



## Costs and Fees Charged To Indigent Criminal Defendants In Philadelphia County

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Recent reports and publications have highlighted the fact that costs and fees are allocated to defendants in criminal cases even when it is clear, because of their indigency, that they will never be paid. Even after the offender has completed the sentence imposed by a judge, those fees and costs remain an unpaid debt, chaining the defendants to their pasts and denying them a future.

Since its founding in 2011, Philadelphia Lawyers for Social Equity (PLSE) has been representing low-income clients seeking to have non-conviction data and summary offenses expunged from their criminal history records. This paper reports on the results of the study we performed on the “debts” that the Philadelphia Criminal Court still lists those clients as owing.

### Context

Pennsylvania State Treasurer Joe Torsella opened the discussion with an op-ed published by the *Philadelphia Tribune* on August 18, 2020, in the context of how police departments were funded.<sup>1</sup> He wrote:

Too often — and especially during economic downturns — some governments turn to using court fines and fees to make budget. It refills their coffers, but at the direct expense

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<sup>1</sup> “How local governments raise money can impact use of police force,” [https://www.phillytrib.com/commentary/torsella-how-local-governments-raise-money-can-impact-use-of-police-force/article\\_87e352f1-3a79-5022-a05b-27e7c8b3c190.html](https://www.phillytrib.com/commentary/torsella-how-local-governments-raise-money-can-impact-use-of-police-force/article_87e352f1-3a79-5022-a05b-27e7c8b3c190.html)

of lower-income and minority communities, and in a way that dramatically increases the odds of conflict between police forces and the citizens they exist to protect.

On December 18, 2020, the ACLU of Pennsylvania issued its report on a ten-year study it had done on fines, costs and restitution in Pennsylvania.<sup>2</sup> Among other things, it found that “most of the fines, costs, and restitution imposed in Pennsylvania go uncollected, even after a decade.” Calling court costs “taxes placed on criminal defendants to generate revenue, which have a strikingly disproportionate impact on indigent defendants,” the report noted:

Not only is this debt obligation a stressor in and of itself—and a barrier to reintegration, particularly for individuals leaving prison—its existence can trigger numerous collateral and legal consequences, including incarceration, which makes it more difficult to leave the criminal justice system behind and move forward with life.

The year ended with the publication of an article in the University of Michigan Law Review that reported on a national study demonstrating how people once involved with the criminal justice system remain chained to their offenses long after they have completed their sentences:

These findings suggest that tens of millions of Americans are stuck in a paper prison, held back by deficiencies in the administration of second chances that have left them incarcerated, disenfranchised, or burdened by convictions beyond what the law requires.<sup>3</sup>

### **PLSE’s Fees and Costs Study**

Pennsylvania law allows judges to expunge (erase) criminal charges that have not resulted in a conviction, as well as convictions for “summary offenses” after a certain number of years have passed. PLSE provides free representation to low-income Philadelphians in expungement proceedings and defines “low-income” as being part of a household where its total

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<sup>2</sup> **Imposition and Collection of Fines, Costs, and Restitution in Pennsylvania Criminal Courts: Research in Brief**, [Imposition and Collection of Fines, Costs, and Restitution in Pennsylvania Criminal Courts: Research in Brief | ACLU Pennsylvania \(aclupa.org\)](#)

<sup>3</sup> **America’s Paper Prisons: The Second Chance Gap**, Colleen Chien, <http://michiganlawreview.org/americas-paper-prisons-the-second-chance-gap/>

income is less than 200% of the federal poverty line.<sup>4</sup> The Philadelphia Court of Common Pleas allows people seeking such relief to proceed *in forma pauperis*, that is, without having to pay any filing or other court fees.<sup>5</sup>

The purpose of this research project was to determine the what the Philadelphia Court of Common Pleas is reporting today as to the amount owed by PLSE's clients in the criminal prosecutions against them.

### **Collection Criteria**

The court records all moneys owed by a defendant on the docket of the case in which those sums originated. The dockets include money owed as a result of the sentence imposed by the judge in the case – restitution owed to a victim, fines owed to the state – as well as from fees and costs allocated to the proceeding as a result of some law, rule, regulation or procedure that applies generally to all cases filed in the court.

The data collected in this study only include costs and fees and does not include any fines or restitution. They were obtained from the docket sheets of the cases in which PLSE filed expungement petitions at the time those petitions were filed, and only in cases where the client had been convicted of at least one offense.<sup>6</sup> Finally, the data were collected only for cases that

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<sup>4</sup> Regulations of the federal Legal Services Corporation, which funds poverty legal organizations around the country, permit local legal aid programs to use 200% of poverty guidelines as their eligibility standard when individuals are seeking to obtain or retain government benefits, or when the cost of unreimbursed medical expenses, fixed debts and obligations, and employment-related expenses do not financially permit the engagement of private counsel. 45 C.F.R. § 1611.5.

<sup>5</sup> The Rule that allows this is a rule of *civil* procedure, Pa.R.Civ.P 240, which allows indigent people access to the courts as either plaintiffs or defendants despite their inability to pay the costs of litigation. There is no similar rule of *criminal* procedure. The Supreme Court's Rules Committee is currently considering a proposed Rule of Judicial Administration that could apply the civil rule to criminal proceedings. The Court has not announced any date by which the report on such a proposal will be concluded.

<sup>6</sup> In cases where the arrest and prosecution ended in no convictions, clients obtain a "full" expungement and the whole record is erased by the expungement, including the fees and costs that had been assigned to them. It is only where there is at least one conviction that the record remains, along with all of the charges associated with it (restitution, fines, fees, and costs).

were filed in calendar year 2013 and earlier, making all of the costs and fees at least eight (8) years old.<sup>7</sup>

### Method

PLSE's electronic content management system allows for accurate and efficient scraping of data. At the time legal services are rendered, each client has every one of their court dockets obtained from the court and stored in their individual electronic file. The final page of each docket is a financial summary listing all sums recorded by the court as being due in that proceeding.

Data from each case docket was inserted into a secure spreadsheet for aggregation. The spreadsheet consisted of the following information: client name, docket number, case disposition date, date of last payment, grand total, and amount outstanding. The grand total represents the amount owed before any adjustments or payments were recorded. The amount outstanding represents the amount a client was recorded as owing after any payments or adjustments. A list of the fees and costs charged to our clients can be found in the *References* section below.

### Results

In the course of this study, **1,743** individual dockets were reviewed involving **605** PLSE clients. For them, a total amount claimed to be owed is **\$1,007,251.27** – **an average of \$1,664.88 per client**. Because every one of PLSE's clients is indigent, there is no possibility that such a sum could ever be paid – often, in large part due to the fact that that same criminal conviction is keeping the client from obtaining a better-paying job.

The oldest disposition date – that is, the date on which the judge imposed the final sentence – is more than 40 years ago: August 4, 1981. The client in that case still has an amount

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<sup>7</sup> Court dockets uniformly reflect the year of filing. For example, this docket CP-51-CR-0004916-2013 refers to a criminal proceeding filed in the Court of Common Pleas ("CP") in Philadelphia County (county no. 51) in 2013.

claimed due of \$40. It is likely this debt appears on the client's credit report. The typical client has a claimed debt in the range of \$400-\$600. The greatest amount claimed by the Court to be owed in fees and costs in a single case is \$4,942.50, while the lowest amount owed is \$0.20.

Certain clear patterns emerge from the data. If a client ever began making payments towards their outstanding balance, they continued to make payments for a few months, but eventually end up defaulting. The payments typically made are very small, both in amount and relative to their outstanding balance. Very few payments were made at any time after 2017.

### **Conclusion**

There is no doubt whatsoever that any business would have written off these "debts" as uncollectible, and that no rating agency would ever consider them as an asset.<sup>8</sup> Four years after collection efforts failed, their collection would be barred by the statute of limitation.

How is it, then, that these costs – permanently chaining these low-income defendants to the worst things they have ever done in their lives, and holding them back from moving forward with housing, education, and upward mobility – remain asserted as an amount due by the institution that is society's guardian of civic and social justice?

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<sup>8</sup> See PA State Treasurer Joe Torsella's op ed, supra at n.1.

*References*

**Costs and Fees Data Project – data spreadsheet**

<https://docs.google.com/spreadsheets/d/1SBHler7ZHtdbYdrjg0vZIBKKDGTDWqb9rsYjJ8CSSVg/edit?usp=sharing>

**Costs and Fees Surcharges**

Automation Fee (Bucks)	State Court Costs (Act 204 of 1976)
Booking Center Fee (Bucks)	Commonwealth Cost - HB627 (Act 167 of 1992)
Certification (Bucks)	Crimes Commission Cost (Act 96 of 1984)
Information Service Fee (Bucks)	County Court Cost (Act 204 of 1976)
Law Library (Bucks)	Costs of Prosecution - CJEA
Misd. & Felony Before Trial (Bucks)	Crime Victims Compensation (Act 96 of 1984)
Postage (Bucks)	Domestic Violence Compensation (Act 44 of 1988)
Sheriff Fee (Bucks)	Victim Witness Service (Act 111 of 1998)
Sheriff (Delaware)	Judicial Computer Program Surcharge
Sheriff Apprehension (Delaware)	Firearm Education and Training Fund
Bail Handling Straight (Delaware)	Judicial Computer Project
Clerk of Courts - Misdemeanor (Delaware)	Access to Justice
Prison (Delaware)	CAT/MCARE/General Fund
Office of Judicial Support Fee (Delaware)	Emergency Medical Services (Act 45 of 1985)
Constable (Delaware)	Substance Abuse Education (Act 198 of 2002)
Bench Warrant (Delaware)	DNA Detection Fund (Act 185-2004)
Community Service - Adult (Delaware)	Criminal Justice Enhancement Surcharge
	Restitution Recovery
	Costs of Prosecution - CJEA
Clerk of Quarter Sessions Fee (Philadelphia)	
Lien Filing (Philadelphia)	
Collection Fee (Philadelphia)	
Booking Center Fee (Philadelphia)	
Criminal Lab Fee (Philadelphia)	
Motion Filing Fee - Expungement (Philadelphia)	
Attorney Collection Fee 4 (Philadelphia)	
DUI Lab Fee (Philadelphia)	
CQS Fee Misdemeanor (Philadelphia)	