



**FINES & FEES
JUSTICE
CENTER**

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TESTIMONY IN SUPPORT OF VIRGINIA HB 824

TO: Hon. Vivian Watts, Chair
Members of the Virginia House of Delegates Courts of Justice Criminal Committee

FROM: Mary Mergler, Fines and Fees Justice Center

DATE: February 2, 2024

Dear Chair Watts and Members of the Courts of Justice Criminal Committee:

House Bill 824 would end the harmful practice of assessing fees for appointed counsel and public defenders, putting money back in the pockets of Virginia families who are struggling financially and improving community safety. We urge the Committee to support this critically important piece of legislation.

The Fines and Fees Justice Center is a national hub for information, advocacy, and collaboration for the reform of fines and fees. Our mission is to eliminate fees in the justice system, ensure that fines are equitably imposed, and end abusive collection practices. Fines and fees in the justice system hurt millions of Americans – entrenching poverty, exacerbating racial disparities, diminishing trust in our courts and police, and trapping people in perpetual cycles of punishment. FFJC convenes the bipartisan End Justice Fees coalition, along with Americans for Prosperity and the ACLU, which supports the elimination of fees charged in the justice system, like the counsel fees addressed in this critical legislation.¹

Fees are distinct from fines; fees are not intended to be punitive and exist only to generate revenue. Fees operate as a regressive tax, forcing those least able to pay to fund the justice system rather than evenly distributing the burden among everyone that it serves. These fees trap people in a perpetual cycle of debt and punishment when they are unable to pay.

A recent report released by the Legal Aid Justice Center shows that Virginia is imposing nearly \$35 million per year in counsel fees on Virginians, often amounting to thousands of dollars per person.² People who are assessed these fees are the least able to pay; to be appointed counsel or a public defender, they must meet a very low income threshold. As a result, only a fraction of

¹ More information available at www.endjusticefees.org.

² Pat Levy-Lavelle, *Can't Afford an Attorney? Virginia Law Tells People to Pay Anyway*, Legal Aid Justice Center (2023), available at <https://www.justice4all.org/wp-content/uploads/2023/12/Cant-Afford-an-Attorney.pdf>.

the fees assessed are ever collected, and the amount collected is a tiny drop in the bucket of state and local revenue.³

Yet, the assessment of these fees causes tremendous harm to Virginia families. While counsel fees are technically assessed against the individuals who have been charged, the costs are inevitably borne by entire households – children, spouses and other dependents. Research has shown that families regularly forgo basic necessities, like food, rent, and medical care, to pay fees owed to the justice system, because they fear the consequences of nonpayment, like arrest and incarceration of their loved one.⁴ A 2023 study by the Fines and Fees Justice Center and the Wilson Center for Science and the Law at Duke University found that 1 in 3 adults in the U.S. had fine or fee debt in the previous 10 years. Of those with debt, 35% had challenges obtaining food as a result and 27% reported the debt causing hardships related to housing.⁵ Eliminating counsel fees would immediately return millions of dollars to Virginia families who are already struggling financially.

Furthermore, as the DOJ explains in its 2023 Dear Colleague letter, “unaffordable fines and fees undermine rehabilitation and successful reentry and increase recidivism for adults and minors.”⁶ One study found that increased fees were linked to increases in being rearrested for a new offense, and specifically, an increase in the severity of financially motivated offenses that a person committed.⁷ A survey of more than 900 people with court debt found nearly 2 in 5 people reported engaging in illegal activities for purposes of paying their court debt, including selling drugs, theft, sex work, and writing bad checks.⁸ Lifting the debt burden of counsel fees will ultimately further community safety.

The state is constitutionally required to provide counsel to those accused of crimes who cannot afford to hire their own counsel and should not pass along the obligations to fund the public defense system to families least able to afford it. We appreciate the Committee’s attention to this critical issue and urge the Committee’s support of House Bill 824.

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³ *Id.*

⁴ See Saneta deVuono-Powell et al., *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center, Forward Together, Research Action Design (Sept. 2015), www.whopaysreport.org.

⁵ Fines and Fees Justice Center & Wilson Center for Science and Justice at Duke Law, *Debt Sentence: How Fines And Fees Hurt Working Families* (May 2023), available at <https://finesandfeesjusticecenter.org/articles/debt-sentence-how-fines-and-fees-hurt-working-families/>.

⁶ U.S. Dept. of Justice Office of the Associate Attorney General, Dear Colleague Letter to Courts Regarding Fines and Fees for Youth and Adults (Apr. 20, 2023), available at https://www.justice.gov/d9/press-releases/attachments/2023/04/20/doj_fines_and_fees_dear_colleague_letter_final_with_signatures_0.pdf

⁷ Tyler Giles, *The Government Revenue, Recidivism and Financial Health Effects of Criminal Fines and Fees*, Working Paper, available at <https://sites.google.com/view/tylertgiles/research?authuser=0>.

⁸ Alabama Appleseed et al., *Under Pressure: How fines and fees hurt people, undermine public safety, and drive Alabama’s racial wealth divide* (2018) available at <https://www.alabamaappleseed.org/underpressure>. See also Fines and Fees Justice Center, *The Impact of New Mexico’s Fines and Fees: Interim Survey Results* (2023), available at https://finesandfeesjusticecenter.org/content/uploads/2023/01/New-Mexico-Survey-DIGITAL_2023.pdf.