

Price of Justice

Challenging the Future

of Fines and Fees

Center for Court Innovation

520 Eighth Avenue
New York, NY 10018
p. 646.386.3100
f. 212.397.0985
courtinnovation.org

Authors

Yolaine Menyard

Center for Court Innovation

Chidinma Ume

Center for Court Innovation

Elizabeth DeWolf

City University of New York Institute for State and Local Governance

Reagan Daly

City University of New York Institute for State and Local Governance

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Introduction

Criminal legal systems report that they need a reliable source of funding to survive. But when these systems depend, in part, on fines and fees levied against people caught up in the system, not only does this place a strain on people unable to pay, it also creates a perverse incentive to order more such financial penalties. How can criminal legal agencies continue providing services while relying less on criminal legal debt? What are the ways to reduce the disproportionate impact of legal financial obligations on low-income people, especially those from marginalized racial and ethnic groups? These are the questions that the U.S. Department of Justice’s Bureau of Justice Assistance (BJA) sought to answer through the “Price of Justice: Rethinking the Consequences of Justice Fines and Fees” Initiative.

After a highly competitive process that began in 2016, BJA selected five states—California, Louisiana, Missouri, Texas, and Washington—to receive approximately \$500,000 each to tackle the issue of criminal legal debt. Over a three-year period, the Center for Court Innovation and the City University of New York’s Institute for State and Local Governance partnered to provide the grantee states with training and technical assistance tailored to each site’s programmatic, policy, and data and performance measurement needs. Each grantee site acted as something of an innovation laboratory, incorporating the use of technology in pilot solutions—from the development of ability-to-pay calculators to online case resolution and text notification systems.

The Price of Justice called attention to some of the key questions and challenges at the center of fines and fees reform. Beginning with ability to pay, several sites sought to improve existing practices or develop new, fairer methods for calculating fines and fees. In addition to reducing and waiving costs (when permitted by state laws), Initiative sites were tasked with evaluating their non-monetary alternatives to payment and with thinking beyond the traditional forms of community service (manual labor, most prominently) to develop more meaningful and equitable options.

The question of equity was threaded throughout the Initiative, as sites attempted to use data to measure overall performance and ongoing racial and ethnic disparities. As the grantees contemplate ways to lessen their reliance on fines and fees, the biggest remaining question is how local courts are to be funded, with each site having to decide how they can use what they’ve learned to address existing structures.

The following report introduces the work to-date of the five grantees, including the challenges and opportunities they encountered along the way; shares our training and technical assistance approach; and provides guidance for other jurisdictions seeking to take on similar reforms.

The report is organized into the following three sections:

1. Price of Justice Initiative Overview
2. Measuring Performance Across the Initiative
3. Lessons Learned and Practice Considerations

SECTION 1.

Price of Justice Initiative Overview

BACKGROUND: WHAT IS CRIMINAL LEGAL DEBT?

Criminal legal debt, also known as “fines and fees” or “legal financial obligations,” are imposed at every stage of the legal system by a variety of agencies. While fines are typically used as sanctions for committing an offense, fees act as service charges for using the criminal legal system, regardless of conviction status and whether or not a person is found guilty or innocent. For example, people are charged fees for appearing in court, obtaining a public defender, being on probation supervision, electronic monitoring, participating in substance- and alcohol-use treatment, and even for their trials.

Fines and fees play a dual role within the legal system. They are designed to hold individuals accountable, particularly in low-level cases, and are used to fund basic court operations in the absence of adequate state funding. This latter relationship poses a clear conflict of interest, and more groups are questioning whether judges should be incentivized to sentence people to monetary sanctions and are seeking to change this process through litigation¹ and legislative action. But the reliance on fines and fees is further complicated by the effect they have on low-income and poor individuals and families. People who are unable to pay fines and fees, as well as the accompanying surcharges and high interest rates that compound their initial financial obligation, plunge into spirals of debt.

Despite the Supreme Court’s prohibition on “punishing a person for [their] poverty,”² non-payment can lead to arrest, incarceration,

revocation of driver’s licenses, and challenges in obtaining or maintaining employment. Without fair and accessible alternatives, criminal legal debt destabilizes the lives of low-income people and their families and, by extension, their communities. Yet without the revenue from fines and fees, or when debt becomes “uncollectable,”³ courts and government agencies, especially in smaller jurisdictions with fewer resources, risk potentially disrupting day-to-day operations.

WHAT IS THE PRICE OF JUSTICE INITIATIVE?

The Price of Justice Initiative set out to create fairer practices regarding fines and fees. The Initiative began in 2016 to further five goals: eliminate the unnecessary and unconstitutional jailing of individuals for nonpayment of fines and fees; reduce the overuse of fines and fees that disproportionately impact the poor and people of color; increase data-sharing among criminal legal agencies; support the creation of alternatives to fines and fees; and coordinate and disseminate best practices and lessons learned to the field at-large.

The five states selected for this work were tasked with taking into account their respective governing and funding structures, and designing a set of strategies that would respond to their states’ needs and potential areas for reform. All five states incorporated the use of technology into their approaches and included the formation of an advisory group or consortium made up of criminal legal agency representatives and stakeholders to help guide their projects. A central challenge for all

grantees was access to data and the integration of data systems across legal agencies to better track and understand the landscape of fines and fees and the outcomes of their pilot projects (discussed more in Section 2).

The Center for Court Innovation and the CUNY Institute for State and Local Governance provided training and technical assistance (TTA) to the grantee states, beginning with a diagnostic and self-assessment phase designed to help grantees build on their initial research and planning and develop an action plan for the work ahead. Throughout the three-year grant period, the TTA team provided individualized support through phone calls, site visits, and webinars,⁴ and hosted two national convenings at BJA's offices in Washington, D.C.

What follows is a snapshot of the work to date conducted by the grantees. A more in-depth discussion on data and performance measurement—led by the CUNY Institute for State and Local Governance—and what the TTA team learned from this process, follows in sections II and III.

PRICE OF JUSTICE GRANTEES AT A GLANCE

California

California's court system is the largest in the country, handling approximately 8.5 million cases. As in many states, California laws and regulations set out a complex scheme of legal financial obligations across multiple sections of state code. These include hundreds of fines, fees, penalty assessments, and specialty assessments that vary widely depending on the offense and the county. The Judicial Council of California decided to focus their initial planning efforts on fines and fees for traffic offenses, as the consequences can compound quickly here. For example, the base fine for running a stop sign in California is \$35, yet with the addition of fees that number reaches \$238. Failure to pay or to appear in court brings an additional civil penalty

of \$300, and prior to July 2017, this type of non-compliance was likely to result in a person's driver's license being suspended.

In January 2016, the California Department of Motor Vehicles reported more than 600,000 suspended driver's licenses related to unpaid court-ordered debt. Since driving without a license is a misdemeanor punishable by incarceration, an initial fine for an offense like running a stop sign could snowball into a grossly disproportionate outcome, particularly for low-income people. In July 2017, the California Assembly Bill 103 removed courts' ability to suspend licenses for failure to pay fines, and required courts to start providing alternatives, including fine reduction and/or payment plans.

As part of the Price of Justice Initiative, California worked to make judicial officers' determinations of ability to pay more consistent, and to provide an online option for resolving cases. The option was intended to make court appearances easier and increase access to resolutions for these cases that could carry hefty penalties if unresolved. The state proposed to develop an automated ability-to-pay calculator and online case resolution system for traffic offenses to be piloted in a handful of jurisdictions representing diverse sizes and income profiles.⁵

Creating such a tool raised a host of practical, legal, and technical questions. What constitutes "ability-to-pay" and how do we measure it? Do privacy laws allow courts to verify a court user's private financial information? May courts conduct "investigatory" activities, and, what form of consent is needed? Finally, California's lack of a uniform data-management system—a reality across many states—made it challenging to design a tool that can operate within different systems, and to measure progress across all pilot courts (**see Section 2 on the role of data**).

Despite these challenges, California contracted with Global Justice Solutions to design their online ability-to-pay and case resolution system⁶ and included input from a statewide working group. The

tool was finalized in February 2019 and launched in five pilot courts. Through the state's Department of Social Services, a function was created, allowing users to automatically verify their income if they are enrolled in the state's food and nutritional benefits program. Users can access the system online and request either 1) a reduction in their traffic fine, 2) a payment plan, 3) community service in lieu of a fine, or 4) more time to make a payment. The tool—eventually available in multiple languages—also allows users to enter a plea to resolve their case without coming to court.

As of February 2020, roughly 2,325 individuals submitted requests related to 3,333 traffic infraction cases across all four pilot sites. The average amount owed across all cases was \$653.62. Nearly 80 percent of those cases received approval for a fine reduction, a payment plan, community service, or more time to make a payment. Among cases with approved requests, the final amount owed dropped by almost half, to an average of \$355.65.

In June 2018, as a result of the progress under the Price of Justice grant, the Judicial Council of California successfully negotiated for additional funds within California's state budget.⁷ The funds will be used to support the expansion and maintenance of their online ability-to-pay and case resolution system into additional courts across the state.

Louisiana

Louisiana is among the five states in the U.S. with the highest incarceration rates per capita.⁸ Of those incarcerated, many are there for “failure to pay,” despite their indigence. The Vera Institute of Justice found that, on any given day in New Orleans in 2015, more than 500 people were in jail because they couldn't afford bail or as a result of an arrest for not paying their fines and fees.⁹ The problem of over-incarceration in Louisiana has been exacerbated by the state's decentralized court system and lack of standardized practices regarding the imposition and collection of fines and fees. Unchecked judicial discretion has resulted in

disparate outcomes for similarly-situated individuals with court involvement, including allowing some people to serve time in jail to “pay off” their fines, despite a ruling against such activities.¹⁰

By joining the Price of Justice Initiative, the Louisiana Supreme Court decided to further the work they began in 2014 to better understand how they are currently collecting fines and fees and develop strategies to address the issues described above. Their initial proposal included a data-sharing pilot project that would create a database to track legal financial obligations assessed, imposed, and collected in a jurisdiction, accessible to people with court cases and criminal legal agencies. However, Louisiana made several mid-course changes to the scope of their work following challenges in identifying pilot sites willing to participate. These prospective courts were the subject of active lawsuits regarding their fines and fees practices, and thus were more hesitant to participate. While this continues to be an issue across all grantee sites, it posed a particular challenge for Louisiana.

As a result, the Louisiana team created an open-call for jurisdictions that had existing proposals to fund that intersected with the issue of fines and fees. This resulted in: 1) the development of a text notification system in Hammond City Court that alerts people of their court dates, with the goal of reducing warrants and rearrests; 2) the development of a similar text notification system in the Municipal Traffic Court of New Orleans that also allows case managers to send individualized text messages to people explaining their payment options; and 3) the enhancement of judicial dashboards in the 23rd Judicial District of Louisiana connecting court and sheriff's office data systems to better track warrants, including those for non-payment, and reduce the time people are held in custody. By the end of the first year for the text notification system at Hammond City Court (July 2018 through June 2019), 1,838 individuals had enrolled. The text notification system at in the Municipal Traffic Court of New Orleans launched in March 2019, and there were 4,689 individuals enrolled by June 2019.

In 2017, shortly after the Louisiana Supreme Court began their work through the Price of Justice Initiative, the state passed its Justice Reinvestment legislation. The package of ten bills included measures directed toward fines and fees, such as making ability-to-pay determinations for all felony cases; establishing debt forgiveness incentives; and prohibiting driver's license suspensions for nonpayment, unless there is a "willful refusal."¹¹ In 2019, Louisiana's Commission on Justice System Funding was established to search for ways to fund the court system without relying on "user fees." The Commission is working to identify how much the state would have to pay to fund court operations and related legal services and prevent the disproportionate impact of fines and fees on low-income Louisianans. The Commission provided initial recommendations to the Legislature during the March-June 2020 session and was approved to continue its work determining how to fund the courts without relying on people involved in the system.

Moving forward, the Louisiana Supreme Court will continue implementation of their pilot projects, along with creating a searchable database listing all required and optional fines and fees that may be charged in the state, including the entities responsible for collection at different points in the process. They are playing a lead role on the state's Justice System Funding commission. This work has only become more urgent in light of the U.S. Court of Appeals for the Fifth Circuit ruling that criminal court judges in Orleans Parish have a conflict of interest when deciding whether people can pay the fines and fees that ultimately fund their own court's operations.¹²

Missouri

While Missouri has a unified court system, its more than 400 standalone municipal divisions still operate under limited supervision by the Missouri Supreme Court. Municipal courts, which primarily handle traffic offenses and city ordinance violations, are subject to special rules, giving them greater discretion over how

they use fines and fees. The fact that most are locally funded has contributed to their overreliance on fines and fees as a revenue source, a powerful incentive to continue with "business as usual."

Following the death of Michael Brown in St. Louis County, the U.S. Department of Justice published an investigative report identifying serious shortcomings in the Ferguson court system, including policies and practices aimed to maximize revenue rather than public safety. One of the most significant issues was the requirement that all individuals who could not pay their fines and fees appear in court. This is particularly difficult for low-income individuals who are impacted by challenges with transportation, childcare, and employment—along with the lack of clarity around municipal court procedures. What's more, Missouri's only available method for resolving cases outside of court—Plead and Pay¹³—was an online system that only provided the option of paying certain traffic citations in full. For people who needed alternatives, their sole option was appearing in court.

Through the Price of Justice, the Missouri Office of State Courts Administration proposed to create an automated system that would 1) facilitate out-of-court resolutions and increase opportunities for people to resolve citations without appearing in court; 2) match individuals with proposed appropriate alternatives, such as community service; and 3) provide this option for a wider array of cases (for example, all offenses where the penal code has designated that a resolution outside of court is allowed). This system would serve to increase transparency and access to justice, while reducing the number of summonses, warrants, and fees issued for failure to appear.

Missouri elected to have its in-house technology team design and build their proposed tool, as opposed to contracting with an outside vendor or developer. With input from a strategic working group, the technology team is in the process of finalizing the development of an automated tool to resolve municipal traffic and ordinance violations.

The online system—“Access My Ticket”—will provide a number of new alternatives. First, the tool will display a list of providers offering programmatic and community service alternatives to fines. Individuals accessing their ticket will also have the choice to select a non-monetary alternative for any citation eligible for an out-of-court resolution under state law, regardless of their ability to pay. Instead of having to appear in court and face transportation, employment, and other challenges, people will be able to resolve their cases online and have a secure platform to correspond with the court and prosecutors about their cases. Finally, the tool will integrate the previous system—“Plead and Pay”—thereby gathering all case resolution options into one interface. Later this year, the Missouri team plans to pilot the tool in the City of Lee’s Summit, where there is a high volume of eligible citations. This should allow for a thoroughgoing evaluation of implementation.

Texas

Texas criminal courts handle several million criminal cases per year, the large majority of which take place in lower courts whose jurisdictions include fine-only misdemeanors. In Texas, justice-involved individuals who are unable to pay their fines and fees are legally allowed to participate in alternatives to criminal legal debt—including community service, work programs, electronic monitoring, and tutoring programs. Yet courts rarely make use of these options, or exercise their authority to waive fines and fees; in 2015, from July 2018 through June 2019, only a little more than two percent of convictions at Texas municipal and justice of the peace courts were satisfied in whole or in part through alternatives to legal financial obligations. As of June 2019, there were 142,686 warrants issued for failing to pay such obligations.¹⁴

Judges and court staff report difficulty in determining people’s ability to pay and linking those who cannot pay with appropriate alternatives. As a Price of Justice grantee, the Texas

Office of Court Administration proposed a series of products, including a tool to calculate ability to pay, an online program to link individuals without the ability to pay to alternative community service options, and an educational curriculum for judges and court personnel.

The Texas in-house technology team is in the process of developing their ability-to-pay tool. Instead of developing two separate tools—one to make ability-to-pay determinations and another to connect people to alternatives—the team is considering whether to merge these functions into one online system accessible by judges, court staff, providers, and court users. Initial development was delayed due to limited proposals from outside vendors that met Texas’s standards, which led to in-house development of the tool. Once the tool is finalized, the Texas team will focus on pilot site recruitment, as they’ll have a clearer sense of the data and operational requirements for participation.

During the course of this grant, the Texas team supported legislation improving how legal financial obligations are handled statewide. In June 2017, Texas passed SB 1913, an effort to address the phenomenon of the “debtor’s prison.” The law requires judges to inquire about an individual’s ability to pay fines at sentencing; to either waive fees or offer an alternative for individuals who are unable to pay; and limits the ability to arrest people for failing to pay costs stemming from low-level offenses. The tool will help judges to collect information about a person’s ability to pay before a court appearance, with the hope of providing greater transparency and fairer outcomes.

Washington

Washington is plagued with challenges similar to those experienced by states across the country. These include: differences in assessment and sanctioning practices by judges, even though the state requires that a court inquire into whether a person is able to pay;¹⁵ differences in practices regarding the collection and disbursement of fines

and fees; and an overdependence on fines and fees to fund court operations. While there are mandatory and statutorily set costs—such as a \$500 victim penalty assessment¹⁶ and a \$100 DNA collection cost¹⁷—there are a number of optional costs imposed at the court’s discretion.

The capacity of courts to track all of this information also varies. Without integrated court and corrections systems, it’s nearly impossible to track financial obligations at each stage of a case—such as the effects of late fees and practices by private collection agencies—and conduct an accurate accounting of the system as a whole.

Despite this rocky landscape, Washington has been at the forefront of advocacy and research efforts addressing fines and fees. Prior to joining the Price of Justice, Washington’s Minority and Justice Commission had already created a series of reference guides, including bench cards, to help judges navigate the state laws regarding legal financial obligations. To continue addressing subjective sentencing practices and mitigate the disparate outcomes on low-income people, the Commission proposed to develop an online “ability-to-pay” calculator. The tool, known as their “LFO Calculator,”¹⁸ captures over 300 fines and fees, applicable to 1,500 different crimes. It shows judges all of the statutes, possible fines, and opportunities for discretion to adjust and/or waive fines and fees for a given charge.

Judges can enter in a person’s financial information so that they are not assigned default amounts that will take years to pay back. The online tool is accessible by the public, promoting transparency in how fines are calculated and imposed and more fair and consistent practices. Washington’s work was guided in part by a diverse consortium of court and legal stakeholders, including advocacy and community groups.

The calculator was officially launched in 2018, and is currently in use in ten courts made up of superior courts and courts of limited jurisdiction. The tool was developed pro bono through Microsoft’s civic engagement and outreach group and in partnership with AIM Consulting. The Minority and Justice Commission has marketed the tool to a range of criminal legal stakeholders, including prosecutors and defense attorneys, so that its use extends beyond the bench. The team also conducted regular interviews with pilot site judges to assess the tool’s use and incorporate feedback into the development of updates and/or enhancements. Between June 2018 and October 2018, the most recent data available, the calculator was used in 848 cases. For 507 of those cases, the calculator determined that the person was indigent.

In March 2018, Washington passed HB 1783, eliminating the 12 percent interest rate on non-restitution legal financial obligations and setting clear standards for determining ability-to-pay. Now that their tool is in use, the Washington team’s main goal is both a technical and fiscal one—securing the funding to maintain its operation and allow for its uninterrupted use by current and future court users.

SECTION 2.

Measuring Performance

The CUNY Institute for State and Local Governance (ISLG) worked with the Bureau of Justice Assistance (BJA), the Center for Court Innovation, and each of the five Price of Justice grantees to develop a framework for measuring the sites' performance in achieving the Initiative's goals. The objectives of the framework were to (1) build capacity for sites to analyze and report regularly on fines and fees, (2) help sites track the impact of programs and reforms over time, and (3) demonstrate accountability to stakeholders and funders.

The framework consists of metrics in both Initiative-wide and site-specific categories, both "process measures" that examined progress with implementation, and "outcome measures" that assessed results. Table 1 outlines the key distinctions between these types of measures. The initial intention was to capture baseline data – or get a picture of how things operated—for the period just prior to the launch of each site's intervention, and then to collect data on a quarterly basis post-launch to evaluate impact and how things changed over time.

At the project outset, each grantee state planned to collect the Initiative performance measures for all courts statewide, and to collect the grantee-specific performance measures only for the courts that were piloting new legal financial obligation reforms. However, due to data challenges described in later sections, Louisiana was the only grantee that was able to launch a pilot tool and collect data regularly enough to begin to analyze performance measures both before and after their tool launch. Even for Louisiana, however, three years was not enough time

TABLE 1. KEY DISTINCTIONS FOR PERFORMANCE MEASURES

Initiative vs. grantee-specific measures

- **Initiative measures** are intended to measure each grantee's progress toward achieving the broad goals and objectives of the Price of Justice Initiative, including reducing the overreliance on LFOs and the consequences that flow from inability to pay them. The initial goal was to collect and compare the same Initiative measures for all five grantees.
- **Grantee-specific measures** are measures that are tailored to the particular reform efforts being pursued by each grantee. The measures aim to assist both grantees and BJA in monitoring and evaluating progress toward each grantee's specific reform goals.

Process vs. outcome measures

- **Process measures** are intended to answer questions about how a program or strategy is being implemented. These measures examine the steps, activities or tasks required to achieve an outcome or the direct products of activities or services delivered. Both Initiative and grantee-specific measures can be process measures.
- **Outcome measures** reflect the intended results or consequences of a program or policy change, and involve a level of change in attitudes, knowledge or behavior. Both Initiative and grantee-specific measures can be outcome measures.

to draw conclusions about the site's performance or to observe reliable trends over time.

As jurisdictions continue these measurements, they will eventually get a high-level picture of long-term trends and be able to determine which results require deeper investigation. For the purposes of this report, many of the metrics collected by the sites are presented where relevant in the overviews of each site in Section 1. Ultimately, the Initiative served as a catalyst for what will hopefully be a long-term commitment to developing and improving reforms to fines and fees and methods of measuring their impact.

HOW TO DEVELOP PERFORMANCE MEASURES?

The first step for the grantee states in creating performance measures was to set up a logic model mapping out a theory of change for the intervention or strategy—it is crucial that the goals of the intervention, and the steps necessary to achieve those goals, inform the selection of the performance measures used to track its progress. Once the logic model was complete, the subsequent steps included: establishing and operationalizing metrics for each component of the logic model; identifying data sources for those metrics; developing a process for collecting data and tracking metrics; and, finally, determining the performance measurement reporting schedule and process. **For detailed instructions on the 5-step development process, see Appendix A.**

As mentioned above, the framework included both Initiative measures for cross-site comparison and grantee-specific measures tailored to each grantee's pilot, intervention, or reform. Thirteen Initiative measures were initially proposed, reflecting the core goals and objectives of the overall project. **Table 2 illustrates the relationships between the proposed key metrics and the overall goals and objectives for the Initiative.** Again, these measures were intended to be collected and compared across all five sites.

TABLE 2. INITIATIVE MEASURES

Community courts take an individualized approach to justice that is tailored to the specific circumstances of each participant

Initiative Goals	Objectives	Initiative Performance Measures
<p>Goal 1.</p> <p>Encourage and disseminate best practices for coordinated and appropriate criminal legal system responses to inability to pay LFOs</p>	<p>Promote and increase collaboration and data sharing among criminal legal agencies and officials regarding assessment, collection, prioritization and tracking of LFOs</p>	<p>1. Number of stakeholder meetings</p>
		<p>2. Number of new data sharing policies, protocols, or MOUs</p>
<p>Goal 2.</p> <p>Eliminate unnecessary and unconstitutional confinement due to inability to pay</p>	<p>Support tailored alternatives to LFOs that promote rehabilitation, reintegration and community trust</p>	<p>3. Percentage of cases with LFOs assessed (or accounts) that are enrolled in any alternative (including payment plans, community service)</p>
	<p>Reduce use of law enforcement and corrections resources in response to failure or inability to pay LFOs</p>	<p>4. Percentage of cases with LFOs assessed (or accounts) that are satisfied in whole or in part through an alternative</p>
		<p>5. Number of warrants executed for failure to pay LFOs or failure to appear at an LFO hearing</p>
	<p>6. Number of bookings into custody for warrants, charges or violations associated with failure to pay or failure to appear at an LFO hearing</p>	
<p>Goal 3.</p> <p>Increase individual accountability</p>	<p>Improve the ability of people to successfully comply with court-ordered sanctions</p>	<p>7. Number and percentage of cases that fully satisfy LFOs (by indigency status, charge severity, race/ethnicity)</p>

<p>Goal 4.</p> <p>Reduce overuse of LFOs that disproportionately impact the poor and people of color</p>	<p>Reduce the undue burden of LFO imposition or collection on low-income individuals</p>	<p>8. Percentage of cases in which a standardized ability-to-pay assessment is conducted (by indigency status, charge severity, race/ethnicity)</p>
		<p>9. Percentage of cases receiving waivers or reductions of LFOs (by indigency status, charge severity, race/ethnicity)</p>
		<p>10. Average and median amount of LFOs assessed (by LFO type, indigency status, charge severity, race/ethnicity)</p>
	<p>Reduce disparities in LFO imposition or collection for people of color</p>	<p>11. Ratio of delinquency rates for Nonwhite people and White people per # cases</p>
<p>Goal 5.</p> <p>Increase fairness in LFO practices</p>	<p>Increase consistency of practices in similar cases across jurisdictions</p>	<p>12. Average amount of LFOs assessed for convictions on state offenses, excluding restitution (by pilot site, indigency status, charge severity)</p>
	<p>Increase impartiality or neutrality of LFO imposition</p>	<p>13. Rate of concurrence between results of standardized ability-to-pay assessment and amount of LFOs assessed (or adjustment of LFOs upward/downward) (by pilot site)</p>

Grantee-specific performance measures were tailored to the goals of each grantee’s intervention or reform as well as to their site’s target population. Though the measures varied for each grantee, each site was provided with a list of sample measures to choose from that could apply to most interventions (e.g., to determine ability-to-pay, to remind people to appear in court, etc.). **Examples of grantee-specific measures included:**

- The number of cases filed and disposed in the target population
- The number of cases in the target population with any fines or fees assessed
- The average, median, and total dollar amounts of fines and fees assessed, collected, and disbursed
- The number of courts or people with cases utilizing pilot tools
- Metrics related to payment compliance, collections effectiveness, case processing efficiency, and court responses to failure-to-appear or failure-to-pay

Each grantee finalized a list of measures that were the most meaningful and appropriate for their respective intervention(s), as well as feasible to collect depending on their site's capacity. **For a comprehensive list of the grantee-specific measures selected by each grantee, see Appendix B.**

KEY BENEFITS OF PERFORMANCE MEASUREMENT

The grantees reported a number of benefits to their participation in the Initiative related to new insights around legal financial obligation trends, revelations about data capacity needs, accountability and structure, and access to performance measurement expertise and feedback.

New Insights. Though all five sites have long collected data on legal financial obligations, prior to the Price of Justice Initiative, none had analyzed or reported on this data in isolation. The Initiative gave sites the opportunity to create data-reporting mechanisms and structures specifically focused on fines and fees, allowing them to realize insights they would not have noticed otherwise. For example, Missouri had not looked specifically at collection rates in their courts. Through the Price of Justice process, they realized that their pilot court, Lee's Summit, had a very high collection rate, with 94 percent of individuals fully satisfying their payments in quarter four of 2019. This prompted the site to consider analyzing collections rates in less affluent jurisdictions to see how the data differs. Relatedly, while developing their performance measures, Louisiana observed that individuals of color are disproportionately affected by fines and fees debt, and they are in the process of addressing this disparity with the courts directly.

Increasing Capacity to Measure Performance. As explained in more detail in the section below, most of the sites experienced challenges maintaining the capacity to access and analyze the data required to measure performance over time. Participating

in the Initiative revealed many of these challenges to a broader range of court stakeholders. The Texas Office of Court Administration, for example, experienced how difficult it was to collect data regularly from courts with different case management systems. The site team hopes that these challenges can be abated in a few years, once the Office of Court Administration creates and offers a free case management system to courts statewide. Similar problems faced in California have galvanized additional support for a planned statewide data index that will make it easier for its Judicial Council to access all court data through a centralized database.

Enhanced Structure and Accountability. The Price of Justice, with its structured deadlines and reporting requirements, provided an opportunity for sites to develop their performance measurement frameworks and then regularly collect and report on data. The California site team, in particular, found it useful to have structured reporting responsibilities as they were tasked with collecting data from four distinct courts with different case management systems. The site team was able to rely on the reporting deadlines as a way to mobilize the various pilot courts to meet their deadlines. Though Louisiana had in-house data-analysis capacity, its team still found the process time-consuming and reported that their performance measurement duties may have been pushed back and eventually forgotten without the built-in accountability of the Price of Justice Initiative.

Expertise and Feedback. A number of the sites found the performance measurement process valuable because it provided them with access to additional technical expertise that they did not always have in-house. Both the Louisiana and Washington site teams reported that it was helpful to have access to a technical assistance team with expertise in performance measurement because it allowed them to get feedback on ideas for the performance measurement process as well as on-demand support with data analysis and issues.

THE CHALLENGES OF PERFORMANCE MEASUREMENT

Throughout the performance measurement process, all of the grantees experienced challenges related to data availability, access, capacity, and/or quality. As a result, the sites' performance measurement frameworks took slightly different forms by the end of the Initiative. Below is an overview of the types of challenges experienced by the grantees, as well as the actions taken in response.

Data Collection Issues. The most common issue grantees found at the outset of the Initiative was that many of the measures ISLG proposed for the framework were not collected in the sites' existing case management systems. In most cases, incorporating new measures into a case management system would require changes to state law or court rules, which mandate data collection standards—a process outside the scope of this project. The grantees responded to this challenge in a number of ways. In many cases, the site teams made plans to incorporate data collection for many of the measures as part of their reform strategies (e.g., as part of ability-to-pay tool registration). Where this was not possible, most sites opted to use replacement metrics—such as those that were readily available through their case management systems—or simply reported on fewer of the Initiative and grantee-level measures than they had originally intended. As a result, none of the initial Initiative performance measures can be compared across sites. Although cross-site comparison would be ideal, the priority is that the measures are as relevant and appropriate to their given sites as possible and that they can be tracked over time to evaluate reform performance.

Fragmented Data Systems. Some sites experienced significant challenges accessing data because their participating courts used different case management systems and data-reporting processes. The California site team had to receive data

from each pilot court individually (as opposed to a centralized case management system), and several of the pilot courts were unable to export their data in an easily analyzable format, such as a spreadsheet. This led to reporting delays as submitting the data templates required manual data entry. For its part, the Washington site team chose to make a public records request to the state courts' data warehouse in order to access the data, and it took nearly a year for the warehouse to fulfill this request because the courts happened to be in the process of switching over to a new case management system. Ultimately, because of this transition, the Washington team only received data for some of the pilot courts.

Though courts in Texas—which does not have a unified court system—also use different case management systems and data definitions, all courts submit data on a monthly basis to an application that consolidates aggregate data. However, the submission process is not streamlined—some courts even submit data by fax. The fact that data is submitted in aggregate, rather than at the case level, also meant that the Texas site team could not disaggregate the data and re-analyze it as needed for some of the proposed performance measures.

This fragmentation led to a shift in approach for the Initiative performance measures, which were initially intended to provide a statewide picture of fines and fees for each site. Since most sites were not able to feasibly access statewide court data, ISLG changed the approach so that the sites would collect data for both Initiative and grantee-specific measures from the participating pilot courts instead, thereby reducing the number of distinct case management systems that sites would need to work with to participate in the Price of Justice Initiative.

Limitations in Data Analysis and Management Capacity. Several of the Price of Justice site teams experienced issues with maintaining the staff capacity required to regularly extract, analyze, and submit data. A successful performance measurement process requires the regular monitoring of metrics in order to evaluate program

progress in a timely manner. The California site team and pilot courts found the measurement process especially cumbersome because the pilot courts use different data definitions, and at times separate systems, to track data related to fines and fees; following specific cases from infraction through to payment had to be done manually. In other cases, the way that data is uploaded makes analysis more cumbersome. In Louisiana, the data for certain case-level metrics are uploaded as documents, rather than as figures, and they require special permissions to access and must be analyzed manually.

For some pilot courts, the same court staff responsible for the programmatic management of the pilot tools were also those in charge of data collection and analysis, among other duties. Another challenge was that many pilot courts lacked performance measurement expertise and either did not know that they had access to certain information or did not know how to find it in the case management system. Louisiana and Missouri, however, had an advantage because their site teams included state-level court data analysts who had direct access to the pilot court case management systems, which streamlined the performance measurement process. Though these analysts had responsibilities outside of their Price of Justice work, they also had the performance measurement expertise required to collect and analyze data on a regular basis.

Inconsistencies and Inaccuracies in the Data. Many sites expressed concerns that all data relevant to an infraction may not always be collected, or that staff at the individual pilot courts might not always enter this data consistently or accurately into the case management system. The California site team found that for many traffic citations, which are hand-written, law enforcement did not always fill out the race/ethnicity field on the citation. In other instances, the information was illegible.

SECTION 3.

Lessons Learned and Practice Considerations

Over the three-year grant period, the Price of Justice sites emerged as a laboratories of experimentation for promising reforms to fines and fees practices.

The five grantees endeavored to examine several key questions:

1. How can we improve methods to determine individuals' ability to pay and enhance non-monetary alternatives?
2. What role can 21st century technology play in advancing access to justice?
3. How might we consider and address racial and ethnic disparities in fines and fees assessment and collection?
4. What should we consider when developing performance measures to evaluate what's working? And finally,
5. What role, if any, should legal financial obligations play in funding governmental operations?

The next section addresses these questions, highlighting lessons learned through the five grantees' efforts to-date.

DETERMINING ABILITY TO PAY

A growing spotlight on the national scope of fines and fees practices has increased the push for reform, including through adjusting penalties according to a person's ability to pay. In practice, however, even where judicial officers can consider a person's economic means, there is not always

guidance on how to do so, what factors to consider, or what alternatives to payment are possible. Across the Initiative, grantees examined how to improve current procedures for making this determination and how to increase access to options that do not require payment.

In California, existing rules prior to the Initiative allowed for judicial officers to consider a person's ability to pay in traffic cases.¹⁹ While court rules called for an assessment of a person's financial means—income, expenses, household size, and extenuating financial circumstances—there was little guidance on how to actually conduct this inquiry and weigh factors during a determination. Existing ability to pay court forms²⁰ offered a foundation for judicial officers of what information to collect from a person and how, but the process involved multiple, distinct steps, including a physical court appearance and potential waiting times of days or weeks for a judicial decision. Additionally, both the forms and the process could vary from one county to another—as is often the case across judicial districts. Given this landscape, California convened its *Ability to Pay Workgroup*. This group—comprised of Superior Court presiding judges, court commissioners and administrators, along with representatives from the California State Association of Counties, the California District Attorneys Association, and the California Public Defenders Association—recommended strategies to streamline the ability to pay determination process in traffic courts.²¹

California's workgroup thereby built upon the existing forms, as a reference for creating their online tool. To make the process friendlier to court users, California made sure to use plain language and a "card-based presentation," allowing people to answer one question at a time in completing their determinations. Other improvements included highlighting key components of the form that could be either lost or missed, such as a person's enrollment in the state's food and nutritional benefits program. Thus, the examples of ability to pay inquiries could allow for the collection and consideration of standard information within participating counties across the state as well as greater ease of use by judicial officers adapting to the new interface to weigh the information presented to them.

Like California, Washington and Texas also used existing forms as a baseline for their ability to pay tool determinations. While Washington reviewed existing forms as possible templates for their tool, the process of determining ability to pay became easier with the passage of Washington's House Bill 1783 in March 2018. This new law, which took effect in June 2018, provided clearer guidance on determining indigency (the new criterion being whether a person receives state assistance) and prohibited imposing costs on individuals who are indigent and unable to pay.²² Washington's LFO Calculator incorporated key features, such as ways to show judicial officers which fines and fees are mandated by law and which are not, and which can be reduced by judicial discretion, converted to community service, or waived altogether. Washington also added a function to show how much time it could take to satisfy financial obligations and allow parties to determine what would be a reasonable payment plan given a person's current income. As part of training around the ability to pay tool, Washington²³ and Texas both developed "bench cards"—guidelines for court actors showing which factors to consider for ability to pay and how to conduct the determinations.²⁴

Additionally, California added a dynamic component to their tool development process. During focus

groups, the site team reviewed case scenarios with judges for a first-hand view of ability to pay determinations. These observations informed the development of the tool to allow for the digital process to complement and support the court process. Consolidating and automating the existing forms could yield benefits—not only for the user to receive a more comprehensive review of their financial circumstances but also for judicial decision-making, as it allowed for a streamlining of the various components in this area.

ALTERNATIVES TO PAYING FINES AND FEES

The Price of Justice Initiative also produced new ideas for increasing access to non-monetary options for legal financial obligations. Across the country, court-ordered community service in lieu of a fine tends to be the most common type of non-monetary alternative.²⁵ A 2019 study by the Center for Court Innovation highlighted that a perceived benefit of community service is its potential to ease the financial strain on people's finances, particularly those who are indigent.²⁶ Conversely, challenges may arise because of a lack of standard guidelines for converting fines to community service, an absence of evidence-informed models for administering these programs, and because of the potential for incarceration for non-compliance. Additional questions may need to be addressed, such as: How to make the conversion, imposition, and assignment of community service equitable across income groups and individuals with different abilities? How to address the possible negative consequences for individuals who have to take time away from other obligations, such as employment and childcare? The Price of Justice provided fertile ground to address some of these challenges and explore solutions.

Fine-to-Work Conversion. California recently amended a state penal code section related to converting community service hours. In 2020, California raised its conversion rate to double the minimum wage set for the applicable calendar year. Thus, every hour of service is considered to be two

hour's wages towards paying one's fine. California also offers a reduced fine and/or payment plan that can be paired with community service to reduce the amount of one's legal financial obligation and perform community service to satisfy the remainder. This reform aligns with recommendations from California's *Ability to Pay Workgroup* and from community advocates to ensure the proportionality of legal financial obligations.²⁷

Community-Based Options. Missouri's "Access My Tickets" tool seeks to provide people who are self-represented with increased awareness of available community service options. The tool provides a pre-approved list of community service organizations, and individual counties may add to the list as new partnerships emerge—including removing vendors after quality assurance checks. Through the tool, individuals can experience a greater degree of transparency and autonomy in selecting a service provider and even search options based on their preferred geographic area. While provider availability and location may not be sufficient to meet all the needs of the individuals who use the tool, Missouri intends for the tool to establish the framework needed to add service providers as capacity increases.

Going Beyond Community Service. In Texas, State Bill 1913 expanded the definition of "community service" to include a wider array of non-monetary alternatives.²⁸ As of 2018, individuals can also satisfy community service by attending educational and workforce development programs, substance and alcohol abuse programs, and counseling, among other options. Additionally, community service need not only be performed at government or non-profit entities, but may also be carried out at educational institutions or at any organizations that enhance the social welfare of the community.²⁹ The Texas sites supported efforts by community advocates and the legislature to effectuate this change while working on the Price of Justice to help ensure long-lasting system change beyond the Initiative.

Other jurisdictions around the country are also attempting to move beyond the more traditional

concept of community service to a broader definition of alternatives. For example, New York City has incorporated online learning, or "e-learning," as a community service option for those who cannot afford (or choose not) to pay fines.³⁰ The Civil Alternatives program was created as part of New York's 2016 Criminal Justice Reform Act that moved many low-level violations from criminal court to the Office of Administrative Trials and Hearings.³¹ This program offers people the option to complete a free online learning module as an alternative to paying fines associated with low-level summons offenses.³² As noted above, fine-to-work conversions are an important part of determining alternatives. After a year of implementation, OATH adjusted the original calculation outlined in NYC's legislation to allow higher fines to be resolved through less time.³³

In this way, the breadth and flexibility of technology provides the opportunity to generate new and innovative solutions in our legal system and better serve people who encounter it, regardless of their location, technological literacy, or language skills. These solutions can make court systems, programs, and services more efficient while at the same time increasing access to justice. The Price of Justice Initiative has provided a framework to design more equitable and meaningful alternatives—moving beyond traditional community service, which is especially challenging in resource-limited jurisdictions. Each jurisdiction will need to continue to monitor the administration of these reforms to combat net-widening (when a greater number of individuals are required to participate in an alternative, but actually should have received a less intensive sentence or none at all), and expand apt areas for growth.

THE PROMISE (AND PITFALLS) OF DATA AND TECHNOLOGY

As jurisdictions across the country increasingly look to technology for solutions to longstanding challenges in the criminal legal system,³⁴ the Price

of Justice grantees embraced the importance of data and development of digital solutions for their fines and fees reforms. Among three of the five grantees, a central goal emerged: to increase opportunities to resolve cases involving monetary sanctions online. The premise is straightforward: because for many people court appearances can mean missed wages or even the loss of a job, challenges with transportation, or difficulty securing childcare, why not create another way to adjudicate these cases online? In doing so, the grantees also sought to promote procedural justice within the system. Additionally, for court personnel, processing these cases the traditional way can create administrative congestion—requiring, at times, loose slips of hardcopy documentation—and require administrators to assess financial information manually, however complex.

While all the grantees pursued technological developments, their varying approaches bore different insights. Some sites contracted with external developers while others elected to build their tools in-house. For California and Washington, which both contracted with third-party companies (Global Justice Solutions and Microsoft, respectively), the development process infused design-perspectives from industries beyond the courts sector, which spurred a perceived spirit of deepened innovation. On the other hand, in-house development in sites like Missouri and Texas capitalized on a deep familiarity with court systems and stakeholders, as well as a keen understanding of how judicial officers prefer to interface with such tools.

Another key decision for the grantees was whether to develop a new tool or adapt an existing tool from a technology company. While purchasing ready-made software can speed up the development process drastically, it still presents the need for customization to meet both local and statewide needs. As such, most of the Price of Justice sites elected to build new software to best tailor and refine their tools as pilots continue and grow. That said, while home-grown tools can bring a tailor-made solution to a need, it can be a challenge to

maintain and upgrade these tools—even when done by an outside developer. Additionally, ensuring proper integration and compatibility with the latest versions of browsers and hardware can be costly and involved process and require outside assistance.

Even where a tool is made from scratch pro bono, as with Washington, costs to maintain software can create additional funding needs that last beyond a grant or start-up period. These costs will need to be factored in for implementation efforts but also for moderate- and long-term sustainability plans. Regardless of whether done in-house or through a third-party, the grantees' experiences affirmed that building tools from scratch can be expensive, time-consuming, and complex; and the capacity needed to collect data in a reliable way and evaluate these tools and reform strategies can be equally challenging.

Relationships and Data Agreements with Third-Party Vendors. While tools can help institute a more systematic capturing of data, managing that data can present challenges. At some grantee sites, private companies, rather than the courts, handled and collected the payment of fines and fees. In Washington's case, this leads to gaps in the data regarding how much people actually owe and how close they are to paying off their debts. Missouri and Louisiana, however, are able to regularly access third-party collections data and update case-level data in the courts' case management systems (CMS).

In thinking about accessing data from ability-to-pay tools or other interventions, it is important courts consider whether to develop and manage programs or tools in-house or through a third-party vendor. This decision has resource implications—many courts do not have the capacity to take this on, but working with a vendor can be expensive. For Texas and California, it was most cost-effective to take a hybrid approach by working with a vendor to prototype the tool on a short-term contract and then managing the ongoing tool development in-house. Other courts did not have any in-house staff with the capacity for this work, in which case a third-party vendor was the better option.

Another important consideration when working with vendors is how to access the data generated by the program or tool and how to incorporate it into the court CMS. If courts frequently experience procurement and contracting challenges—as in the case of the Washington site team—they may periodically be unable to access data or even operate the program or tool. Courts should work closely with vendors to develop a protocol that lays out data reporting responsibilities and how and when courts will access data. Many sites are also thinking about how to link data from the program to the courts' CMS. In the lead up to their tool launch, the Missouri site team is currently developing a plan to link their tool's data to their CMS.

Standardizing Case Management Systems and/or Databases. Often a new performance measurement process reveals that desired measures are not being tracked by the case management system. Ideally, courts would be able to update their systems to include additional fields as they became relevant. We learned that courts wanting to create a new performance measurement framework should also create a plan to include any new metrics that the court wants to track. Typically, this is a political consideration, and may require changes mandated by state legislation and then funding to enable the third-party owner of the case management system to make the necessary IT changes. In the case of the Missouri Office of State Courts Administrator, however, the statewide case management system is managed in-house, and if the office wants to add a new field, it can seek approval from an internal oversight committee. Upon approval, the court's IT team would create and test the new metric field before adding it to the case management system.

It also became clear that the site teams that were using one case management system for all analyses (i.e. there was one system for all courts statewide, or all participating pilot courts used the same system) were more easily able to analyze data for multiple courts. For instance, the Louisiana site team was able to use the same tables and codes to extract data for both pilot courts. The analysts

in Louisiana and Missouri were also able to access the court data directly, rather than by requesting reports from the courts or from a data warehouse, which streamlined the process. While overhauling a state's case management system might not always be feasible, opting for centralized data warehouses for states where courts use different case management systems, such as California or Texas, would be most beneficial. Using standardized data definitions, compatible case management interfaces, and some type of centralized database can dramatically streamline the data analysis and performance measurement process, requiring much less staff capacity.

Advantages of Automation. Sites expressed that automation was one of the single greatest benefits of creating online tools. Prior to the Price of Justice, many aspects of ability-to-pay determinations were completed manually, which can be inherently at-odds with fast-paced court settings. With judicial officers having to juggle the myriad statutory guidelines on fines and fees with assessing an individual's finances, ability-to-pay tools can greatly improve decision-making.

Additionally, online calculators can allow for the immediate verification of information relating to ability to pay. For example, through a partnership with the state's Department of Social Services, California's tool integrated a feature to verify if a person is enrolled in the state's food and nutritional benefits program. After uploading an image of an enrollment card or basic identifying information, individuals can more easily demonstrate pertinent financial information that can improve outcomes of their ability-to-pay determinations.

Further, where automated tools can capture case dispositions, they may help track community service and other non-monetary options better than existing court systems. For example, Missouri's tool can capture whether community service is an approved resolution to a case.

User-Centered Design. Each state relied heavily on user feedback in developing their tools. The

grantees used agile processes, and in conjunction with their technology teams, solicited feedback from the various user groups during the development process. These audiences included judicial officers, court staff, and members of the public. California took a nuanced approach to user-centered design by procuring a service designer. This team member was responsible for creating an experience that would promote greater use of the tool, by court staff and members of the public alike. The service designer not only helped engage users during the tool development process, but also continued to monitor usage after the tool launched. Using web-based analytics, the site team tracks usership of the tool across the continuum of the online ability-to-pay process. Thus, the site team can see where users engage most with the tool and where confusion may disengage them. From there, the team can take a data-driven approach to developing solutions to address perceived challenges with the tool.

In addition, behavioral economics became a focus of the Price of Justice. The Initiative encouraged site teams to consider design techniques that could increase ease of use by different audiences (e.g., judicial officers, court administrators, members of the public). To this end, ideas42, a Washington, D.C.-based behavioral economics company, presented on these topics and served as a resource for grantees during the Initiative's second year.

Minding Potential Minefields. Grantee sites also confronted how to manage the data collected, including how much personal, identifying information to collect and how long it should be saved. For Missouri and California, users can create profiles that can store their demographic, and potentially, their financial information, for up to a few years. Though courts commonly receive and store a person's personal information, maintaining an online database containing comprehensive user profiles (perhaps more accessible than a court file would otherwise be) raises potential questions about privacy and storage. Grantee sites elected to save

this data in cloud-based applications and to destroy it after short, set periods of time. Some states, such as Washington and California, elected to save this data in a cloud whereas Missouri, Texas, and Louisiana are utilizing system-based repositories.

Building In-house Performance Measurement Capacity. The challenges that arose throughout the performance measurement process offer valuable opportunities for improving data management for any jurisdiction interested in undertaking a similar measurement initiative. Though, as discussed above, some of the challenges would require large-scale changes to address (for example, overhauling a state's entire case management system), one potential approach is for states to consider allocating resources to building an in-house team of analysts within the state court system specializing in performance measurement. As noted above, the Missouri and Louisiana site teams included data analysts with the capacity to efficiently conduct the performance measurement process, while other sites had limited capacity and faced greater challenges extracting, analyzing, and submitting data in a timely manner. Other options are to prioritize data-extraction training for staff at all courts statewide and to enable access to local court data systems for state-level analysis, where possible.

Quality Assurance Strategies. Having a dedicated team of data analysts, either at the state or local court level, with ownership over the data collection, extraction, and analysis processes is key for data quality control. Courts should consider investing in on-going cross-agency trainings and educational workshops for law enforcement officers and court staff tasked with collecting and entering data to ensure consistency and reliability. Instituting regular data audits can also help courts catch problems with data quality and develop timely solutions. In some cases, courts may be able to work with their IT departments or third-party case management system providers to build in mechanisms such as automatic feeds and quality control checks to reduce the risk of errors.

CONSIDERING RACIAL AND ETHNIC DISPARITIES

With growing recognition of the disparate impact of fines and fees on communities of color, the Price of Justice Initiative also incorporated a focus on equity.³⁵ A report by the U.S. Commission on Civil Rights shows that criminal legal debt practices—enforcing low-level offenses in part, to help cover budget shortfalls of court and local governments—are most common in communities of color and, to a lesser degree, low-income communities.³⁶ The targeted imposition of fines and fees on these communities not only affects the individual ticketed, it also undermines the broader perception of the efficacy of the judicial system as a whole. For example, in Ferguson, Missouri, African Americans accounted for 85 percent of traffic stops and 90 percent of citations even while making up two thirds of the population in the City of Ferguson. This high rate of police encounters for African Americans was only exacerbated by the fact that these stops could lead to the issuance of multiple tickets in a single stop.³⁷

A central challenge with addressing inequities of fines and fees has been the availability of usable information. National data on the extent to which people are jailed or otherwise penalized because of their inability to pay fines and fees are insufficiently developed.³⁸ However, some of the local data that does exist points to the need for a more systematic collection and analysis of inequity in fines and fees practices and impact. Using data from over 9,000 cities, researchers have found that cities with larger Black populations were more likely to use fines to generate revenue through overreliance on criminal legal debt from Black community members.³⁹ The Price of Justice Initiative approached the fines and fees work through this lens. Many of the grantees have designed their ability-to-pay tools to collect more systematic race and ethnicity data and ultimately allow for greater understanding of the impact of fines and fees on people in low-income communities and communities of color. As part of

this effort, the grantee sites have also worked to better engage their communities.

Missouri and California are examples of this approach. These sites have incorporated the collection of race data into their tools. Users may elect to indicate their race while using the ability-to-pay tool. This information is voluntary, out of concerns about fairness and deterring people from utilizing these tools. Additionally, users are informed that their racial affiliation will not be used in outcome determinations but rather for research and analysis.

On the community engagement front, Texas invited community groups to join their Price of Justice Advisory Committee. These groups helped inform how Texas could support the ultimately-enacted state legislation, SB 1913, and use technology to standardize ability-to-pay determinations. Given that Texas does not have a unified court system, insights from the lived experience of court users proved invaluable. Similarly, members of Washington's Price of Justice Workgroup engaged directly with community groups. Washington met with legal aid attorneys who assist people in many matters involving fines and fees, as well as the group, Living with Conviction. These conversations underscored the importance of educating judicial officers on which fines and fees are in fact waivable (and which are not), to impose the least restrictive sanctions on people. These conversations also helped with strategies for spreading community awareness of Washington's LFO Calculator.

THE ROLE OF STAKEHOLDER CHAMPIONS

Securing the support of key stakeholders was essential for the Price of Justice grantees. All five sites, which were the highest court administrative offices in the state, obtained the buy-in of their chief judges. Their support helped unite the various actors—judges, attorneys, court staff, and community representatives—around a common

reform effort. Given that fines and fees reform can translate into lower revenue for courts, this level of support may prove critical. In addition, when the highest-ranking judge in a jurisdiction flags an effort as high-priority, it helps to ensure sufficient resources are allocated.

Grantees drew from having the support of their chief judges in different ways. In Washington's instructional video to train users of its ATP calculator, the Chief Judge makes an appearance to encourage use of the tool. California, by contrast, called upon the support of the Chief Clerk to invite counties to volunteer as pilot sites. This outreach was effective as it signaled that county courts' participation in the Price of Justice was paramount to the Chief Judge. Additionally, Texas's chief Judge approved the Texas site lending support for landmark fines and fees legislation (described above in Section 1). In Texas, lacking a unified court system, support from the highest level in the states' judiciaries was critical.

What's Next for Fines and Fees Practices?

The Price of Justice Initiative underscored the tremendous possibilities for advancing fines and fees reforms. From standardizing practices across counties, to promoting consideration of people's abilities to pay, jurisdictions can implement new policies that require little financial or digital commitments. Where more resources—time, staff, and funding—are available, courts can leverage technology, as the Price of Justice grantees did, to improve how they administer and analyze legal financial obligations while increasing fairness for the communities served.

The Initiative also identified a key area of opportunity: improving data and analysis around fines and fees practices can help jurisdictions move away from excessive reliance on the revenue they generate. Technological tools may also help further this goal. These tools—when developed and maintained—can shed light on the effectiveness of fines and fees practices. With greater capacity to determine the penalties that can be assessed and

paid, jurisdictions can shape policy to better match current practices.

Economic Sanctions Practices: Goals and Reality.

There is more jurisdictions can do to understand how their handling of economic sanctions might run counter to their expressed goals of fairness and racial equity. Currently, many jurisdictions rely on fines and fees to fund a portion of their budgets. Since 2008, almost every state has either increased criminal and civil court fees or added new ones to help fund basic court operations. The categories of offenses that trigger fines have also been expanded. Yet, research has shown that much of the money that jurisdictions expect to receive never arrives—a significant portion remains uncollected or is diverted to other budget lines. An analysis by the Brennan Center found that a North Carolina county in 2009 arrested 564 individuals and jailed 246 of them for failing to pay debt, but that the amount of money ultimately collected was less than what it spent on their incarceration.⁴⁰

How much money jurisdictions ultimately recoup is also unclear, especially when, as part of collection efforts, they spend additional sums on staff, paperwork, and outside agencies. To this end, courts can enhance their tracking of current practices—how these cases are resolved, the amounts of fines and fees assessed, any alternatives used, and the extent to which incarceration is the end result. Employing tools that can help demonstrate the utility—and costs—of current efforts can inform needed reforms. Measuring the performance of these efforts can also help administrators and communities, alike, ensure the efficacy of these tools and their corresponding reforms and address potential disparities—racial, socioeconomic, or otherwise—that may arise.

Consider Sustainability Strategies. As important as launching new reforms is ensuring their staying power. The Price of Justice Initiative illustrates the importance of beginning with an end goal in mind: to secure statutory and financial support to effectively implement reforms statewide. To ensure the uniformity and longevity of these reforms,

both the funding and legislative components are key. States may consider developing task forces or multidisciplinary working groups to garner support at the state level for advancing criminal legal debt reforms. These entities would ideally partner with community groups well-versed in the harmful effects of economic sanctions. The groups can assist with pursuing state-level support for reforming fines and fees practices, inform solutions, and provide feedback during implementation phases. Indeed, in some states, especially where the court system is not unified across counties, statewide commitment of resources can ensure that court actors receive the support and training they need to implement reforms, and that communities benefit as widely as possible from them.

Promoting an Ability-to-Pay Lens for Fines and Fees. As a corollary to determining ability to pay, the idea of “day fines” has returned.⁴¹ Borrowing from European and Latin American countries, the day fines concept factors a person’s adjusted income against a numerical penalty assigned to certain offenses. Since the 1980s, researchers have devised and tested this additional method of administering economic sanctions.⁴² Several courts in the United States have piloted day fines that are calibrated to a person’s income.⁴³ In some courts, effectuating day fines not only increased overall revenue collected from economic sanctions, but also decreased the disproportional impact of criminal legal debt. Because day fines are purported to better reflect individuals’ ability to pay them, collection rates can be much higher than with traditional fines. However, day fines still amount to a form of criminal legal debt and may not do enough to move away from a reliance on monetary sanctions.

Rethinking Alternatives. In addition to considering a broader array of alternatives to fines and fees that come at no cost to people who are unable to pay, there is growing interest in civil alternatives. Jurisdictions inspired by the examples in Texas—where legislation more broadly defines community service alternatives—and New York City—where free online classes may substitute for community service—may enact their own models. These options would ideally be less onerous for court actors and individuals alike. These alternatives could significantly reduce the time and resources courts spend adjudicating these cases while promoting increased compliance and access to more fair and legal outcomes for people.

Conclusion

The Price of Justice Initiative provided the five grantee states—California, Louisiana, Missouri, Texas, and Washington—with an opportunity to use technology to build on their existing efforts to tackle the issues surrounding criminal legal debt. While many of the grantees were already at the forefront of research, policy, and advocacy regarding fines and fees reform, the Initiative helped further lay the foundation to test out, or expand on, possible technological solutions. This type of innovation was not easy. Developing and implementing new technologies posed a challenge for all sites in one way or another, and was affected by factors within and outside the direct control of grantees.

In addition to developing technological solutions, the importance of data collection and monitoring was threaded throughout the Initiative. Data was required to understand the landscape of fines and fees before and after the implementation of pilot projects. From the outset, the TTA team and BJA promoted the importance of data tracking and analysis as a means of determining the effectiveness of pilot solutions and reforms and identifying ideas that could be replicated in other jurisdictions. Much of this work will require more than the three years of work funded by the Initiative, since some sites have taken longer to develop their tools and begin the implementation stage. However, many advances and lessons learned have been documented along the way. And while the performance measurement process was challenging for all grantees, the Initiative highlighted a number of potential approaches that state and local court systems can take to streamline performance measurement processes, increase data capacity and access, and improve the overall quality of data.

Finally, a key takeaway from the Initiative was the importance of peer networks and creating ways for court systems—of different sizes, structures, and funding streams—to learn from one another and discuss the opportunities and issues each could look out for when pursuing similar reforms. To date, each of the grantee states has made notable strides. All five have committed to moving their projects forward beyond the Price of Justice and continuing to address their state’s overreliance on fines and fees and the unfair consequences of criminal legal debt.

APPENDIX A.

Setting Up Performance Measures to Monitor an Intervention or Strategy

STEP 1.

DEVELOP A LOGIC MODEL FOR THE INTERVENTION OR STRATEGY

The purpose of starting with a logic model is to ensure alignment between the intervention's goals, its approach to achieving those goals, and the metrics that will ultimately be used to monitor its performance.

The logic modeling process works by diagramming:

- The resources necessary to carry out the intervention;
- The key activities that reflect the core strategy of the intervention;
- The outputs, or immediate results, of those activities;
- The short-term outcomes of the intervention; and
- The intervention's longer-term impacts.

Figure 1 below places each of these components into a logic model diagram. Some find it easier to start by identifying the intervention's intended impacts, or long-term goals, and then work backwards to determine the outcomes, outputs, activities, and resources. It is possible to work in either direction.

FIGURE 1. LOGIC MODEL COMPONENTS					
Intervention	Resources	Activities	Outputs	Outcomes	Impacts
Select intervention	List the resources necessary to carry out the intervention	Create a list of key activities that reflect the core strategy of the intervention	List the immediate results you expect to see if activities are carried out as intended	Determine the short- and intermediate term outcomes of those activities if they are successful	List the intended impacts, or broader benefits of the intervention

Figure 2 below illustrates the process using one example for each component. A complete logic model will have several items each column.

FIGURE 2. EXAMPLE OF HOW TO START A LOGIC MODEL					
Intervention	Resources	Activities	Outputs	Outcomes	Impacts
Ability-to-pay calculator	Pilot courts to test the calculator ...	Use calculator to conduct ability-to-pay assessments ...	More people are screened for ability-to-pay ...	More low-income people receive alternatives to LFOs ...	Court processes are more equitable and less burdensome for low-income people ...

Sites should continue the logic modeling process and include as many resources, activities, outputs, outcomes, and long-term impacts as possible.

STEP 2. ESTABLISH OPERATIONAL METRICS

After completing the logic modeling process, sites will brainstorm potential metrics for the activities, outputs, outcomes, and impacts of the intervention. The list developed through this exercise can include both process measures (which track progress on implementation and operations) and outcome measures (which track results of the intervention). Each metric should be operational, with a specifically defined approach to measuring it, so that it can be used to demonstrate change in the same variable over time. It is important that sites document specific definitions for each metric, including key terms within them, to ensure consistency in performance measurement and so that all audiences know exactly what is being measured. **See Figure 3** (page 29).

STEP 4. DEVELOP PROCESS FOR COLLECTING DATA AND TRACKING METRICS

Develop the process for collecting data and tracking metrics over time. Sites should consider the following:

1. How frequently are raw data updated (e.g., daily, weekly, monthly)? How frequently can they be made available for metric development?
2. Who has access to the data (e.g., is data accessible only by individual courts, or can state administrative bodies access the data)?
3. Which entities will be responsible for analyzing the data and/or creating the metrics (e.g., will individual courts be analyzing the data and then submitting metrics to a state administrative body? Will the administrative body collect raw data from individual courts or have access to a statewide case management system)?
4. (If data-sharing is needed across agencies to create metrics) How will data be shared, and how often?
5. Who within the responsible entities will undertake the necessary data and analytic work? Are staff with those skills available? If not, are there alternative ways to secure that kind of support?

STEP 5. DETERMINE REPORTING PROCESS AND SCHEDULE

Finally, the site team needs to develop a process and schedule for reporting on the metrics by determining the following:

1. How frequently should metrics be analyzed and reported (e.g., monthly, quarterly)? This will depend in part on how often data are updated and made available.
2. Who within the team is responsible for creating regular reports?
3. Who will receive the reports?
4. What will the reporting template look like? This should be informed in part by the audience.

By going through the above steps, sites can make decisions around which performance measures are most meaningful and feasible for their team to regularly collect, analyze, and report. Again, determining the appropriate metrics is an iterative process, and it may take several rounds of data collection and analysis to answer the above questions and finalize the framework.

Figure 3 illustrates the process of establishing operational metrics. The first row contains the same example resource, activity, output, outcome, and impact as shown in Figure 2, and the second row contains sample metrics for each.

FIGURE 3. USING THE LOGIC MODEL TO ESTABLISHING METRICS					
Logic Model (using examples from Figure 2)					
Intervention	Resources	Activities	Outputs	Outcomes	Impacts
Ability-to-pay calculator	Pilot courts to test the calculator	Use calculator to conduct ability-to-pay assessments	More people are screened for ability-to-pay	More low-income people receive alternatives to LFOs	Court processes are more equitable and less burdensome for low-income people
	↓	↓	↓	↓	↓
	Number of pilot courts testing the calculator	Percentage of all cases using calculator	Percentage of all people screened for ability-to-pay	Percentage of low-income people receiving alternatives to LFOs	Disparity ratio between the percentage of low-income people incarcerated for failure to pay and the percentage of moderate-high income people incarcerated for failure to pay

APPENDIX B.

Final Lists of Grantee-specific Metrics by State

Where possible and appropriate, all states have been asked to provide data disaggregated by indigency status, race and ethnicity, and charge type.

CALIFORNIA

Intervention: Ability-to-Pay Calculator

Grantee-specific Metrics

- _____ 1. Number of traffic infraction citations filed as cases during this period
- _____ 2. Number of FTAs in traffic infraction cases during this time period
- _____ 3. Number of traffic infraction cases disposed (of those filed this year, # dismissed or resolved)
- _____ 4. Number of cases in which an ability-to-pay assessment was conducted
- _____ 5. Number of ability-to-pay cases processed receiving any alternative sanctions (i.e. waivers or reductions of fines/fees, payment plans, more time to pay, or community service)
- _____ 6. Number of cases receiving waivers or reductions of fines/fees
- _____ 7. Number of cases receiving payment plans
- _____ 8. Number of cases receiving community service
- _____ 9. Total dollar amount of fines/fees assessed for traffic infraction cases filed in this time period
- _____ 10. Average amount of fines/fees assessed for traffic infraction cases filed in this time period
- _____ 11. Median amount of fines/fees assessed for traffic infraction cases filed in this time period
- _____ 12. Total amount of fines collected
- _____ 13. Total number of cases in collections
- _____ 14. Number of cases that are in good standing in collections, making payments
- _____ 15. Number of cases in which collections reports missed payments
- _____ 16. Time from order to first payment

LOUISIANA

Intervention: Court Notification Tool (Text Reminders)

Grantee-specific Metrics

- _____ 1. Total number of cases filed in the target population
- _____ 2. Total number of cases disposed in the target population
- _____ 3. Number and percentage of cases in the target population resulting in a conviction
- _____ 4. Percentage of cases in the target population represented by a public defender or court-appointed counsel
- _____ 5. Total number of cases in the target population with any LFO assessed
- _____ 6. Total dollar amount of LFOs assessed for disposed cases
- _____ 7. Total dollar amount of LFOs assessed that are waived or reduced
- _____ 8. Total dollar amount of LFOs revenues collected for disposed cases
- _____ 9. Total dollar amount of LFOs revenues disbursed, all cases
- _____ 10. Average amount of LFOs assessed for cases in the target population
- _____ 11. Median amount of LFOs assessed for cases in the target population
- _____ 12. Total dollar amount of LFOs revenues converted to time-served
- _____ 13. Total dollar amount of LFOs revenues converted to community service
- _____ 14. Number of cases in the target population enrolled in court notification tool
- _____ 15. Number of court appearance reminders issued for cases in the target population
- _____ 16. Number of payment reminders issued for cases in the target population
- _____ 17. Number of payment reminders issued that were opened for cases in the target population
- _____ 18. Percentage of cases in target population in which at least one court or payment reminder is used
- _____ 19. Percentage of cases in the target population paying on schedule
- _____ 20. Average number of days to first payment
- _____ 21. Median number of days to first payment
- _____ 22. Percentage of convictions where a person has failed to make any payments toward mandated LFOs
- _____ 23. Collections rate
- _____ 24. Number and percentage of cases in the target population that fail-to-appear at a scheduled hearing related to LFOs
- _____ 25. Number and percentage of cases in the target population issued a warrant for failure-to-appear or failure-to-pay
- _____ 26. Number of driver's license suspensions or revocations for failure-to-pay
- _____ 27. Percentage of cases in the target population with a driver's license suspension or revocation sentence (excluding DUI, drug, or criminal traffic charges)
- _____ 28. Number of bookings or admissions into custody on charges associated with failure-to-pay or failure-to-appear
- _____ 29. Average length of stay for individuals booked on charges associated with failure-to-pay or failure-to-appear

MISSOURI

Intervention: Online Case Resolution Tool

Grantee-specific Metrics

- _____ 1. Total number of cases filed in the target population
- _____ 2. Total number of cases disposed in the target population
- _____ 3. Number and percentage of cases in the target population resulting in a conviction
- _____ 4. Total number of cases in the target population with any LFO assessed
- _____ 5. Total dollar amount of LFOs assessed for disposed cases in the target population
- _____ 6. Total dollar amount of LFO revenues collected for disposed cases in the target population
- _____ 7. Total dollar amount of LFO revenues disbursed in the target population
- _____ 8. Average amount of LFOs assessed for cases in the target population
- _____ 9. Median amount of LFOs assessed for cases in the target population
- _____ 10. Number and percentage of courts using/implementing the tool
- _____ 11. Number of court staff and/or judicial officers participating in training on the tool
- _____ 12. Number and percentage of requests for an ability-to-pay assessment out of total cases in the target population
- _____ 13. Percentage of cases in the target population entering into a collection arrangement or alternative
- _____ 14. Number and percentage of cases in the target population resolved using the case resolution tool
- _____ 15. Number of cases in the target population in which at least one party signed up for a court appearance reminder
- _____ 16. Number of payment reminders issued for cases in the target population
- _____ 17. Number and percentage of cases in the target population with LFOs registered with the tool during the given period
- _____ 18. Number of service providers registered with the tool
- _____ 19. Number and percentage of cases in the target population enrolled in a community service alternative
- _____ 20. Number and percentage of cases in the target population that fully satisfy LFOs
- _____ 21. Of cases enrolled in an alternative, percentage successfully completing an alternative program
- _____ 22. Percentage of convictions where a person has failed to make any payments toward mandated LFOs in the target population
- _____ 23. Average age of delinquent accounts in the target population
- _____ 24. Median age of delinquent accounts in the target population
- _____ 25. Collections rate for the target population, as measured by the proportion of LFOs due in a given timeframe that are collected
- _____ 26. Average time from filing to disposition for cases in the target population
- _____ 27. Median time from filing to disposition for cases in the target population
- _____ 28. Percentage of court dockets resolved without an in-person court appearance for the target population
- _____ 29. Number and percentage of cases in the target population that fail to appear at a scheduled hearing related to LFOs
- _____ 30. Number and percentage of cases in the target population issued a warrant for failure to appear

TEXAS

Interventions: Ability-to-Pay Calculator, Community Service Tool

Grantee-specific Metrics

- _____ 1. Total number of cases filed in the target population
- _____ 2. Total number of cases disposed in the target population
- _____ 3. Number and percentage of cases in the target population resulting in a conviction
- _____ 4. Percentage of cases in the target population represented by a public defender or court appointed counsel
- _____ 5. Total number of cases in the target population with any LFO assessed
- _____ 6. Total dollar amount of LFOs assessed for disposed cases in the target population
- _____ 7. Total dollar amount of LFOs that are waived or reduced
- _____ 8. Total dollar amount of LFOs revenues collected for disposed cases
- _____ 9. Total dollar amount of LFOs revenues disbursed in the target population
- _____ 10. Average amount of LFOs assessed for cases in the target population
- _____ 11. Number of courts using/implementing the tool
- _____ 12. Number of court staff and/or judicial officers participating in training on the tool
- _____ 13. Number and percentage of cases in the target population assessed for ability-to-pay using the tool
- _____ 14. Percentage of cases in the target population entering into a collection arrangement or alternative
- _____ 15. Number and percentage of courts using/implementing the tool (or community service alternative)
- _____ 16. Number of court staff and/or judicial officers participating in training on the tool
- _____ 17. Number and percentage of cases in the target population with LFOs registered with the tool during the given period
- _____ 18. Number of service providers registered with the tool during the given period
- _____ 19. Number and percentage of cases in the target population enrolled in a community service alternative
- _____ 20. Percentage of cases in the target population paying on schedule
- _____ 21. Number and percentage of cases in the target population that fully satisfy LFOs
- _____ 22. Of cases enrolled in an alternative, percentage successfully completing an alternative program
- _____ 23. Percentage of convictions where a person has failed to make any payments toward mandated LFOs
- _____ 24. Collections rate, as measured by the proportion of LFOs due in a given timeframe that are collected
- _____ 25. Number and percentage of cases in the target population issued a warrant for failure-to-pay or failure-to-appear

WASHINGTON

Intervention: Ability-to-Pay Calculator

Grantee-specific Metrics

- _____ 1. Total number of cases with disposition including but not limited to conviction
- _____ 2. Total number of cases with conviction
- _____ 3. Total number of cases in the target population with any LFO assessed
- _____ 4. Total dollar amount of LFOs assessed for disposed cases
- _____ 5. Total dollar amount of LFOs assessed that are waived or reduced
- _____ 6. Total dollar amount of LFOs revenues collected for disposed cases
- _____ 7. Total dollar amount of LFOs revenues disbursed
- _____ 8. Average amount of LFOs assessed for cases in the target population
- _____ 9. Median amount of LFOs assessed for cases in the target population
- _____ 10. Number and percentage of courts using/implementing the tool
- _____ 11. Number of cases calculated with checked "indigent" box
- _____ 12. Number and percentage of cases in the target population determined to be unable to pay
- _____ 13. Number of cases in the target population receiving waivers or reductions of LFOs, or entering into a collection arrangement or alternative
- _____ 14. Percentage of convictions in the prior quarter that failed to pay in the current quarter
- _____ 15. Average age of delinquent accounts
- _____ 16. Median age of delinquent accounts
- _____ 17. Number of cases in target population with LFOs that are delinquent by length of delinquency
- _____ 18. Collections rate

Endnotes

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11. See Louisiana Justice Reinvestment Package: https://s32082.pcdn.co/wp-content/uploads/2019/08/la_final.package.summary_2017-6-7_final.pdf.
12. See the Fifth Circuit Court of Appeals Decision here: <https://lawyerscommittee.org/wp-content/uploads/2019/08/cain5thcircuit.pdf>.
13. “Plead and Pay,” Missouri State Courts Online; available at: <https://www.courts.mo.gov/page.jsp?id=1886>.
14. See *id.*
15. See *State v. Blazina et al.*(2015), full text at: <https://caselaw.findlaw.com/wa-court-of-appeals/1631981.html>.
16. See Revised Code of Washington RCW 7.68.035, full text at: <https://app.leg.wa.gov/RCW/default.aspx?cite=7.68.035>.
17. See Revised Code of Washington RCW 43.43.7541, full text here: <https://app.leg.wa.gov/RCW/default.aspx?cite=43.43.7541>.
18. State of Washington “LFO Calculator” accessed here: <https://beta.lfocalculator.org/>.
19. CA Rule 4.335: Ability to Pay Determinations for Infraction Offenses, retrieved at: https://www.courts.ca.gov/cms/rules/index.cfm?title=four&linkid=rule4_335.
20. *Supra* note 6.
21. California’s Online System to Request a Fine Reduction, available at: <https://mycitations.courts.ca.gov/interview?i=docassemble.jcc.abilitytopay%3Adata%2Fquestions%2Finterview.yml#page1>.
22. See a summary of the key provisions of Washington’s House Bill 1783 here: <https://finesandfeesjusticecenter.org/articles/wa-house-bill-e2shb-1783-legal-financial-obligations/>.

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30. See description of Civil Alternatives here: <https://www.courtinnovation.org/programs/civil-alternatives>.
31. See a summary of the New York City Criminal Justice Reform Act here: <https://council.nyc.gov/legislation/criminal-justice-reform/>.
32. *Supra* note 30.
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37. *See id.*
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42. *See id.*
43. *Supra* note 27.

**Center
for
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520 Eighth Avenue
New York, NY 10018
p. 646.386.3100
courtinnovation.org