

# Unjust Revenue from an Imbalanced Criminal Legal System: How Georgia's Fines and Fees Worsen Racial Inequity

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## Key Takeaways:

- Georgia's poor governance of fines and fees revenue practices has allowed many economically underperforming localities to over-rely on fines and fees revenue, significantly contributing to Georgia having the highest probation rate in the country. Of the more than 430,000 Georgians who were on probation in 2018, nearly 40 percent of them were on probation for misdemeanors or traffic fines.
- While the national average among localities' fines and fees revenue as a share of general revenue was 2 percent, Georgia consistently ranked second-worst among states with localities with fines and fees shares above 10 percent, and second-worst among per capita amounts of fines paid among adult residents in 2018.
- Abusive fines and fees practices and lack of protections for Georgians in deep poverty, have disproportionately harmed Black and Hispanic Georgians long before the pandemic and worsened in many localities during a pandemic that has been most unforgiving to low-income communities. Among the 27 Georgia counties that increased their fines and fees share of general revenue from 2019 to 2020, 12 of them had population shares that were higher than 36 percent Black, significantly higher than the overall state, where 33 percent of Georgians are Black.

## Introduction

Georgia's policy framework that governs fines and fees practices gives Georgia courts broad discretion across state, county and municipal jurisdictions. While this current level of flexibility allows each jurisdiction to address unique needs, it also incentivizes and leaves room for revenue-strapped jurisdictions to engage in abusive fines and fees assessment and collection practices that carry heavy human and economic collateral costs. Many of these collateral costs remain hidden from public accountability. Furthermore, while the concept of flexibility and discretion given to local court jurisdictions may seem like a virtue, in practice, it does not often translate into flexible debt resolution options for criminal legal system-facing Georgians charged

with fines and fees. Moreover, it exacerbates racial and economic inequities and compromises public safety across the state.

By pairing punitive and revenue-raising approaches meant to deter criminal and civil infractions and fund public services, Georgia's fines and fees approach adds another harmful layer of regressive fiscal policy by creating a two-tiered system of justice, where those who can afford to pay court debt can move forward with their lives and those who cannot—often people of color—are placed in a vicious cycle of debt, hopelessness and criminal legal system involvement. While an equitable fines and fees system cannot exist in our current, broken legal system, improvements to the framework and standards under which it operates are possible.

## **Fine and Fees and their History of Inequality**

“Court fines and fees” is a phrase often used to describe a broader set of legal financial obligations (LFOs) that are charged, enforced and collected from criminal and civil defendants by courts, police departments and public or private supervision entities. Their origin can range from citations given to those who commit minor traffic or parking violations<sup>1</sup> to financial charges given to those who commit misdemeanor or felony crimes.

Fines can include punitive charges and/or restitution to victims, are imposed upon conviction and are intended as both a deterrent and means of punishment.<sup>2</sup> Fees, however, are primarily intended to raise revenue and shift criminal legal system costs from all Georgians to solely those who are defendants and who are often tagged as the “users of the courts” to justify financial penalties that are anything but equitable. They are added on to base fine amounts, contribute to the funding of almost every part of the criminal justice process, as well as unrelated programs, and are earmarked to fund court-appointed attorney fees, court clerk fees, filing clerk fees, DNA database fees, jury fees, crime lab analysis fees and several other designated state and local areas of government.

Court fees also include a number of surcharges that effectively penalize poverty, including late fees, payment plan fees and interest when Georgians do not have the money to pay all at once.<sup>3</sup> Year after year, lawmakers often increase or expand these fees with little to no review or evaluation process to consider the financial and human costs to vulnerable Georgians as well as the wider consequences to the economy.<sup>4</sup>

Fines and fees in Georgia have long shaped our criminal legal system and economy, and have played a role in setting the modern stage for political participation and the labor market, each of which collides with the notion of whether the wealthy and non-wealthy, white and non-white, and immigrant and non-immigrant should have equal freedoms and protections. Ironically, colonial Georgia was originally created in 1733 as a refuge for the poor<sup>5</sup> to escape the cycle of incarceration and debt. Slavery was initially prohibited as a means to encourage the settlement of poor “English and Christian” people. These sentiments quickly changed, and by the end of the Civil War, many Southern states, including Georgia,<sup>6</sup> used criminal justice debt as a means to re-enslave African Americans.<sup>7</sup> These anti-Black policies, used in tandem with others such as the state poll tax, were designed to systematically disenfranchise and overtax Black voters in

Georgia.<sup>8</sup> The remnants of poll taxes in their most direct form were removed in late 2020 when the secretary of state clarified<sup>9</sup> voter eligibility for Georgians who have completed a felony sentence but still owe money for restitution to crime victims, fees and court costs. And while Georgia allows those with misdemeanor convictions to retain voter eligibility, those who are in deep poverty and faced with impossible debt choices may feel forced to commit repeated or higher-level crimes, often as a means of survival through spiraling debt, which could be considered felonies that warrant a loss of voting privileges.

Georgia's fines and fees system may no longer serve as a poll tax, but the insurmountable debt that it places on countless Georgians in poverty may force them into a broader separation from society. Unpayable debt may compel impoverished Georgians to commit additional infractions to earn income to pay court debts, place assets in other people's names to avoid interaction with the state and risk never fully reintegrating into civic life, such as by not voting, in the attempt to avoid being tracked by debt collecting officials that they cannot afford to pay.<sup>10</sup> For example, speaking about those who had their driver's license suspended for non-payment of court debt, a former Georgia Department of Driver Services (DDS) executive testified that nearly 75 percent of individuals whose driver's licenses are suspended continue to drive, despite the risks involved, further complicating their situation if they are caught.<sup>11</sup> Beyond being legally stripped from a means of earning money to pay court debt, countless Georgians committing minor legal infractions are needlessly stripped off an essential tool to meet basic needs.<sup>12</sup> Many are left with no choices in a state with one of the worst public transit systems in the US, ranking No. 44 in commute time and No. 29 in public transit usage, which likely means long commute times and insufficient availability to meet daily travel needs.<sup>13</sup>

A common domino effect of hardship for a Georgian experiencing poverty and who is unable to pay court debt is their difficulty regaining driving privileges if their license is suspended:

*A Georgian has their driver's license suspended for failure to appear in court. Ironically, they failed to appear because they were incarcerated and literally could not attend their court date. Furthermore, they cannot get their license back until 1) their case is fully adjudicated; 2) they pay all fines, fees and surcharges; and 3) pay the Department of Driver Services (DDS) reinstatement fees. After being released from jail, they go to traffic court and resolve their case. While in court, they are assessed fines and fees which they cannot pay. Also, it is discovered that two additional Failure to Appear charges (FTAs) require resolution and assessment of more fines and fees. The court provided no option to enter payment plans to pay off these debts, placing this indigent Georgian deeper into debt. Even worse, they are unable to obtain a job because they can't drive. Later on, these impossible choices lead them to drive their child to an important doctor appointment out of necessity, and they are pulled over by law enforcement, arrested for driving on a suspended license, serve jail time and is assessed even more fines and surcharges. Eventually, they are somehow able to resolve all outstanding cases and go to DDS to get their license back. However, because a DDS reinstatement fee attaches for every individual reason for suspension, they ultimately face hundreds of dollars of reinstatement fees, even after having the reinstatement fees cut in half due to their low income and are therefore still unable to get their license back.<sup>14</sup>*

## Policy Landscape that Governs Fines and Fees Practices

Georgia's criminal court system is made up of nine court types. Seven of them—business, municipal, magistrate, probate, juvenile, state and superior courts—are trial courts.<sup>15</sup> The Court of Appeals and Supreme Court are the state's appellate courts. While the Georgia Constitution of 1983 classifies its collection of courts as a “unified judicial system,” its structure allows for a relative level of independence among court types,<sup>16</sup> and aside from municipal courts that are solely funded by municipal revenue, offers mixed funding types to trial courts that are either funded by revenues from the state, counties or both.<sup>17</sup> Therefore, state law sets broad rules including maximum fine amounts or penalties, while local criminal legal systems determine what is owed and collected and whether they will contract with private probation companies to manage misdemeanor fines and fees collection. Private probation companies offer contractual agreements to collect fines and fees for local governments at no direct cost, in exchange for the freedom to profit from added fees charged to misdemeanor debtors who cannot afford to immediately pay their fines and fees assessed by judges. Georgians in deep poverty are therefore placed on “pay-only probation,” which criminally scolds them for living in poverty. And what is the punishment? More debt with interest, often enforced by aggressive collection tactics that threaten Georgians in poverty with greater debt or incarceration that may be wrongly warranted by charges of willful nonpayment. Because profiteering companies absorb local government collection costs, fines and fee revenue interests often take priority over due process to protect Georgians in deep poverty from fines and fees they cannot pay. Aggressive private collections actions are often ignored by judicial systems, to maintain a consistent flow of revenue that is often extorted from Georgians who are forced to make impossible choices to pay their debt.

One Georgian in deep poverty had their experience with a private probation company summarized in the following way:

*Rita Luse from Cleveland, Georgia received a traffic citation a few years ago and pleaded guilty to driving while unlicensed in the county probate court. She owed a fine, and because she could not pay that fine when she appeared in court, she was put on probation with a private probation company, Sentinel Offender Services LLC. She was placed on probation supervision although she posed no threat to public safety, making it difficult to conceive of any legitimate reason why her behavior would need to be monitored. Yet, under the system in Cleveland, as in so many places, Ms. Luse's inability to pay a fine resulted in her having a “probation officer,” reporting to a probation officer, paying “supervision fees” and submitting her urine for drug testing at her expense. On one occasion during the course of her probation, Ms. Luse, who did not have a lot of money, came up short. When she asked for extra time to pay, her probation officer told her that if she did not pay by the end of the day, a warrant would be issued for her arrest. Ms. Luse secured an emergency loan from a relative and raced across town to borrow money and convert the cash into a money order, fearful that she would be jailed if she did not deliver \$140 to the probation office before closing time.<sup>18</sup>*

Judicial discretion is a vital component of justice and fairness. However, when influenced or swayed by fiscal motivations or bias, it forfeits equal protections to Georgians and becomes an obstructor of justice. This perversion of discretion is arguably at its worst in Georgia, as too many local judicial systems choose not to meaningfully consider the ability to pay among economically vulnerable and Georgians in deep poverty who face court debt. This translates into disproportionate shares of individuals and families encountering the criminal legal system who cannot successfully exit because a family member or loved one cannot afford to pay their fines and fees.

More broadly, it heavily contributes to Georgia leading the nation with the highest probation rate, which is the number of probationers per 100,000 residents, with nearly 40 percent of them on probation for misdemeanor or traffic offenses.<sup>19</sup> In tandem, Georgia ranked among the worst-performing states in fines and fees abuse, based on a 2019 nationwide analysis done by *Governing*, which included more than 800 cities, towns, villages and counties. It ranked No. 1 among states with localities that had fines and fees revenue that was more than 10 percent of general revenue, No. 1 among states with localities with shares above 20 percent, No. 2 among those above 30 percent and No. 2 among those with shares above 50 percent. It ranked No. 2 among states with the highest per capita amounts of fines among adult residents.<sup>20</sup>

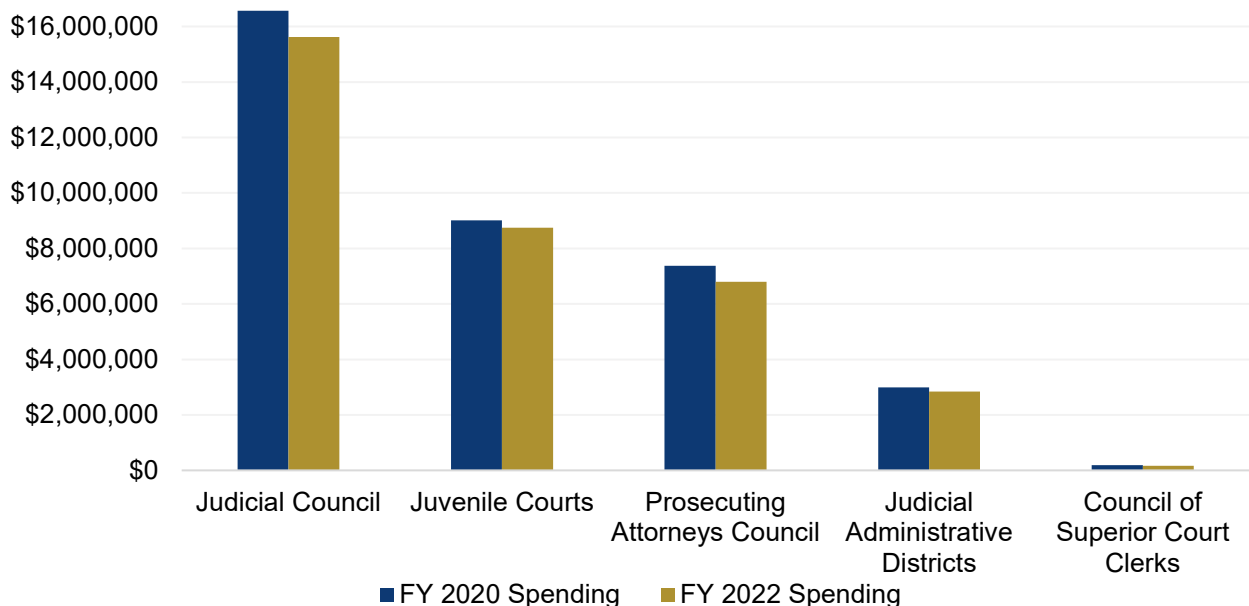
Georgia's broad discretion has given way to practices among judges to give a post-sentencing review of ability-to-pay rather than a pre-sentencing ability-pay-hearing. Post-sentencing reviews fail to protect Georgians in deep poverty from non-payment sanctions that can occur immediately after being charged with court debt.<sup>21</sup> And when ability-to-pay hearings are granted, Georgia rejects the notion of a right to counsel even when civil debt proceedings could result in incarceration, leaving those who cannot afford legal help at significant risk of incarceration because they cannot legally navigate those hearings on their own. This is essentially a consequence of simply being poor.<sup>22</sup> State law also allows judges to extend an individual's term of probation, even if all other probation obligations have been satisfied except for outstanding debt due to poverty.<sup>23</sup>

While less forceful and austere than court fines and fees, wealth extraction from vulnerable communities is also present in Georgia's primary revenue-raising approach, its tax system, which continues to widen racial and economic inequities for low-income communities and people of color. Revenue generated under Georgia's tax structure is driven by regressive state and local sales and use taxes, an outdated personal income tax and corporate tax loopholes that allow a growing share of Georgia's economy to be irresponsibly exempt from taxation that can fund critical public investments.<sup>24</sup> This is only part of a state structure with deep roots in intentionally racist policies, including slavery and Jim Crow, along with disparate policing practices and mass incarceration, that are directly tied to the historic overrepresentation of Black families in Georgia's low-income tax brackets.

Furthermore, racial gaps remain through systemic practices that perpetually barricade many Black Georgians from equitable access to adequate health care, quality early pre-K through 12<sup>th</sup>-education, quality workforce training, high-wage jobs, wealth accumulation and unemployment and social safety net protections<sup>25</sup>—each of which meaningfully and collectively leads to and maintains economic prosperity.

Its fines and fees structure forcibly compounds these systemic harms, incentivizing a growing practice<sup>26</sup> among local court and police jurisdictions to increase their reliance on fines and fees—which disproportionately traps low-income Georgians, who are overrepresented by Black and Hispanic families, in debt that they cannot afford to pay—to avoid raising taxes that can be equitably shared by a larger pool of Georgians. Economic downturns, coupled with the state’s limited revenue-raising options outside of fines and fees, have shown to increase the likelihood that local governments will turn to this form of financial abuse. And coinciding with the current economic downturn brought on by the COVID public health crisis, state lawmakers have made and maintained nearly \$2 million in austerity cuts since Fiscal Year (FY) 2020. These cuts represent more than a 5 percent funding reduction across a handful of areas within Georgia’s judicial system,<sup>27</sup> placing greater pressure on local courts to generate their own revenue and further incentivizing them to look to fines and fees to make up for lost funding.

***Budget Cuts Stripped Local Courts of Nearly \$2 Million, Or 5%, Since FY 2020, Leaving Some Likely to Replace With Fine and Fee Revenue***



Source: GBPI Analysis of FY 2020 and FY 2022 Appropriation Bills.



State budget cuts have unavoidable racial consequences that manifest in several ways. Funding reductions to local courts often spur them to have a greater reliance on fines and fees to generate revenue, which worsens inequities because of the divergent impacts along racial and ethnic lines. With longstanding equity gaps in employment, incarceration levels and wealth, Black and Hispanic Georgians of color more often encounter barriers to paying off court debts, compared to others.

These inequities are reflected through overrepresentation among Black and Hispanic Georgians in lower-wage, unstable jobs due to occupational segregation, lack of access to quality workforce training and racial hiring bias, which in turn, perpetuate historic gaps in unemployment and underemployment. Sadly, these inequities have continued throughout the pandemic recovery<sup>28</sup> and made many Black and Latinx Georgians more vulnerable and unable to afford a fine and fee charge that could more easily be paid for by their white or Asian counterparts who encounter the legal system.

Research from the Federal Reserve shows that in 2020, 39 percent of employed Black households would not be able to pay some or all of their monthly bills after a sudden \$400 expense, compared to 38 percent of employed Hispanic households and only 18 percent of employed white households. Among unemployed households in 2020, 65 percent of Black households reported not being able to cover some or all of their bills after a sudden \$400 expense, compared to 58 percent and 36 percent of Hispanic and white households, respectively.<sup>29</sup> These gaps have likely carried into the third quarter of 2021, as Black and Hispanic Georgians experienced higher unemployment and significantly higher underemployment than other groups<sup>30</sup> and are less likely than white workers to qualify for unemployment insurance protections.<sup>31</sup> Greater use of fines and fees to fund local governments only makes these disparities wider.

Unemployment rates of those coming out of prison are notoriously high. According to the National Institute for Justice, following the first year of release, up to 60 percent of people who were formerly incarcerated are unemployed.<sup>32</sup> Despite the active labor force within Georgia's general population reaching a 3.2 percent unemployment rate in September<sup>33</sup> and nearly 31,000 fewer Georgians in the active labor force compared to pre-pandemic, formerly incarcerated, active jobless workers often struggle to find stable, livable employment.

Unless specified by law, Georgia courts can impose a fine up to \$100,000 as a condition of probation for felony offenses and a fine up to \$1,000 for misdemeanor offenses, which include traffic violations.<sup>34</sup> As one of at least ten states<sup>35</sup> that allow local governments to contract with private probation companies to collect fines and fees from Georgians with debts associated with misdemeanor cases, Georgia extracted over \$120 million by 2015 in annual fines through these for-profit companies,<sup>36</sup> and likely dozens or hundreds of millions more as of now. Private probation companies, which supervise nearly 80 percent of Georgia's 200,000 misdemeanor probationers, have their collection practices shielded from public accountability, as the General Assembly specifically exempted them from Georgia's Open Records Act in 2006.<sup>37</sup>

There are several state provisions, not limited to those following, that offer few to no protections for Georgians in deep poverty charged with court debt and limit fiscal alternatives for local governments:<sup>38</sup>

- Georgia does not firmly cap its municipal governments' fines and fee revenue.<sup>39</sup>
- The state allows broad discretion for municipal courts to enact charters and codes which may then be used to enact ordinances against harmless or vaguely defined conduct and then enforce those provisions to raise revenue.<sup>40</sup>
- Municipalities are allowed to budget for future revenue obtained through fines and fees collected by municipal courts, leaving law enforcement or courts vulnerable to pressure to prioritize revenue raising over public safety or justice.<sup>41</sup>
- Municipalities can choose between property, sales or income tax to raise revenue,<sup>42</sup> but Georgia excludes most services from its sales tax, a missed opportunity to pursue more equitable revenue sources.<sup>43</sup>
- Georgia has no specific provision that protects municipalities from having to provide public services through unfunded state mandates.<sup>44</sup>
- State law fails to require municipal courts to function independently of their corresponding legislative or executive branches, leaving them vulnerable to influence or pressure to prioritize fines and fee revenue over justice or public safety.<sup>45</sup>
- State law requires or permits not releasing an already suspended driver's license until fines and fees are fully paid, endangering employment needed to pay debt obligations and maintain economic stability.<sup>46</sup>

## **Abusive Practices and Destructive Outcomes**

Georgia's fines and fees structure has led to abusive practices across county governments, which are only partially funded by the state, as well as municipal governments, which receive no state funding at all. These practices have led to destructive outcomes for countless vulnerable Georgians who already struggle to manage and afford necessities in a pandemic that has been most unforgiving to families with low incomes. Research has also found an association between negative health outcomes and criminal legal system involvement that involves those who are found guilty and not guilty,<sup>47</sup> as well as those who are not charged with a crime.<sup>48</sup> Placing unpayable debts on unprotected people with low incomes is much the equivalent of taking blood from a stone. While used figuratively in this policy brief, there have been instances in states offering wide latitude to local judges, where blood was literally suggested to defendants in poverty as payment for court debt.<sup>49</sup>

Georgians in deep poverty who face court fines and fee debt do not have the financial options or protections that are available with other forms of unpaid debt. Unlike personal loans or credit card debt, they cannot be removed through bankruptcy, despite the potential credit damage.<sup>50</sup> Unlike for those with a delinquent sub-prime mortgage, there are no options akin to forbearance, short-sale or foreclosure to manage or remove the debt. When someone is charged with a legal financial obligation that may initially total to a small amount, it can quickly add up, leading to hundreds or thousands of dollars in accumulated debt that is unaffordable.



Georgians with unpaid court debt face the potential issuance of arrest warrants for nonpayment; criminal court hearings; additional fines and court surcharges; detention in jail and a criminal record. Although debtors' prisons were declared unconstitutional in the Supreme Court's *Bearden vs. Georgia* decision, Georgia courts still manage to incarcerate people for not paying those debts.

Recent research found disparate financial harms to Black felony probationers, who ended up owing an average of \$87 more in outstanding balances than other racial groups,<sup>51</sup> which may reflect systemic economic barriers tied to race that caused more delayed payments and greater added fees and surcharges. And because criminal justice and court debt appear on credit reports, this can potentially inform employers of someone's criminal history, despite state lawmakers' past and current efforts to "ban the box," or enact laws that require that employers remove criminal-history questions from applications for employment.<sup>52</sup>

Creating adequate statewide measures to ensure that local jurisdictions offer reasonable and accessible due process protections for Georgians in deep poverty can lead to higher collection rates and reduce the health, economic and social hardships that disproportionately fall on Black and Hispanic residents. Empirical research<sup>53</sup> has shown that localities with the most aggressive fines and fees practices, on average, have the highest population shares of Black residents. As such, they are likely overrepresented among countless numbers of Georgians that are sentenced to probation for inability to immediately pay LFOs that are charged for minor infractions. In 2012, 648 courts assigned more than 250,000 cases to private probation companies, many of which were likely to be for failure to immediately pay court debt.<sup>54</sup> And among felony defendants, Bureau of Justice Statistics (BJS) data<sup>55</sup> has shown that more than 80 percent of them are in deep poverty.

While the experiences of impoverished Georgians who face the criminal legal system may be unique, their hardships are all highly severe. Their encounters may play out like another common scenario described below:

*After receiving a traffic ticket, a Georgian experiencing poverty is unable to go to court because they could not miss work, and in turn, their driver's license is suspended. Like 42 percent of people whose licenses are suspended, this Georgian loses their job because they can no longer get to work. Later on, they appear in a follow-up court date, get their case adjudicated, but cannot immediately pay off their fines, fees and surcharges. They cannot get on a payment plan but were offered pay-only probation as their only way to pay in installments. They are placed on probation for one year and charged \$35 per month for probation costs (even though they are not seeing a probation officer). Though the \$35 probation fee can only be charged for three of the months a client is on probation, the \$105 added to their bill makes it that much harder to pay everything off. As they look for a job, they now face another barrier as an individual on probation. The client eventually is able to pay off their fines, fees and surcharges, goes to DDS after saving more money, and pays the reinstatement fee and gets their license back. The client gets a new job, but like 88 percent of people who lose their job due to a suspended license, their new job pays less than the job they had pre-suspension.<sup>56</sup>*

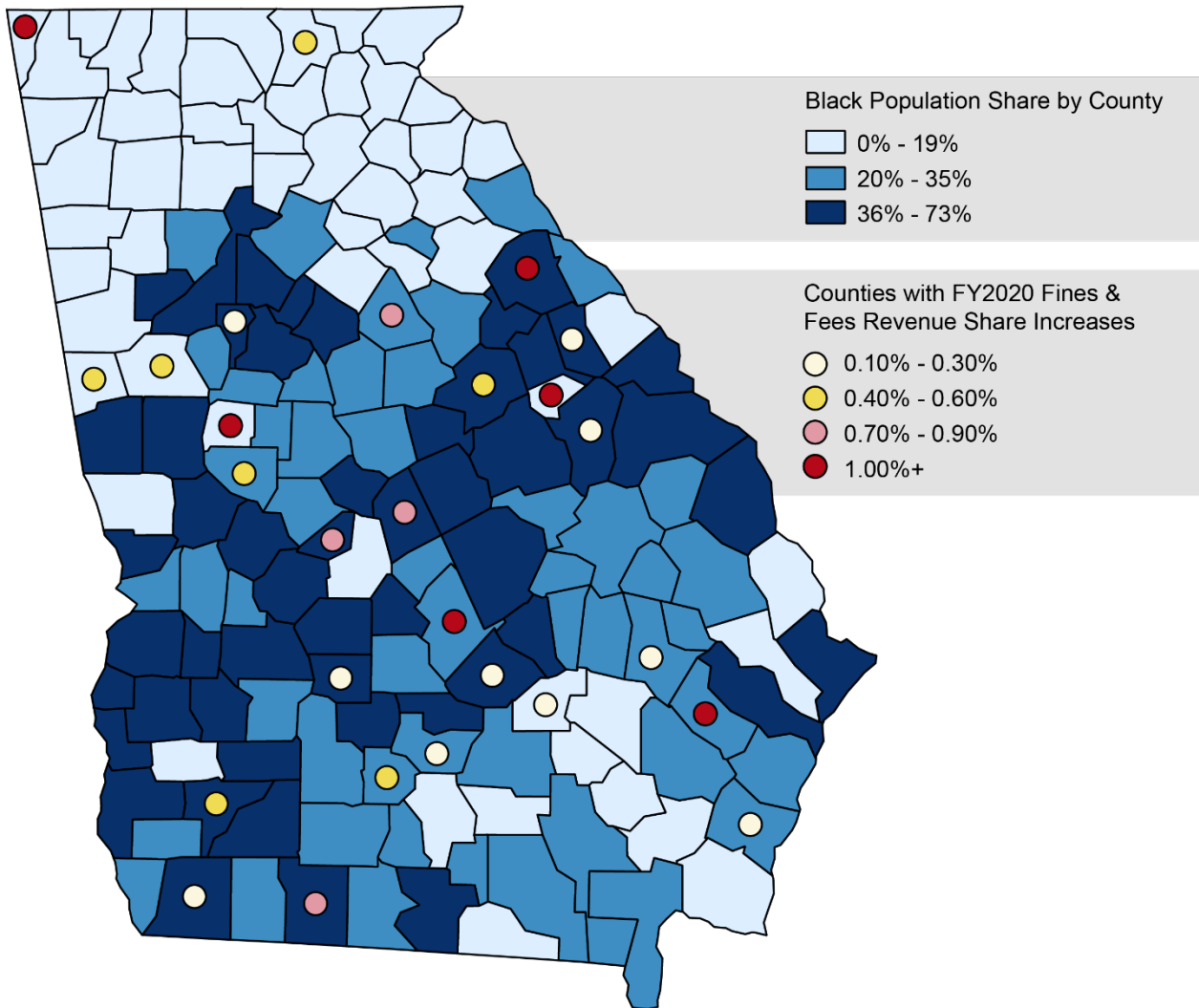
On a broader level, municipal and county governments committing abusive fines and fees practices immediately before and during the COVID pandemic have added another layer of economic distress to vulnerable Georgians, who have already faced a disproportionate share of health, economic and psychological hardship while being the slowest to experience recovery. While the national average for fines and fee revenue shares among total revenues, excluding public utilities and intergovernmental transfers, is 2 percent,<sup>57</sup> several local governments in Georgia rely on and collect significantly higher shares of fines and fees,<sup>58</sup> as found in local finance documents provided by the Georgia Department of Community Affairs.

Moreover, many of these governments are in counties or municipalities with low median household incomes, high shares of Georgians of color and high shares of immigrant populations. This analysis aligns with more comprehensive statistical studies, which include data from more than 9,000 cities, finding that those with larger black populations rely more on fines and court fees to raise revenue. The average collection was about \$8 per person for all cities that get at least some revenue from fines and fees, but that rose to as much as \$20 per person in the cities with the highest Black populations. These findings persisted even after controlling for other factors, such as differences in crime rates and the size of cities.<sup>59</sup>

Four of nine Georgia counties that had near 10 percent or more of their revenue from fines and fees in 2019 or 2020 have a median household income that falls below the 25<sup>th</sup> percentile of all counties in the state.<sup>60</sup> At least two of those nine counties raised their share of fines and fees revenue during the pandemic, suggesting that Georgians in poverty with possibly already-crippling pandemic hardships were more likely to face either more frequent and/or higher fine and fee amounts to pay for public services that should be funded by all residents.<sup>61</sup>

Because of systemic policies and racial biases that perpetuate gaps across income and wealth, Georgians of color are likely to earn low incomes, which disproportionately place them at higher risk of living in communities that rely on abusive levels of fines and fees revenue. Additionally, of the 27 counties that increased their share of fines and fee revenue during the pandemic, 12 of them had shares that were higher than 36 percent Black, significantly higher than the overall 33 percent state share of Black Georgians.<sup>62</sup> Nine of those twelve counties had Black populations at least 40 percent or greater, while 3 of those 12 had Black populations greater than 50 percent.<sup>63</sup>

**Fines & Fees Disparities**



Source: GBPI Analysis of GA Department of Community Affairs finance data and ACS 5-year data.

Immigrant communities have also faced disproportionate shares of fines and fee abuse from municipal governments. Among the top 50 immigrant-populated cities in Georgia, in FY 2019, twenty-four had fines and fees revenue that were higher than the national average, which is 2 percent of total local revenue.<sup>64</sup> In FY 2020, nineteen had fines and fees revenue shares that were higher than the national average.<sup>65</sup> At least thirteen had shares that were at least 5 percent, or more than double the national average. Eight cities had shares that were at least 10 percent of total municipal revenue.<sup>66</sup> Three of those eight had shares that were more than 25 percent. And five of the top 50 immigrant-populated cities raised their shares of court debt revenue during the pandemic.<sup>67</sup>

These data paint a broad picture of fines and fees abuse that is much similar to that which is disproportionately imposed on non-immigrant Black communities, in which localities fill budget gaps through the cruel overreliance on low-income immigrant households facing the criminal legal system, and institute racially, ethnically or culturally biased citation practices that are disguised as safety needs. These harmful practices are problematic in many Georgia cities, including Clarkston and Doraville.<sup>68</sup>

Ultimately, state governing choices have led to Georgia being one of the worst states for fines and fee practices. This ranking is consistent with a 2017 U.S. Commission on Civil Rights report<sup>69</sup>—spurred by law enforcement atrocities and fines and fees practices in Ferguson, Missouri—that found that Georgia cities were disproportionately represented in the top 10 of all U.S. cities in fines and fees revenue as a percentage of all revenue. Several Georgia counties and municipalities rely on fines and fee revenue shares that are even larger than those in Ferguson, and just like Ferguson, widen gaps in public trust among everyday Georgians. These practices not only violate the fundamental public finance concepts of an equitably shared responsibility for funding government but perpetuate long-established barriers to economic prosperity for Georgians of color.

## **Conclusions and Policy Recommendations**

Simply put, the constructs of Georgia's fines and fees system are racist. They maintain a spiraling prison of debt that often traps Georgia's most economically vulnerable individuals and families, which fall along the fault lines of race and ethnicity, and exacerbate historic inequities across those same lines. The multitude of harmful effects are much akin to those of the slavery and sharecropping periods of Georgia's past. They are also part of a failing revenue structure that harms the economic vitality of local governments, too often cornering them to rely on revenue from those who cannot pay, therefore increasing costs paid by the public when local courts jail and punish defendants for simply being poor.

These practices inflict long-term, if not permanent, damage to a segment of Georgia's workforce that could otherwise be significant players in local and statewide economic growth. To change this trajectory, state and local policymakers must realize that racial equity and revenue generation are not mutually exclusive. Better safeguards that mutually protect people and the functioning of local and state government, can begin at the state level by:

- Firmly capping local government fines and fee revenue.
- Creating racial and ethnic equity guidelines for local ordinance creation, including standards that ensure that localities take formal steps to gather public input from diverse racial and ethnic populations, particularly for localities that do not have political representation that reflects the diverse communities that they govern.
- Requiring counties and municipalities to provide data on how much uncollected fine and fee debt is owed, to better assess the costs and effectiveness of collection efforts.
- Expanding the state sales tax to include taxation on a larger range of services, which can incentivize local governments to end the harmful practice of budgeting for fines and

fees revenue that often leads to aggressive citation and collection practices that widen racial and ethnic inequities.

- Enabling provisions that protect local governments from state mandates that are not accompanied with corresponding funding, which will remove pressures and incentives to heavily rely on fines and fees revenue.
- Prioritizing state funding to ensure that local courts have training that allows municipal government branches to function independently and utilize checks and balances that maintain a prioritization of justice over revenue.
- Reducing the number of fines and fees that are charged, which can reduce hardships for Georgians experiencing poverty, as well as the reliance on this form of revenue to fund courts and public services.
- Ending the requirement of full payment of fines and fees before releasing the suspension of a driver's license.

By maintaining the status quo, state lawmakers would be making a harmful choice, foregoing a necessary reimagining of how state and local governments can generate revenue and protect low-income Georgians from lifelong hardships because of abusive fine and fee practices. Continuing to ignore these harms will only uphold a significant part of an unjust criminal legal system, deepen longstanding public distrust, continue historic and disparate harms to Georgians of color, perpetuate recidivism by trapping a largely untapped workforce into unemployment or underemployment and bar countless Georgians from prosperity.

## Endnotes

<sup>1</sup> Sibilla, N. (2019, August 29). Nearly 600 Towns Get 10% Of Their Budgets (or More) From Court Fines. Forbes. <https://www.forbes.com/sites/nicksibilla/2019/08/29/nearly-600-towns-get-10-of-their-budgets-or-more-from-court-fines/?sh=6e1dab554c99>

<sup>2</sup> Menendez, M., Crowley, M., Eisen, L., Atchison, N. (2019) *The Steep Cost of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties*. Brennan Center For Justice. Pg. 6.

<sup>3</sup> Ibid, pg. 6

<sup>4</sup> See <https://www.courttrax.org/legislation.asp> for a list of various Georgia legislation that pertain to fines and fees assessment and collection.

<sup>5</sup> *Establishing the Georgia Colony, 1732-1750*. Library of Congress. Last Retrieved on November 8, 2021, from <https://www.loc.gov/classroom-materials/united-states-history-primary-source-timeline/colonial-settlement-1600-1763/georgia-colony-1732-1750/>

<sup>6</sup> *The New South and The New Slavery: Convict Labor in Georgia*. Digital Library of Georgia. Last Retrieved on November 8, 2021, from <https://georgia-exhibits.galileo.usg.edu/spotlight/convict-labor/feature/the-convict-lease-system>

<sup>7</sup> Bannon, A., Nagrecha, M., Diller, R. (2010) Criminal Justice Debt: A Barrier to Reentry. *Brennan Center for Justice*, pg. 19

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<sup>40</sup> Legal analysis from Institute for Justice report from April 30, 2020, under Category A1 of "Category Ranks" section, finding Georgia's statutory code allows for local governing frameworks that could justify citation practices influenced by monetary and/or anti-Black, anti-Hispanic or anti-immigrant sentiment, similar to what a federal DOJ investigation found in [Ferguson, MO citation practices in 2013](#).

<sup>41</sup> Legal analysis from [Institute for Justice](#) report from April 30, 2020, under Category B1 of "Category Ranks" section. Furthermore, budgeting for future fines and fines revenue can create or embolden aggressive enforcement and collection practices among local governments and private probation companies seeking to meet revenue quotas.

<sup>42</sup> Legal analysis from [Institute for Justice](#) report from April 30, 2020, under Category B2 of "Category Ranks" section.

<sup>43</sup> Cash-strapped local governments with limited revenue raising options [are more likely](#) to use private probation companies to collect court debts as a means of reducing collection spending on court clerk and public probation staff.

<sup>44</sup> Legal analysis from Institute for Justice report from April 30, 2020, under Category B6 of "Category Ranks" section. Under current statutory law, if Georgia requires municipalities to furnish new or additional services without corresponding funding, municipalities can face greater fiscal stress and pressure them to turn to levying greater fines and fees on people.

<sup>45</sup> *Ibid*, under Category B7 of "Category Ranks" section. Because current state law does not require full judicial independence at the local level, a mayor or city council member could influence judicial fines and fee practices because of their power to appoint or remove judges.

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