

LESSONS FROM FERGUSON: WHAT EVERY MUNICIPAL COURT NEEDS TO KNOW

Outline and Select Excerpts Investigation of the Ferguson Police Department (IFDP Report), U.S Department of Justice Civil Rights Division (March 4, 2015)

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For additional information about the events in Ferguson, the DOJ Report, news about the Ferguson Municipal Court, community recommendations, and recently enacted legislative changes aimed at curbing perceived abuses power, please visit the following companion page for this presentation:

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SOURCE: IFDP REPORT (PAGES 1-6)

REPORT SUMMARY

The Civil Rights Division of the United States Department of Justice opened its investigation of the Ferguson Police Department (“FPD”) on September 4, 2014. This investigation was initiated under the pattern-or-practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d (“Safe Streets Act”), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (“Title VI”). This investigation has revealed a pattern or practice of unlawful conduct within the Ferguson Police Department that violates the First, Fourth, and Fourteenth Amendments to the United States Constitution, and federal statutory law.

Over the course of the investigation, we interviewed City officials, including City Manager John Shaw, Mayor James Knowles, Chief of Police Thomas Jackson, Municipal Judge Ronald Brockmeyer, the Municipal Court Clerk, Ferguson’s Finance Director, half of FPD’s sworn officers, and others. We spent, collectively, approximately 100 person-days onsite in Ferguson. We participated in ride-alongs with on-duty officers, reviewed over 35,000 pages of police records as well as thousands of emails and other electronic materials provided by the police department. Enlisting the assistance of statistical experts, we analyzed FPD’s data on stops, searches, citations, and arrests, as well as data collected by the municipal court. We observed four separate sessions of Ferguson Municipal Court, interviewing dozens of people charged with local offenses, and we reviewed third-party studies regarding municipal court practices in Ferguson and St. Louis County more broadly. As in all of our investigations, we sought to engage the local community, conducting hundreds of in-person and telephone interviews of individuals who reside in Ferguson or who have had interactions with the police department. We contacted ten neighborhood associations and met with each group that responded to us, as well as several other community groups and advocacy organizations. Throughout the investigation, we relied on two police chiefs who accompanied us to Ferguson and who themselves interviewed City and police officials, spoke with community members, and reviewed FPD policies and incident reports.

We thank the City officials and the rank-and-file officers who have cooperated with this investigation and provided us with insights into the operation of the police department, including the municipal court. Notwithstanding our findings about Ferguson’s approach to law enforcement and the policing culture it creates, we found many Ferguson police officers and other City employees to be dedicated public servants striving each day to perform their duties lawfully and with respect for all members of the Ferguson community. The importance of their often-selfless work cannot be overstated.

We are also grateful to the many members of the Ferguson community who have met with us to share their experiences. It became clear during our many conversations with Ferguson residents from throughout the City that many residents, black and white, genuinely embrace Ferguson’s diversity and want to reemerge from the events of recent months a truly inclusive, united community. This Report is intended to strengthen those efforts by recognizing the harms caused by Ferguson’s law enforcement practices so that those harms can be better understood and overcome.

Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs. This emphasis on revenue has compromised the institutional character of Ferguson's police department, contributing to a pattern of unconstitutional policing, and has also shaped its municipal court, leading to procedures that raise due process concerns and inflict unnecessary harm on members of the Ferguson community. Further, Ferguson's police and municipal court practices both reflect and exacerbate existing racial bias, including racial stereotypes. Ferguson's own data establish clear racial disparities that adversely impact African Americans. The evidence shows that discriminatory intent is part of the reason for these disparities. Over time, Ferguson's police and municipal court practices have sown deep mistrust between parts of the community and the police department, undermining law enforcement legitimacy among African Americans in particular.

Focus on Generating Revenue

The City budgets for sizeable increases in municipal fines and fees each year, exhorts police and court staff to deliver those revenue increases, and closely monitors whether those increases are achieved. City officials routinely urge Chief Jackson to generate more revenue through enforcement. In March 2010, for instance, the City Finance Director wrote to Chief Jackson that "unless ticket writing ramps up significantly before the end of the year, it will be hard to significantly raise collections next year. . . . Given that we are looking at a substantial sales tax shortfall, it's not an insignificant issue." Similarly, in March 2013, the Finance Director wrote to the City Manager: "Court fees are anticipated to rise about 7.5%. I did ask the Chief if he thought the PD could deliver 10% increase. He indicated they could try." The importance of focusing on revenue generation is communicated to FPD officers. Ferguson police officers from all ranks told us that revenue generation is stressed heavily within the police department, and that the message comes from City leadership. The evidence we reviewed supports this perception.

Police Practices

The City's emphasis on revenue generation has a profound effect on FPD's approach to law enforcement. Patrol assignments and schedules are geared toward aggressive enforcement of Ferguson's municipal code, with insufficient thought given to whether enforcement strategies promote public safety or unnecessarily undermine community trust and cooperation. Officer evaluations and promotions depend to an inordinate degree on "productivity," meaning the number of citations issued. Partly as a consequence of City and FPD priorities, many officers appear to see some residents, especially those who live in Ferguson's predominantly African-American neighborhoods, less as constituents to be protected than as potential offenders and sources of revenue.

This culture within FPD influences officer activities in all areas of policing, beyond just ticketing. Officers expect and demand compliance even when they lack legal authority. They are inclined to interpret the exercise of free-speech rights as unlawful disobedience, innocent movements as physical threats, indications of mental or physical illness as belligerence. Police supervisors and leadership do too little to ensure that officers act in accordance with law and policy, and rarely respond meaningfully to civilian complaints of officer misconduct. The result is a pattern of stops without reasonable suspicion and arrests without probable cause in violation of the Fourth Amendment; infringement on free expression, as well as retaliation for

protected expression, in violation of the First Amendment; and excessive force in violation of the Fourth Amendment.

Even relatively routine misconduct by Ferguson police officers can have significant consequences for the people whose rights are violated. For example, in the summer of 2012, a 32-year-old African-American man sat in his car cooling off after playing basketball in a Ferguson public park. An officer pulled up behind the man's car, blocking him in, and demanded the man's Social Security number and identification. Without any cause, the officer accused the man of being a pedophile, referring to the presence of children in the park, and ordered the man out of his car for a pat-down, although the officer had no reason to believe the man was armed. The officer also asked to search the man's car. The man objected, citing his constitutional rights. In response, the officer arrested the man, reportedly at gunpoint, charging him with eight violations of Ferguson's municipal code. One charge, Making a False Declaration, was for initially providing the short form of his first name (e.g., "Mike" instead of "Michael"), and an address which, although legitimate, was different from the one on his driver's license. Another charge was for not wearing a seat belt, even though he was seated in a parked car. The officer also charged the man both with having an expired operator's license, and with having no operator's license in his possession. The man told us that, because of these charges, he lost his job as a contractor with the federal government that he had held for years.

Municipal Court Practices

Ferguson has allowed its focus on revenue generation to fundamentally compromise the role of Ferguson's municipal court. The municipal court does not act as a neutral arbiter of the law or a check on unlawful police conduct. Instead, the court primarily uses its judicial authority as the means to compel the payment of fines and fees that advance the City's financial interests. This has led to court practices that violate the Fourteenth Amendment's due process and equal protection requirements. The court's practices also impose unnecessary harm, overwhelmingly on African-American individuals, and run counter to public safety.

Most strikingly, the court issues municipal arrest warrants not on the basis of public safety needs, but rather as a routine response to missed court appearances and required fine payments. In 2013 alone, the court issued over 9,000 warrants on cases stemming in large part from minor violations such as parking infractions, traffic tickets, or housing code violations. Jail time would be considered far too harsh a penalty for the great majority of these code violations, yet Ferguson's municipal court routinely issues warrants for people to be arrested and incarcerated for failing to timely pay related fines and fees. Under state law, a failure to appear in municipal court on a traffic charge involving a moving violation also results in a license suspension. Ferguson has made this penalty even more onerous by only allowing the suspension to be lifted after payment of an owed fine is made in full. Further, until recently, Ferguson also added charges, fines, and fees for each missed appearance and payment. Many pending cases still include such charges that were imposed before the court recently eliminated them, making it as difficult as before for people to resolve these cases.

The court imposes these severe penalties for missed appearances and payments even as several of the court's practices create unnecessary barriers to resolving a municipal violation. The court often fails to provide clear and accurate information regarding a person's charges or court obligations. And the court's fine assessment procedures do not adequately provide for a defendant to seek a fine reduction on account of financial incapacity or to seek alternatives to

payment such as community service. City and court officials have adhered to these court practices despite acknowledging their needlessly harmful consequences. In August 2013, for example, one City Councilmember wrote to the City Manager, the Mayor, and other City officials lamenting the lack of a community service option and noted the benefits of such a program, including that it would “keep those people that simply don’t have the money to pay their fines from constantly being arrested and going to jail, only to be released and do it all over again.”

Together, these court practices exacerbate the harm of Ferguson’s unconstitutional police practices. They impose a particular hardship upon Ferguson’s most vulnerable residents, especially upon those living in or near poverty. Minor offenses can generate crippling debts, result in jail time because of an inability to pay, and result in the loss of a driver’s license, employment, or housing.

We spoke, for example, with an African-American woman who has a still-pending case stemming from 2007, when, on a single occasion, she parked her car illegally. She received two citations and a \$151 fine, plus fees. The woman, who experienced financial difficulties and periods of homelessness over several years, was charged with seven Failure to Appear offenses for missing court dates or fine payments on her parking tickets between 2007 and 2010. For each Failure to Appear, the court issued an arrest warrant and imposed new fines and fees. From 2007 to 2014, the woman was arrested twice, spent six days in jail, and paid \$550 to the court for the events stemming from this single instance of illegal parking. Court records show that she twice attempted to make partial payments of \$25 and \$50, but the court returned those payments, refusing to accept anything less than payment in full. One of those payments was later accepted, but only after the court’s letter rejecting payment by money order was returned as undeliverable. This woman is now making regular payments on the fine. As of December 2014, over seven years later, despite initially owing a \$151 fine and having already paid \$550, she still owed \$541.

Racial Bias

Ferguson’s approach to law enforcement both reflects and reinforces racial bias, including stereotyping. The harms of Ferguson’s police and court practices are borne disproportionately by African Americans, and there is evidence that this is due in part to intentional discrimination on the basis of race.

Ferguson’s law enforcement practices overwhelmingly impact African Americans. Data collected by the Ferguson Police Department from 2012 to 2014 shows that African Americans account for 85% of vehicle stops, 90% of citations, and 93% of arrests made by FPD officers, despite comprising only 67% of Ferguson’s population. African Americans are more than twice as likely as white drivers to be searched during vehicle stops even after controlling for non-race based variables such as the reason the vehicle stop was initiated, but are found in possession of contraband 26% less often than white drivers, suggesting officers are impermissibly considering race as a factor when determining whether to search. African Americans are more likely to be cited and arrested following a stop regardless of why the stop was initiated and are more likely to receive multiple citations during a single incident. From 2012 to 2014, FPD issued four or more citations to African Americans on 73 occasions, but issued four or more citations to non-African Americans only twice. FPD appears to bring certain offenses almost exclusively against African Americans. For example, from 2011 to

2013, African Americans accounted for 95% of Manner of Walking in Roadway charges, and 94% of all Failure to Comply charges. Notably, with respect to speeding charges brought by FPD, the evidence shows not only that African Americans are represented at disproportionately high rates overall, but also that the disparate impact of FPD's enforcement practices on African Americans is 48% larger when citations are issued not on the basis of radar or laser, but by some other method, such as the officer's own visual assessment.

These disparities are also present in FPD's use of force. Nearly 90% of documented force used by FPD officers was used against African Americans. In every canine bite incident for which racial information is available, the person bitten was African American.

Municipal court practices likewise cause disproportionate harm to African Americans. African Americans are 68% less likely than others to have their cases dismissed by the court, and are more likely to have their cases last longer and result in more required court encounters. African Americans are at least 50% more likely to have their cases lead to an arrest warrant, and accounted for 92% of cases in which an arrest warrant was issued by the Ferguson Municipal Court in 2013. Available data show that, of those actually arrested by FPD only because of an outstanding municipal warrant, 96% are African American.

Our investigation indicates that this disproportionate burden on African Americans cannot be explained by any difference in the rate at which people of different races violate the law. Rather, our investigation has revealed that these disparities occur, at least in part, because of unlawful bias against and stereotypes about African Americans. We have found substantial evidence of racial bias among police and court staff in Ferguson. For example, we discovered emails circulated by police supervisors and court staff that stereotype racial minorities as criminals, including one email that joked about an abortion by an African-American woman being a means of crime control.

City officials have frequently asserted that the harsh and disparate results of Ferguson's law enforcement system do not indicate problems with police or court practices, but instead reflect a pervasive lack of "personal responsibility" among "certain segments" of the community. Our investigation has found that the practices about which area residents have complained are in fact unconstitutional and unduly harsh. But the City's personal-responsibility refrain is telling: it reflects many of the same racial stereotypes found in the emails between police and court supervisors. This evidence of bias and stereotyping, together with evidence that Ferguson has long recognized but failed to correct the consistent racial disparities caused by its police and court practices, demonstrates that the discriminatory effects of Ferguson's conduct are driven at least in part by discriminatory intent in violation of the Fourteenth Amendment.

Community Distrust

Since the August 2014 shooting death of Michael Brown, the lack of trust between the Ferguson Police Department and a significant portion of Ferguson's residents, especially African Americans, has become undeniable. The causes of this distrust and division, however, have been the subject of debate. Police and other City officials, as well as some Ferguson residents, have insisted to us that the public outcry is attributable to "outside agitators" who do not reflect the opinions of "real Ferguson residents." That view is at odds with the facts we have gathered during our investigation. Our investigation has shown that distrust of the Ferguson Police Department is longstanding and largely attributable to Ferguson's approach to

law enforcement. This approach results in patterns of unnecessarily aggressive and at times unlawful policing; reinforces the harm of discriminatory stereotypes; discourages a culture of accountability; and neglects community engagement. In recent years, FPD has moved away from the modest community policing efforts it previously had implemented, reducing opportunities for positive police-community interactions, and losing the little familiarity it had with some African- American neighborhoods. The confluence of policing to raise revenue and racial bias thus has resulted in practices that not only violate the Constitution and cause direct harm to the individuals whose rights are violated, but also undermine community trust, especially among many African Americans. As a consequence of these practices, law enforcement is seen as illegitimate, and the partnerships necessary for public safety are, in some areas, entirely absent.

Restoring trust in law enforcement will require recognition of the harms caused by Ferguson’s law enforcement practices, and diligent, committed collaboration with the entire Ferguson community. At the conclusion of this report, we have broadly identified the changes that are necessary for meaningful and sustainable reform. These measures build upon a number of other recommended changes we communicated verbally to the Mayor, Police Chief, and City Manager in September so that Ferguson could begin immediately to address problems as we identified them. As a result of those recommendations, the City and police department have already begun to make some changes to municipal court and police practices. We commend City officials for beginning to take steps to address some of the concerns we have already raised.

Nonetheless, these changes are only a small part of the reform necessary. Addressing the deeply embedded constitutional deficiencies we found demands an entire reorientation of law enforcement in Ferguson. The City must replace revenue-driven policing with a system grounded in the principles of community policing and police legitimacy, in which people are equally protected and treated with compassion, regardless of race.

SOURCE: IFDP REPORT (PAGES 42-62)

FERGUSON LAW ENFORCEMENT PRACTICES VIOLATE THE LAW AND UNDERMINE COMMUNITY TRUST, ESPECIALLY AMONG AFRICAN AMERICANS

Ferguson’s Municipal Court Practices

The Ferguson municipal court handles most charges brought by FPD, and does so not with the primary goal of administering justice or protecting the rights of the accused, but of maximizing revenue. The impact that revenue concerns have on court operations undermines the court’s role as a fair and impartial judicial body.²⁰ Our investigation has uncovered substantial evidence that the court’s procedures are constitutionally deficient and function to impede a person’s ability to challenge or resolve a municipal charge, resulting in unnecessarily prolonged cases and an increased likelihood of running afoul of court requirements. At the same time, the court imposes severe penalties when a defendant fails to meet court requirements, including added fines and fees and arrest warrants that are unnecessary and run counter to public safety. These practices both reflect and reinforce an approach to law enforcement in Ferguson that violates the Constitution and undermines police legitimacy and community trust.

Ferguson’s municipal court practices combine to cause significant harm to many individuals who have cases pending before the court. Our investigation has found overwhelming evidence of minor municipal code violations resulting in multiple arrests, jail time, and payments that exceed the cost of the original ticket many times over. One woman, discussed above, received two parking tickets for a single violation in 2007 that then totaled \$151 plus fees. Over seven years later, she still owed Ferguson \$541—after already paying \$550 in fines and fees, having multiple arrest warrants issued against her, and being arrested and jailed on several occasions. Another woman told us that when she went to court to try to pay \$100 on a \$600 outstanding balance, the Court Clerk refused to take the partial payment, even though the woman explained that she was a single mother and could not afford to pay more that month. A 90-year-old man had a warrant issued for his arrest after he failed to timely pay the five citations FPD issued to him during a single traffic stop in 2013. An 83-year-old man had a warrant issued against him when he failed to timely resolve his Derelict Auto violation. A 67-year-old woman told us she was stopped and arrested by a Ferguson police officer for an outstanding warrant for failure to pay a trash-removal citation. She did not know about the warrant until her arrest, and the court ultimately charged her \$1,000 in fines, which she continues to pay off in \$100 monthly increments despite being on a limited, fixed income. We have heard similar stories from dozens of other individuals and have reviewed court records documenting many additional instances of similarly harsh penalties, often for relatively minor violations.

Our review of police and court records suggests that much of the harm of Ferguson’s law enforcement practices in recent years is attributable to the court’s routine use of arrest warrants to secure collection and compliance when a person misses a required court appearance or payment. In a case involving a moving violation, procedural failures also result in the suspension of the defendant’s license. And, until recently, the court regularly imposed a separate Failure to Appear charge for missed appearances and payments; that charge resulted in an additional fine in the amount of \$75.50, plus \$26.50 in court costs. *See* Ferguson Mun. Code § 13-58 (repealed Sept. 23, 2014). During the last three years, the court imposed roughly one Failure to Appear charge per every two citations or summonses issued by FPD. Since at least

²⁰The influence of revenue on the court, described both in Part II and in Part III.B. of this Report, may itself be unlawful. *See Ward v. Vill. of Monroeville*, 409 U.S. 57, 58-62 (1972) (finding a violation of the due process right to a fair and impartial trial where a town mayor served as judge and was also responsible for the town’s finances, which were substantially dependent on “fines, forfeitures, costs, and fees” collected by the court).

2010, the court has collected more revenue for Failure to Appear charges than for any other charge. This includes \$442,901 in fines for Failure to Appear violations in 2013, which comprised 24% of the total revenue the court collected that year. While the City Council repealed the Failure to Appear ordinance in September 2014, many people continue to owe fines and fees stemming from that charge. And the court continues to issue arrest warrants in every case where that charge previously would have been applied. License suspension practices are similarly unchanged. Once issued, arrest warrants can, and frequently do, lead to arrest and time in jail, despite the fact that the underlying offense did not result in a penalty of imprisonment.²¹

Thus, while the municipal court does not generally deem the code violations that come before it as jail-worthy, it routinely views the failure to appear in court to remit payment to the City as jail-worthy, and commonly issues warrants to arrest individuals who have failed to make timely payment. Similarly, while the municipal court does not have any authority to impose a *fine* of over \$1,000 for any offense, it is not uncommon for individuals to pay more than this amount to the City of Ferguson—in forfeited bond payments, additional Failure to Appear charges, and added court fees—for what may have begun as a simple code violation. In this way, the penalties that the court imposes are driven not by public safety needs, but by financial interests. And despite the harm imposed by these needless penalties, until recently, the City and court did little to respond to the increasing frequency of Failure to Appear charges, and in many respects made court practices more opaque and difficult to navigate.

1. Court Practices Impose Substantial and Unnecessary Barriers to the Challenge or Resolution of Municipal Code Violations

It is a hallmark of due process that individuals are entitled to adequate notice of the allegations made against them and to a meaningful opportunity to be heard. *See Cole v. Arkansas*, 333 U.S. 196, 201 (1948); *see also Ward v. Vill. of Monroeville*, 409 U.S. 57, 58-62 (1972) (applying due process requirements to case adjudicated by municipal traffic court). As documented below, however, Ferguson municipal court rules and procedures often fail to provide these basic protections, imposing unnecessary barriers to resolving a citation or summons and thus increasing the likelihood of incurring the severe penalties that result if a code violation is not quickly resolved.

We have concerns not only about the obstacles to resolving a charge even when an individual chooses not to contest it, but also about the trial processes that apply in the rare occasion that a person does attempt to challenge a charge. While it is “axiomatic that a fair trial in a fair tribunal is a basic requirement of due process,” *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 876 (2009), the adjudicative tribunal provided by the Ferguson municipal court appears deficient in many respects.²² Attempts to raise legal claims are met with retaliatory conduct. In an August 2012 email exchange, for instance, the Court Clerk asked what the

²¹ As with many of the problematic court practices that we identify in this report, other municipalities in St. Louis County also have imposed a separate Failure to Appear charge, fine, and fee for missed court appearances and payments. Many continue to do so.

²² As discussed in Part II of this report, City officials have acknowledged several of these procedural deficiencies. In 2012, a City Councilmember, citing specific examples, urged against reappointing Judge Brockmeyer because he “often times does not listen to the testimony, does not review the reports or the criminal history of defendants, and doesn’t let all the pertinent witnesses testify before rendering a verdict.”

Prosecuting Attorney does when an attorney appears in a red light camera case, and the Prosecuting Attorney responded: “I usually dismiss them if the attorney merely requests a recommendation. If the attorney goes off on all of the constitutional stuff, then I tell the attorney to come . . . and argue in front [of] the judge—after that, his client can pay the ticket.” We have found evidence of similar adverse action taken against litigants attempting to fulsomely argue a case at trial. The man discussed above who was cited after allowing his child to urinate in a bush attempted to challenge his charges. The man retained counsel who, during trial, was repeatedly interrupted by the court during his cross-examination of the officer. When the attorney objected to the interruptions, the judge told him that, if he continued on this path, “I will hold you in contempt and I will incarcerate you,” which, as discussed below, the court has done in the past to others appearing before it. The attorney told us that, believing no line of questioning would alter the outcome, he tempered his defense so as not to be jailed. Notably, at that trial, even though the testifying officer had previously been found untruthful during an official FPD investigation, the prosecuting attorney presented his testimony without informing defendant of that fact, and the court credited that testimony.²³ The evidence thus suggests substantial deficiencies in the manner in which the court conducts trials.

Even where defendants opt not to challenge their charges, a number of court processes make resolving a case exceedingly difficult. City officials and FPD officers we spoke with nearly uniformly asserted that individuals’ experiences when they become embroiled in Ferguson’s municipal code enforcement are due not to any failings in Ferguson’s law enforcement practices, but rather to those individuals’ lack of “personal responsibility.” But these statements ignore the barriers to resolving a case that court practices impose, including: 1) a lack of transparency regarding rights and responsibilities; 2) requiring in-person appearance to resolve most municipal charges; 3) policies that exacerbate the harms of Missouri’s law requiring license suspension where a person fails to appear on a moving violation charge; 4) basic access deficiencies that frustrate a person’s ability to resolve even those charges that do not require in-court appearance; and 5) legally inadequate fine assessment methods that do not appropriately consider a person’s ability to pay and do not provide alternatives to fines for those living in or near poverty. Together, these barriers impose considerable hardship. We have heard repeated reports, and found evidence in court records, of people appearing in court many times—

²³ This finding of untruthfulness by a police officer constitutes impeachment evidence that must be disclosed in any trial in which the officer testifies for the City. Under the Fourteenth Amendment, the failure to disclose evidence that is “favorable to an accused” violates due process “where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady v. Maryland*, 373 U.S. 83, 87 (1963). This duty applies to impeachment evidence, *United States v. Bagley*, 473 U.S. 667, 676 (1985), and it applies even if the defendant does not request the evidence, *United States v. Agurs*, 427 U.S. 97, 107 (1976). The duty encompasses, furthermore, information that should be known to the prosecutor, including information known solely by the police department. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). This constitutional duty to disclose appears to extend to municipal court cases, which can result in jail terms of up to three months under Section 29-2 of Ferguson’s municipal code. *See City of Kansas City v. Oxley*, 579 S.W.2d 113, 114 (Mo. 1979) (en banc) (holding that the due process standard of proof beyond a reasonable doubt applied in a municipal court speeding case because “the violation has criminal overtones”); *see also City of Cape Girardeau v. Jones*, 725 S.W.2d 904, 907-09 (Mo. Ct. App. 1987) (explaining that reasonable doubt standard applied to municipal trespass prosecution because municipal ordinance violations are “quasi-criminal,” and reversing two convictions based on privilege against self-incrimination). We are aware of at least two cases, from January 2015, in which the City called this officer as a witness without disclosing the finding of untruthfulness to the defense.

in some instances on more than ten occasions—to try to resolve a case but being unable to do so, and subsequently having additional fines, fees, and arrest warrants issued against them.

a. Court Practices and Procedural Deficiencies Create a Lack of Transparency Regarding Rights and Responsibilities

It is often difficult for an individual who receives a municipal citation or summons in Ferguson to know how much is owed, where and how to pay the ticket, what the options for payment are, what rights the individual has, and what the consequences are for various actions or oversights. The initial information provided to people who are cited for violating Ferguson’s municipal code is often incomplete or inconsistent. Communication with municipal court defendants is haphazard and known by the court to be unreliable. And the court’s procedures and operations are ambiguous, are not written down, and are not transparent or even available to the public on the court’s website or elsewhere.

The rules and procedures of the court are difficult for the public to discern. Aside from a small number of exceptions, the Municipal Judge issues rules of practice and procedure verbally and on an ad hoc basis. Until recently, on the rare occasion that the Judge issued a written order that altered court practices, those orders were not distributed broadly to court and other FPD officials whose actions they affect and were not readily accessible to the public. Further, Ferguson, unlike other courts in the region, does not include *any* information about its operations on its website other than inaccurate instructions about how to make payment.²⁴ Court staff acknowledged during our investigation that the public would benefit from increased information about how to resolve cases and about court practices and procedures. Yet neither the court nor other City officials have undertaken efforts to make court operations more transparent in order to ensure that litigants understand their rights or court procedures, or to enable the public to assess whether the court is operating in a fair manner.

Current court practices fail to provide adequate information even to those who are charged with a municipal violation. The lack of clarity about a person’s rights and responsibilities often begins from the moment a person is issued a citation. For some offenses, FPD uses state of Missouri uniform citations, and typically indicates on the ticket the assigned court date for the offense. Many times, however, FPD officers omit critical information from the citation, which makes it impossible for a person to determine the specific nature of the offense charged, the amount of the fine owed, or whether a court appearance is required or some alternative method of payment is available. In some cases, citations fail to indicate the offense charged altogether; in November 2013, for instance, court staff wrote FPD patrol to “see what [a] ticket was for” because it “does not have a charge on it.” In other cases, a ticket will indicate a charge but omit other crucial information. For example, speeding tickets often fail to indicate the alleged speed observed, even though both the fine owed and whether a court appearance is mandatory depends upon the specific speed alleged. Evidence shows that in some of these cases,

²⁴ See *City Courts*, City of Ferguson, <http://www.fergusoncity.com/60/The-City-Of-Ferguson-Municipal-Courts> (last visited Feb. 26, 2015). By contrast, the neighboring municipality of Normandy operates a court website with an entire page containing information regarding fine due dates, methods of payment, and different payment options, including the availability of payment plans for those who cannot afford to pay a fine in full. See *How Do I Pay a Ticket / Fine?*, City of Normandy, <http://www.cityofnormandy.gov/index.aspx?NID=570> (last visited Feb. 26, 2015).

a person has appeared in court but been unable to resolve the citation because of the missing information. In June 2014, for instance, a court clerk wrote to an FPD officer: “The above ticket . . . does not have a speed in it. The guy came in and we had to send him away. Can you email me the speed when you get time.” Separate and apart from the difficulties these omissions create for people, the fact that the court staff routinely add the speed to tickets weeks after they are issued raises concerns about the accuracy and reliability of officers’ assertions in official records.

We have also found evidence that in issuing citations, FPD officers frequently provide people with incorrect information about the date and time of their assigned court session. In November 2012, court staff emailed the two patrol lieutenants asking: “Would you please be so kind to tell your squads to check their ct. dates and times. We are getting quite a few wrong dates and times [on tickets].” In December 2012, a court clerk emailed an FPD officer to inform him that while he had been putting 6:00 p.m. on his citations that month, the scheduled court session was actually a morning session. More recently, in March 2014, an officer wrote a court clerk because the officer had issued a citation that listed the court date as ten days later than the actual court date assigned. Some of these emails indicate that court staff planned to send a letter to the person who was cited. As noted below, however, such letters often are returned to the court as undeliverable. It is thus unsurprising that, on one occasion, a City employee who works in the building where court was held wrote the Court Clerk to tell her that “[a] few people stopped by tonight looking for court and I referred them to you.” The email notes that one person insisted on providing her information so the employee could “vouch for her appearance for Night Court.” The email does not identify any other individual who showed up for court that night, nor does it state that any steps were taken to ensure that those assigned the incorrect court date did not have Failure to Appear charges and fines imposed, arrest warrants issued against them, or their licenses suspended.

Even if the citation a person receives has been properly filled out, it is often unclear whether a court appearance is required or if some other method of resolving a case is available. Ferguson has a schedule that establishes fixed fines for a limited number of violations that do not require court appearance. Nonetheless, this list—called the “TVB” or “Traffic Violations Bureau” list—is incomplete and does not provide sufficient clarity regarding whether a court appearance is mandatory. Court staff members have themselves informed us that there are certain offenses for which they will sometimes require a court appearance and other times not, depending on their own assessment of whether an appearance should be required in a given case. That information, however, is not reliably communicated to the person who has been given the citation.

Although the City of Ferguson frequently bears responsibility for giving people misinformation about when they must appear in court, Ferguson does little to ensure that persons who have missed a court date are properly notified of the consequences that result from an additional missed appearance, such as arrest or losing their driver’s licenses, or that those consequences have already been levied. If a person misses a required appearance, it is the purported practice of court staff to send a letter that sets a new court date and informs the defendant that missing the next appearance will result in an arrest warrant being issued. But court staff do not even claim to send these letters before issuing warrants if an individual is on a payment plan and misses a payment, or if a person already has an outstanding warrant on a

different offense; in those cases, the court issues a warrant after a single missed payment or appearance. Further, even for the cases in which the court says it does send such letters prior to issuing a warrant, court records suggest that those letters are often not actually sent. Even where a letter is sent, some are returned to court, and court staff told us that in those cases, they make no additional effort to notify the individual of the new court date or the consequences of non-appearance. Court staff and staff from other municipal courts have informed us that defendants in poverty are more likely not to receive such a letter from court because they frequently change residence.

If an individual misses a second court date, an arrest warrant is issued, without any confirmation that the individual received notice of that second court date. In the past, when the court issued a warrant it would also send notice to the individual that a warrant was issued against them and telling them to appear at the police department to resolve the matter. This notice did not provide the basis of the arrest warrant or describe how it might be resolved. In any case, Ferguson stopped providing even this incomplete notice in 2012. In explaining the decision to stop sending this warrant notice, the Court Clerk wrote in a June 2011 email to Chief Jackson that “this will save the cost of warrant cards and postage” and “it is not necessary to send out these cards.” Some court employees, however, told us that the notice letter had been useful—at least for those who received it—and that they believe it should still be sent. That the court discontinued what little notice it was providing to people in advance of issuing a warrant is particularly troubling given that, during our investigation, we spoke with several individuals who were arrested without ever knowing that a warrant was outstanding.²⁵

Once a warrant is issued, a person can clear the warrant by appearing at the court window in the police department and paying a pre-determined bond. However, that process is itself not communicated to the public and, in any case, is only useful if an individual knows there is a warrant for her or his arrest. Court clerks told us that in some cases they deem sympathetic in their own discretion, they will cancel the warrant without a bond. Further, it appears that if a person is aware of an outstanding warrant but believes that the warrant was issued in error, that person can petition the Municipal Judge to cancel the warrant only after the bond is paid in full. If a person cannot afford to pay the bond, there is no opportunity to seek recourse from the court.

If a person is arrested on an outstanding warrant—or as the result of an encounter with FPD—it is often difficult to secure release with a bond payment, not only because of the inordinately high bond amounts discussed below, but also because of procedural obstacles. In practice, bond procedures depart from those articulated in official policy, and are arbitrary and confusing. FPD staff have told us that correctional officers have at times tried to find a warrant in the court’s files to determine the bond amount owed, but have been unable to do so. This is unsurprising given the existence of what has been described to us as “drawers and drawers of warrants.” In some cases, people have attempted to pay a bond to secure the release of a family

²⁵ Prior to September 2014, a second missed court appearance (or a single missed payment) would result not only in a warrant being issued, but also the imposition of an additional Failure to Appear *charge*. This charge was imposed automatically. It does not appear that there was any attempt by the court to inform individuals that a failure to appear could be excused upon a showing of good cause, or to provide individuals with an opportunity to make such a showing. Additionally, just as the court does not currently send any notice informing a defendant that an arrest warrant has been issued, the court did not send any notice that this additional Failure to Appear charge had been brought.

member in FPD custody, but were not even seen by FPD staff. On one occasion, an FPD staff member reported to an FPD captain that a person “came to the station last night and waited to post bond for [a detainee], from 1:00 until 3:30. No one ever came up to get her money and no one informed her that she was going to have to wait that long.”

b. Needlessly Requiring In-Court Appearances for Most Code Violations Imposes Unnecessary Obstacles to Resolving Cases

Ferguson requires far more defendants to appear in court than is required under state law. Under Missouri Supreme Court rules, there is a short list of violations that require the violator’s appearance in court: any violation resulting in personal injury or property damage; driving while intoxicated; driving without a proper license; and attempting to elude a police officer. *See Mo. Sup. Ct. R. 37.49.* The municipal judge of each court has the discretion to expand this list of “must appears,” and Ferguson’s municipal court has expanded it exponentially: of 376 actively charged municipal offenses, court staff informed us that approximately 229 typically require an appearance in court before the fine can be paid, including Dog Creating Nuisance, Equipment Violations, No Passing Zone, Housing – Overgrown Vegetation, and Failure to Remove Leaf Debris. Ferguson requires these court appearances regardless of whether the individual is contesting the charges.

Requiring an individual to appear at a specific place and time to pay a citation makes it far more likely that the individual will fail to appear or pay the citation on time, quickly resulting, in Ferguson, in an arrest warrant and a suspended license. Even setting aside the fact that people often receive inaccurate information about when they must appear in court, the in-person appearance requirement imposes particular difficulties on low-wage workers, single parents, and those with limited access to reliable transportation. Requiring an individual to appear in court also imposes particular burdens on those with jobs that have set hours that may conflict with an assigned court session. Court sessions are sometimes set during the workday and sometimes in the early evening. Additionally, while court dates can be set for several months after the citation was issued, in some cases they can also be issued as early as a week after a citation is received. For example, court staff have instructed FPD officers that derelict auto violations must be set for the “very next court date even if it is just a week . . . or so away.” This can add an additional obstacle for those with firmly established employment schedules.

There are also historical reasons, of which the City is well-aware, that many Ferguson residents may not appear in court. Some individuals fear that if they cannot immediately pay the fines they owe, they will be arrested and sent to jail. Ferguson court staff members told us that they believe the high number of missed court appearances in their court is attributable, in part, to this popular belief. These fears are well founded. While Judge Brockmeyer has told us that he has never sentenced someone to jail time for being unable to pay a fine, we have found evidence that the Judge has held people appearing in court for contempt on account of their unwillingness to answer questions and sentenced those individuals to jail time. In December 2013, the FPD officer assigned to provide security at a court session directly emailed the City Manager to provide notice that “Judge Brockmeyer ordered [a defendant] arrested tonight after [he] refused to answer any questions and told the Judge that he had no jurisdiction. This happened on two separate occasions and with the second occasion when [the defendant] continued with his refusal

to answer the Judge, he was order[ed] to be arrested and held for 10 days.”²⁶ We also spoke with a woman who told us that, after asking questions in court, FPD officers arrested her for Contempt of Court at the instructions of the Court Clerk. Moreover, we have also received a report of an FPD officer arresting an individual at court for an outstanding warrant. In that instance, which occurred in April 2014, the individual—who was in court to make a fine payment—was approached by an FPD officer, asked to step outside of the court session, and was immediately arrested. In addition, as Ferguson’s Municipal Judge confirmed, it is not uncommon for him to add charges and assess additional fines when a defendant challenges the citation that brought the defendant into court. Appearing in court in Ferguson also requires waits that can stretch into hours, sometimes outdoors in inclement weather. Many individuals report being treated dismissively, or worse, by court staff and the Municipal Judge.

Further, as Ferguson officials have told us, many people have experience with the numerous other municipal courts in St. Louis County that informs individuals’ expectations about the Ferguson municipal court. Our investigation shows that other municipalities in the area have engaged in a number of practices that have the effect of discouraging people from attending court sessions. For instance, court clerks from other municipalities have told us that they have seen judges order people arrested if they appear in court with an outstanding warrant but are unable to pay the fine owed or post the bond amount listed on the warrant. Indeed, one municipal judge from a neighboring municipality told us that this practice has resulted in what he believes to be a widespread belief that those who attend court but cannot pay will be immediately arrested—a view that municipal judge says is “entirely the municipal courts’ fault” for perpetuating because they have not taken steps to correct it. Recent reports have documented other problematic practices. For example, a June 2014 letter from Presiding Circuit Court Judge Maura McShane to municipal court judges in the region discussed troubling and possibly unlawful practices of municipal courts in St. Louis County that served to prevent the public from attending court sessions. These practices included not allowing children in court. Indeed, as late as October 2014, the municipal court website in the neighboring municipality of Bel Ridge—where Judge Brockmeyer serves as prosecutor—stated that children are not allowed in court. While it appears that Ferguson’s court has always allowed children, we talked with people who assumed it did not because of their experiences in other courts. One man told us he was aggressively questioned by FPD officers after he left his child outside court with a friend because of this assumption. Thus, even though Ferguson might not engage in some of these practices, and while it may even be the case that other municipalities have themselves implemented reforms, the long history of these practices continues to shape community members’ views of what might happen to them if they attend court.

Court officials have told us that Ferguson’s expansive list of “must appear” offenses is not driven by any public safety need. That is underscored by the fact that, in some cases, attorneys are allowed to resolve such offenses over the phone without making any appearance in

²⁶ The email reports that the defendant, a black male, was booked into jail. This email does not provide the full context of the circumstances that led to the 10-day jail sentence and further information is required to assess the appropriateness of that order. Nonetheless, the email suggests that the court jailed a defendant for refusing to answer questions, which raises significant Fifth Amendment concerns. There is also no indication as to whether the defendant was represented or, if not, was allowed or afforded representation to defend against the contempt charge and 10-day sentence.

court. Nonetheless, despite the acknowledged obstacles to appearing in person in court and the lack of any articulated need to appear in court in all but a few instances, Ferguson has taken few, if any, steps to reduce the number of cases that require a court appearance.

c. Driver's License Suspensions Mandated by State Law and Unnecessarily Prolonged by Ferguson Make It Difficult to Resolve a Case and Impose Substantial Hardship

For many who have already had a warrant issued against them for failing to either appear or make a required payment, appearing in court is made especially difficult by the fact that their warrants likely resulted in the suspension of their driver's licenses. Pursuant to Missouri state law, anyone who fails to pay a traffic citation for a moving violation on time, or who fails to appear in court regarding a moving traffic violation, has his or her driver's license suspended. Mo. Rev. Stat. § 302.341.1. Thus, by virtue of having their licenses suspended, those who have already missed a required court appearance are more likely to fail to meet subsequent court obligations if they require physically appearing in court—fostering a cycle of missed appearances that is difficult to end. That is particularly so given what some City officials from Ferguson and surrounding communities have called substandard public transportation options. We spoke with one woman who had her license suspended because she received a Failure to Appear charge in Ferguson and so had to rely on a friend to drive her to court. When her friend canceled, she had no other means of getting to court on time, missed court, and had another Failure to Appear charge and arrest warrant issued against her—adding to the charges that required resolution before her license could be reinstated.²⁷

To be clear, responsibility for the hardship imposed by automatically suspending a person's license for failing to appear in a traffic case rests largely with this state law. Notably, however, Ferguson's own discretionary practices amplify and prolong that law's impact. A temporary suspension can be lifted with a compliance letter from the municipal court, but the Ferguson municipal court does not issue compliance letters unless a person has satisfied the *entire fine* pending on the charge that caused the suspension. This rule is not mandated by state law, which instead provides a municipality with the authority to decide when to issue a compliance letter. *See* Mo. Rev. Stat. § 302.341.1 (“Such suspension shall remain in effect until the court with the subject pending charge requests setting aside the noncompliance suspension pending final disposition.”). Indeed, Ferguson court staff told us that they will issue compliance letters before full payment has been made for cases that they determine, in their unguided discretion, to be sympathetic.

This rule and the Ferguson practices that magnify its impact underscore how missed court appearances can have broad ramifications for individuals' ability to maintain a job and care for their families. We spoke with one woman who received three citations during a single incident in 2013 in which she pulled to the side of the road to allow a police car to pass, was confronted by the officer for doing so, and was cited for obstructing traffic, failing to signal, and not wearing a seatbelt. The woman appeared in court to challenge those citations, was told a new trial date would be mailed to her, and instead received notice from the Missouri Department of Revenue

²⁷ While Missouri provides a process to secure a temporary waiver of a license suspension, we have heard from many that this process can be difficult and, in any case, is only available in certain circumstances.

several months later that her license was suspended. Upon informing the Court Clerk that she never received notice of her court date, the Clerk told her the trial date had passed two weeks earlier and that there was now a warrant for her arrest pending.²⁸ Given that the woman's license was suspended only two weeks after her trial date, it appears the court did not send a warning letter before entering a warrant and suspending the license, contrary to purported policy. Court records likewise do not indicate a letter being sent. The woman asked to see the Municipal Judge to explain the situation, but court staff informed her that she could only see the Judge if she was issued a new court date and that she would only be issued a new court date if she paid her \$200 bond. With no opportunity to further petition the court, she wrote to Mayor Knowles about her situation, stating:

Although I feel I have been harassed, wronged and unjustly done by Ferguson . . . [w]hat I am upset and concerned about is my driver's license being suspended. I was told that I may not be able to [be] reinstate[d] until the tickets are taken care of. I am a hard working mother of two children and I cannot by any means take care of my family or work with my license being suspended and being unable to drive. I have to have [a] valid license to keep my job because I transport clients that I work with not to mention I drive my children back and forth to school, practices and rehearsals on a daily basis. I am writing this letter because no one has been able to help me and I am really hoping that I can get some help getting this issue resolved expediently.

It appears that, at the Mayor's request, the court entered "Not Guilty" dispositions on her cases, several months after they first resulted in the license suspension.

d. Court Operations Impose Obstacles to Resolving Even Those Offenses that Do Not Require In-Person Court Appearance

The limited number of code violations that do not require an in-person court appearance can likewise be difficult to resolve, even if a person can afford to do so. The court has accepted mailed payments for some time and has recently begun to accept online payments, but the court's website suggests that in-person payment is required and provides no information that payment online or by mail is an option. As a result, many people try to remit payment to the court window within the police department. But community members have informed us that the court window often closes earlier than the posted hours indicate. Indeed, during our investigation, we observed the court window close at 4:30 p.m. on days where an evening court session was not being held, despite the fact that both the Ferguson City website and the Missouri Courts website state that the window closes at 5:00 p.m.²⁹ On one such occasion, we observed two different sets

²⁸ By initiating the license suspension procedure after a single missed appearance and without first providing notice or an opportunity to remedy the missed appearance, the court appears to have violated Missouri law. *See* Mo. Rev. Stat. § 302.341.1 (providing that after a missed appearance associated with a moving violation, a court "shall within ten days . . . inform the defendant by ordinary mail at the last address shown on the court records that the court will order the director of revenue to suspend the defendant's driving privileges if the charges are not disposed of and fully paid within thirty days from the date of mailing").

²⁹ *See City Courts*, City of Ferguson, <http://www.fergusoncity.com/60/The-City-Of-Ferguson-Municipal-Courts> (last visited Feb. 26, 2015); *Ferguson Municipal Court*, Your Missouri Courts, <http://www.courts.mo.gov/page.jsp?id=8862> (last visited Feb. 26, 2015).

of people arrive after 4:30 p.m. but before 5:00 p.m. One man told us his ticket payment was due that day. Another woman arrived in the rain with her small child, unsuccessfully attempted to call someone to the window, and left. Even when the court window is technically open, we have seen people standing at the window waiting for a response to their knocks for long periods of time, sometimes in inclement weather—even as court staff sat inside the police department tending to their normal duties.

As noted above, documents we reviewed showed that even where individuals are successful in talking with court staff about a citation, FPD-issued citations are sometimes so deficient that court staff are unable to determine what the fine, or even charge, is supposed to be. Evidence also shows that court staff have at times been unable to even find a person's case file, often because the FPD officer who issued the ticket failed to properly file a copy. In these cases, a person is left unable to resolve her or his citation.

- e. High Fines, Coupled with Legally Inadequate Ability-to-Pay Determinations and Insufficient Alternatives to Immediate Payment, Impose a Significant Burden on People Living In or Near Poverty

It is common for a single traffic stop or other encounter with FPD to give rise to fines in amounts that a person living in poverty is unable to immediately pay. This fact is attributable in part to FPD's practice of issuing multiple citations—frequently three or more—on a single stop. This fact is also attributable to the fine assessment practices of the Ferguson municipal court, including not only the high fine amounts imposed, but also the inadequate process available for those who cannot afford to pay a fine. Even setting aside cases where additional fines and fees were imposed for Failure to Appear violations, our investigation found instances in which the court charged \$302 for a single Manner of Walking violation; \$427 for a single Peace Disturbance violation; \$531 for High Grass and Weeds; \$777 for Resisting Arrest; and \$792 for Failure to Obey, and \$527 for Failure to Comply, which officers appear to use interchangeably.

For many, the hardship of the fine amounts imposed is exacerbated by the fact that they owe similar fines in other, neighboring municipalities. We spoke with one woman who, in addition to owing several hundred dollars in fines to Ferguson, also owed fines to the municipal courts in Jennings and Edmundson. In total, she owed over \$2,500 in fines and fees, even after already making over \$1,000 in payments and clearing cases in several other municipalities. This woman's case is not unique. We have heard reports from many individuals and even City officials that, in light of the large number of municipalities in the area immediately surrounding Ferguson, most of which have their own police departments and municipal courts, it is common for people to face significant fines from many municipalities.

City officials have extolled that the Ferguson preset fine schedule establishes fines that are “at or near the top of the list” compared with other municipalities across a large number of offenses. A more recent comparison of the preset fines of roughly 70 municipal courts in the region confirms that Ferguson's fine amounts are above regional averages for many offenses, particularly discretionary offenses such as non-speeding-related traffic offenses. That comparison also shows that Ferguson imposes the highest fine of any of those roughly 70 municipalities for the offense of Failing to Provide Proof of Insurance; Ferguson charges \$375, whereas the average fine imposed is \$186 and the median fine imposed is \$175. In 2013 alone,

the Ferguson court collected over \$286,000 in fines for that offense—more than any other offense except Failure to Appear.

The fines that the court imposes for offenses without preset fines are more difficult to evaluate precisely because they are imposed on a case-by-case basis. Typically, however, in imposing fines for non-TVB offenses during court sessions, the Municipal Judge adopts the fine recommendations of the Prosecuting Attorney—who also serves as the Ferguson City Attorney. As discussed above, court staff have communicated with the Municipal Judge regarding the need to ensure that the prosecutor’s recommended fines are sufficiently high because “[w]e need to keep up our revenue.” We were also told of at least one incident in which an attorney received a fine recommendation from the prosecutor for his client, but when the client went to court to pay the fine, a clerk refused payment, informing her that there was an additional \$100 owed beyond the fine recommended by the prosecutor.

The court imposes these fines without providing any process by which a person can seek a fine reduction on account of financial incapacity. The court does not provide any opportunity for a person unable to pay a preset TVB fine to seek a modification of the fine amount. Nor does the court consider a person’s financial ability to pay in determining how much of a fine to impose in cases without preset fines. The Ferguson court’s failure to assess a defendant’s ability to pay stands in direct tension with Missouri law, which instructs that in determining the amount and the method of payment of a fine, a court “shall, insofar as practicable, proportion the fine to the burden that payment will impose in view of the financial resources of an individual.” Mo. Rev. Stat. § 560.026.

In lieu of proportioning a fine to a particular individual’s ability to pay or allowing a process by which a person could petition the court for a reduction, the court offers payment plans to those who cannot afford to immediately pay in full. But such payment plans do not serve as a substitute for an ability-to-pay determination, which, properly employed, can enable a person in some cases to pay in full and resolve the case. Moreover, the court’s rules regarding payment plans are themselves severe. Unlike some other municipalities that require a \$50 monthly payment, Ferguson’s standard payment plan requires payments of \$100 per month, which remains a difficult amount for many to pay, especially those who are also making payments to other municipalities. Further, the court treats a single missed, partial, or untimely payment as a missed appearance. In such a case, the court immediately issues an arrest warrant without any notice or opportunity to explain why a payment was missed—for example, because the person was sick, or the court closed its doors early that day. The court reportedly has softened this rule during the course of our investigation by allowing a person who has missed a payment to go to court to seek leave for not paying the full amount owed. However, even this softened rule provides minimal relief, as making this request requires a person to appear in court the first Wednesday of the month at 11:00 a.m. If a person misses that session, the court immediately issues an arrest warrant.

Before the court provided this Wednesday morning court session for those on payment plans, court staff frequently rejected requests from payment plan participants to reduce or continue monthly payments—leaving individuals unable to make the required payment with no recourse besides incurring a Failure to Appear charge, receiving additional fines, and having an arrest warrant issued. In July 2014, an assistant court clerk wrote in an email that she rejected a defendant’s request for a reduced monthly payment on account of inability to pay and told the

defendant, “everyone says [they] can’t pay.” This is consistent with earlier noted statements by the acting Ferguson prosecutor that he stopped granting “needless requests for continuances from the payment docket.” Another defendant who owed \$1,002 in fines and fees stemming from a Driving with a Revoked License charge wrote to a City official that he would be unable to make his required monthly payment but hoped to avoid having a warrant issued. He explained that he was unemployed, that the court had put him on a payment plan only a week before his first payment was due, and that he did not have enough time to gather enough money. He implored the City to provide “some kind of community service to work off the fines/fees,” stating that “I want to pay you guys what I owe” and “I have been trying to scrape up what I can,” but that “with warrants it’s hard to get a job.” The City official forwarded the request to a court clerk, who noted that the underlying charge dated back to 2007, that five Failure to Appear charges had been levied, and that no payments had yet been made. The clerk responded: “In this certain case [the defendant] will go to warrant.” Records show that, only a week earlier, this same clerk asked a court clerk from another municipality to clear a ticket for former Ferguson Police Chief Moonier as a “courtesy.” And, only a month later, that same clerk also helped the Ferguson Collector of Revenue clear two citations issued by neighboring municipalities.

Ferguson does not typically offer community service as an alternative to fines. City officials have emphasized to us that Ferguson is one of only a few municipalities in the region to provide *any* form of a community service program, and that the program that is available is well run. But the program, which began in February 2014, is only available on a limited basis, mostly to certain defendants who are 19 years old or younger.³⁰ We have heard directly from individuals who could not afford to pay their fines—and thus accumulated additional charges and fines and had warrants issued against them—that they requested a community service alternative to monetary payment but were told no such alternative existed. One man who still owes \$1,100 stemming from a speeding and seatbelt violation from 2000 told us that he has been arrested repeatedly in connection with the fines he cannot afford to pay, and that “no one is willing to work with him to find an alternative solution.” City officials have recognized the need to provide a meaningful community service option. In August 2013, one City Councilmember wrote to the City Manager and the Mayor that, “[f]or a few years now we have talked about offering community service to those who can’t afford to pay their fines, but we haven’t actually made it happen.” The Councilmember noted the benefits of such a program, including that it would “keep those people that simply don’t have the money to pay their fines from constantly being arrested and going to jail, only to be released and do it all over again.”

2. The Court Imposes Unduly Harsh Penalties for Missed Payments or Appearances

The procedural deficiencies identified above work together to make it exceedingly difficult to resolve a case and exceedingly easy to run afoul of the court’s stringent and confusing rules, particularly for those living in or near poverty. That the court is at least in part responsible for causing cases to protract and result in technical violations has not prevented it from imposing

³⁰ Recently, the court has allowed some individuals over age 19 to resolve fines through community service, but that remains a rarity. See *City of Ferguson Continues Court Reform Initiative by Offering Community Service Program*, City of Ferguson (Dec. 15, 2014), <http://www.fergusoncity.com/CivicAlerts.aspx?AID=370&ARC=699> (stating community service program was launched in partnership with Ferguson Youth Initiative in February 2014 “to assist teenagers and certain other defendants”).

significant penalties when those violations occur. Although Ferguson’s court—unlike many other municipal courts in the region—has ceased imposing the Failure to Appear charge, the court continues to routinely issue arrest warrants for missed appearances and missed payments. The evidence we have found shows that these arrest warrants are used almost exclusively for the purpose of compelling payment through the threat of incarceration. The evidence also shows that the harms of the court’s warrant practices are exacerbated by the court’s bond procedures, which impose unnecessary obstacles to clearing a warrant or securing release after being arrested on a warrant and often function to further prolong a case and a person’s involvement in the municipal justice system. These practices—together with the consequences to individuals and communities that result—raise significant due process and equal protection concerns.

a. The Ferguson Municipal Court Uses Arrest Warrants Primarily as a Means of Securing Payment

Ferguson uses its police department in large part as a collection agency for its municipal court. Ferguson’s municipal court issues arrest warrants at a rate that police officials have called, in internal emails, “staggering.” According to the court’s own figures, as of December 2014, over 16,000 people had outstanding arrest warrants that had been issued by the court. In fiscal year 2013 alone, the court issued warrants to approximately 9,007 people. Many of those individuals had warrants issued on multiple charges, as the 9,007 warrants applied to 32,975 different offenses.

In the wake of several news accounts indicating that the Ferguson municipal court issued over 32,000 warrants in fiscal year 2013, court staff determined that it had mistakenly reported to the state of Missouri the number of charged offenses that had warrants (32,975), not the number of people who had warrants outstanding (9,007). Our investigation indicates that is the case. In any event, it is probative of FPD’s enforcement practices that those roughly 9,000 warrants were issued for over 32,000 offenses. Moreover, for those against whom a warrant is issued, the number of offenses included within the warrant has tremendous practical importance. As discussed below, the bond amount a person must pay to clear a warrant before an arrest occurs, or to secure release once a warrant has been executed, is often dependent on the number of offenses to which the warrant applies. And, that the court issued warrants for the arrest of roughly 9,000 people is itself not insignificant; even under that calculation, Ferguson has one of the highest warrant totals in the region.

The large number of warrants issued by the court, by any count, is due exclusively to the fact that the court uses arrest warrants and the threat of arrest as its primary tool for collecting outstanding fines for municipal code violations. With extremely limited exceptions, every warrant issued by the Ferguson municipal court was issued because: 1) a person missed consecutive court appearances, or 2) a person missed a single required fine payment as part of a payment plan. Under current court policy, the court issues a warrant in every case where either of those circumstances arises—regardless of the severity of the code violation that the case involves. Indeed, the court rarely issues a warrant for any other purpose. FPD does not request arrest or any other kind of warrants from the Ferguson municipal court; in fact, FPD officers told us that they have been instructed not to file warrant applications with the municipal court because the court does not have the capacity to consider them.

While issuing municipal warrants against people who have not appeared or paid their municipal code violation fines is sometimes framed as addressing the failure to abide by court rules, in practice, it is clear that warrants are primarily issued to coerce payment.³¹ One municipal judge from a neighboring municipality told us that the use of the Failure to Appear charge “provides cushion for judges against the attack that the court is operating as a debtor’s prison.” And the Municipal Judge in Ferguson has acknowledged repeatedly that the warrants the court issues are not put in place for public safety purposes. Indeed, once a warrant issues, there is no urgency within FPD to actually execute it. Court staff reported that they typically take weeks, if not months, to enter warrants into the system that enables patrol officers to determine if a person they encounter has an outstanding warrant. As of December 2014, for example, some warrants issued in September 2014 were not yet detectable to officers in the field. Court staff also informed us that no one from FPD has ever commented on that lag or prioritized closing it. Nor does there seem to be any public safety obstacle to eliminating failure to appear warrants altogether. The court has, in fact, adopted a temporary “warrant recall program” that allows individuals who show up to court to immediately have their warrants recalled and a new court date assigned. And, under longstanding practice, once an attorney makes an appearance in a case, the court automatically discharges any pending warrants.

That the primary role of warrants is not to protect public safety but rather to facilitate fine collection is further evidenced by the fact that the warrants issued by the court are overwhelmingly issued in non-criminal traffic cases that would not themselves result in a penalty of imprisonment. From 2010 to December 2014, the offenses (besides Failure to Appear ordinance violations) that most often led to a municipal warrant were: Driving While License Is Suspended, Expired License Plates, Failure to Register a Vehicle, No Proof of Insurance, and Speed Limit violations. These offenses comprised the majority of offenses that led to a warrant not because they are more severe than other offenses, but rather because every missed appearance or payment on any charge results in a warrant, and these were some of the most common charges brought by FPD during that period.

Even though these underlying code violations would not on their own result in a penalty of imprisonment, arrest and detention are not uncommon once a warrant enters on a case. We have found that FPD officers frequently check individuals for warrants, even when the person is not reasonably suspected of engaging in any criminal activity, and, if a municipal warrant exists, will often make an arrest. City officials have told us that the decision to arrest a person for an outstanding warrant is “highly discretionary” and that officers will frequently not arrest unless the person is “ignorant.” Records show, however, that officers do arrest individuals for outstanding municipal warrants with considerable frequency. Jail records are poorly managed, and data on jail bookings is only available as of April 2014. But during the roughly six-month period from April to September 2014, 256 people were booked into the Ferguson City Jail after being arrested at least in part for an outstanding warrant—96% of whom were African American. Of these individuals, 28 were held for longer than two days, and 27 of these 28 people were black.

³¹ As stated in the Missouri Municipal Court Handbook produced by the Circuit Court: “Defendants who fail or refuse to pay their fines and costs can be extremely difficult to deal with, but if there is a credible threat of incarceration if they do not pay, the job of collection becomes much easier.” Mo. Mun. Benchbook, Cir. Ct., Mun. Divs. § 13.6 (2010).

Similarly, data collected during vehicle stops shows that, during a larger period of time between October 2012 and October 2014, FPD arrested roughly 460 individuals following a vehicle stop *solely* because they had outstanding warrants. This figure is likely a significant underrepresentation of the total number of people arrested for outstanding warrants during that period, as it does not include those people arrested on outstanding warrants not during traffic stops; nor does it include those people arrested during traffic stops for multiple reasons, but who might not have been stopped, much less arrested, without the officer performing a warrant check on the car and finding an outstanding warrant. Even among this limited pool, the data shows the disparate impact these arrests have on African Americans. Of the 460 individuals arrested during traffic stops solely for outstanding warrants, 443 individuals—or 96%—were African American.

That data also does not include those people arrested by *other* municipal police departments on the basis of an outstanding warrant issued by Ferguson. As has been widely reported in recent months, many municipal police departments in the region identify people with warrants pending in other towns and then arrest and hold those individuals on behalf of those towns. FPD’s records show that it routinely arrests individuals on warrants issued by other jurisdictions. And, although we did not review the records of other departments, we have heard reports of many individuals who were arrested for a Ferguson-issued warrant by police officers outside of Ferguson. On some occasions, Ferguson will decline to pick up a person arrested in a different municipality for a Ferguson warrant and, after however long it takes for that decision to be made, the person will be released, sometimes after being required to pay bond. On other occasions, Ferguson will send an officer to retrieve the person for incarceration in the Ferguson City Jail; FPD supervisors have in fact instructed officers to do so “regardless of the charge or the bond amount, or the number of prisoners we have in custody.” We found evidence of FPD officers traveling more than 200 miles to retrieve a person detained by another agency on a Ferguson municipal warrant.

Because of the large number of municipalities in the region, many of which have warrant practices similar to Ferguson, it is not unusual for a person to be arrested by one department, have outstanding warrants pending in other police departments, and be handed off from one department to another until all warrants are cleared. We have heard of individuals who have run out of money during this process—referred to by many as the “muni shuffle”—and as a result were detained for a week or longer.

The large number of municipal court warrants being issued, many of which lead to arrest, raises significant due process and equal protection concerns. In particular, Ferguson’s practice of automatically treating a missed payment as a failure to appear—thus triggering an arrest warrant and possible incarceration—is directly at odds with well-established law that prohibits “punishing a person for his poverty.” *Bearden v. Georgia*, 461 U.S. 660, 671 (1983); *see also Tate v. Short*, 401 U.S. 395, 398 (1971). In *Bearden*, the Supreme Court found unconstitutional a state’s decision to revoke probation and sentence a defendant to prison because the defendant was unable to pay a required fine. *Bearden*, 461 U.S. at 672-73. The Court held that before imposing imprisonment, a court must first inquire as to whether the missed payment was attributable to an inability to pay and, if so, “consider alternate measures of punishment other than imprisonment.” *Id.* at 672; *see also Martin v. Solem*, 801 F.2d 324, 332 (8th Cir. 1986)

(noting that the state court had failed to adequately determine, as required by *Bearden*, whether the defendant had “made sufficient bona fide efforts legally to acquire the resources to pay,” but nonetheless denying habeas relief because the defendant’s failure to pay was due not to indigency but his “willful refusal to pay”).

The Ferguson court, however, has in the past routinely issued arrest warrants when a person is unable to make a required fine payment without any ability-to-pay determination. While the court does not *sentence* a defendant to jail in such a case, the result is often equivalent to what *Bearden* proscribes: the incarceration of a defendant solely because of an inability to pay a fine. In response to concerns about issuing warrants in such cases, Ferguson officials have told us that without issuing warrants and threatening incarceration, they have no ability to secure payment. But the Supreme Court rejected that argument, finding that states are “not powerless to enforce judgments against those financially unable to pay a fine,” and noting that—especially in cases like those at issue here in which the court has already made a determination that penological interests do *not* demand incarceration—a court can “establish a reduced fine or alternate public service in lieu of a fine that adequately serves the state’s goals of punishment and deterrence, given the defendant’s diminished financial resources.”³² *Id.* As discussed above, however, Ferguson has not established any such alternative.³³

Finally, in light of the significant portion of municipal charges that lead to an arrest warrant, as well as the substantial number of arrest warrants that lead to arrest and detention, we have considerable concerns regarding whether individuals facing charges in Ferguson municipal court are entitled to, and being unlawfully denied, the right to counsel.

b. Ferguson’s Bond Practices Impose Undue Hardship on Those Seeking to Secure Release from the Ferguson City Jail

Our investigation found substantial deficiencies in the way Ferguson police and court officials set, accept, refund, and forfeit bond payments. Recently, in response to concerns raised during our investigation, the City implemented several changes to its bond practices, most of which apply to those detained after a warrantless arrest.³⁴ These changes represent positive

³² Ferguson officials have also told us that the arrest warrant is issued not because of the missed payment per se, but rather because the person missing the payment failed to abide by the court’s rules. But the Supreme Court has rejected that contention, too. In *Bearden*, the Court noted that the sentencing court’s stated concern “was that the petitioner had disobeyed a prior court order to pay the fine,” but found that the sentence nonetheless “is no more than imprisoning a person solely because he lacks funds” to pay. *Bearden*, 461 U.S. at 674.

³³ Additionally, Ferguson’s municipal code provides: “When a sentence for violation of any provision of this Code or other ordinance of the city . . . includes a fine and such fine is not paid, or if the costs of prosecution adjudged against an offender are not paid, the person under sentence shall be imprisoned one day for every ten dollars (\$10.00) of any such unpaid fine or costs . . . not to exceed a total of four (4) months.” Ferguson Mun. Code § 1-16. Our investigation did not uncover any evidence that the court has sentenced anyone to imprisonment pursuant to this statute in the past several years. Nonetheless, it is concerning that this statute, which unconstitutionally sanctions imprisonment for failing to pay a fine, remains in effect. *Cf. Bearden v. Georgia*, 461 U.S. 660, 671 (1983).

³⁴ In December 2014, the court set forth a bond schedule for warrantless arrests, which provides that, for all but 14 code violations, a person arrested pursuant to a municipal code violation and brought to Ferguson City Jail shall be issued a citation or summons and released on his or her own recognizance without any bond payment required. For those 14 code violations requiring a bond, the court has set “fixed” bond amounts, although these are subject to the court’s discretion to raise or lower those amounts at the request of the City or the detained individual. The court’s

developments, but many deficiencies remain.³⁵ Given the high number of arrest warrants issued by the municipal court—and given that in many cases a person can only clear a pending warrant or secure release from detention by posting bond—the deficiencies identified below impose significant harm to individuals in Ferguson.

Current bond practices are unclear and inconsistent. Information provided by the City reveals a haphazard bond system that results in people being erroneously arrested, and some people paying bond but not getting credit for having done so. Documents describe officers finding hundred dollar bills in their pockets that were given to them for bond payment and not remembering which jail detainee provided them; bond paperwork being found on the floor; and individuals being arrested after their bonds had been accepted because the corresponding warrants were never cancelled. At one point in 2012, Ferguson's Court Clerk called such issues a “daily problem.” The City’s practices for receiving and tracking bond payments have not changed appreciably since then.

The practices for setting bond are similarly erratic. The Municipal Judge advised us that he sets all bonds upon issuing an arrest warrant. We found, however, that bond amounts are mostly set by court staff, and are rarely even reviewed by the Judge. While court staff told us that the current bond schedule requires a bond of \$200 for up to four traffic offenses, \$100 for every traffic offense thereafter, \$100 for every Failure to Appear charge, and \$300 for every criminal offense, FPD’s own policy includes a bond schedule that departs from these figures. In practice, bond amounts vary widely. *See* FPD General Order 421.02. Our review of a random sample of warrants indicates that bond is set in a manner that often departs from both the schedule referenced by court staff and the schedule found in FPD policy. In a number of these cases, the bond amount far exceeded the amount of the underlying fine.

The court’s bond practices, including the fact that the court often imposes bonds that exceed the amount owed to the court, do not appear to be grounded in any public safety need. In a July 2014 email to Chief Jackson and other police officials, the Court Clerk reported that “[s]tarting today we are going to reduce anyone’s bond that calls and is in warrant[] to half the amount,” explaining that “[t]his may bring in some extra monies this way.” The email identifies no public safety obstacle or other reason not to implement the bond reduction. Notably, the email also states that “[w]e will only do this between the hours of 8:30 to 4” and that no half-bond will be accepted after those hours unless the Court Clerk approves it.³⁶ Thus, as a result of this policy, an individual able to appear at the court window during business hours would pay half as much to clear a warrant as an individual who is actually arrested on a warrant after hours. That Ferguson’s bond practices do not appear grounded in public safety is underscored by the

recent order further provides that, even if an individual does not pay the bond required, he or she shall in any case be released after 12 hours, rather than the previous 72-hour limit.

³⁵ For example, the recent orders fail to specify that, in considering whether to adjust the bond imposed, the court shall make an assessment of an individual’s ability to pay, and assign bond proportionately. *Cf. Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (en banc) (noting that the incarceration of those who cannot afford to meet the requirements of a fixed bond schedule “without meaningful consideration of other possible alternatives” infringes on due process and equal protection requirements).

³⁶ The court’s website states that the court window is open from 8:30 a.m. to 5:00 p.m., not 4:00 p.m. *See City Courts*, City of Ferguson, <http://www.fergusoncity.com/60/The-City-Of-Ferguson-Municipal-Courts> (last visited Feb. 26, 2015).

fact that the court will typically cancel outstanding warrants without requiring the posting of *any* bond for people who have an attorney enter an appearance on their behalf. Records show that this practice is also applied haphazardly, and there do not appear to be any rules that govern the apparent discretion court staff have to waive or require bond following an attorney's appearance.

It is not uncommon for an individual charged with only a minor violation to be arrested on a warrant, be unable to afford bond, and have no recourse but to await release. Longstanding court rules provide for a person arrested pursuant to an arrest warrant to be held up to 72 hours before being released without bond, and the court's recent orders do not appear to change this. Records show that individuals are routinely held for 72 hours. FPD's records management system only began capturing meaningful jail data in April 2014; but from April to September 2014 alone, 77 people were detained in the jail for longer than two days, and many of those detentions neared, reached, or exceeded the 72-hour mark. Of those 77 people, 73, or 95%, were black. Many people, including the woman described earlier who was charged with two parking code violations, have reported being held up until the 72-hour limit—despite having no ability to pay.

Indeed, many others report being held for far longer, and documentary evidence is consistent with these reports. In April 2010, for example, the Chief of Police wrote an email to the Captain of the Patrol Division stating that the “intent is that when the watch commander / street supervisor gets the census from the jail he asks who will come up on 72 hrs.,” and, if there is any such person, “he can have them given the next available court date and released, or authorize they remain in jail, since he will be the designate.” The email continues: “If someone has already been there more than 72 hours, it may be assumed their continued hold was previously authorized.” Further, as noted above, while comprehensive jail records do not exist for detentions prior to April 2014, records do show several recent instances in which FPD detained a person for longer than the purported 72-hour limit.

Despite the fact that those arrested by FPD for outstanding municipal warrants can be held for several days if unable to post bond, the Ferguson municipal court does not give credit for time served. As a result, there have been many cases in which a person has been arrested on a warrant, detained for 72 hours or more, and released owing the same amount as before the arrest was made. Court records do not even track the total amount of time a person has spent in jail as part of a case. When asked why this is not tracked, a member of court staff told us: “It's only three days anyway.”

These prolonged detentions for those who cannot afford bond are alarming, and raise considerable due process and equal protection concerns. The prolonged detentions are especially concerning given that there is no public safety need for those who receive municipal warrants to be jailed at all. The Ferguson Municipal Judge has acknowledged that for most code violations, it is “probably a good idea to do away with jail time.”

Further, there are many circumstances in which court practices preclude a person from making payment against the underlying fine owed—and thus resolving the case, or at least moving the case toward resolution—and instead force the person to pay a bond. If, for example, an individual is jailed on a “must appear” charge and has not yet appeared in court to have the

fine assessed, the individual will not be allowed to make payment on the underlying charge. Rather, the person must post bond, receive a new court date, appear in court, and start the process anew. Even when the underlying fine has been assessed, a person in jail may still be forced to make a bond payment instead of a fine payment to secure release if court staff are unavailable to determine the amount the person owes. And when a person attempts to resolve a warrant before they end up arrested, a bond payment will typically be required unless the person can afford to pay the underlying fine in full, as, by purported policy, the court does not accept partial payment of fines outside of a court-sanctioned payment plan.

Bond forfeiture procedures also raise significant due process concerns. Under current practice, the first missed appearance or missed payment following a bond payment results in a warning letter being sent; after the second missed appearance or payment, the court initiates a forfeiture action (and issues another arrest warrant). As with “warrant warning letters” described above, our investigation has been unable to verify that the court *consistently* sends bond forfeiture warning letters. And, as with warrant warning letters, bond forfeiture warning letters are sometimes returned to the court, but court staff members do not appear to make any further attempt to contact the intended recipient.

Upon a bond being forfeited, the court directs the bond money into the City’s account and does not apply the amount to the individual’s underlying fine. For example, if a person owes a \$200 fine payment, is arrested on a warrant, and posts a bond of \$200, the forfeiture of the bond will result in the fine remaining \$200 and an arrest warrant being issued. If, instead, Ferguson were to allow this \$200 to go toward the underlying fine, this would resolve the matter entirely, obviating the need for any warrant or subsequent court appearance. Not applying a forfeited bond to the underlying fine is especially troubling considering that this policy does not appear to be clearly communicated to those paying bonds. Particularly in cases where the bond is set at an amount near the underlying fine owed—which we have found to be common—it is entirely plausible that a person paying bond would mistakenly believe that payment resolves the case.

When asked why the forfeited bond is not applied to the underlying fine, court staff asserted that applicable law prohibits them from doing so without the bond payer’s consent.³⁷ That explanation is grounded in an incorrect view of the law. In *Perry v. Aversman*, 168 S.W.3d 541 (Mo. Ct. App. 2005), the Missouri Court of Appeals explicitly upheld a rule requiring that forfeited bonds be applied to pending fines of the person who paid bond and found that such practices are acceptable so long as the court provides sufficient notice. *Id.* at 543-46. In light of the fact that applicable law permits forfeited bonds to be applied to pending fines, Ferguson’s longstanding practice of directing forfeited bond money to the City’s general fund is troubling. In fiscal year 2013 alone, the City collected forfeited bond amounts of \$177,168, which could instead have been applied to the fines of those making the payments.

Ferguson’s rules and procedures for *refunding* bond payments upon satisfaction of the underlying fine raise similar concerns. Ferguson requires that when a person pays the underlying

³⁷ Critically, however, when a person attends court after paying a bond and is assessed a fine, court staff members *do* automatically apply the bond already paid to the fine owed, and in fact require application of the bond to the fine regardless of the defendant’s wishes. Thus, the court has simultaneously asserted that it *can* apply a bond to a fine without a defendant’s consent when the bond would otherwise be returned to the defendant, but that it *cannot* apply a bond to a fine without a defendant’s consent when the bond would otherwise be forfeited into the City’s own accounts.

fine to avoid bond forfeiture, he or she must pay in person and provide photo identification. Yet, where the underlying fine is less than the bond amount—a common occurrence—the City does not immediately refund the difference to the individual. Rather, pursuant to a directive issued by the current City Finance Director approximately four years ago, bond refunds *cannot* be made in person, and instead must be sent via mail. According to Ferguson’s Court Clerk, it is not entirely uncommon for these refund checks to be returned as undeliverable and become “unclaimed property.”

SOURCE: IFDP REPORT (PAGES 97-102)

CHANGES NECESSARY TO REMEDY FERGUSON’S UNLAWFUL LAW ENFORCEMENT PRACTICES AND REPAIR COMMUNITY TRUST

Ferguson Court Practices

1. Make Municipal Court Processes More Transparent

Restoring the legitimacy of the municipal justice system requires increased transparency regarding court operations to allow the public to assess whether the court is operating in a fair manner. The municipal court should:

- a. Make public—through a variety of means, including prominent display on the City, police, and municipal court web pages—all court-related fines, fees, and bond amounts, and a description of the municipal court payment process, including court dates, payment options, and potential consequences for non-payment or missed court dates;
- b. Create, adopt, and make public written procedures for all court operations;
- c. Collect all orders currently in effect and make those orders accessible to the public, including by posting any such materials on the City, police, and municipal court web pages. Make public all new court orders and directives as they are issued;
- d. Initiate a public education campaign to ensure individuals can have an accurate and complete understanding of how Ferguson’s municipal court operates, including that appearance in court without ability to pay an owed fine will not result in arrest;
- e. Provide broadly available information to individuals regarding low-cost or cost-free legal assistance;
- f. Enhance public reporting by ensuring data provided to the Missouri Courts Administrator is accurate, and by making that and additional data available on City and court websites, including monthly reports indicating:
 - 1) The number of warrants issued and currently outstanding;
 - 2) The number of cases heard during the previous month;
 - 3) The amount of fines imposed and collected, broken down by offense, including by race;
 - 4) Data regarding the number of Missouri Department of Revenue license suspensions initiated by the court and the number of compliance letters enabling license reinstatement issued by the court.
- g. Revise the municipal court website to enable these recommendations to be fully implemented.

2. Provide Complete and Accurate Information to a Person Charged with a Municipal Violation

In addition to making its processes more transparent to the public, the court should ensure that those with cases pending before the court are provided with adequate and reliable information about their case. The municipal court, in collaboration with the Patrol Division, should:

- a. Ensure all FPD citations, summonses, and arrests are accompanied by sufficient, detailed information about the recipient's rights and responsibilities, including:
 - 1) The specific municipal violation charged;
 - 2) A person's options for addressing the charge, including whether in-person appearance is required or if alternative methods, including online payment, are available, and information regarding all pending deadlines;
 - 3) A person's right to challenge the charge in court;
 - 4) The exact date and time of the court session at which the person receiving the charge must or may appear;
 - 5) Information about how to seek a continuance for a court date;
 - 6) The specific fine imposed, if the offense has a preset fine;
 - 7) The processes available to seek a fine reduction for financial incapacity, consistent with recommendation four set forth below;
 - 8) The penalties for failing to meet court requirements.
- b. Develop and implement a secure online system for individuals to be able to access specific details about their case, including fines owed, payments made, and pending requirements and deadlines.

3. Change Court Procedures for Tracking and Resolving Municipal Charges to Simplify Court Processes and Expand Available Payment Options

The municipal court should:

- a. Strictly limit those offenses requiring in-person court appearance for resolution to those for which state law requires the defendant to make an initial appearance in court;
- b. Establish a process by which a person may seek a continuance of a court date, whether or not represented by counsel;
- c. Continue to implement its online payment system, and expand it to allow late payments, payment plan installments, bond payments, and other court payments to be made online;
- d. Continue to develop and transition to an electronic records management system for court records to ensure all case information and events are tracked and accessible to court officials and FPD staff, as appropriate. Ensure electronic records management system has appropriate controls to limit user access and ability to alter case records;
- e. Ensure that the municipal court office is consistently staffed during posted business hours to allow those appearing at the court window of the police department seeking to resolve municipal charges to do so;
- f. Accept partial payments from individuals, and provide clear information to individuals about payment plan options.

4. Review Preset Fine Amounts and Implement System for Fine Reduction

The municipal court should:

- a. Immediately undertake a review of current fine amounts and ensure that they are consistent not only with regional but also statewide fine averages, are not overly

- punitive, and take into account the income of Ferguson residents;
- b. Develop and implement a process by which individuals can appear in court to seek proportioning of preset fines to their financial ability to pay.

5. Develop Effective Ability-to-Pay Assessment System and Improve Data Collection Regarding Imposed Fines

The municipal court should:

- a. Develop and implement consistent written criteria for conducting an assessment of an individual's ability to pay prior to the assessment of any fine, and upon any increase in the fine or related court costs and fees. The ability-to-pay assessment should include not only a consideration of the financial resources of an individual, but also a consideration of any documented fines owed to other municipal courts;
- b. Improve current procedures for collecting and tracking data regarding fine amounts imposed. Track initial fines imposed as an independent figure separate from any additional charges imposed during a case;
- c. Regularly conduct internal reviews of data regarding fine assessments. This review should include an analysis of fines imposed for the same offenses, including by race of the defendant, to ensure fine assessments for like offenses are set appropriately.

6. Revise Payment Plan Procedures and Provide Alternatives to Fine Payments for Resolving Municipal Charges

The municipal court should:

- a. Develop and implement a specific process by which a person can enroll in a payment plan that requires reasonable periodic payments. That process should include an assessment of a person's ability to pay to determine an appropriate periodic payment amount, although a required payment shall not exceed \$100. That process should also include a means for a person to seek a reduction in their monthly payment obligation in the event of a change in their financial circumstances;
- b. Provide more opportunities for a person to seek leave to pay a lower amount in a given month beyond the court's current practice of requiring appearance the first Wednesday of the month at 11:00 a.m. Adopt procedures allowing individuals to seek their first request for a one-time reduction outside of court, and to have such requests be automatically granted. Such procedures should provide that subsequent requests shall be granted liberally by the Municipal Judge, and denials of requests for extensions or reduced monthly payments shall be accompanied by a written explanation of why the request was denied;
- c. Cease practice of automatically issuing a warrant when a person on a payment plan misses a payment, and adopt procedures that provide for appropriate warnings following a missed payment, consistent with recommendation eight set forth below;
- d. Work with community organizations and other regional groups to develop alternative penalty options besides fines, including expanding community service options. Make all individuals eligible for community service.

7. Reform Trial Procedures to Ensure Full Compliance with Due Process Requirements

The municipal court should take all necessary steps to ensure that the court's trial procedures fully comport with due process such that defendants are provided with a fair and impartial forum to challenge the charges brought against them. As part of this effort, the court shall ensure that

defendants taking their case to trial are provided with all evidence relevant to guilt determinations consistent with the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963), and other applicable law.

8. Stop Using Arrest Warrants as a Means of Collecting Owed Fines and Fees

As Ferguson’s own Municipal Judge has recognized, municipal code violations should result in jail in only the rarest of circumstances. To begin to address these problems, Ferguson should only jail individuals for a failure to appear on or pay a municipal code violation penalty, if at all, if the following steps have been attempted in a particular case and have failed:

- a. Enforcement of fines through alternative means, including:
 - 1) Assessment of reasonable late fees;
 - 2) Expanding options for payment through community service;
 - 3) Modified payment plans with reasonable amounts due and payment procedures;
 - 4) A show cause hearing on why a warrant should not issue, including an assessment of ability to pay, where requested. At this hearing the individual has a right to counsel and, if the individual is indigent, the court will assign counsel to represent the individual. *See* Mo. Sup. Ct. R. 37.65; Mo. Mun. Benchbook, Cir. Ct., Mun. Divs. § 13.8;
- b. Personal service on the individual of the Order to Show Cause Motion that provides notice of the above information regarding right to counsel and the consequences of non-appearance; and
- c. If the above mechanisms are unsuccessful at securing payment or otherwise resolving the case, the court should ensure that any arrest warrant issued has the instruction that it be executed only on days that the court is in session so that the individual can be brought immediately before the court to enable the above procedures to be implemented. *See* Mo. Mun. Benchbook, Cir. Ct., Mun. Divs. § 13.8 (“If a defendant fails to appear in court on the return date of the order to show cause or motion for contempt, *a warrant should be issued to get the defendant before the court for the hearing.*”) (emphasis added).

9. Allow Warrants to be Recalled Without the Payment of Bond

Ferguson recently extended its warrant recall program, also called an “amnesty” program, which allows individuals to have municipal warrants recalled and to receive a new court date without paying a bond. This program should be made permanent. The municipal court should:

- a. Allow all individuals to seek warrant recall in writing or via telephone, whether represented by an attorney or not;
- b. Provide information to a participating individual at the time of the warrant recall, including the number of charges pending, the fine amount due if a charge has been assessed, the options available to pay assessed fines, the deadlines for doing so, and the requirements, if any, for appearing in court.

10. Modify Bond Amounts and Bond and Detention Procedures

Ferguson has two separate municipal code bond schedules and processes: one for warrantless arrests, and another for arrests pursuant to warrants issued by the municipal court. Ferguson’s municipal court recently limited the number of municipal code violations for which officers can jail an individual without a warrant, and reduced the amount of time the jail may hold a defendant who is unable to post bond from 72 to 12 hours. These changes are a positive start, but further reforms are necessary. The City and municipal court should:

- a. Limit the amount of time the jail may hold a defendant unable to post bond on *all* arrests for municipal code violations or municipal arrest warrants to 12 hours;
- b. Establish procedures for setting bond amounts for warrantless and warrant-based detainees that are consistent with the Equal Protection Clause’s prohibition on incarcerating individuals on the basis of indigency, and that ensure bond shall in no case exceed \$100 for a person arrested pursuant to a municipal warrant, regardless of the number of pending charges;
- c. At the time of bond payment, provide individuals with the option of applying a bond fee to underlying fines and costs, including in the event of forfeiture;
- d. Take steps necessary, including the continued development of a computerized court records management system as discussed above, to enable court staff, FPD officers, and FPD correctional officers to access case information so that a person has the option of paying the full underlying fine owed in lieu of bond upon being arrested;
- e. Increase options for making a bond payment, including allowing bond payment by credit card and through the online payment system, whether by a person in jail or outside of the jail;
- f. Institute closer oversight and tracking of bond payment acceptance by FPD officers and FPD correctional officers;
- g. Initiate practice of issuing bond refund checks immediately upon a defendant paying their fine in full and being owed a bond refund;
- h. Ensure that all court staff, FPD officers, and FPD correctional officers understand Ferguson’s bond rules and procedures.

11. Consistently Provide “Compliance Letters” Necessary for Driver’s License Reinstatement After a Person Makes an Appearance Following a License Suspension

Per official policy, the municipal court provides people who have had their licenses suspended pursuant to Mo. Rev. Stat. § 302.341.1 with compliance letters enabling the suspension to be lifted only once the underlying fine has been paid in full. Court staff told us, however, that in “sympathetic cases,” they provide compliance letters that enable people to have their licenses reinstated. The court should adopt and implement a policy of providing individuals with compliance letters immediately upon a person appearing in court following a license suspension pursuant to this statute.

12. Close Cases that Remain on the Court’s Docket Solely Because of Failure to Appear Charges or Bond Forfeitures

In September 2014, the City of Ferguson repealed Ferguson Mun. Code § 13-58, which allowed the imposition of an additional “Failure to Appear” charge, fines, and fees in response to missed appearances and payments. Nonetheless, many cases remain pending on the court’s docket solely on account of charges, fines, and fees issued pursuant to this statute or because of questionable bond forfeiture practices. The City and municipal court should:

- a. Close all municipal cases in which the individual has paid fines equal or greater to the amount of the fine assessed for the original municipal code violation—through Failure to Appear fines and fees or forfeited bond payments—and clear all associated warrants;
- b. Remove all Failure to Appear related charges, fines, and fees from current cases, and close all cases in which only a Failure to Appear charge, fine, or fee remains pending;
- c. Immediately provide compliance letters so that license suspensions are lifted for all individuals whose cases are closed pursuant to these reforms.

13. Collaborate with Other Municipalities and the State of Missouri to Implement Reforms

These recommendations should be closely evaluated and, as appropriate, implemented by other municipalities. We also recommend that the City and other municipalities work collaboratively with the state of Missouri on issues requiring statewide action, and further recommend:

- a. Reform of Mo. Rev. Stat. § 302.341.1, which requires the suspension of individuals' driving licenses in certain cases where they do not appear or timely pay traffic charges involving moving violations;
- b. Increased oversight of municipal courts in St. Louis County and throughout the state of Missouri to ensure that courts operate in a manner consistent with due process, equal protection, and other requirements of the Constitution and other laws.



U.S. Department of Justice

Civil Rights Division

Office for Access to Justice

Washington, D.C. 20530

March 14, 2016

Dear Colleague:

The Department of Justice (“the Department”) is committed to assisting state and local courts in their efforts to ensure equal justice and due process for all those who come before them. In December 2015, the Department convened a diverse group of stakeholders—judges, court administrators, lawmakers, prosecutors, defense attorneys, advocates, and impacted individuals—to discuss the assessment and enforcement of fines and fees in state and local courts. While the convening made plain that unlawful and harmful practices exist in certain jurisdictions throughout the country, it also highlighted a number of reform efforts underway by state leaders, judicial officers, and advocates, and underscored the commitment of all the participants to continue addressing these critical issues. At the meeting, participants and Department officials also discussed ways in which the Department could assist courts in their efforts to make needed changes. Among other recommendations, participants called on the Department to provide greater clarity to state and local courts regarding their legal obligations with respect to fines and fees and to share best practices. Accordingly, this letter is intended to address some of the most common practices that run afoul of the United States Constitution and/or other federal laws and to assist court leadership in ensuring that courts at every level of the justice system operate fairly and lawfully, as well as to suggest alternative practices that can address legitimate public safety needs while also protecting the rights of participants in the justice system.

Recent years have seen increased attention on the illegal enforcement of fines and fees in certain jurisdictions around the country—often with respect to individuals accused of misdemeanors, quasi-criminal ordinance violations, or civil infractions.¹ Typically, courts do not sentence defendants to incarceration in these cases; monetary fines are the norm. Yet the harm

¹ See, e.g., Civil Rights Division, U.S. Department of Justice, *Investigation of the Ferguson Police Department* (Mar. 4, 2015), http://www.justice.gov/crt/about/spl/documents/ferguson_findings_3-4-15.pdf (finding that the Ferguson, Missouri, municipal court routinely deprived people of their constitutional rights to due process and equal protection and other federal protections); Brennan Center for Justice, *Criminal Justice Debt: A Barrier to Reentry* (2010), available at <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> (reporting on fine and fee practices in fifteen states); American Civil Liberties Union, *In for a Penny: The Rise of America’s New Debtors’ Prisons* (2010), available at https://www.aclu.org/files/assets/InForAPenny_web.pdf (discussing practices in Louisiana, Michigan, Ohio, Georgia, and Washington state).

caused by unlawful practices in these jurisdictions can be profound. Individuals may confront escalating debt; face repeated, unnecessary incarceration for nonpayment despite posing no danger to the community²; lose their jobs; and become trapped in cycles of poverty that can be nearly impossible to escape.³ Furthermore, in addition to being unlawful, to the extent that these practices are geared not toward addressing public safety, but rather toward raising revenue, they can cast doubt on the impartiality of the tribunal and erode trust between local governments and their constituents.⁴

To help judicial actors protect individuals' rights and avoid unnecessary harm, we discuss below a set of basic constitutional principles relevant to the enforcement of fines and fees. These principles, grounded in the rights to due process and equal protection, require the following:

- (1) Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing that the failure to pay was willful;
- (2) Courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees;
- (3) Courts must not condition access to a judicial hearing on the prepayment of fines or fees;
- (4) Courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees;
- (5) Courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections;
- (6) Courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release; and
- (7) Courts must safeguard against unconstitutional practices by court staff and private contractors.

In court systems receiving federal funds, these practices may also violate Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, when they unnecessarily impose disparate harm on the basis of race or national origin.

² Nothing in this letter is intended to suggest that courts may not preventively detain a defendant pretrial in order to secure the safety of the public or appearance of the defendant.

³ See Council of Economic Advisers, Issue Brief, *Fines, Fees, and Bail: Payments in the Criminal Justice System that Disproportionately Impact the Poor*, at 1 (Dec. 2015), available at https://www.whitehouse.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf (describing the disproportionate impact on the poor of fixed monetary penalties, which “can lead to high levels of debt and even incarceration for failure to fulfil a payment” and create “barriers to successful re-entry after an offense”).

⁴ See Conference of State Court Administrators, 2011-2012 Policy Paper, *Courts Are Not Revenue Centers* (2012), available at <https://csjusticecenter.org/wp-content/uploads/2013/07/2011-12-COSCA-report.pdf>.

As court leaders, your guidance on these issues is critical. We urge you to review court rules and procedures within your jurisdiction to ensure that they comply with due process, equal protection, and sound public policy. We also encourage you to forward a copy of this letter to every judge in your jurisdiction; to provide appropriate training for judges in the areas discussed below; and to develop resources, such as bench books, to assist judges in performing their duties lawfully and effectively. We also hope that you will work with the Justice Department, going forward, to continue to develop and share solutions for implementing and adhering to these principles.

1. Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing that the failure to pay was willful.

The due process and equal protection principles of the Fourteenth Amendment prohibit “punishing a person for his poverty.” *Bearden v. Georgia*, 461 U.S. 660, 671 (1983). Accordingly, the Supreme Court has repeatedly held that the government may not incarcerate an individual solely because of inability to pay a fine or fee. In *Bearden*, the Court prohibited the incarceration of indigent probationers for failing to pay a fine because “[t]o do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment.” *Id.* at 672-73; *see also Tate v. Short*, 401 U.S. 395, 398 (1971) (holding that state could not convert defendant’s unpaid fine for a fine-only offense to incarceration because that would subject him “to imprisonment solely because of his indigency”); *Williams v. Illinois*, 399 U.S. 235, 241-42 (1970) (holding that an indigent defendant could not be imprisoned longer than the statutory maximum for failing to pay his fine). The Supreme Court recently reaffirmed this principle in *Turner v. Rogers*, 131 S. Ct. 2507 (2011), holding that a court violates due process when it finds a parent in civil contempt and jails the parent for failure to pay child support, without first inquiring into the parent’s ability to pay. *Id.* at 2518-19.

To comply with this constitutional guarantee, state and local courts must inquire as to a person’s ability to pay prior to imposing incarceration for nonpayment. Courts have an affirmative duty to conduct these inquiries and should do so sua sponte. *Bearden*, 461 U.S. at 671. Further, a court’s obligation to conduct indigency inquiries endures throughout the life of a case. *See id.* at 662-63. A probationer may lose her job or suddenly require expensive medical care, leaving her in precarious financial circumstances. For that reason, a missed payment cannot itself be sufficient to trigger a person’s arrest or detention unless the court first inquires anew into the reasons for the person’s non-payment and determines that it was willful. In addition, to minimize these problems, courts should inquire into ability to pay at sentencing, when contemplating the assessment of fines and fees, rather than waiting until a person fails to pay.

Under *Bearden*, standards for indigency inquiries must ensure fair and accurate assessments of defendants' ability to pay. Due process requires that such standards include both notice to the defendant that ability to pay is a critical issue, and a meaningful opportunity for the defendant to be heard on the question of his or her financial circumstances. *See Turner*, 131 S. Ct. at 2519-20 (requiring courts to follow these specific procedures, and others, to prevent unrepresented parties from being jailed because of financial incapacity). Jurisdictions may benefit from creating statutory presumptions of indigency for certain classes of defendants—for example, those eligible for public benefits, living below a certain income level, or serving a term of confinement. *See, e.g.*, R.I. Gen. Laws § 12-20-10 (listing conditions considered “prima facie evidence of the defendant’s indigency and limited ability to pay,” including but not limited to “[q]ualification for and/or receipt of” public assistance, disability insurance, and food stamps).

2. Courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees.

When individuals of limited means cannot satisfy their financial obligations, *Bearden* requires consideration of “alternatives to imprisonment.” 461 U.S. at 672. These alternatives may include extending the time for payment, reducing the debt, requiring the defendant to attend traffic or public safety classes, or imposing community service. *See id.* Recognizing this constitutional imperative, some jurisdictions have codified alternatives to incarceration in state law. *See, e.g.*, Ga. Code Ann. § 42-8-102(f)(4)(A) (2015) (providing that for “failure to report to probation or failure to pay fines, statutory surcharges, or probation supervision fees, the court shall consider the use of alternatives to confinement, including community service”); *see also Tate*, 401 U.S. at 400 n.5 (discussing effectiveness of fine payment plans and citing examples from several states). In some cases, it will be immediately apparent that a person is not and will not likely become able to pay a monetary fine. Therefore, courts should consider providing alternatives to indigent defendants not only after a failure to pay, but also in lieu of imposing financial obligations in the first place.

Neither community service programs nor payment plans, however, should become a means to impose greater penalties on the poor by, for example, imposing onerous user fees or interest. With respect to community service programs, court officials should consider delineating clear and consistent standards that allow individuals adequate time to complete the service and avoid creating unreasonable conflicts with individuals' work and family obligations. In imposing payment plans, courts should consider assessing the defendant's financial resources to determine a reasonable periodic payment, and should consider including a mechanism for defendants to seek a reduction in their monthly obligation if their financial circumstances change.

3. Courts must not condition access to a judicial hearing on prepayment of fines or fees.

State and local courts deprive indigent defendants of due process and equal protection if they condition access to the courts on payment of fines or fees. *See Boddie v. Connecticut*, 401 U.S. 371, 374 (1971) (holding that due process bars states from conditioning access to

compulsory judicial process on the payment of court fees by those unable to pay); *see also Tucker v. City of Montgomery Bd. of Comm'rs*, 410 F. Supp. 494, 502 (M.D. Ala. 1976) (holding that the conditioning of an appeal on payment of a bond violates indigent prisoners' equal protection rights and "has no place in our heritage of Equal Justice Under Law" (citing *Burns v. Ohio*, 360 U.S. 252, 258 (1959))).⁵

This unconstitutional practice is often framed as a routine administrative matter. For example, a motorist who is arrested for driving with a suspended license may be told that the penalty for the citation is \$300 and that a court date will be scheduled only upon the completion of a \$300 payment (sometimes referred to as a prehearing "bond" or "bail" payment). Courts most commonly impose these prepayment requirements on defendants who have failed to appear, depriving those defendants of the opportunity to establish good cause for missing court. Regardless of the charge, these requirements can have the effect of denying access to justice to the poor.

4. Courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees.

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950); *see also Turner*, 131 S. Ct. at 2519 (discussing the importance of notice in proceedings to enforce a child support order). Thus, constitutionally adequate notice must be provided for even the most minor cases. Courts should ensure that citations and summonses adequately inform individuals of the precise charges against them, the amount owed or other possible penalties, the date of their court hearing, the availability of alternate means of payment, the rules and procedures of court, their rights as a litigant, or whether in-person appearance is required at all. Gaps in this vital information can make it difficult, if not impossible, for defendants to fairly and expeditiously resolve their cases. And inadequate notice can have a cascading effect, resulting in the defendant's failure to appear and leading to the imposition of significant penalties in violation of the defendant's due process rights.

Further, courts must ensure defendants' right to counsel in appropriate cases when enforcing fines and fees. Failing to appear or to pay outstanding fines or fees can result in incarceration, whether through the pursuit of criminal charges or criminal contempt, the imposition of a sentence that had been suspended, or the pursuit of civil contempt proceedings. The Sixth Amendment requires that a defendant be provided the right to counsel in any criminal proceeding resulting in incarceration, *see Scott v. Illinois*, 440 U.S. 367, 373 (1979); *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972), and indeed forbids imposition of a suspended jail sentence on a probationer who was not afforded a right to counsel when originally convicted and sentenced,

⁵ The Supreme Court reaffirmed this principle in *Little v. Streater*, 452 U.S. 1, 16-17 (1981), when it prohibited conditioning indigent persons' access to blood tests in adversarial paternity actions on payment of a fee, and in *M.L.B. v. S.L.J.*, 519 U.S. 102, 107 (1996), when it prohibited charging filing fees to indigent persons seeking to appeal from proceedings terminating their parental rights.

see Alabama v. Shelton, 535 U.S. 654, 662 (2002). Under the Fourteenth Amendment, defendants likewise may be entitled to counsel in civil contempt proceedings for failure to pay fines or fees. *See Turner*, 131 S. Ct. at 2518-19 (holding that, although there is no automatic right to counsel in civil contempt proceedings for nonpayment of child support, due process is violated when neither counsel nor adequate alternative procedural safeguards are provided to prevent incarceration for inability to pay).⁶

5. Courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections.

The use of arrest warrants as a means of debt collection, rather than in response to public safety needs, creates unnecessary risk that individuals' constitutional rights will be violated. Warrants must not be issued for failure to pay without providing adequate notice to a defendant, a hearing where the defendant's ability to pay is assessed, and other basic procedural protections. *See Turner*, 131 S. Ct. at 2519; *Bearden*, 461 U.S. at 671-72; *Mullane*, 339 U.S. at 314-15. When people are arrested and detained on these warrants, the result is an unconstitutional deprivation of liberty. Rather than arrest and incarceration, courts should consider less harmful and less costly means of collecting justifiable debts, including civil debt collection.⁷

In many jurisdictions, courts are also authorized—and in some cases required—to initiate the suspension of a defendant's driver's license to compel the payment of outstanding court debts. If a defendant's driver's license is suspended because of failure to pay a fine, such a suspension may be unlawful if the defendant was deprived of his due process right to establish inability to pay. *See Bell v. Burson*, 402 U.S. 535, 539 (1971) (holding that driver's licenses "may become essential in the pursuit of a livelihood" and thus "are not to be taken away without that procedural due process required by the Fourteenth Amendment"); *cf. Dixon v. Love*, 431 U.S. 105, 113-14 (1977) (upholding revocation of driver's license after conviction based in part on the due process provided in the underlying criminal proceedings); *Mackey v. Montrym*, 443 U.S. 1, 13-17 (1979) (upholding suspension of driver's license after arrest for driving under the influence and refusal to take a breath-analysis test, because suspension "substantially served" the government's interest in public safety and was based on "objective facts either within the personal knowledge of an impartial government official or readily ascertainable by him," making the risk of erroneous deprivation low). Accordingly, automatic license suspensions premised on determinations that fail to comport with *Bearden* and its progeny may violate due process.

⁶ *Turner's* ruling that the right to counsel is not automatic was limited to contempt proceedings arising from failure to pay child support to a custodial parent who is unrepresented by counsel. *See* 131 S. Ct. at 2512, 2519. The Court explained that recognizing such an automatic right in that context "could create an asymmetry of representation." *Id.* at 2519. The Court distinguished those circumstances from civil contempt proceedings to recover funds due to the government, which "more closely resemble debt-collection proceedings" in which "[t]he government is likely to have counsel or some other competent representative." *Id.* at 2520.

⁷ Researchers have questioned whether the use of police and jail resources to coerce the payment of court debts is cost-effective. *See, e.g.,* Katherine Beckett & Alexis Harris, *On Cash and Conviction: Monetary Sanctions as Misguided Policy*, 10 CRIMINOLOGY & PUB. POL'Y 505, 527-28 (2011). This strategy may also undermine public safety by diverting police resources and stimulating public distrust of law enforcement.

Even where such suspensions are lawful, they nonetheless raise significant public policy concerns. Research has consistently found that having a valid driver's license can be crucial to individuals' ability to maintain a job, pursue educational opportunities, and care for families.⁸ At the same time, suspending defendants' licenses decreases the likelihood that defendants will resolve pending cases and outstanding court debts, both by jeopardizing their employment and by making it more difficult to travel to court, and results in more unlicensed driving. For these reasons, where they have discretion to do so, state and local courts are encouraged to avoid suspending driver's licenses as a debt collection tool, reserving suspension for cases in which it would increase public safety.⁹

6. Courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release.

When indigent defendants are arrested for failure to make payments they cannot afford, they can be subjected to another independent violation of their rights: prolonged detention due to unlawful bail or bond practices. Bail that is set without regard to defendants' financial capacity can result in the incarceration of individuals not because they pose a threat to public safety or a flight risk, but rather because they cannot afford the assigned bail amount.

As the Department of Justice set forth in detail in a federal court brief last year, and as courts have long recognized, any bail practices that result in incarceration based on poverty violate the Fourteenth Amendment. See Statement of Interest of the United States, *Varden v. City of Clanton*, No. 2:15-cv-34-MHT-WC, at 8 (M.D. Ala., Feb. 13, 2015) (citing *Bearden*, 461 U.S. at 671; *Tate*, 401 U.S. at 398; *Williams*, 399 U.S. at 240-41).¹⁰ Systems that rely primarily on secured monetary bonds without adequate consideration of defendants' financial means tend to result in the incarceration of poor defendants who pose no threat to public safety solely because they cannot afford to pay.¹¹ To better protect constitutional rights while ensuring defendants' appearance in court and the safety of the community, courts should consider transitioning from a system based on secured monetary bail alone to one grounded in objective risk assessments by pretrial experts. See, e.g., D.C. Code § 23-1321 (2014); Colo. Rev. Stat. 16-

⁸ See, e.g., Robert Cervero, et al., *Transportation as a Stimulus of Welfare-to-Work: Private versus Public Mobility*, 22 J. PLAN. EDUC. & RES. 50 (2002); Alan M. Voorhees, et al., *Motor Vehicles Affordability and Fairness Task Force: Final Report*, at xii (2006), available at http://www.state.nj.us/mvc/pdf/About/AFTF_final_02.pdf (a study of suspended drivers in New Jersey, which found that 42% of people lost their jobs as a result of the driver's license suspension, that 45% of those could not find another job, and that this had the greatest impact on seniors and low-income individuals).

⁹ See Am. Ass'n of Motor Veh. Adm'rs, *Best Practices Guide to Reducing Suspended Drivers*, at 3 (2013), available at <http://www.aamva.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=3723&libID=3709> (recommending that "legislatures repeal state laws requiring the suspension of driving privileges for non-highway safety related violations" and citing research supporting view that fewer driver suspensions for non-compliance with court requirements would increase public safety).

¹⁰ The United States' Statement of Interest in *Varden* is available at http://www.justice.gov/sites/default/files/opa/pressreleases/attachments/2015/02/13/varden_statement_of_interest.pdf.

¹¹ See *supra* Statement of the United States, *Varden*, at 11 (citing Timothy R. Schnacke, U.S. Department of Justice, National Institute of Corrections, FUNDAMENTALS OF BAIL: A RESOURCE GUIDE FOR PRETRIAL PRACTITIONERS AND A FRAMEWORK FOR AMERICAN PRETRIAL REFORM, at 2 (2014), available at <http://nicic.gov/library/028360>).

4-104 (2014); Ky. Rev. Stat. Ann. § 431.066 (2015); N.J. S. 946/A1910 (enacted 2015); *see also* 18 U.S.C. § 3142 (permitting pretrial detention in the federal system when no conditions will reasonably assure the appearance of the defendant and safety of the community, but cautioning that “[t]he judicial officer may not impose a financial condition that results in the pretrial detention of the person”).

7. Courts must safeguard against unconstitutional practices by court staff and private contractors.

In many courts, especially those adjudicating strictly minor or local offenses, the judge or magistrate may preside for only a few hours or days per week, while most of the business of the court is conducted by clerks or probation officers outside of court sessions. As a result, clerks and other court staff are sometimes tasked with conducting indigency inquiries, determining bond amounts, issuing arrest warrants, and other critical functions—often with only perfunctory review by a judicial officer, or no review at all. Without adequate judicial oversight, there is no reliable means of ensuring that these tasks are performed consistent with due process and equal protection. Regardless of the size of the docket or the limited hours of the court, judges must ensure that the law is followed and preserve “both the appearance and reality of fairness, generating the feeling, so important to a popular government, that justice has been done.” *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980) (internal quotation marks omitted); *see also* American Bar Association, MODEL CODE OF JUDICIAL CONDUCT, Canon 2, Rules 2.2, 2.5, 2.12.

Additional due process concerns arise when these designees have a direct pecuniary interest in the management or outcome of a case—for example, when a jurisdiction employs private, for-profit companies to supervise probationers. In many such jurisdictions, probation companies are authorized not only to collect court fines, but also to impose an array of discretionary surcharges (such as supervision fees, late fees, drug testing fees, etc.) to be paid to the company itself rather than to the court. Thus, the probation company that decides what services or sanctions to impose stands to profit from those very decisions. The Supreme Court has “always been sensitive to the possibility that important actors in the criminal justice system may be influenced by factors that threaten to compromise the performance of their duty.” *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 810 (1987). It has expressly prohibited arrangements in which the judge might have a pecuniary interest, direct or indirect, in the outcome of a case. *See Tumey v. Ohio*, 273 U.S. 510, 523 (1927) (invalidating conviction on the basis of \$12 fee paid to the mayor only upon conviction in mayor’s court); *Ward v. Village of Monroeville, Ohio*, 409 U.S. 57, 61-62 (1972) (extending reasoning of *Tumey* to cases in which the judge has a clear but not direct interest). It has applied the same reasoning to prosecutors, holding that the appointment of a private prosecutor with a pecuniary interest in the outcome of a case constitutes fundamental error because it “undermines confidence in the integrity of the criminal proceeding.” *Young*, 481 U.S. at 811-14. The appointment of a private probation company with a pecuniary interest in the outcome of its cases raises similarly fundamental concerns about fairness and due process.

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The Department of Justice has a strong interest in ensuring that state and local courts provide every individual with the basic protections guaranteed by the Constitution and other federal laws, regardless of his or her financial means. We are eager to build on the December 2015 convening about these issues by supporting your efforts at the state and local levels, and we look forward to working collaboratively with all stakeholders to ensure that every part of our justice system provides equal justice and due process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Vanita Gupta".

Vanita Gupta
Principal Deputy Assistant Attorney General
Civil Rights Division

A handwritten signature in blue ink, appearing to read "Lisa Foster".

Lisa Foster
Director
Office for Access to Justice