

SPUR REPORT
ECONOMIC JUSTICE

 **SPUR**
REGIONAL
STRATEGY



More Harm Than Good

Building a more just fine and fee
system in California

JUNE 2021



This report is a component of the SPUR Regional Strategy, a vision for the future of the San Francisco Bay Area

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Author: Jacob Denney

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Edited by Susannah Parsons
Designed by Shawn Hazen
Cover photo by Sergio Ruiz

Contents

Introduction	4
Fines and Fees Cause Significant Harm to Californians	5
We Don't Need Large Fines to Change Behavior or Fund Government	7
What's Next: Policy Options for Further Reform	9
Now Is the Time to Fix Fines and Fees in California	11

Introduction

California’s system of fines and fees is causing significant financial harm to low-income, Black, and Latinx communities in the San Francisco Bay Area and runs counter to the region’s commitment to an equitable economic recovery. These fines and fees are disproportionately levied on people of color, undermine economic security for low-income communities, constitute an inequitable source of government income and are ineffective in promoting behavior change. To address these challenges, California should eliminate its reliance on punitive fees; introduce means-based fines and expand ability-to-pay programs; and explore and introduce more effective ways to promote behavior that supports safety and the greater social good.

Fines and Fees in California

A fine is a monetary penalty levied for illegal behavior, typically for misdemeanor acts such as speeding. Fees are additional costs added to many fines; they are not intended to punish people but are instead an attempt to recoup costs or to generate revenue. After years of slowly increasing administrative fees and assessments, California now has some of the most expensive citations in the country; for example, it can cost \$500 for failing to come to a complete stop when taking a right on a red light, more than in any other state in the nation. The cumulative cost of these fines and fees is massive: they cost Californians more than a billion dollars every year. Yet the high cost of fines and fees has not resulted in meaningful revenue, nor have they provoked the behavior change that was the original intent.¹ Researchers estimate that there is at least \$10 billion in outstanding fines and fees debt, with the amount outstanding growing every year.² Meanwhile, the rate of traffic citations and other fines and fees being levied has not declined, indicating that the system of fines and fees is failing to produce the desired behavior change. Research into fines has shown that they don’t stop people from violating traffic laws, and further research has shown that increasing fine amounts has no relationship with deterrence.³ People cannot afford to pay California’s fines and fees, and they are not working.

FIGURE 1
More than half of all traffic citations are not paid at the end of the year
 Share of statewide traffic citations paid, 2018-2019



1 San Francisco Financial Justice Project, “Criminal Justice Administrative Fees: High Pain for People, Low Gain for Government,” Office of the Treasurer & Tax Collector of the City and County of San Francisco, April 2019, https://sfgov.org/financialjustice/sites/default/files/2020-04/High%20Pain%20Low%20Gain%20FINAL_04-24-2019_1.pdf; Policy Advocacy Clinic, “Making Families Pay: the Harmful, Unlawful, and Costly Practice of Charging Juvenile Administrative Fees in California,” University of California Berkeley Law School, March 2017, <https://www.law.berkeley.edu/wp-content/uploads/2015/12/Making-Families-Pay.pdf>; Roopal Patel et al., “Criminal Justice Debt: A Toolkit for Action,” the Brennan Center, 2012, <https://www.brennancenter.org/sites/default/files/legacy/publications/Criminal%20Justice%20Debt%20Background%20for%20web.pdf>

2 Alex Bender et al., “Not Just a Ferguson Problem,” Lawyers Committee for Civil Rights San Francisco, 2015, <https://lccrsf.org/not-just-ferguson-problem-how-traffic-courts-drive-inequality-in-california/>

3 Uri Gneezy and Aldo Rustichini, “A Fine is a Price,” *The Journal of Legal Studies* 29, no. 1, January 2000, <https://www.journals.uchicago.edu/doi/abs/10.1086/468061>; Rune Elvik and Peter Christensen, “The deterrent effect of increasing fixed penalties for traffic offences: The Norwegian experience,” *Journal of Safety Research* 38, 6, pp. 689-695, <https://www.sciencedirect.com/science/article/abs/pii/S0022437507001272>

Fines and Fees Cause Significant Harm to Californians

Fines and fees disproportionately harm low-income Californians, pushing many families into debt and cutting into their ability to meet their basic needs. A survey of low-income people found that lowering the cost of fines was the second-largest financial concern for struggling families, and more than half of the survey respondents said that fines caused their families financial hardship.⁴ When fines are so costly, low-income people have to give up a large portion of their income in order to pay them. The same survey found that 48% of people grappling with fines could not pay their other monthly bills, 40% had to skip paying utility bills and 37% could not afford groceries. For many, fines become a debt trap that forces them to choose between feeding their families or paying a criminal legal debt.

Fines and fees often create a cycle of debt that haunts people for years and increases the risk of accumulating more fines. If someone cannot afford to pay a traffic ticket or other fine in California, they can appear before a judge and request an ability-to-pay determination. The judge investigates the individual's income and assesses whether or not they have the means to pay the fine. The judge can, at their discretion, reduce the fine amount or put the person on a payment plan. However, a number of barriers prevent people from pursuing this relief. Receiving a big fine is daunting, and many people do not appear in court to argue their case. Still others are unaware of the opportunity to reduce fine amounts and so they never request a determination. A 2017 survey of all nine Bay Area counties found little available information about court processes to obtain ability-to-pay relief, and no court could produce criteria used to evaluate such cases.⁵ In other cases, people may lack the flexibility required to appear in court, due to jobs that do not offer them time off or family responsibilities that make it difficult to appear for a hearing in the middle of a work day. When an individual does not pay a fine, for whatever reason, they can be charged additional costs that increase the amount owed by hundreds of dollars.⁶ If someone fails to appear in court related to a traffic offense, they can have their license suspended. For people lacking adequate access to transit, a suspended license can create additional burdens, limiting people's ability to get to work and thereby further constraining their ability to raise the money necessary to pay traffic fines.

Fines and fees particularly strip wealth from Black, Latinx and other people of color, as over-policing makes them disproportionately likely to be stopped and given a ticket.⁷ In addition, structural racism and economic exclusion have denied Black and Latinx people the same economic opportunities as their white neighbors.⁸ As a result, Black and Latinx people are much less likely to be able to afford the added burden of fines. (The COVID-19 pandemic has made it more clear how Latinx and Black households suffer more when the economy has a downturn: the unemployment rates for Black and Latinx workers have been higher than those for white or

4 SaverLife, "How Fines and Fees Impact Low-Income Californians," <https://about.saverlife.org/research-posts/fines-and-fees>

5 Stephen Bingham et al., "Paying More for Being Poor," Lawyers Committee for Civil Rights of the San Francisco Bay Area, May 2017, <https://lccrsf.org/wp-content/uploads/LCCRReport-Paying-More-for-Being-Poor-May-2017.pdf>

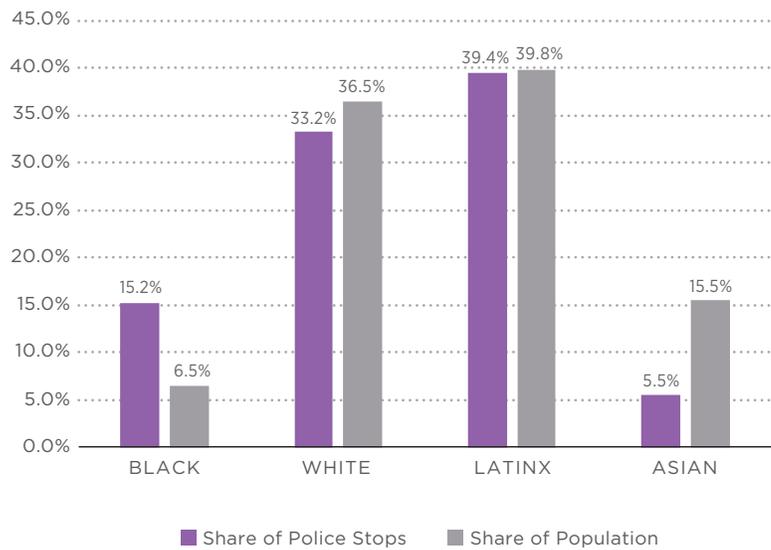
6 Judicial Council of California, "If You Ignore Your Ticket," California Courts <https://www.courts.ca.gov/9540.htm?rdeLocaleAttr=en> (accessed 2021)

7 Ted Miller et al., "Perils of police action: a cautionary tale from US data," *Injury Prevention* 23, 2017, pp. 27, <https://pubmed.ncbi.nlm.nih.gov/27457242/>

8 Danyelle Solomon, et al., "Systematic Inequality and Economic Opportunity," Center for American Progress, August 2019, <https://www.americanprogress.org/issues/race/reports/2019/08/07/472910/systematic-inequality-economic-opportunity/>

Asian workers during the pandemic.⁹) Statewide, 46% of Black households and 52% of all Latinx households are unable to meet their basic needs each month.¹⁰ At the same time, people of color, particularly Black people, are disproportionately represented among all people stopped by police and more likely to be cited and fined. Black people make up 6% of all people in California, but make up 15% of those stopped by police. Conversely, white people are underrepresented in police stops, making up just 33% of all stops despite being 36% of the state’s population. A 2017 study found that Latinx and Black drivers were four and 16 times as likely, respectively, to be arrested for driving with a license that had been suspended for failure to pay a traffic fine.¹¹ Ultimately, Black and Latinx families disproportionately pay high fines, at the expense of their families and communities.

FIGURE 2
Black people are over-represented in police stops in California
 California police stops and population by race and ethnicity, 2019



9 Employment Development Department of California, “California Demographic Labor Force,” March 2021, https://www.labormarketinfo.edd.ca.gov/specialreports/CA_Employment_Summary_Table.pdf

10 Insight Center for Community Economic Development, Family Needs Calculator, <https://insightcced.org/2018-family-needs-calculator/>

11 Stephen Bingham et al., “Paying More for Being Poor,” Lawyers Committee for Civil Rights of the San Francisco Bay Area, May 2017, <https://lccrsf.org/wp-content/uploads/LCCR-Report-Paying-More-for-Being-Poor-May-2017.pdf>

We Don't Need Large Fines to Change Behavior or Fund Government

Massive fines are not needed to enforce traffic rules or promote other behavioral changes. Even a small fine can have a significant impact on working people's finances. For a person working full time and being paid minimum wage in San Francisco, a \$50 fine would still take up 8% of their week's wages, roughly equivalent to half of a day's work. A \$100 fine costs more than a full day's work after taxes. For people with low incomes, fines of \$500 or \$1,000 are equivalent to a week or more's wages; this is financially disastrous and a punishment not proportional to the violation.

Further, the severity of punishment has little to no impact on deterrence. Decades of research in behavioral science show that the most effective ways to deter unwanted behavior are through systems change or through the certainty of being caught.¹² Despite what many think, severe punishments such as large fines do not effectively "chasten" people and discourage certain behavior, as people rarely consider the punishments for behavior in advance. System changes that promote behavioral change, such as speed bumps to reduce speeding or signs that discourage littering, are more effective than large fines.¹³ Additionally, consistent and effective enforcement, so that people know if they break the law they will be caught regardless of the punishment, is one of the most effective deterrents.¹⁴

Fines and fees collected on low-income people are also a problematic source of revenue for local governments because of their impact on people's economic security. Over the past year, local governments around the Bay Area have recognized the disproportionate impact of the pandemic on low-income residents and have committed to supporting an equitable economic recovery. A key aspect of such a recovery is eliminating undue burdens on low-income people. Government is also charged with delivering safety net services, the demand for which is directly impacted by the financial hardship disproportionate fines and fees introduce.

While fines and fees do provide revenue for government services, the level of contribution is very small. In San Francisco, fines and penalties represent less than 1% of the combined city and county budget. Oakland and San Jose have slightly higher rates, but fines and penalties still represent less than 2% of their annual budgets. A case study of 17 counties from across California found that fines and penalties accounted for between 0.297% and 4.22% of budgets, showing just how little fines contributed to government expenditures.¹⁵ Research on criminal legal system fines and fees has also shown that they are by and large an unreliable source of revenue.¹⁶ In 2019 the state reported about \$9 billion in unpaid criminal fines and fees. Much of the debt is uncollectible, with billions of dollars owed that is unlikely to ever be paid.

12 National Institute of Justice, "Five Things About Deterrence," U.S. Department of Justice, May 2016, <https://nij.ojp.gov/topics/articles/five-things-about-deterrence>

13 IRF, "Using Behavioral Economics Insights in Incentives, Rewards, and Recognition: A Nudge Guide," Incentive Research Foundation, <https://theirf.org/am-site/media/behavioral-economics-nudge-guide.pdf>

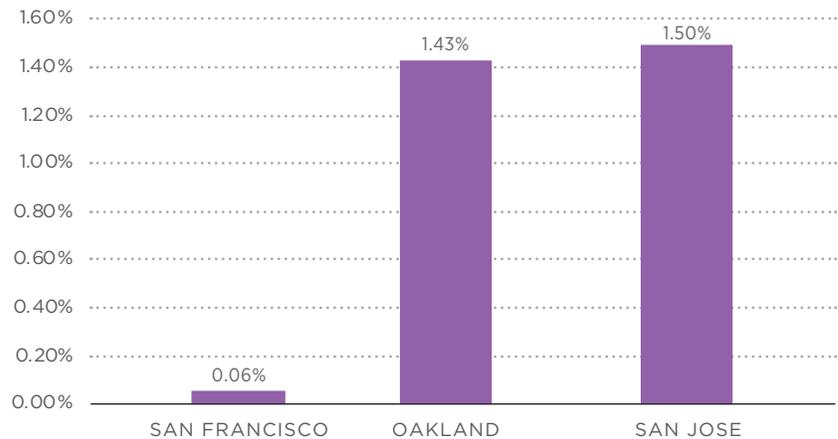
14 National Institute of Justice, "Five Things About Deterrence," U.S. Department of Justice, May 2016, <https://nij.ojp.gov/topics/articles/five-things-about-deterrence>

15 Paulina Maqueda Escamilla, "Unholy Alliance: California Courts' Use of Private Debt Collectors," California Reinvestment Coalition, May 2018, <https://calreinvest.org/wp-content/uploads/2018/07/Unholy20Alliance20-20California20Courts20Use20of20Private20Debt20Collectors.pdf>

16 San Francisco Financial Justice Project, "Criminal Justice Administrative Fees: High Pain for People, Low Gain for Government," Office of the Treasurer & Tax Collector of the City and County of San Francisco, April 2019, https://sfgov.org/financialjustice/sites/default/files/2020-04/Hig%20Pain%20Low%20Gain%20FINAL_04-24-2019_1.pdf

Ultimately, fines and fees collected on low-income people are an unreliable, limited and problematic source of revenue for local governments. The state can play a role by backfilling the needs of local governments that rely on fines and fees to ensure that services continue without relying on inefficient — and inequitable — revenue streams.

FIGURE 3
Fines contribute little to city budgets
 Fines and penalties as share of budget, 2019-2020 projections



Ongoing Efforts to Reform Fines and Fees

In recent years, there have been significant efforts to reduce the financial impact of fines and fees on low-income people. In the summer of 2020, Governor Gavin Newsom signed into law the Families Over Fees Act, making California the first state in the nation to eliminate many administrative criminal legal fees, such as probation fees and fees for having a public defender.¹⁷ The Judicial Council of California and eight counties have recently implemented a system where people struggling with traffic court debt can petition for relief online.¹⁸ In a handful of counties including San Francisco and Santa Clara, people receiving public benefits such as CalFresh, or people with incomes at or below 250% of the federal poverty level, can apply online to have their traffic fines and fees reduced by as much as 80%.¹⁹ Eligible participants can then pay off the remainder of their fines in a payment plan or through community service. San Francisco has enacted a variety of fine reforms for low-income people, including reducing tow fines from more than \$500 to \$100, establishing payment plans for low-income people who are ticketed for evading Muni fares, and more. Payment plan programs in San Francisco have worked so well that revenue from citations has actually increased, as people are able to pay down their debts over time with no penalties.²⁰ In the spring of 2021, Governor Newsom proposed the elimination of traffic debt incurred by low-income people between 2015 and 2021.²¹ In these cases, state and local governments have shown they understand that fines and fees should not be financially devastating and that traffic citations are not doing what they should.

17 San Francisco Financial Justice Project, "Governor Newsom Signs the Families Over Fees Act," Office of the Treasurer & Tax Collector of the City and County of San Francisco, September 2020, <https://sfgov.org/financialjustice/newsletters/governor-newsom-signs-families-over-fees-act>

18 Judicial Council of California, "Online Traffic: Ability to Pay," Judicial Branch of California, <https://www.courts.ca.gov/abilitytopay.htm#:~:text=The%20%22MyCitations%22%20tool%20allows%20people,to%20pay%20or%20community%20service>

19 San Francisco Financial Justice Project, "Can't Afford to Pay Your Fine, Fee, or Ticket in San Francisco?," Office of the Treasurer & Tax Collector of the City and County of San Francisco, September 2020, https://sfgov.org/financialjustice/sites/default/files/2020-09/FJP%20Consumer%20Guide_September2020.pdf

20 Joe Fitzgerald Rodriguez, "City says reduced fee for parking citation payment program boosting revenues," *San Francisco Examiner*, May 14, 2018, <https://www.sfoxaminer.com/news/city-says-reduced-fee-for-parking-citation-payment-program-boosting-revenues/>

21 Nick Cahill, "Awash in Cash, Newsom Ups Ante With \$267 Billion Revised California Budget," *Courthouse News Service*, May 14, 2021, <https://www.courthousenews.com/awash-in-cash-newsom-ups-ante-with-267-million-revised-california-budget/>

Expand and Automate Ability-to-Pay Programs

Existing ability-to-pay programs help to reduce the impact of fines on low-income people. The Judicial Council of California's ability-to-pay program allows people who receive public benefits or meet an income threshold to reduce their traffic fines in eight counties.²³ California should expand this program to all counties in the state, allowing low-income people to use an easy-to-access tool to petition to lower their traffic fines and sign up for a manageable payment plan. Governor Newsom already proposed this: his office's original budget proposal for 2020 included a provision to expand the program to all counties in California, but it was ultimately cut because of the pandemic.²⁴ The program should also be expanded to include all fines, not just traffic citations, ensuring that any fine levied against a person is responsive to their economic realities. California should also go a step further and seek to automate ability-to-pay determinations to remove the administrative burden on people who receive fines. In this system, someone would receive an automatic discount on their fine based on their known income, their participation in an income-based public benefit program, or some other benchmark. This would immediately reduce fines for all eligible people without requiring them to prove their financial hardships.

Implement a System of Means-Based Fines

Fines hurt more when you have less money. A person making minimum wage in San Francisco has to give up nearly a week's wages to pay the ticket for parking in a blue zone (reserved for disabled parking). Yet for the city's wealthiest residents, these fines are minor nuisances. A more equitable system would be to introduce a system of means-based fines, sometimes called day fines, where fines are proportional to units of a person's daily income. These fines are intended to have an identical effect regardless of income. The system is popular in some European countries, and was piloted in parts of the United States in the 1980s.²⁵ Researchers found that day fines had the effect of reducing the impact on low-income people while also increasing the effectiveness of fines on higher-income individuals. Day fines also make fines more likely to be paid, making them a more reliable revenue source, as lower-income people are more able to pay lower fines. This would reduce the harmful consequences of fines. Cities and counties could implement day fine systems up to the statutory maximum of current fines. Alternatively, the state could wholesale replace the existing fine system with day fines, eliminating the ceiling on fines while establishing a floor that's proportional to a person's income.

Invest in Alternatives to Traffic Enforcement to Reduce Bias and Alternatives to Fines to Reduce Harms

Traffic fines are the most common fines administered in California and are the most common point of interaction between the public and police. Yet traffic citations are disproportionately given to people of color, particularly Black people. In order to reduce bias in fine administration, California's cities and counties must look to develop alternatives to policing in their traffic enforcement. There are a number of policy ideas being explored and debated across California, and policymakers and advocates should use this moment to identify the best option, whether it's civilian traffic enforcement patrols or automated traffic enforcement. Similarly, California should promote alternatives to fines to promote behavioral change. Fines do not do a good job promoting desired behavior, whereas other behavioral nudges like speed bumps can actually reduce unwanted behavior.

23 Judicial Council of California, "Online Traffic: Ability to Pay," Judicial Branch of California, <https://www.courts.ca.gov/abilitytopay.htm#:~:text=The%20%22MyCitations%22%20tool%20allows%20people,to%20pay%20or%20community%20service>

24 Richard Allyn, "Low-income drivers in California could see traffic fines cut in half," CBS 8, January 2020, <https://www.cbs8.com/article/money/cars/low-income-drivers-in-california-could-see-traffic-fines-cut-in-half/509-105f16c2-fc55-4ad8-bc40-0373a5f665a8>

25 Laura L Winterfield and Sally T. Hillsman, "The Staten Island Day-Fine Project," Vera Institute for Justice, https://www.vera.org/downloads/Publications/the-staten-island-day-fines-project-research-in-brief/legacy_downloads/Staten_Island_brief.pdf

Now Is the Time to Fix Fines and Fees in California

The COVID-19 pandemic and subsequent economic downturn have brought renewed urgency to address fines and fees in California. These penalties are disproportionately harmful to low-income people and communities of color, and are an unreliable source of local revenue. Fines and fees are unlikely to produce the behavior change they purport to seek, as fines that people can never hope to pay do not discourage behavior. In the wake of the pandemic, the impacts of fines and fees are more financially disastrous than ever for low-income people struggling with unemployment, reduced work hours and much lower incomes. With California facing the potential for a long economic downturn, where our state's worst off would struggle the most, fixing fines and fees can't wait.



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