burden on those who can least afford it.”³¹ Additionally, state law allows the courts to withhold funds from refunded cash bail if the defendant has an outstanding fine.³²

Sentencing

If a person is found guilty, either by a guilty plea or by trial, a host of financial obligations may be imposed at the time of sentencing. **In calendar year 2017, the New York City Criminal and Supreme Courts imposed more than 450,000 fees and fines, worth close to \$100 million in legal financial obligations.** (See Table 1.) These obligations include mandatory surcharges and fees, fines, and court-ordered restitution payments.

When assessing financial obligations imposed at sentencing, it is important to bear in mind that in New York City, few cases are decided by trial. Most criminal cases are concluded by dismissal or a guilty plea. For cases that were resolved in New York City Criminal Court in 2017, which includes violations, misdemeanors, and felony charges that are settled at arraignment, 120,707 cases ended in a guilty plea, compared to 355 cases which were

convicted by trial.³³ Similarly, defendants in just 552 felony cases were convicted by trial in 2017; in another 17,082 felony cases that were transferred to Supreme Court following a grand jury indictment, the defendant pled guilty.³⁴

Types of legal financial obligations

- ▶ **Fines:** Financial obligations imposed as a penalty after a criminal conviction or admission of guilt.
- ▶ **Fees or user fees or costs:** Financial obligations imposed as a way for jurisdictions to recoup costs of the “use” of the criminal justice system.
- ▶ **Surcharges:** Financial obligations imposed as a flat fee or percentage added to a fine to fund a particular government function or a general fund.
- ▶ **Restitution:** Financial obligations intended to compensate victims of a crime for their actual losses. Restitution is typically understood to consist of money actually transmitted to individual victims of crime, but in some instances it is in fact paid to reimburse government agencies or insurance companies.
- ▶ **Supervision fees:** User fees that are imposed to recoup the cost of parole or probation supervision.

SOURCE: Criminal Justice Policy Program, Harvard Law School.

Additionally, despite more severe arrest charges, more than 60 percent of convictions are for non-criminal charges.³⁵ Among docketed arrest cases in 2015 resulting in a conviction, 38 percent of defendants were convicted of a misdemeanor or felony. Another 36 percent were convicted of disorderly conduct, and 25 percent were convicted of other violations or infractions.

Mandatory Surcharges Fees

Most criminal cases in New York that result in a conviction, whether through a guilty plea or trial, generate automatic financial obligations.³⁶ The largest automatic financial obligation is known as the mandatory surcharge and equals \$95 for a penal code violation, \$175 for a misdemeanor, and \$300 for a felony.³⁷

The mandatory surcharge was originally adopted with the explicit purpose of raising revenue and shifting the burden of providing services to crime victims from taxpayers to persons found guilty of a crime.³⁸ Since being adopted in 1982, New York’s mandatory conviction surcharges have been increased five times, most recently in 2008.³⁹ In total, 139,000 mandatory surcharges were imposed in 2017 in New York City, including more than 107,000 for misdemeanor or violation cases.

Table 1. Court-imposed Fees and Fines in New York City Criminal and Supreme Court by Charge Severity, Calendar Year 2017 (dollars in thousands)

	Felony Charge		Non-felony Charge*		Total	
	Number	Amount (\$000s)	Number	Amount (\$000s)	Number	Amount (\$000s)
Fine	2,119	\$6,813	125,689	\$48,725	127,808	\$55,538
Mandatory Surcharge	31,550	\$6,516	107,503	\$13,139	139,053	\$19,656
Restitution	803	\$16,897	686	\$1,528	1,489	\$18,425
Crime Victim Assistance	31,514	\$769	105,186	\$2,072	136,700	\$2,841
DNA Databank	20,957	\$1,050	25,487	\$1,277	46,444	\$2,327
Sex Offender Registration	428	\$429	61	\$53	489	\$482
Total	87,371	\$32,474	364,612	\$66,793	451,983	\$99,267

*"Non-felony" includes misdemeanors, violations, infractions and summonses.

Note: Cases are classified by the arrest charge. Persons may be sentenced based on a different offense. Most cases begin in Criminal Court. Continued felony cases are transferred to Supreme Court for prosecution. Data includes fees and fines assessed on corporations.

SOURCE: New York City Comptroller's Office analysis of data provided by the New York City Criminal Court.

All convictions are also subject to a \$25 Crime Victim Assistance (CVA) fee.⁴⁰ The CVA fee was originally adopted in 1989 at a rate of \$2. A \$50 DNA databank fee has also applied to most misdemeanor and felony convictions since 2003.⁴¹

Combined, these mandatory charges amount to \$120 for a non-criminal violation, \$250 for a misdemeanor, and \$375 for a felony. Persons convicted of certain sex offenses must also pay a \$50 Sex Offender Registration Fee. A Supplemental Sex Offender Victim Fee of \$1,000 is applied to persons found guilty of a smaller subset of sex offenses.

Typical Mandatory New York State Conviction Fees for Penal Code Offenses

	Violation	Misdemeanor	Felony
Surcharge	\$95	\$175	\$300
Crime Victim Assistance Fee	\$25	\$25	\$25
DNA Databank Fee	\$0	\$50	\$50
Total	\$120	\$250	\$375

In 1995, during the first year of Governor George Pataki's administration, the State Legislature adopted the Sentencing Reform Act, which among other punitive measures, removed judges' discretion to waive mandatory surcharges and fees.⁴² While before 1995

New York City Criminal Court often waived surcharges for indigent defendants, under these amendments current law states that “under no circumstances shall the mandatory surcharge...be waived.”

Fines and Restitution

Fines and restitution serve a vastly different public objective than mandatory surcharges and fees. Fines are expressly intended to punish and deter crime, particularly repeat offenders. In 2017, New York City Criminal and Supreme Courts imposed 128,000 fines, totaling \$56 million.⁴³ The vast majority of cases in which a fine was imposed, 98 percent, were non-felony cases. The average fine was \$437.

New York State law sets limits on fine amounts according to the severity of the crime. For felony offenses, state law instructs courts to consider certain factors, including profit gained by the defendant, the impact on any victims, and the defendant's economic circumstances.⁴⁴ Courts can impose fines up to \$1,000 or double the value of property disposed of during the commission of the crime for Class A misdemeanor convictions, while felony convictions can result in fines up to \$100,000. The fine can be up to \$250 for a non-criminal violation, such as disorderly behavior.

If the defendant was found to have profited in the course of committing the crime, or caused losses to the victim(s) of the crime, the judge may also order restitution or reparation to be paid to the victim(s).⁴⁵ In 2017, about \$18 million in restitution was ordered across close to 1,500 cases.⁴⁶ If a person has paid restitution, then they do not have to pay the mandatory surcharge or Crime Victim Assistance fee.⁴⁷

The amount of restitution imposed is generally based on profits gained by the offense and/or losses borne by victims, but the total amount is capped at \$15,000 for felony convictions and \$10,000 for misdemeanor convictions.⁴⁸ New York State also imposes a 5 percent surcharge on court-ordered restitution paid to the designated collection official or organization. The City's designated organization, Safe Horizon, notes that restitution can be imposed as an alternative to jail, in addition to incarceration, or as a condition of probation.⁴⁹ Consequently, failure to make payments can result in resentencing, a revocation of probation, and/or incarceration.

New Yorkers' Experiences with Criminal Justice Fees and Fines:



Tina was arrested multiple times for drug-related offenses, cycling in and out of Rikers Island for a few weeks to a few months at time, and in 2011 she was sentenced to state prison for just over a year. Each conviction produced new fees and a new suspension on her driver's license. By the time she arrived in prison, she had a \$750 hold on her commissary account. She was also four-months pregnant. She was desperate for food both during her pregnancy and following the birth of her child, who was allowed to stay in the nursery.

But Tina was effectively shut out from commissary due to the large hold. When the guards realized that she was circumventing food package limits by enlisting the help of other women, she was nearly sent to solitary and separated from her infant. After she was released from prison, she wanted to renew her driver's license but faced nearly \$1,000 in unpaid court debt. She felt as though "everything was set up to make me fail." With help from her mother, she was able to slowly pay down the debt and get her license. While she is now on the path to getting a bachelor's degree, she felt like she had no prospects when she was released. She worries that insurmountable fees could trigger others into giving up or doing something illegal to get by. She recalls the story of a woman whose baby had a milk allergy and sensitive skin and landed back in prison for shoplifting baby formula and lotion while on parole.



Katherine* cycled in and out of jail in New York City over the course of five years due to a drug addiction. Many of her jail stays were the result of lacking family support to pay small amounts of bail, ranging from \$200 to \$1,000. Every time a judge would announce her sentence, she never paid attention to how much she owed in fees and fines because she did not have any money. She knew that she could not pay, so the information felt irrelevant. Despite having a job in jail, she

could rarely afford anything at the commissary because she did not have any family to support her and send her funds. Watching others purchase goods at the commissary added to her sadness and feelings of worthlessness. Katherine was able to turn her life around after being connected to a drug treatment program that accepted Medicaid and an organization that helped her find a job. When she applied to get a driver's license, her outstanding court debt stood in the way, but because she had a job, she was able to eventually pay down her debts. It has now been five years since she was last arrested.

*Stories are based on real people. Names have been changed here to protect the individuals' identities and privacy.

Court-ordered Treatment Programs

As a condition of release or probation, a defendant may be ordered to attend treatment or rehabilitation programs. While some programs may be covered by Medicaid or private insurance, defendants are responsible for any out-of-pocket costs. Defendants may request financial assistance or access to low-cost treatment services, but the courts are not obliged to fulfill such requests. Legal representatives for indigent defendants in New York City have testified that such programs typically cost between \$25 and \$50 per session and typically last between 12 and 36 weeks.⁵⁰ Additional fees may be charged for registration and intake.

For alcohol or drug rehabilitation programs following a conviction of a related traffic offense, the commissioner of the State Department of Motor Vehicles is responsible for establishing a schedule of fees for such programs.⁵¹ Under state law, local municipalities may, but are not required to, bear the cost of such programs. In New York City, most service providers that contract with the Mayor's Office of Criminal Justice (MOCJ) for alternatives to incarceration or alternatives to detention programs do not charge a fee.⁵² However, many providers operate outside MOCJ's portfolio of programs and may be inaccessible to those who cannot afford the fees.

Incarceration

Pretrial incarceration, or a jail or prison sentence following conviction, presents another host of financial charges and penalties. While incarcerated, people must pay for goods and services beyond a basic level of care, often depending on family and friends to provide the money to do so. These monetary costs fall on top of lost wages, barriers to employment post incarceration, and the personal trauma of being incarcerated.

Jail and Prison Expenses

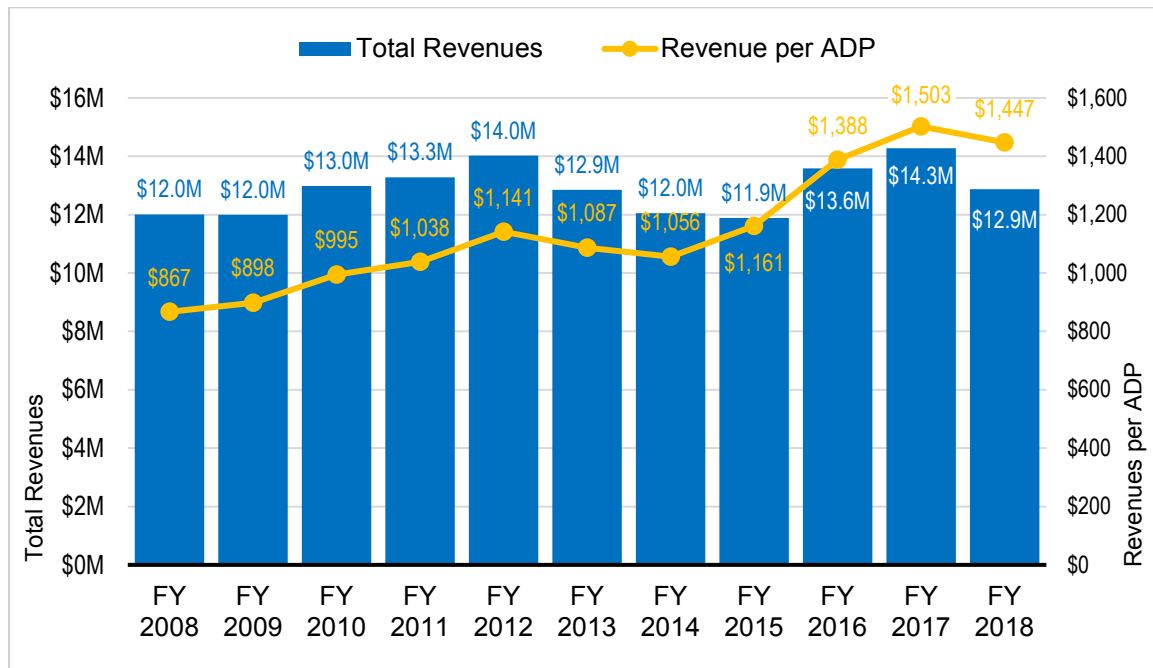
Upon admission, New York State regulations direct local jails to provide, at a minimum, soap, a toothbrush, toothpaste, a drinking cup, toilet paper, a bath towel, and tampons and sanitary napkins to women.⁵³ These items are to be "replenished and replaced as needed." All other toiletries beyond these basics must be purchased at the jail commissary.⁵⁴ Following reports that incarcerated women did not have sufficient access to feminine hygiene products, the New York City Council passed legislation in 2016 clarifying that such products are to be provided at no cost to incarcerated women "as soon as practicable upon request."⁵⁵ The State Legislature followed suit by passing similar legislation in 2018.⁵⁶

Under regulations issued by the New York State Commission on Correction, commissary prices shall be set to allow commissary operations to be "self-supporting" and "provide a modest return above costs."⁵⁷ The most common purchases in city jails include ramen soup, creamer, coffee, beef sticks, potato chips, tuna, mackerel, cheese, and Crystal Light.⁵⁸

If a person in a New York City jail does not have funds in their account, personal hygiene items may be obtained free of charge.⁵⁹ However, a restitution will be recorded, and funds will be deducted if money is subsequently deposited into the account.

In total, in FY 2018 persons under custody in New York City jails spent about \$13 million at jail commissaries, 7 percent more than a decade ago, despite a 36 percent drop in the average daily jail population. (See Chart 2.) While in FY 2008, persons under custody in city jails spent the equivalent of \$867 per year at the jail commissary, or \$2.38 per day, in FY 2018 the average person spent \$1,447 per year on commissary items, or just under \$4 per day.

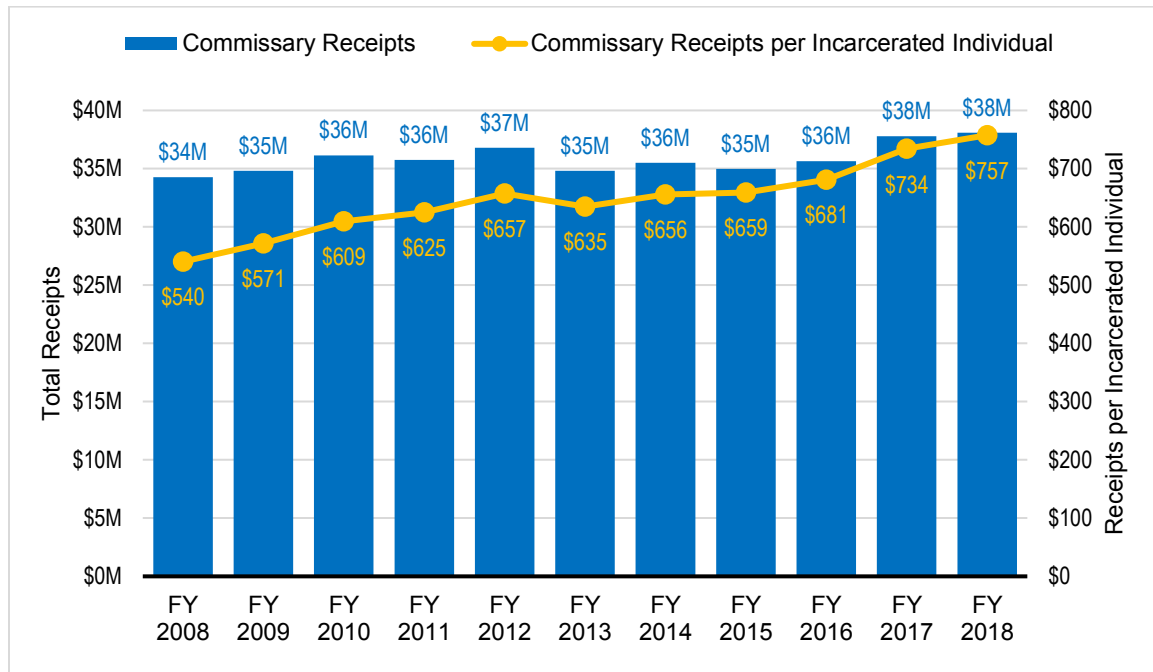
Chart 2. New York City Department of Correction (DOC) Commissary Revenues per Average Daily Population (ADP)



SOURCE: Comptroller's Office analysis of the New York City Comprehensive Annual Financial Report, multiple years.

On a per-person basis, commissary receipts at New York State prison facilities are far less than at New York City jails. In state fiscal year (SFY) 2018, the state Department of Corrections and Community Service (DOCCS) collected about \$757 per person under custody in commissary receipts.⁶⁰ (See Chart 3.) Since SFY 2008, the state prison population has fallen by 21 percent, while commissary receipts rose by 11 percent, leading to a 40 percent increase in commissary receipts per person. The State collected a total of \$38 million in commissary receipts in SFY 2018.

Chart 3. New York State Department of Corrections and Community Supervision (DOCCS) Commissary Account Receipts



Note: Receipts per incarcerated individual is based on the prison population as of December. Receipts include the sale of commodities to incarcerated individuals and interest income.

SOURCES: New York City Comptroller's Office analysis of Office of the New York State Comptroller, *Comptroller's Annual Report to the Legislature on State Funds Cash Basis of Accounting*, multiple years; Office of the New York State Comptroller, *Fund Classification Manual* (January 2019); and New York State Department of Corrections and Community Supervision, "Factsheet: July 1, 2019."

Until recently, another large expense in city jails was phone calls. Contact with family members and outside support is crucial to a person's rehabilitation and ability to successfully return to their community, as well as their mental well-being while incarcerated. Any limitation on personal contacts works against these goals.

According to the City, more than 25,000 phone calls are made from city jails every day.⁶¹ As of May 2019, City jails allow free phone calls within the U.S. Incarcerated individuals are allowed to use the phone for 21 minutes every three hours. Each call is limited to 15 minutes. Prior to the change, jail phone calls had cost \$0.50 for the first minute and \$0.05 for each subsequent minute.

However, New York State prisons have not followed suit. Under a 2018 contract with Securus Technology, phone calls in state prisons cost \$0.043 per minute and include a \$3 fee for credit card transactions.⁶² Family and friends of persons in state custody must have a funded account with Securus to receive phone calls.

Other services in jail and prison also require personal funds. In New York City jails, haircut vouchers cost \$2.⁶³ However, if an incarcerated individual lacks sufficient funds, then a partial payment should be accepted and a restitution created. Medically necessary haircuts are provided for free, as well as haircuts for indigent persons.⁶⁴

According to data provided by the City Department of Correction (DOC), people under city custody purchased more than 79,000 haircuts in FY 2018 at a total cost of \$146,000. Another 25,700 haircuts were provided to people who could not immediately pay. To account for the debt, DOC charged \$47,000 in restitutions related to haircuts; \$41,000 was ultimately paid during the year. Notably, when 16- and 17-year-olds were transferred from adult DOC jails to city-run youth detention facilities, families were notified that their children would no longer need to pay for haircuts and personal hygiene items.⁶⁵

Incarcerated individuals must also use personal funds to purchase stamps, stationary, and envelopes. Barring a court order, persons under city custody are allowed to send and receive an unlimited amount of mail. If a person has no funds in their account, the DOC will provide free stationary, envelopes, and regular first class stamps for two letters per week, plus all correspondence to attorneys, courts and public officials, according a DOC handbook.⁶⁶ Money is recouped if funds are deposited in the person's account within seven days after receiving free mail materials. Unless mandated by a law or rule, persons under DOC custody must pay for certified mail. In FY 2018, the City's jail population purchased about \$38,000 for stamps and certified mail.⁶⁷

Additional expenses in city jails and state prisons include disciplinary penalties, charges for lost id cards, damaged property restitution, and payments for court filing fees. A disciplinary infraction in a city jail could cost \$25, while an infraction could cost \$5 in a state prison and up to \$100 for lost or damaged property.⁶⁸

In early 2018, the State DOCCS announced that all incarcerated individuals in state prisons would soon receive “free” tablets.⁶⁹ The tablets are provided by JPay and offer a range of electronic services, including songs, games, movies, and e-books, at a price.⁷⁰ Educational programming is provided free of charge. According to the DOCCS, JPay expects to earn \$8.8 million over five years from their contract with New York State.⁷¹

Songs cost between \$1 and \$2.50. Games cost up to \$7.99. Movies and movie rentals cost between \$2 and \$25. Persons in state prisons will receive one charger and one set of earbuds for free, but replacement earbuds cost \$5 and replacement chargers cost \$10.

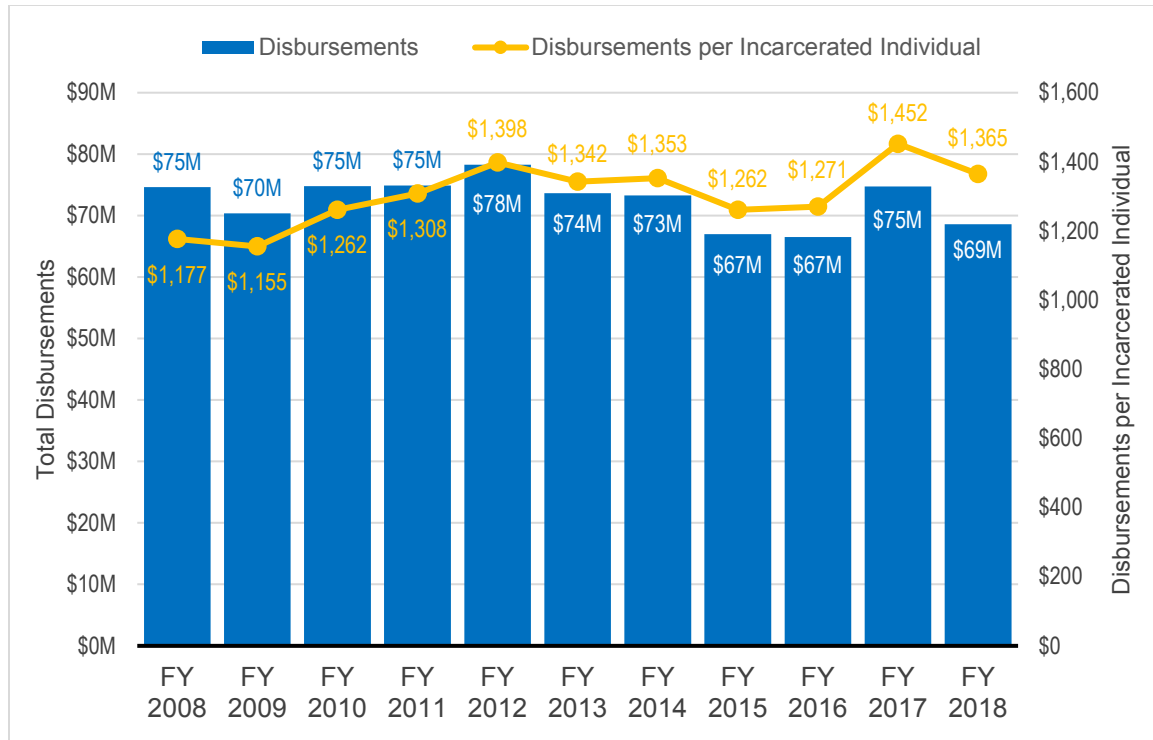
The contract with JPay will also enable incarcerated individuals to send and receive emails. One outbound email “stamp” can be bought for \$0.33.⁷² One hundred stamps are available for \$23.00. One stamp buys one page of typed text. Friends and family can also purchase email stamps at similar prices to send a message. Attachments, such as a photo, require an additional stamp, and adding a 30-second videogram costs four stamps. JPay's contract notes that photo or text printouts will be “at inmate expense.”

The new JPay contract also offers a 30-minute “video visitation” service for \$8.99. While video visitation holds much promise for individuals under custody and their loved ones, who may have difficulties attending in-person visitation, particularly long-distance family and children, its implementation has been problematic in jails and prisons outside of New York. One review found that 74 percent of jails banned in-person visitations after adopting video visitation.⁷³

In state fiscal year (SFY) 2018, incarcerated individuals in New York State prisons spent a total of \$69 million from their prison accounts, including garnishments for court

obligations.⁷⁴ (See Chart 4.) Spending per person in state prison has fluctuated between roughly \$1,200 and \$1,400 per incarcerated individual in the last decade and totaled \$1,365 per person in SFY 2018.

Chart 4. New York State Department of Corrections and Community Supervision Inmates' Account Disbursements



Note: Disbursements per incarcerated individual based on the prison population as of December. Disbursements include mandatory surcharges and personal purchases. Revenues to the Inmates' Account include prison earnings, gifts, social security benefits, interest, income tax refunds and other miscellaneous receipts.

SOURCES: Comptroller's Office analysis of Office of the New York State Comptroller, *Comptroller's Annual Report to the Legislature on State Funds Cash Basis of Accounting*, multiple years; Office of the New York State Comptroller, *Fund Classification Manual* (January 2019); and New York State Department of Corrections and Community Supervision, "Factsheet: July 1, 2019."

Money Transfers and Wages to Incarcerated Individuals

To facilitate payment for commissary items and other services, a unique financial account is created for each person upon admission. If the incarcerated person has a job in jail or prison, wages are deposited into the account. However, persons under custody primarily rely on friends and family to send money. According to data provided by the New York City Department of Correction (DOC), more than \$17.5 million was deposited to the accounts of incarcerated individuals through 331,000 unique transactions in FY 2018, implying that the average deposit was \$53. In the same year the DOC paid \$5.9 million in wages to 16,424 unique people under custody, or \$662 per the average daily jail population.

Prior to 2007, family and friends could deposit funds only through the DOC, either by mailing a money order or cashier's check or by depositing funds in person at a DOC cashier.⁷⁵ However, in 2007 the DOC entered into license agreements with two outside vendors – JPay and Western Union – to provide more convenient options, including online and telephone payment.⁷⁶ The convenience came with substantial fees.

Table 2. JPay Service Fees for NYC Department of Correction (DOC) and NYS Department of Corrections and Community Supervision (DOCCS) Money Transfers

(as of August 2019)

NYC DOC				NYS DOCCS			
Online				Online			
\$0.01	-	\$20	\$3.95	\$2	-	\$9.99	\$1.99
\$20.01	-	\$100	\$6.95	\$10	-	\$19.99	\$2.99
\$100.01	-	\$200	\$8.95	\$20	-	\$49.99	\$3.99
\$200.01	-	\$300	\$10.95	\$50	-	\$300	\$5.99
By Phone				By Phone			
\$0.01	-	\$20	\$4.95	\$2	-	\$9.99	\$2.99
\$20.01	-	\$100	\$7.95	\$10	-	\$19.99	\$3.99
\$100.01	-	\$200	\$9.95	\$20	-	\$49.99	\$4.99
\$200.01	-	\$300	\$11.95	\$50	-	\$300	\$6.99
Walk-in Cash Payments (MoneyGram)				MoneyGram			
\$0.01	-	\$5,000	\$8.95	\$0.01	-	\$2,999.99	\$4.00
Kiosk Cash Payments							
\$0.01	-	\$5,000	\$3.00				

Note: Current service fees for the City Department of Correction (DOC) are the same as agreed to at the outset of JPay's contract with the City, which began June 2007. Under the DOC contract, JPay may request annual increases. For the State Department of Corrections and Community Supervision (DOCCS), current service fees are below the rates agreed to in JPay's contract with the State, which began in August 2017.

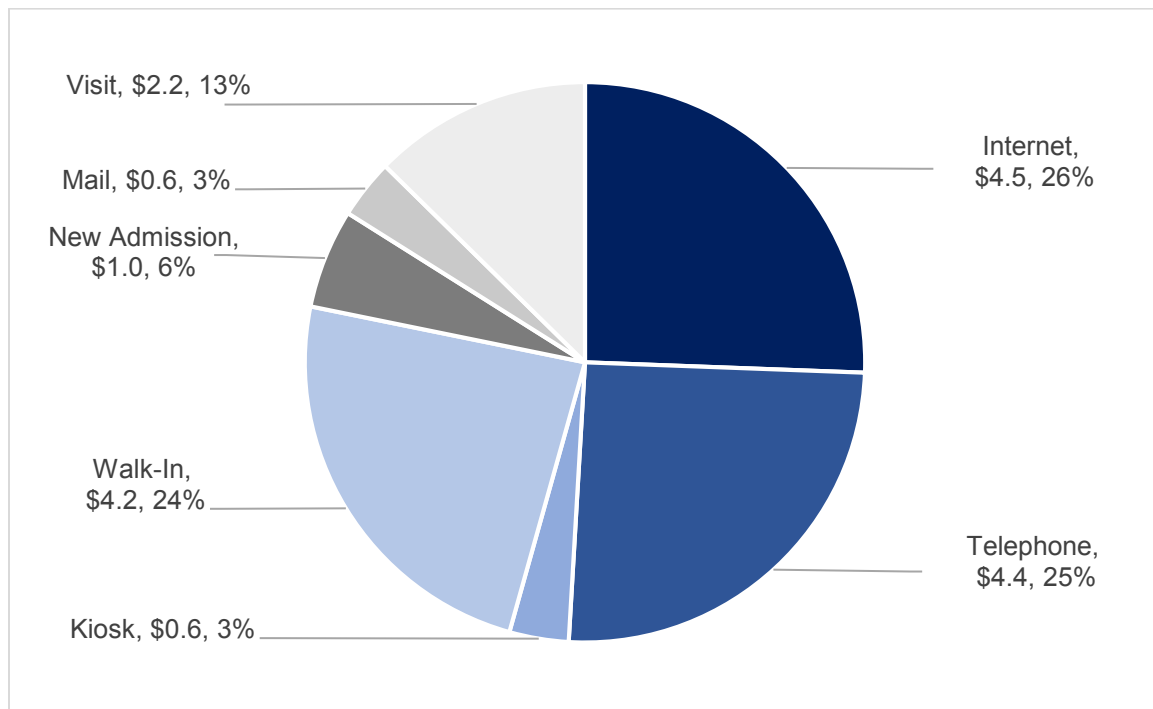
SOURCES: JPay, "New York City Department of Correction: Rates" (accessed August 1, 2019), <https://www.jpay.com/Agency-Details/New-York-City-Department-of-Correction.aspx>; Contract Agreement Between the New York City Department of Correction and JPay, Inc for the period beginning June 24, 2007 through June 23, 2017; New York State Department of Corrections and Community Supervision, "Notice to Family and Friends of New York State Incarcerated Individuals Regarding Reduced Fees for Certain Money Transfers through JPay" (November 2018), <http://www.doccs.ny.gov/DoccsNews/2018/Notice%20to%20Family%20and%20Friends%20of%20New%20York%20State%20Inmates%2011-2018.pdf>; Contract Between New York State Department of Corrections and Community Supervision and JPay Inc. for the period of August 1, 2017 through July 31, 2022, Exhibit A, https://www.prisonpolicy.org/scans/JPay_NYDOCCS_inmatekiosks_piggybackcontract.pdf; and "NYS DOCCS Inmate Services" (accessed August 1, 2019), <https://www.jpay.com/Agency-Details/NYS-DOCCS-Inmate-Services.aspx>.

For an online payment, JPay’s service fees range from \$3.95 for a transaction up to \$20 to \$10.95 for depositing between \$200 and \$300.⁷⁷ (See Table 2.) Fees to pay by phone are \$1 higher than the online charges. Under the current fee structure, a \$20 online deposit would require a 20 percent fee, while a \$300 deposit would generate a 4 percent fee. Even in-person payments generate service fees. A walk-in cash payment at a JPay location requires a fee of \$8.95, and a cash payment at a JPay kiosk requires an extra \$3. These high fees are in spite of the fact that under New York State regulations service fees on the transfer of funds into the account of an incarcerated individual using “electronic kiosks, automated teller machines, or other similar devices or systems capable of allowing members of the public to deposit funds into an inmate’s institutional fund account” cannot exceed \$5 per transaction.⁷⁸

Despite the high service fees, according to DOC records, more than three-quarters of deposits to jail accounts in FY 2018 went through third-party vendors. (See Chart 5.) These third-party transactions were roughly evenly split between internet, telephone, and walk-in payments.

Chart 5. Deposits to NYC Department of Correction Jail Accounts in FY 2018

(dollars in millions, third-party transactions shaded in blue)



SOURCE: Comptroller’s Office analysis of data provided by the New York City Department of Correction.

Based on the distribution of payments deposited with third-party vendors, **the Comptroller's Office estimates that family and friends of people incarcerated in DOC facilities spent roughly \$2 million in service fees in FY 2018.**⁷⁹ While these fees may pale in comparison to the DOC's annual budget of \$1.4 billion, \$2 million represents a substantial transfer of wealth from family and friends – typically in lower-income communities – for the simple privilege of sending money to a loved one in jail.

While in jail or prison, individuals who have been sentenced can be required to work, barring certain exemptions. Pretrial detainees can voluntarily request to work. However, state and federal labor laws, including the minimum wage and workers compensation, do not apply. In New York State, wage rates for incarcerated persons are set at the discretion of the state DOCCS and the sheriffs or commissioners of local correctional agencies.⁸⁰ At both state and local correctional facilities, wage rates are a mere fraction of New York's minimum wage. Low wages have been justified by state prison officials by emphasizing the rehabilitative nature of work and skill-building opportunity for incarcerated individuals, as well as the benefits of reducing idle time. In 2019, New York State lawmakers proposed imposing a minimum wage of \$3 per hour in state prisons and local correctional facilities, a move that would raise wage rates far above any other state.⁸¹

In New York, wage rates for incarcerated individuals are set depending on the skill level required. At New York City jail facilities, “skilled” jobs, such as cooks and electricians, pay \$0.32-\$0.39 per hour, while “unskilled” jobs, including sanitation and housekeeping work, pay \$0.22-\$0.27 per hour.⁸² Detainees who work as observation aides, for example, monitoring other detainees in solitary confinement, can earn as much as \$1 per hour. Other than observation aides, persons under DOC custody may work a maximum of 40 hours per week.

Even with a skilled job at a New York City jail, such as a cook, someone would need to work more than 300 hours, or roughly eight weeks at 40 hours a week, to earn enough money to pay the \$120 mandatory fees for a non-criminal violation conviction.

Within the state prison system, wage rates are as low as \$0.10 an hour and may rise in accordance with job performance, length of time on the job, and a high school diploma or equivalent.⁸³ The highest paid jobs are available through the Division of Correctional Industries, known as Corcraft, with wages ranging from \$0.16 to \$0.65 an hour and potential for productivity-based bonus payments.⁸⁴ Corcraft workers manufacture a wide range of goods, including clothing, soap, office furniture, highway signage, glasses, and specialty metals.⁸⁵ Workers may also be engaged in the removal of asbestos, lead-based paint, or mold.

Corcraft is designated as a “preferred source” supplier by New York State, and as such, Corcraft is exempted from the competitive bidding process and their products receive preference in local procurement. In state fiscal year 2019, Corcraft collected \$53 million in revenues from the sale of its products.⁸⁶

The top pay rate for a non-Corcraft job is \$2 per day, the equivalent of \$0.33 per hour.⁸⁷ Each state correctional facility is permitted to pay just one person for every 300 incarcerated individuals at the top rate. According to data obtained by MuckRock from the

DOCCS, as of November 1, 2018, about 13,000 persons under state custody had a job in prison.⁸⁸ The most common job was food service.

Additionally, as authorized in New York State law, state prison facilities are permitted to “collect from the compensation paid to a prisoner for work performed while housed in a general confinement facility an incarceration fee, not to exceed one dollar per week, for each week of confinement to help defray the costs of incarceration.”⁸⁹ If the fee would cause an “unreasonable hardship on the prisoner or his or her immediate family,” then the incarceration fee may be waived.

State prisons further withhold 20 percent of weekly payroll for the first 15 weeks of payroll until 15 days of pay has been withheld.⁹⁰ Within one year of the person’s earliest release date, state prisons also begin withholding 12.5 percent of all receipts, from payroll and outside funds, until \$40 in total has been withheld. These funds are later given to the person upon their release as “gate money.”

New York State law also authorizes state prisons to deduct certain expenses from wages earned by incarcerated individuals while on temporary work release, including “appropriate and reasonable costs related to the inmate’s participation in the work release program,” support of the inmates’ dependents, court fines and restitution, and commissary purchases.⁹¹ Currently, work release participants are subject to a weekly \$10 “day reporting fee” and a 20 percent room and board fee, which is applied to net earnings.⁹²

Incarceration Account Refunds and Debt

Funds remaining in a person’s account are supposed to be returned upon release. When a person is discharged from a DOC jail, people can receive up to \$100 in cash and the remainder in check form, according to a 2011 DOC directive.⁹³ According to the DOC, in FY 2018 city jails returned \$2.4 million to roughly 18,600 discharged persons, including \$610,000 in cash and \$1.8 million in checks.⁹⁴ Discharged persons with account balances below two times the current transit fare are eligible for a MetroCard worth three times the current fare.⁹⁵ Otherwise, individuals may request to purchase a MetroCard upon release and have funds deducted from their account balance. In FY 2018, roughly \$45,000 was charged to jail accounts for the purchase of MetroCards.

However, formerly incarcerated individuals have complained that receiving funds can be difficult, and sometimes impossible, on the day of their release. In fact, a 2018 investigation by the State Commission on Correction revealed that, as of March 2017, \$3.5 million was owed to about 180,000 people who did not receive their money from the DOC upon release.⁹⁶ Subsequently, at a June 2019 City Council hearing on a bill to address unclaimed funds, DOC officials stated that \$3.7 million was owed to approximately 140,000 people, dating back to 2012.⁹⁷ Abandoned funds are forwarded to Police Property Payable after 120 days. Data provided by the DOC shows that about \$280,000 was transferred to Police Property Payable from personal jail accounts in FY 2018.

Additionally, according to a DOC jail handbook, if a person is discharged with outstanding obligations, the debt will remain under the person’s account.⁹⁸ If that person is ever incarcerated again, funds will be withdrawn from any new commissary account.

The State's current system of returning personal funds exposes formerly incarcerated persons to a wide range of new fees. Under the recent contract between the State DOCCS and JPay, DOCCS will issue "JPay Release Debit Cards" to disburse remaining funds to released individuals. JPay's contract lists 15 different fees associated with the debit cards, including a \$0.50 domestic ATM balance inquiry fee, a \$0.50 domestic purchase fee, a \$2 monthly service fee, a \$2.99 inactivity fee, a \$1.50 statement print fee, and a \$9.95 account closure fee.⁹⁹

Probation, Parole and Other Post-conviction Charges

Beyond the costs incurred during incarceration, the accumulation of legal financial obligations can continue even after a guilty verdict is rendered and time has been served. These additional costs include probation and parole supervision fees and fees to reinstate a driver's license.

Probation

In some cases, a person may be sentenced to probation, rather than a jail sentence. These individuals receive programming and treatment services in the community while remaining under supervision. Persons on probation are still required to pay mandatory surcharges and fees, fines, and restitution following a conviction.

During calendar year 2018, New York City's Department of Probation (DOP) supervised an average of 19,183 adults every month.¹⁰⁰ For adults, probation can last for one to six years for a misdemeanor offense and five to ten years for a felony conviction.¹⁰¹ According to DOP data, the successful completion of probation requires more than three years on average.¹⁰²

Under city law, a person convicted of driving while under the influence and sentenced to probation is required to pay a \$30 per month administrative fee.¹⁰³ DOP may waive the fee due to financial hardship. In FY 2018, the City DOP assessed \$834,090 in DWI fees to more than 2,600 people, and provided 218 waivers.¹⁰⁴ However, far less was actually collected. DOP reported collecting \$374,325, leaving \$459,765 uncollected. Although city law permits DOP to "seek to enforce payment in any manner permitted by law for enforcement of a debt," the department reported that no enforcement actions were initiated in FY 2018.

\$834,090

*DWI Probation Fee,
FY18*

45%

*Share of NYS Parolees
with Court Debt*

9%

*Share of NYS Parolees
with Closed Cases who
Paid Court Debts*

New York City Family Court may also impose a fee between \$50 and \$500 when DOP is ordered to conduct an investigation.¹⁰⁵ The fee is based on the party's ability to pay. According to DOP, such fee was collected in just 39 cases in FY 2018, generating \$14,055.

Parole

Upon exiting state prison prior to reaching the maximum expiration of their sentence, all individuals are placed under community supervision, either through conditional release following a determinate sentence or through a decision of the State Parole Board following an indeterminate sentence. Individuals under community supervision are subject to regular reporting, home and work visits, drug tests, and other conditions of their release. While about two-thirds of releases to community supervision are from conditional releases, all persons under the supervision of the New York State DOCCS are generally referred to as parolees.¹⁰⁶

The period of parole is a critical time in a formerly incarcerated person's life. The person must reintegrate into society while facing numerous hurdles and challenges. In fact, while New York City's jail population has fallen by 30 percent since the beginning of 2014, the one category of detainees that has risen is people jailed for technical violations of parole.¹⁰⁷

Despite the barriers to finding employment, housing, and financial stability after leaving prison, in addition to meeting all the conditions of their release, parolees are expected to pay a supervision fee of \$30 per month.¹⁰⁸ Waivers may be granted for financial hardship. While the fee is not considered to be a condition of the person's community supervision, and nonpayment does not constitute a violation, nonpayment may be considered, among other factors, in determining termination of parole, including early discharge.¹⁰⁹ (See "Supervision Fee Acknowledgment Form" below.) The State is allowed to seek collection of unpaid fees, including through civil judgments and wage garnishment, but is precluded by state law from using a private debt collection agency or service.

Parole supervision fees must be paid through JPay, the same vendor who provides for money transfers and electronic services in state prisons. Payments can be made online, by phone, through JPay's mobile app, at MoneyGram locations, or by money order. However, money orders are the only option that do not involve additional "convenience" fees. Online payments cost \$1.99; phone payments cost \$2.99; and MoneyGram costs \$2.50.¹¹⁰

As of July 2019, about 16,000 people were on parole and under DOCCS supervision in New York City.¹¹¹ Based on the July caseload, parolees in New York City could potentially owe up to \$480,000 in supervision fees every month and about \$6 million each year.

Parolees may also exit prison with unpaid court obligations. According to the State DOCCS, during the 12 months ending September 30, 2017, a total of 22,453 people under DOCCS supervision had court fee and fine obligations, making up about 45 percent of the total caseload.¹¹² During the 12-month period, DOCCS reported collecting \$371,907 in court costs, fines, and fees from parolees. DOCCS further reported that among the 8,788 parole cases that were closed during the year, in which court fees or fines had been ordered, only 9 percent had paid the obligations.

Similar to New York State's treatment of the parole supervision fee, failure to pay court fees and fines can extend a person's period of parole. In order for parole to be terminated early, it must be determined that a parolee who is "financially able," has made "a good faith effort" to comply with any court order of restitution, mandatory surcharges, any applicable sex offender registration fee, or DNA databank fee.¹¹³

Driving Under the Influence (DUI)

A number of additional fees and penalties apply to persons convicted of driving under the influence of alcohol or drugs. Since 2004, New York State has applied a Driver Responsibility Assessment to anyone who is convicted of an alcohol or drug-related driving offense, anyone who refuses a chemical blood alcohol content test, or anyone who accumulates six or more points within 18 months.¹¹⁴ The annual assessment is \$250 for three years for driving under the influence or for refusing a test. All revenue from the Driver Responsibility Assessment is allocated to the State's Dedicated Highway and Bridge Trust Fund.¹¹⁵

Some convictions for driving under the influence result in a person's license being suspended or revoked. If a person's license is revoked, New York State requires a \$100 fee to apply for a new license.¹¹⁶ If a person's license has been suspended, they must pay a \$50 termination of suspension fee for their driving privileges to be restored.¹¹⁷ The termination fee is \$100 if the license suspension relates to a conviction involving alcohol or drugs, and the fee is \$70 if the suspension relates to failing to pay a fine or penalty or failing to respond to an appearance ticket or summons.

Many alcohol and drug-related traffic convictions also result in the mandatory installation of an Ignition Interlock Device (IID), which requires the driver to pass an alcohol breath test before starting the automobile.¹¹⁸ According to an annual state summary, New York City courts ordered 1,913 IIDs in 2017.¹¹⁹ However, only 345 devices were actually installed. State law requires the cost of installing and maintaining an IID to be borne by the offender, unless the court determines that the person cannot financially afford the device.¹²⁰ As of August 2019, just four companies are authorized by New York State to provide IIDs.¹²¹ Companies are required to disclose their fees, which are extensive. For example, for a basic Class I device Alcolock NY charges \$125 for basic installation, \$75 for removal, and upwards of \$95 per month for monitoring.¹²² Additional fees are charged for out-of-state monitoring, shared vehicles, missed appointments, and early termination. Drivers must also either pay \$10 per month for a loss protection plan or pay a \$500 security deposit. Although these disclosed fees assume a 10 percent waiver due to unaffordability, state statistics show that just 3 percent of New York City offenders with installed devices, and about 8 percent statewide, received a partial or full waiver.¹²³

Criminal History Search Fees

According to a U.S. Department of Justice survey, New York State's criminal history database contained records for a staggering 9.941 million people as of 2016.¹²⁴ For many reasons, a person may want to check their criminal record, including a review for potential inaccuracies. An analysis by the Legal Action Center in 2013 found that at least 30 percent of New Yorkers' criminal records contained errors.¹²⁵ Moreover, roughly 9 percent of New York State arrest records in the F.B.I.'s database do not show how the case ended.¹²⁶ Thus, a record could show an arrest but not show that the charges were dismissed or otherwise dropped. Other common errors in criminal history records include showing the wrong outcome of the case, containing duplicate entries, showing open warrants that have been resolved, and displaying cases that should have been sealed.¹²⁷

In April 2019, New York State increased the fee for requesting an individual's criminal history from \$65 to \$95.¹²⁸ The additional revenue will be dedicated to funding indigent legal services.¹²⁹ Across New York State, courts collected \$195 million in criminal history search fees in state fiscal year 2018, including fees from individuals, as well as employers performing background reviews for potential hires.¹³⁰ A fee waiver may be requested by submitting a valid public assistance benefit card or notarized proof of income.¹³¹

People who have a criminal record may also wish to obtain a Certificate of Disposition, which is an official court document that indicates the current status of a case and its outcome. In New York City, such requests require a \$10 fee.¹³² Such certificates may be needed to correct inaccuracies on one's criminal record or rectify issues with bail refunds. While most employers in New York City are not allowed to consider job applicants' criminal history until after a conditional offer has been made, criminal records can still be considered before a final offer is made.¹³³

New York State Supervision Fee Acknowledgment Form

Form 6001CS (Rev. 12/2016)

**State of New York
Department of Corrections and Community Supervision (DOCCS)**

SUPERVISION FEE ACKNOWLEDGEMENT FORM

Name: _____ DIN: _____ NYSID: _____

Offender Rehabilitation Coordinator (ORC): _____

Supervising Offender Rehabilitation Coordinator (SORC): _____

Facility: _____

Date of Interview: _____

_____ I understand I am required under NYS Corrections Law §201 (9)(a) to pay a monthly supervision fee of \$30 while under community supervision.

_____ I understand that my Parole Officer is responsible for monitoring my compliance with fee payment and my Parole Officer will review my income/financial situation to determine if any fee adjustment is warranted. I understand that I must provide my Parole Officer with any and all financial information and documentation he or she may request to make this determination. If I believe I am not able to pay the required monthly supervision fee, I understand it is my responsibility to make efforts to pay such fee in order to obtain any fee adjustment consideration by my Parole Officer and the Senior Parole Officer.

_____ I understand that my supervision fees may be paid via money order to a contractor (JPay) provided Post Office Box or by credit or debit card via MoneyGram, JPay online, JPay mobile app, or telephone to JPay. I further understand that if I make supervision fee payments via MoneyGram, JPay online, JPay mobile app, or via telephone to JPay, I will be required to pay a convenience transaction fee (money transfer fee) in addition to the monthly payment. I also understand that there is no JPay transaction fee for payments made via money order.

_____ I understand that my early discharge from community supervision (5 Year Discharge, 3 Year Discharge or Merit Termination of Sentence) and any consideration by the Department of Corrections and Community Supervision (DOCCS) for issuance of a Certificate of Relief from Disabilities or a Certificate of Good Conduct may be denied if I do not make a good faith effort to pay the supervision fee.

_____ I understand that my failure to pay the required supervision fee may subject me to debt collection proceedings in which the Department of Corrections and Community Supervision (DOCCS) or the State of New York will seek a judgment against me in a court of competent jurisdiction for the entire amount of unpaid fees, and thereafter, will utilize whatever remedy the law allows for, e.g., wage garnishment, to collect that amount.

Parolee Signature: _____ Date: _____

ORC/SORC Signature: _____ Date: _____

DISTRIBUTION: 1) ORIGINAL - PAROLEE; 2) COPY - COMMUNITY SUPERVISION CASE FILE; 3) COPY - CS CENTRAL FILES

Where Does the Money Go?

Revenue collected from criminal justice charges and assessments are dedicated to different purposes. In some cases, like with private bail bonds, funds support a private for-profit industry while in others the money flows to the State or City to support specific programs or general operations.

City Funds

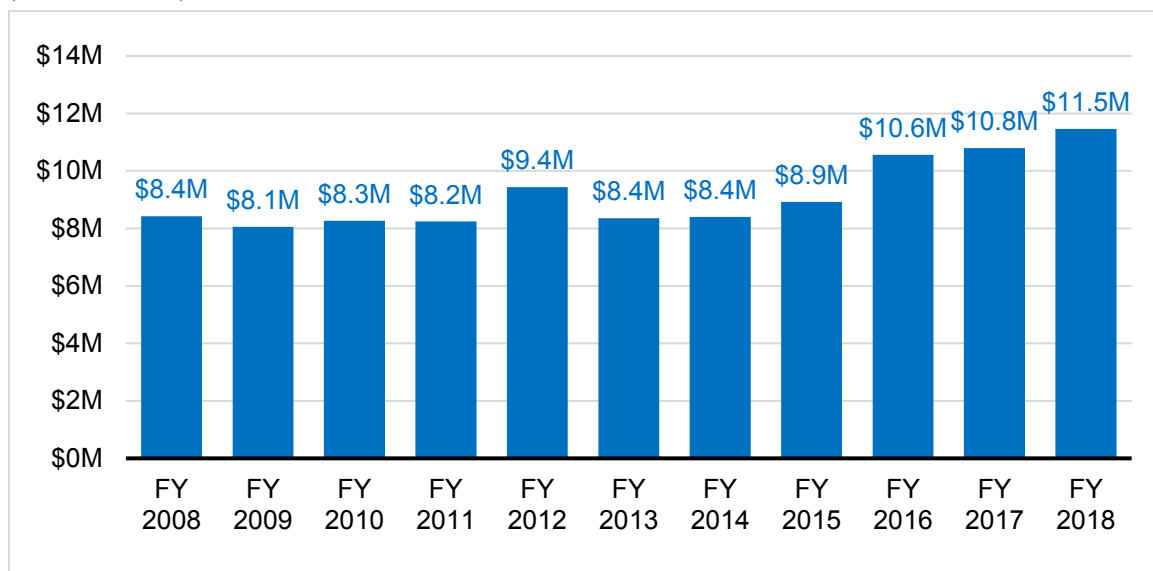
A relatively small amount of revenue from fees and fines in the criminal justice system flow to the City budget. The largest source is court fine revenue, which is allocated between the City and State according to complex state laws. In the last three years, court fine revenue allocated to the City has grown by 28 percent, reaching \$11.5 million in FY 2018, as shown in Chart 6. These funds are available for general purposes.

Other smaller sources of revenue to the City include bail forfeitures and revenues collected from the sale of goods and services in city jails. Under a revenue agreement with the Office of Management and Budget, the City's five District Attorneys are allowed to keep a portion of revenue generated from fines, restitution, and bail bond forfeitures.¹³⁴ In FY 2018, bail bond forfeitures produced roughly \$985,000 in revenue.¹³⁵

As previously discussed, the City Department of Correction is allowed to collect a “modest return” on jail commissary sales under state regulations. State regulations mandate that all commissary profits be used “only for the purposes of prisoner welfare and rehabilitation.”

Chart 6. Court Fine Revenues Allocated to New York City

(dollars in millions)



SOURCE: New York City Comprehensive Annual Financial Report, multiple years.

State Funds

At the state level, some court-ordered financial obligations are dedicated to specific purposes. For example, nearly all state grants for victim assistance programs are funded by fines, fees and surcharges paid by individuals convicted in state or federal court.¹³⁶ Under state penal law, the mandatory surcharge, the Crime Victim Assistance fee, and the supplemental sex offender victim fee are deposited into the Criminal Justice Improvement Account (CJIA), which funds programs that provide services to crime victims and witnesses and payments to victims.¹³⁷

In state fiscal year 2018-19, dedicated state revenues from the CJIA funded about \$30 million in spending at the State's Office of Victims Services.¹³⁸ Most recently, in the State's 2019-20 budget, the State Legislature appropriated \$23.5 million for payments to victims, \$15.8 million for local grants to crime victim programs and services, and \$5.5 million in state agency operations from the CJIA.¹³⁹

Additionally, some vehicle and traffic law surcharges and fees, as well as a portion of criminal history search fees, are dedicated to the State's Indigent Legal Services Fund.¹⁴⁰ The fund was established in 2003 to help localities meet legal obligations to provide adequate representation to individuals who cannot afford a lawyer. Conversely, most fines allocated to the State, the majority of surcharges on traffic offenses, the sex offender registration fee, and the DNA databank fee go to the State's general fund.



Consequences for Nonpayment

In many cases, defendants are unable to pay fees and fines imposed by the courts. **In 2017, the New York City Criminal Court, excluding Supreme Court, collected \$23 million in fines, mandatory conviction surcharges and fees, and sex offender registration fees.¹⁴¹ The amount collected totaled just one-third of the total amount imposed in the same year.** (See Table 3.) Of the \$16.7 million in fines collected, more than two-thirds was from summonses. Of the \$5.6 million collected from mandatory surcharges, about \$2.1 million was from violations and \$1.9 million was from non-DUI traffic offenses. Another \$1.5 million was collected in mandatory surcharge revenue from New York City Supreme Court for felony offenses. Thus, about 60 percent of mandatory surcharge revenue collected by New York City Criminal Court comes from non-criminal violations and non-DUI traffic offenses.

Table 3. Court Fees and Fines Imposed and Collected in New York City Criminal Court (excludes Supreme Court), Calendar Year 2017

	Imposed	Collected	Ratio of Imposed to Collected Revenue
Fines	\$49,579,203	\$16,717,982	34%
Mandatory Surcharge	\$15,064,749	\$5,594,864	37%
Crime Victim Assistance	\$2,406,062	\$753,259	31%
DNA Databank	\$1,588,141	\$115,640	7%
Sex Offender Registration	\$62,250	\$11,640	19%
Total	\$68,700,405	\$23,193,385	34%

Note: Revenue collected in 2017 may relate to court orders from prior years, as well as obligations incurred in 2017. Data includes fees and fines assessed on corporations.

SOURCES: New York City Comptroller's Office analysis of data provided by the New York City Criminal Court and the New York City Criminal Court 2017 Annual Report.

If a person is unable to pay an obligation immediately, the judge may allow the person to defer payment until a later date or pay a portion of the obligation at designated periodic intervals.¹⁴² A hardship waiver may also be granted for a youthful offender for the Crime Victim Assistance fee.¹⁴³

Low rates of payment occur despite the fact that failure to pay a court-ordered financial obligation can have serious, and long-term, consequences. The most common outcome of nonpayment is a civil judgment, but in more than 11,200 cases in 2017, a warrant for arrest was issued for failure to pay court obligations.¹⁴⁴ In a more limited number of cases each year, judges order the immediate imprisonment of someone for failure to pay court obligations.

Court Orders for Nonpayment

In 2017, New York City Criminal and Supreme Court ordered 103,649 judgments for nonpayment.¹⁴⁵ Until recently, civil judgments appeared in a person's credit report for seven years. However, beginning in July 2017, the major national consumer credit bureaus agreed to remove most civil judgments from credit reports.¹⁴⁶ Nonetheless, civil judgments can still be found through a public records search and may still impede a person's ability to secure a mortgage or other loan.

Additionally, the courts ordered 11,258 warrants and 161 commitments, that is, imprisonments, for nonpayment. More than 80 percent of warrants ordered originated in the Bronx (42 percent) or Brooklyn (38 percent). If a warrant is issued, the person can then be arrested and brought before a judge. If the person cannot immediately pay the obligation, the judge can negotiate a payment plan or remand the person to custody. The period of imprisonment for unpaid restitution and fines can be up to one year for a felony, one-third of the maximum authorized for a misdemeanor, and up to 15 days for a petty offense.¹⁴⁷ If defendants are unable to pay court-ordered restitution or fines, they may apply to be resentenced.¹⁴⁸ At the time of resentencing, the judge must consider all of the defendant's sources of income, including wages earned in jail or prison and deposits made to the person's commissary account if the person is incarcerated.

As discussed, fines and restitution fall on top of mandatory surcharges, which can also lead to imprisonment for up to 15 days if unpaid.¹⁴⁹ However, in the case of failure to pay the mandatory surcharge, the Crime Victim Assistance fee, and the DNA Databank fee, prior to directing the defendant to be imprisoned, the court must also make a contemporaneous finding that payment "will not work an unreasonable hardship" on the defendant or his or her immediate family.¹⁵⁰

Commissary Garnishment

If a person enters jail or prison with unpaid court debt, funds may be withheld from the person's commissary account, including funds deposited by family and friends and any earnings during the term of imprisonment.¹⁵¹ Collection begins upon entry to jail or prison, unless the court has ordered deferment of payment.¹⁵² Under current state law, courts are not authorized to defer mandatory surcharges at the time of sentencing. Rather, a subsequent motion must be filed for resentencing to be granted a deferral.

Under city DOC policy, the repayment of mandatory surcharges is the first priority, followed by commissary debts.¹⁵³ **In New York City jails, 457 people under custody had their commissary funds garnished to pay \$101,298 in mandatory surcharges in FY 2018. The average garnishment was \$222 per person.**

New York State DOCCS guidelines state that payment of court-ordered restitution takes priority over all other obligations.¹⁵⁴ If the person's account funds are insufficient, then up to 20 percent of prison wages and 50 percent of outside receipts are collected until the obligation is paid. If more than one restitution has been ordered, then up to 40 percent of wages and 100 percent of outside receipts can be encumbered. Unless a judge has ordered the deferral of payment, other court-related encumbrances on a person's commissary

account are collected at a rate of up to 20 percent of wages and 25 percent of outside receipts if one encumbrance is active or 40 percent of wages and 50 percent of outside receipts if more than one encumbrance exists.¹⁵⁵ While the mandatory surcharge and Crime Victim Assistance fee count as one encumbrance, a person in state prison is subject to separate encumbrances for restitution, fines, sex offender registration fees, and the DNA Databank fee.¹⁵⁶

\$101k	161	103,649
<i>Mandatory surcharges garnished from DOC accounts, FY18</i>	<i>Jail commitments for nonpayment, 2017</i>	<i>Judgments ordered for nonpayment, 2017</i>

Driver's License Suspension

As in 42 other states and D.C., New Yorkers can lose their driving privileges for failing to pay traffic fines.¹⁵⁷ New York State law does not allow for reduced, waived, deferred, or partial payments for traffic fines. If a person misses the deadline to pay a ticket, they are given 30 days before a “failure to pay” suspension is issued.

While a person's license can also be suspended for poor driving behavior, according to an analysis of State Department of Motor Vehicles (DMV) data, roughly two-thirds of driver's license suspensions are for failing to pay fines or failing to appear in court.¹⁵⁸ Research by the Driven by Justice Coalition found that between January 2016 and April 2018, the State DMV issued 1.7 million license suspensions for failure to pay or failure to appear.¹⁵⁹ Within New York City, Staten Island had the highest rate of suspensions, accounting for 23,000 driver's license suspensions in 2016.

The Coalition further found a clear link between traffic debt suspensions and race and poverty. In New York City, the suspension rate in the ten zip codes with the highest share of people of color was 2.5 times higher than zip codes with the highest share of white residents. Statewide, the suspension rate was nine times higher in the ten poorest zip codes than the ten wealthiest zip codes.

Because the ability to drive is crucial to daily life and the livelihoods of individuals in many parts of the state, including parts of New York City, the Coalition reports that about 75 percent of people with suspended licenses continue to drive. However, if they are caught, they will be arrested.

Since 2017, California, Mississippi, Idaho and Washington, D.C. have ended the practice of suspending licenses for failure to pay fines.¹⁶⁰ In December 2018, a judge in Virginia ordered the state to reinstate the licenses of those who had suspensions for unpaid traffic fines or court costs while a class-action lawsuit proceeds.

Recommendations

Persons who cause harm must be held accountable for their actions. And those who have been harmed deserve fair compensation. But the need to deter crime and hold people accountable for their actions must be balanced with the severe consequences of imposing financial obligations that a person simply cannot pay. In order to address the harms perpetuated by the current regime of fees and fines, and other ways that wealth is extracted from low-income communities, overwhelmingly communities of color, the Comptroller's Office proposes a number of policy recommendations, which would require action by the City and State:

Break the cycle of debt and criminal justice involvement

- 1. Eliminate mandatory surcharges.** New York State mandatory surcharges are automatic administrative fees that were explicitly adopted to raise revenue and are applied without consideration of ability to pay. Although the surcharge is larger for more severe offenses, roughly 60 percent of revenue collected by city criminal courts comes from non-criminal violations and traffic offenses. Moreover, in New York City Criminal Court in 2017, just \$5.6 million was collected, compared to \$15.1 million that was imposed in the same year. The failure to pay surcharges can lead to serious, long-term consequences, including tarnished financial records and even incarceration. These obligations, which are in addition to potential fines and restitution ordered, should be eliminated.
- 2. Forgive outstanding court debt for mandatory surcharges.** In addition to eliminating mandatory surcharges for future cases, New York City's Criminal Court should work in partnership with city and state officials, district attorneys, and public defenders to forgive outstanding debt for past mandatory surcharges.
- 3. End incarceration for unpaid court debts.** New York State law allows courts to impose a sentence of up to 15 days for failing to pay the mandatory surcharge, sex offender registration fee, or DNA databank fee, provided that the payment of such fees "will not work an unreasonable hardship upon him or her or his or her immediate family."¹⁶¹ Failure to pay fines and restitution can result in even longer terms of imprisonment. In 2017 the New York City Criminal Court issued 11,258 warrants for failure to pay court-ordered fees and fines, potentially leading to incarceration. New York State should not subject people to incarceration for failing to pay a fee or fine.
- 4. End driver's license suspensions for unpaid fines.** Losing one's driver's license for unpaid fines can push people further into debt by limiting job opportunities and exposing drivers to additional fines for driving without a license. A bill introduced by State Senator Timothy Kennedy would end license suspension for unpaid fines, require income-based payment plans, and allow the option of an installment plan.¹⁶² Suspensions would still be allowed for certain traffic offenses, such as driving while impaired or under the influence.

5. **Eliminate parole and probation supervision fees.** Upon exiting prison, parolees cannot reasonably be expected to pay \$30 a month in supervision fees. During this period of reentry, people should be given support and tools to successfully gain employment and housing, not be saddled with new financial obligations. New York State should eliminate community supervision fees for parolees, as proposed in 2018 by Governor Andrew Cuomo, and the City should eliminate its probation fee for DWI offenders.¹⁶³

End or amend contracts that allow exorbitant fees

6. **Eliminate money transfer fees.** Under the City Department of Correction's current contract, money transfer fees can be as high as \$11.95 for one transaction over \$200 by phone or \$10.95 for one transaction over \$200 online. These high fees are in spite of the fact that under New York State regulations service fees on the transfer of funds into the account of an incarcerated individual using "electronic kiosks, automated teller machines, or other similar devices or systems capable of allowing members of the public to deposit funds into an inmate's institutional fund account" cannot exceed \$5 per transaction.¹⁶⁴ Legislation introduced in the New York City Council by then Public Advocate Leticia James would have capped transactions fees at the lesser of 1 percent or \$5, clarifying that existing state regulations should apply to all forms of money transfers.¹⁶⁵ The City should go even further and completely eliminate these fees.
7. **Eliminate fees in state prisons for phone calls and emails.** The State Department of Corrections and Community Supervision should follow New York City's lead and end charges for phone calls and other forms of communication. A bill introduced in Albany in 2019 would require free domestic phone calls in all state prisons.¹⁶⁶ The ability to communicate with loved ones is essential to a person's rehabilitation and ability to reenter society following a period of incarceration. Communication should not be limited by excessive charges.

Ensure fines are not overly burdensome

8. **Allow partial or full waivers for state fines based on ability to pay.** Fines are commonly used as a form of punishment, yet the severity of the punishment is vastly disproportionate for wealthy and poor defendants. New York State should allow courts to tailor fine amounts based on the person's ability to pay.
9. **Study City-imposed fines.** Beyond fines imposed in criminal courts, New York City levies a far larger universe of fines.¹⁶⁷ In FY 2018, total fines collected by the City amounted to \$1.0 billion. More than half of total city fine revenue relates to parking violations, of which about 30 percent goes uncollected.¹⁶⁸ New York City should regularly review and report on fines, including demographic and geographic collection patterns, to identify fines that may be unreasonable, ineffective, and/or disproportionately imposed.

Greater transparency

- 10. Reporting on mandatory surcharges and fees.** New York State courts are required to report to the State Division of Criminal Justice Services (DCJS) on the disposition and collection of mandatory surcharges, sex offender registration fees, DNA Databank fees, and Crime Victim Assistance fees.¹⁶⁹ However, this data, if it is collected, is not publicly available. DCJS should make data readily available on at least an annual basis.

Review commissary policies and protect the funds of incarcerated persons

- 11. Review commissary policies and ensure all incarcerated individuals have access to basic goods.** Persons under custody have a limited ability to earn wages while incarcerated and therefore depend heavily on family and friends to be able to afford basic goods, such as food items and personal care products. Over the last decade, commissary revenues at New York City jails increased by 7 percent despite a 36 percent drop in the incarcerated population. New York State and City should review commissary policies and incarcerated individuals' access to basic goods, both with or without outside support. One proposal in Albany would increase the minimum wage rate for state and local correctional facilities to \$3 per hour.¹⁷⁰
- 12. Prohibit garnishment of commissary accounts for court-imposed surcharges.** While people are under custody, they rely on meager wages earned in jail or funds provided by family and friends to purchase basic goods and pay to communicate with loved ones. As long as mandatory surcharges are imposed, courts should not be allowed to deplete these funds by garnishing commissary accounts for court-imposed surcharges.

Conclusion

New York State's criminal justice system saps wealth and opportunity in ways both large and small from already vulnerable communities. Beyond incarceration and other explicit forms of legal sanctions, such as restitution and fines, administrative surcharges and service fees represent an all-but-hidden, secondary form of punishment with impacts that can last years beyond a formal sentence. Families are very often forced to forego other basic necessities to pay for their loved one's court fees or to send money to a commissary account. Other defendants may face harsher sanctions, including driver's license suspensions, extended parole terms, and even incarceration for failing to pay court obligations.

New York should not accept that 100,000 civil judgments were issued in just one year for failure to pay criminal court debts in New York City, all but criminalizing poverty. Rather, state and city leaders should eliminate ineffective and harmful surcharges and fees imposed in the criminal justice system that present unnecessary barriers to rehabilitation. These financial obligations, in all their many forms, work against the fair application of justice and further fuel existing racial and economic inequities and the current crisis of mass incarceration. Through legislative and executive actions, New York State and City officials should work to dismantle this backwards system of criminal justice debt and work to create a system defined more by equity and fairness, regardless of income.

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³⁵ Marian J. Gewirtz and Stephen Koppel, “Conviction for Disorderly Conduct” *New York City Criminal Justice Agency* (January 2019), p. 9, https://www.nycja.org/lwdcms/doc-view.php?module=reports&module_id=1647&doc_name=doc.

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³⁷ New York State Penal Law, §60.35, <https://www.nysenate.gov/legislation/laws/PEN/60.35>.

³⁸ *People v. Jones*, 26 N.Y.3d 730, 733 (2016), <https://law.justia.com/cases/new-york/court-of-appeals/2016/2.html>.

³⁹ New York State Office of the Comptroller, *Report on the Justice Court Fund* (August 2010), Appendix B, <https://www.osc.state.ny.us/localgov/pubs/research/justicecourtreport2010.pdf>; and Phylis Skloot Bamberger, “Fees and Surcharges: Consequences of a Conviction” <https://www.nycourts.gov/ip/partnersinjustice/Fees-and-Surcharges.pdf>.

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