



OKLAHOMANS FOR CRIMINAL JUSTICE REFORM

Oklahoma House of Representatives
Judiciary-Civil
Committee

September 8th, 2021

Interim Study Report:
Fines & Fees in the
Criminal Legal System in
Oklahoma

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The following report is a compilation of testimony, research, and findings from the Fines and Fees Interim Study requested by Representative Danny Williams

The following report is produced by Oklahomans for Criminal Justice Reform, Inc. Oklahomans for Criminal Justice Reform is a 501(c)3 with a mission to serve as a catalyst for systemic change in Oklahoma's criminal legal system to promote just and appropriate accountability while reducing mass incarceration and its generational harm to families. We are dedicated to providing the most up to date news and research on criminal justice reform in Oklahoma.

The Oklahoma House of Representatives heard an interim study to review funding for the Oklahoma Court System, focusing on district courts on September 8th in the Judiciary-Civil Committee requested by Representative Danny Williams. This report compiles the information that was presented by the various experts from across the United States.

Panelists included: Jari Askins the Oklahoma Administrative Director of the courts, Oklahoma County Judge Natalie Mai, Tim Laughlin the Executive Director of the Oklahoma Indigent Defense System, Seminole County Judge Timothy Olsen, Damion Shade the Project Manager at Prosper OK, Max Cook a District Attorney for Creek and Okfuskee counties, Greg Mashburn a District Attorney for Cleveland, Garvin and McClain counties, and Steve Lewis, a former speaker of the House and a former United States attorney for the Norther District of Oklahoma

The study pulled together experts and research and best practices from across the state on this topic. We have compiled the testimony into this report that deep dives into the research and takeaways presented to the committee.

[WE RELY ON FEES] TO KEEP LAW ENFORCEMENT ENTITIES, VICTIMS RESOURCES, TRAUMA TREATMENT CARE, MENTAL HEALTH RESOURCES, CRIME REDUCTION RESOURCES [RUNNING] AND [FOR] COURTS TO KEEP THE LIGHTS ON. - DAMION SHADE OF PROSPER OK



Introduction

Representatives Danny Williams, Chris Kannady, Justin Humphrey, and Bob Ed Culver held an interim study Tuesday to review funding for the Oklahoma Court System, focusing on district courts.

Representative Danny Williams gave opening remarks stating, “I appreciate all of you being here today. This is kind of an exciting moment for me. It started in my Sunday school class where I have recovering addicts and we’ve had lengthy discussions over fines fees, funding, and the issues. We’re going to look at things because I think we’ve been in a condition that needs to be addressed.”

He went on after to say, “[the] study highlighted how inefficient the fines and fees system is in Oklahoma’s courts,” Representative Williams said. “Our public servants are burdened with the impossible task of trying to collect money that we will never see, and it’s on taxpayers’ own dime. It’s time to consider potential avenues for a new approach that saves time and taxpayer dollars while ensuring people who commit crimes are fairly punished.”

“Fines are a necessary part of punishment for crimes, but the fine should not be worse than the crime itself,” Representative Kannady said. “We are working to find a balance between fines that are appropriate and fines that are unnecessarily punitive, while also seeing how state appropriated dollars can help balance out the system.”

“Oklahomans accept that people who commit crimes should pay fines and fees as part of their punishment,” Representative Humphrey said. “But right now, we’ve got a system that indebts people to the point they can never return to being contributing members of society. This leaves the taxpayer paying the higher cost of incarceration. This study will give us ideas of how to make the court system work for society not against it.”

“Under the current system, we run the risk of perpetuating the problem we are trying to solve,” Representative Culver said. “The goal for any person who gets in trouble with law enforcement should be to rehabilitate them into productive members of society. If they are constantly indebted to the court system, that makes it much harder to move on with their lives. It’s important that we in the Legislature work with experts to determine if state-appropriated dollars can help fix some of the issues we are seeing.”

A

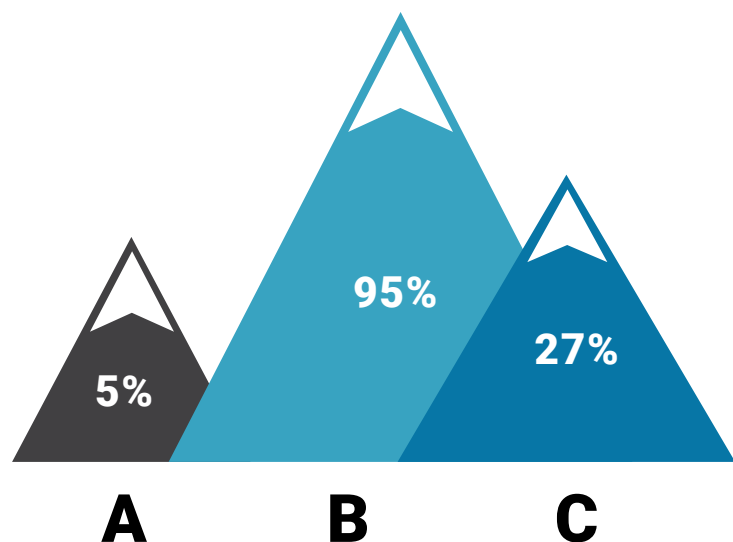
5% of the budget for the courts and the District Attorney’s offices came from the general fund in 2016.

B

95% of the courts & District Attorney’s offices were funded on the backs of criminal defendants through assessed fines and fees.

C

27% percentage of people with prior criminal justice involvement that are unemployed. People who struggle to find employment will be unable to make monthly payments on their court debt.





DAMION SHADE

Damion is the Project Manager at Prosper OK. Prior to that he was the Criminal Justice Policy Analyst at the Oklahoma Policy Institute. Prior to joining the Oklahoma Policy Institute, he was an educator at Jenks Public Schools and the Oklahoma School for the Performing Arts.

“[The Administrative Office of Courts has] seen these consistent fluctuations in their funding amount and they’re constantly coming back to you for supplemental appropriations to fill in those gaps. Think about the first point I made: this is an essential service of the government. We cannot imagine an Oklahoma bereft of these services so what it says to district attorney’s offices and to individual organizations that are living off of these funds is in bad years, what we need to do is try and raise those fee collections in some ways.”

My name is Damion Shade. I’m the project manager for a new project at Oklahoma Policy called Prosper OK which is basically a project focused on the economic impacts of the justice system and the way that they affect communities, rural and urban, across the state of Oklahoma. A big piece of my presentation is focused on sort of the unseen costs. My piece is really focused on three questions:

1. How Oklahoma law enforcement and courts are harmed by what we like to call the “Netflix funding model”;
2. How this perverse funding scheme harms Oklahoma families and communities; and
3. How Oklahoma could better serve law enforcement, courts, and communities, by adequately funding courts.

So to the first question: How Oklahoma law enforcement and courts are harmed by the “Netflix funding model.” Everyone knows what Netflix is, the streaming service that basically utilizes a user fee. The sort of user fee for the purposes of allowing that service to make money to continue building revenue. Unfortunately we have relied too greatly on this sort of fee for service model to keep both law enforcement entities, victims resources in some cases, trauma treatment care, mental health resources, crime reduction resources, and also importantly here, courts to keep the lights on. This means judges, prosecutors, court staff, and court services are dependent on these user fees for their survival. This creates a question: is the court a core function of government? Can we imagine an Oklahoma bereft of courts? No courts, no judges, no prosecutors, no public defenders. Could we imagine a situation where it all went away? If we can’t do that and I can’t do that, I can’t imagine an Oklahoma without a court system, without some prosecutors, without some judges, without a basic base of public safety, then I would argue that courts are an essential function of government. They are a baseline need that we must always invest in but for the purpose of public safety, of protecting the public, of making our families and communities stronger, and of building the resources for our communities and our justice system to thrive.

There’s an economist from Clemson who likes to say, in talking about criminal court fines and fees, that we don’t fund our firefighters on a piecemeal basis, right? We don’t fund our firefighters based on the severity or the intensity of fires. We fund our firefighters because what they do contributes to the public good. It contributes to public safety. Could you imagine the perception that the public might have of firefighters if they thought these folks make money from every serious fire? That they are incentivized to produce more fires and they are incentivized to allow some fires to burn out of control. Everyone would say that was perverse and everyone would say it is a shame to do that to firefighters - public



servants who are putting their lives on the line to protect my family and your family. Yet we do this with sheriffs and deputies and law enforcement agencies and these well-functioning and hard-working court administrators like the AOC and the other individual groups that have been represented here.

This is one of those quotes that I really cannot highlight enough; this is from my Tulsa County District Attorney Kunzweiler: "The idea that a DA has to be collecting fees on the backs of people they're prosecuting is simply immoral."

This is a person who believes in public safety, this is a person who believes in the public good, who believes in defending victims, defending law enforcement, and he's saying that this thing, this fee for service model, this "Netflix Model" that we rely on to keep the lights on in courts, is fundamentally immoral. Think of that and keep that in your context because something that economist from Clemson said as well that stays in my mind during this whole conversation. When we think of economic incentives they work on people's minds unconsciously right? You don't need to consciously know that you may or may not be acting on the basis of a financial incentive for that financial incentive to affect you. It's something I've heard DA Kunzweiler speak about with great passion. The idea that any of his prosecutors might be swayed by a belief that they're making more money because of some charges that are attached to a criminal defendant is just morally reprehensible.

Think about what it does to the community that is on the other side of those charges. Think about what it does between the trust that defendants and the communities have to have for judges and law enforcement. So in law enforcement and courts we are seeing real harms to this system. Forcing courts to rely primarily on criminal court fines and fees leads to an underfunded court system with perverse incentives.

Think about what was just presented to you by the Administrative Office of Courts over the past decade. They have seen these consistent fluctuations in their funding amount and they're constantly coming back to you for supplemental appropriations to fill in those gaps. Think about the first point I made: this is an essential service of the government. We cannot imagine an Oklahoma bereft of these services so what it says to district attorney's offices and to individual organizations that are living off of these funds is in bad years, what we need to do is try and raise those fee collections in some ways. [*note: Oklahomans for Criminal Justice Reform has requested the information provided by the Administrative Office of Courts and this report will be updated if and when materials are provided.] What it says to the members of these bodies is that they need to be doing things to put pressure on the system to raise revenue. We force these members that hold the public trust for our safety, to act as collections agents. We force police officers to act as collections agents. Think about this, the time police spend enforcing failure to pay warrants is time not spent investigating and preventing serious crimes. Every minute they spend chasing down a failure to pay warrant is a minute they're not going after the bad guys. I'm friends with a number of police officers and I can tell you not a single one of those individuals became a police officer thinking I'm going to take poor people to jail. I'm gonna find some people who haven't paid their fees and that's what I'm gonna drive around doing.

We've found by our investigation and our data examination at Oklahoma Policy from 2018 to 2020 more than 40,000 failure to pay warrants issued in Tulsa and Oklahoma County alone.

We have seen, because of the pandemic, some remarkable and very positive changes that have been enforced by folks in Oklahoma County and Tulsa County to try and reduce some of those burdens. However, even in the context of this devastating global pandemic, endemic rates of poverty are going up. Huge rates of unemployment, particularly among justice involved populations. We still see police and law enforcement forced to take their precious time and utilize it to chase down these warrants.

Finally, studies have shown that in some counties it costs \$1.17 to collect every dollar of fee revenue, effectively wasting tax dollars to collect court fees. Can you imagine that we are doing this all in the idea of fiscal responsibility? We're going to charge taxpayers less and instead we're going to take this regressive tax and put it on essentially low-income criminal defendants but we're not even making fiscal sense when you have people sitting in jail, which doesn't happen as much in the larger counties, but you're still seeing it across the state of Oklahoma. People sitting in jail to pay down their \$50 obligations. When you see jails filled with people who are only there because they're poor, now you've combined a public health risk with a waste of county resources and a waste of tax dollars for people who serve no public good being incarcerated.

This chart [image requested] is a great sort of illustration of the way that the state judicial revolving fund that she was just speaking of and sort of the general revenue dynamic changed between 2001 and 2016. As you can see general revenue made up less than 5% of appropriations to district courts in Fiscal Year 2016 [dictated FY16]. That's down from a high of 44% in FY2003. I often say: if we could just get back to the good old days of 2003, a space when about nearly 50% of this system was funded by revenue from actual collections that were being appropriated to courts. I love the fact that you all are going to work on a sort of a stepping down plan to try in a phased and deliberate way to get rid of these obligations but



let's keep clearly in our mind that in the relatively recent past the legislature was paying for almost half of this system. If that was possible then there are no reasons why we shouldn't be able to do it again.

The other really important piece to see here is criminal fee collections and this is fees specifically, we're not talking about fines, we're not talking about other pieces of the court cost picture, but fees specifically, have flatlined since 2003. Our data shows that since 2014, we've seen a doubling in civil court collections. We've seen those fine collections double but we've seen these fee collections relatively flat for decades now and the reason that we believe we've seen this is because 80% of criminal defendants are indigent. That is they're the poorest people that exist in our rural and our urban communities. There is a theoretical limit to how much they can pay and even as we've added new collections each time there was an economic downturn. During the 2007 crisis that we saw in our income tax changes in the early 2000's, each time that we've seen this, the legislature adds more fees. Seventy percent of the fees that we assess in the criminal collection system are never paid. They can't be paid because they're coming from the poorest communities.

From 2012 to 2018 more than \$630 million in court debt remains outstanding from that time period. Think about what that means for courts: that's \$630 million that was meant to keep the lights on for those 77 court clerks across the state, for those judges, for those prosecutors, for those law enforcement resources. That's larger than the annual appropriation on average for the Department of Corrections every year for the past decade. They average about \$500 million a year in their regular appropriation for the DOC so you're talking about more than a state agency of debt hanging over these low-income communities. The poorest people in those communities and that becomes driver's license suspensions, that becomes failure to pay warrants that take moms and dads to jail, that becomes revocations that can send people back to state prisons if these are individuals that might have been on a supervision sentence. That's \$630 million of misery distributed across Oklahoma and particularly harming these law enforcement and court services that are again essential services of government.

How this perverse funding scheme harms Oklahoma families and communities is connected to how it is harming law enforcement. If it's harming public safety, if it's incentivizing the wrong things, and breaking the trust between the community and these vital public safety agencies, what else is it doing?

Between 1992 and 2016, the fine, that is the criminal penalty for speeding 20 MPH over the speed limit, increased \$5. So I mean I've gotten speeding tickets, I'll be honest, and when I paid my speeding ticket, I did not pay \$35. Here you can see \$39 for assorted court costs, there's the Oklahoma Court Identification System, there's the DPS patrol vehicle fund, there's DA council prosecution assessment, which must be a tax for the pleasure of being prosecuted by the State of Oklahoma, there's an Attorney General Victims Assessment. Also, the Attorney General Victim Services Unit, the District Court Administration fee, and on and on and on, there's even a law library fee, which is fascinating to think of that being attached to every speeding ticket that goes out in the State of Oklahoma. All this is because we have not given courts the money they need to function.

Costs for speeding 20 miles over the limit have risen nearly 150% since 1992 and that's fees again, it is not the criminal penalty. We are not making a public safety argument in any of this process. We're not saying you did wrong and you need to pay more to the state on the basis of the wrong you did. We are simply saying we need more money and these are the fees that we want you to pay so that we can collect those funds.

This next piece is a slide of an actual criminal court case obviously we've blocked out the personal information. This was a woman who was experiencing homelessness with significant mental health issues. Her total cost for a small amount of meth possession and some other low-level offenses non-violent offenses was more than \$3,400 and you see she has a payment plan here to pay this amount. How in the world does this person who we knew was experiencing homelessness, who we knew was experiencing significant mental health and substance use issues - struggling with addiction. How is this individual supposed to pay thirty four hundred dollars to the courts? How is this a burden that isn't going to make it more likely that this individual turns back to addiction? More likely that this person doesn't seek treatment and isn't able to afford and pay for the treatment that the court says they desperately need?

The unemployment rate for justice involved Oklahomans is five times higher than the state average. So we're talking about 27% to 30%. Unemployment rates for these justice involved Oklahomans, this massive gap in their ability to earn wealth just because they have a criminal record, when you compound that with these failure to pay warrants and destructive per capita debt assessments across the state, the difference can be paralyzing for whole communities.

It's really in rural Oklahoma also, this isn't just a big city problem. Look at this chart - the per capita fines and fees assessments for all of these rural counties in yellow - are significantly higher than the assessments that we see in urban counties. We can also see that the amount paid in many of these counties is significantly more than the amount paid in most of the urban counties. That means rural counties are effectively subsidizing the fines and fees systems in the urban counties by millions of dollars. In Lincoln and Creek counties, from 2012 to 2018 more than \$23 million of criminal court debt is hanging over those two very small counties. More than \$23 million of these assessments move forward and in urban counties we can literally see racial disparities being built right in the middle of this. That's my county of



Tulsa, Oklahoma. The places with the largest black residents see a profound disparity in failure to pay warrants, the amount of court debt per capita, and per citizen, in those areas. We can see some predominantly black low-income Tulsa neighborhoods reported police stops more than a hundred times that of predominantly wealthy white neighborhoods. Black Tulsans make up 17% of the city population but 35% of those arrested and a significant percentage of those arrested are on cost warrants.

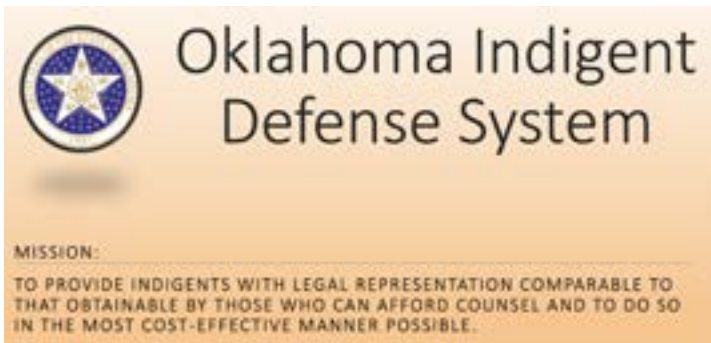
How can we better serve law enforcement courts and communities by adequately funding the system? The vast majority of this debt is never paid, less than a third collected. It's more than a hundred million dollars assessed in each of these and less than a third of that is actually being collected. We saw district courts collected \$81 million for their operations in FY2018. Criminal cases accounted for about \$30.8 million of those collections, just for the court fund.

Policy Recommendations:

- My recommendation is that we fund courts.
 - That we stop pretending that this is something we can do on a provisional basis.
 - Let's aim to return to FY2003 district court funding levels.
 - Let's end incarceration and arrest for failure to pay court fines and fees and then driver's license suspension.
 - Finally a last piece of this, let's abolish juvenile fees in this system as we talk about stepping this down.
 - For less than four million dollars we could abolish the piece of this that locks children into this system.
- This perverse system of fee for service for use in the system and I thank you all for your time.

"I often say: if we could just get back to the good old days of 2003, a space when about nearly 50% of this system was funded by revenue from actual collections that were being appropriated to courts. I love the fact that you all are going to work on a sort of a stepping down plan to try in a phased and deliberate way to get rid of these obligations but let's keep clearly in our mind that in the relatively recent past the legislature was paying for almost half of this system. If that was possible then there are no reasons why we shouldn't be able to do it again."





TIM LAUGHLIN

Tim Laughlin is the Executive Director of the Oklahoma Indigent Defense System.

"We also see inconsistent and unreliable funding which we've heard about already. We've seen the numbers, we know that nobody wants to base a funding mechanism for a big agency like the courts on the backs of indigent people. 80% of these folks are on the criminal side of things. We've also seen the misuse of court resources, the misuse of district attorney resources, the misuse of law enforcement resources, the misuse of my agency's resources in working with people trying to see if we can get them to a point where they can make their payments and show up for those dockets."

My name is Tim Laughlin and I'm the Executive Director of the Oklahoma Indigent Defense System. My agency represents indigent people in 75 counties. We do a few appeals in Tulsa and Oklahoma county, but primarily at the trial level. We serve the rural counties that were talked about a moment ago.

This problem has been 20 to 30 years in the making. This shift from appropriated fees funding going to the court system and other executive agencies and making up for it through the assessment of additional fines costs and other user-based fees. Basically, it's going to take a while to unravel this ball of yarn and so how do we fix it? I just want to say we can with a multi-year step of finding ways to remove executive agency fees and address fines and costs. To empower judges to make informed decisions on the assessment of fees and the establishment of payments. We can get back to a point where we have a more balanced mechanism for funding the court system as well as the executive agencies.

We've talked about fines, fees, costs, and assessments and we can mix those terms a lot. I think it's important to take a step back and look at what each one of these financial burdens on people really means and what they're meant to do. This shows you some of the list of horrors that have been talked about before. We see with the way the fee system is set up right now, you do see increased recidivism, as we just heard. People go out and they get to that - "to heck with it" point - because the overall amount that they owe is too much and their monthly payments can be burdensome. So they stop showing up to court or they go out and commit other crimes. It happens.

We also see inconsistent and unreliable funding which we've heard about already. We've seen the numbers, we know that nobody wants to base a funding mechanism for a big agency like the courts on the backs of indigent people. 80% of these folks are on the criminal side of things. We've also seen the misuse of court resources, the misuse of district attorney resources, the misuse of law enforcement resources, the misuse of my agency's resources in working with people trying to see if we can get them to a point where they can make their payments and show up for those dockets.

I was out in Kingfisher County a couple months ago and it's about two o'clock in the afternoon and I'm meeting with the judge there. The conversation started off really well and we're talking about this new office we set up and all this great work we're going to do. We got to about 2:30 or 2:45 and the blood started draining from his face and his energy got low. I said judge what's going on you know? I can tell you're kind of waning here and he's like I got a cost docket at three and you



can just see - he just hates them. The judges hate them. The cost administrators aren't thrilled with them. Public defenders aren't crazy about them. It's just a drain on the system.

So let's talk about the types of costs that we're dealing with here. Fines are punishment and it's important to keep that in mind. A fine is just like a prison sentence or a jail sentence. It's meant to punish somebody for committing a crime and they're appropriate but fines are kind of all over the place. There's a certain degree of discretion that can be had. Most fines are negotiated when you meet with the DA as a defense lawyer, but if there's not an agreement you can go to the judge and ask to consider a range of punishment or not assessing a fine at all. Fines can also be probated just like a jail sentence or a prison sentence.

Now restitution and I want to be very clear about this: restitution is for the purpose of making the victim of a crime who suffered a financial harm whole. I personally, in my agency, feel like restitution is sacrosanct and, in the statute it can be modified post-sentencing at times, but it's kind of restricted. It rarely happens. The proper time to address restitution is during a plea negotiation or through a hearing in front of a judge based on facts. If someone suffers an actual financial harm through someone else's bad act it's a perfectly appropriate mechanism to restore that victim of a crime to their previous position through the assessment of restitution.

Now costs and assessments. My friends at the District Attorney's Council like to remind us that costs are user fees assessments or user fees and it's appropriate. The idea is that, if on the civil side or the criminal side, you come into the court system and you utilize the resources of the court system and you know it's your action or you're responsible for the action that brought you there, you should restore the system's resources. That's perfectly appropriate as long as they're proper user fees.

Now if you take all these together, court costs, fines, fees, and restitution, a good way to refer to them are legal financial obligations as a blanket term. That gives us kind of an umbrella term to refer to them but it's important to keep the individual types of assessments and fines in mind and what their purposes are.

The Supreme Court has adopted a list of fees and there are quite a few of them. I guess the broadest way to talk about it is to break them down into court costs and executive agency fees. My own agency receives executive agency fees. The Oklahoma Indigent Defense System has built into our statute the fees for our services that can be assessed, starting at about \$150 per case up to a \$1,000. We've asked at various times to swap out those fees for appropriated funds and the DA's did the same thing with their supervision fees a few years ago.

Court costs are generally assessed against criminal defendants upon their conviction, to pay for the services of the court clerk, the court personnel, and other folks that run the system. If you want to look at a list of a lot of the court costs, it's found at title 28 section 153.

Jail fees are another type of executive agency fee and I'm going to talk about them specifically because it's a big part of the legal financial obligations that a lot of indigent folks end up having to face. Under the statute, the jail fee statute, which is found at Title 22, Section 979a, it says that each county that has a jail, and they all do, and each municipality that has a jail, and a lot of them do, can set their own daily fee for the cost of incarceration. It's supposed to reflect the actual cost of the jail and on average these fees come out to be about \$50 a day depending on where you look around the state. Some are higher, some are lower. Cherokee County for example doesn't assess a jail fee, to my knowledge, but on average they're about \$50 a day. Here's the problem with jail fees: in some counties you will see someone get arrested and you will see their bond be set at a level that they're not going to be able to make - it's just too high. Then you will see their first hearing date be put off further into the calendar year than it should. In one county we weren't getting to the preliminary hearing, which was really just a conference, for six months. Now we put an end to that, it's wrapping up, we got a new judge who's doing better, but this went on for years. So what you have are people incarcerated for up to six months at \$55 a day with all this cost building up. By the time you get to get them to a point where we finally get the plea offer and we finally talk to our client, they're so worn down they'll take pretty much any probated sentence that's thrown at them.

So they get out on probation with all these costs and fees, in this county for example, I called up to this county to look for one of my lawyers. She's a roving attorney and she was busy in court. The Court Cost Administrator picked up the phone and recognized my voice from me being up in Woodward for many years and she asked, "Is this Tim?" I said "Yeah, yeah", and she told me "It's Angie the Court Cost Administrator." I'm like "Hey Angie" and we just started chatting like old times. I said "You remember old so-and-so, one of my old clients?" I felt sorry for him, he had you know a bunch of non-violent felonies, drug stuff. I represented almost everybody in his family. Good guy just couldn't stay out of trouble. She goes, "Yeah he's going to be here this afternoon on his cost docket." I hadn't represented him for 20 years. He's still showing up on the cost docket up there and that should only apply to student loans, you know, only student loans should take that long to pay off.

There are also costs associated with probation. You got your ankle monitor, you got your UAs, you got your drug and alcohol treatment, and on and on and on. Any type of probation whether it's specialty court or straight up probation,



you're going to have a lot of extra costs that go along and these are basically executive agency fees they go to fund agencies that provide these services.

What we have in Oklahoma is - once people get through their sentencing or up to their sentencing, we have a mechanism for the enforcement of the payment of costs and fines and fees. All those legal financial obligations, we actually have two enforcement methods, you got probation and you got your rules of probation. If you get a probated sentence, a suspended sentence, a deferred drug court participation sentence and fail to make your cost payments, that can result, in some cases, in someone being revoked or having their sentence accelerated. It's not common but it does happen.

The primary mechanism for enforcing the payment of these legal financial obligations comes through the Rule 8 process. It's Rule 8.1 through 8.8 of the Court of Criminal Appeals Rules and the basic way it works is you got that first Rule 8 hearing, that is supposed to take place at, or before, sentencing. Well if you have someone who is going to discharge additional time, either prison time or jail time, it doesn't make a lot of sense to do that hearing at sentencing because you don't understand what their ability to make payments is going to be until they discharge their time. So they're usually given anywhere from 40 to 180 days after discharge to come back and do what we call a Rule 8 hearing and the term "Rule Eight" has become just kind of universal and ubiquitous for every cost hearing thereafter. Every hearing where someone shows up to make a payment, some counties call them pay or appear dockets, cost dockets, or a whole host of other things but they really all kind of fall under the rules of Rules 8.1 through 8.8. The ways to compel compliance if you fail to appear for a Rule 8: you can be arrested, if you fail to make payments, you can be arrested but generally courts do try to work with people. They try to lower payments here and there and **in fact what we're seeing in the rural areas is most people when they are arrested they're not really arrested for failure to pay. They're arrested for failure to appear at those dockets but the reason they fail to appear is because they were afraid they couldn't pay.**

This is a case everybody should read and should know about. It's supposed to be followed. It's written into our statute but it isn't always strictly adhered to. It's *Bearden v. Georgia*, the United States Supreme Court case. It says it's unconstitutional to incarcerate people for failing to pay unless you can prove that their failure to pay on these legal financial obligations was willful. It can't be because you're poor. It can't be because you can't make your payments because of other obligations. It has to be a willful failure to pay and you know my agency, we're the subject of litigation right now in one county, along with the judges, over these types of issues. There could be legislation that could reinforce the judge's understanding of the mandate of *Bearden v. Georgia*, so they know that you can't move forward to incarcerating people until you make a finding that there was a willful failure to pay those court costs and other obligations. [Editor's note: SB 951, run in the 2021 general legislative session requires the court to make a finding of willfulness in accordance with the *Bearden v. Georgia* standard]

The fines and fees used to fund the court system could be eliminated and replaced with state funding. We do need to look at these agencies, these executive agency fees, including my own. We need to look at all of them and start a process of evaluating are these fees really going to fund the agency? Are they needed? My agency is easy to defend because we do so little as far as our mandate goes and our budget's pretty simple. Bigger agencies? I don't know, I have no idea, but we do need to look at these executive agency fees and start weaning ourselves off of these and finding ways to appropriate funding when necessary for those agencies.

Also the legislature can mitigate or eliminate the compounding costs and fees when defendants fail to appear for cost dockets. In other words, what we see is, once people are on a cost docket and they fail to appear, then they get charged for being arrested and booked in and the fees start to compound over time. I think if we get to a point where we're not doing that, it'll stop that snowball effect that many of our citizens suffer under. The legislature could also pass legislation requiring courts to use summons as opposed to arrest warrants for encouraging people to appear when they've missed court cost dockets. In other words, a summons would be noticed and a lot of people would respond to those and that would help us eliminate the additional costs that are associated with actually sending deputies or police officers out to arrest people.

The legislature could encourage the suspension of fines for non-violent offenses. This would encourage the probationer to avoid the imposition of the fine amount by remaining compliant with his or her cost obligations. In other words, it's going back to judges at this point.

The basic statutes for fines in the state is one that says there's a fine for misdemeanors and fine for felonies. It's not egregious, but then there are a whole host of other fines that carry up to \$500,000 depending on what it is, and who



you steal from, and what you steal. I recommend you do not steal oil filled equipment because that is one of the most heavily fined offenses. I saw this just last week, a twenty five thousand dollar fine for a crime, and two thousand was due and another twenty three thousand was suspended. That's kind of an extreme example but I think if judges have more latitude to suspend even smaller fines, it would give an incentive for people to comply with their rules of probation and make those payments without having the full amount of the fine due.

There should probably be a cap on jail fees. Right now there is no official cap. Some judges capped their fees at about four thousand dollars or three thousand dollars. Some, like I said, don't assess jail fees but at some point we might consider imposing a cap on jail fees because that is one of the biggest components of legal financial obligations.

Some counties charge in excess of the state average on jail fees. We have some counties where I've had a District Judge call me up and say your attorney should argue more about fines. I've talked to the DA. They're not going to pull the deal, the plea offer, with regard to the amount of time to do so but if you make an argument on fines I'll consider it. I've had some Judges tell me on jail fees, that if your client is mentally ill, and we do this on a regular basis under the jail fee statute, you are exempt from being assessed jail fees. That's what the statute says. It doesn't say the judge may not impose jail fees on you if you suffer from a mental illness, under that statute it says, you are exempt. We've had judges respond well to that in certain areas and then we've had judges in other areas that say my interpretation is: are you suffering from the mental illness now? In other words, are you suffering from the symptoms now and using that as an excuse to still impose jail fees. I don't know that that's a fair reading of the law. I don't think it is. I don't think you stop being mentally ill. I think being mentally ill is a class of individual that the legislature set out to protect in this statute but this is the kind of pushback that we see, day in and day out, in the trenches trying to advocate for a lower cost for our clients.

Where does the money go in the court system? I can only account for my agency. We get an average of \$1.3 million, give or take, in what we call OIDS fees. We get a variety of statements from the court clerks showing us where this money came in and who it came from. Some are pretty detailed. Some show us on a case-by-case, line-by-line, basis. Fifty dollars from this client, thirty dollars from this client, but I don't know the breakdown. I don't know every time a defendant pays a forty dollar fee, what portion goes to what agency. I'm sure there's a program for that but I can just say that as far as that assessment that's what comes to us and that's what we get.

What formula can be developed to make a consistent system across the state which allows people to fulfill their financial needs in the court system and not bury them in debt? Identify the executive agencies and substitute those fees where possible with appropriated funds. We visited about that under Rule 8. Compel courts to more strictly comply with *Bearden v. Georgia*, and there may be some rules that can be adopted to take additional time to find out who truly cannot pay versus who is simply unwilling to pay.

Next, broaden the court's authority to mitigate the overall amount owed in legal financial obligations. There's already some authority in the sentencing statutes that allows for this but I think if we're going to have individualized determinations on people's ability to pay, the judges need to be able to make those decisions. I trust judges. They tend to be more thoughtful. They're rooted in their communities. Some of these folks they've known for a long time. They will know who is taking care of sick children and struggling with child care. They will know who has an elderly person in their home that they have to take care of. They'll know who has mental illness or vocational disabilities. They'll know who can get a job and who's hiring. They can make informed decisions. We need to empower these judges.

We need to enforce the exclusion of mentally ill people from jail fees and we need to cap the total amount of jail fees that can be assessed on indigent people. I think at some point we might consider capping legal financial obligations at two percent of the overall income of individuals just as a jumping off point. There may be a better number, it may be higher, it may be lower, but we've got to find a number somewhere where we're capping these obligations at the outset, so people can have a realistic way of complying with their cost payments.

Throughout the process we need to encourage meaningful reviews of indigency through the rule 8 process and we need to mandate that the defendant and defense counsel be provided with a full and final accounting of all the legal financial obligations before sentencing. Now my lawyers have a limited role. We don't go to hearings usually after sentencing. It's beyond our mandate. We take care of it if we can negotiate it up front prior to sentencing and if there's a revocation or an acceleration or a termination of drug court then we get involved because now it's a proper criminal case again. The Rule 8 hearings are civil in nature and that's and we don't do those but if we had a good accounting of all the fines, the jail fees, the costs, the assessments, prior to sentencing, we could advocate for our clients and negotiate to get those lowered. We could counsel our clients, the way we try to now, with regard to being able to satisfy those obligations. We could possibly make an argument to the judge to get relief at some point prior to sentencing so that we have that set up at the outset. There's one county that does this now, that I know of, Grady County. I think it should be mandated throughout the state. We should probably be receiving those well in advance of, or maybe in conjunction with receiving plea offers and discovery. We should also mandate that when defendants are on cost dockets in multiple counties, that these dockets be consolidated into one county. We see this all the time. People owe costs in multiple counties and they're responsible to different counties. There is a statutory mechanism that allows for the consolidation



of all cost payments into the county of residence of the defendant but it's very rarely utilized. We see people all the time owing costs in multiple counties across the state for various misdemeanors and small non-violent felonies. Over the next several years we should consider increasing appropriations to the district courts proportionate to what we think any drop-off would be in court costs assessments.

You have to start somewhere. You don't write a book without putting that first word on a piece of paper. So I think we need to come up with a good fair estimate of what we need to do to increase the appropriations for the court system and guess and try and figure out what the drop-off might be in the revenues that come in through costs and fines and fees. Then revisit that on a yearly basis over about a five year period until we get to a point where we hit equilibrium.

It's not going to be perfect but I think that's one thing, if you look back at the history of the increased assessments, increased executive agency funding is placed on the backs of mostly indigent criminal defendants. It's almost as if we've gotten afraid to revisit it because we don't know what the damage will be done as far as funding the courts. I think we need to take a leap and that's what I would recommend. Make your best guess, figure out what's going to be the drop off, and appropriate that funding for the courts and the other executive agencies. Then revisit it year after year until we get it back to where it should be.





MAX COOK

Max Cook has been the District Attorney for Creek and Okfuskee counties since former Governor Frank Keating appointed him in 1997.

“DA’s offices have never been fully funded. A few years ago, I haven’t checked it recently, but a few years ago my office was funded by the legislature for 47% of what it took to operate it. We had to go get the rest of it from post-check fees, from probation fees, from forfeitures that we did. Forfeitures have gone away, bogus checks have gone away.”

I wasn’t here for all of this morning and I don’t intend to plow a bunch of old ground that y’all have heard. I don’t intend to give you a bunch of stats because I assume that you probably looked at some of the stats and you looked at the ABA standards on fines and fees and costs. You probably all looked at the Brennan Law Center’s study on fines and costs and fees. I’ve been to several interim studies, they actually let me talk in one or two, and we all seem to always come to the same problem - money. It’s a lot of the reason why legislators have jobs. We’re trying to get the money and figure out what to do with it. Who gets it? Who screams the loudest or hopefully deserves it? I’m going to suggest that we look at this a little more in depth.

Is the funding of the system appropriate with what we have? Yeah probably not. DA’s are faced with the situation, not as much nowadays as they used to be - but we used to be the ones that would do the plea bargaining on bogus check cases, so that the defendants in bogus check cases got to pay us a fee.

That’s partially because the DA’s offices have never been fully funded. A few years ago, I haven’t checked it recently, but a few years ago my office was funded by the legislature for 47% of what it took to operate it. We had to go get the rest of it from post-check fees, from probation fees, from forfeitures that we did. Forfeitures have gone away, bogus checks have gone away. A couple years ago the legislature, as I’m sure you all know, said you give us all of your 911 fees. We see you collected roughly, in the last year, that’s sort of working, we’re collecting them and giving it to the state or the general fund and such as that. Should we do that? Well there’s always been a question of are we adequately supervising the probationers and the answer is it depends on what you want. We get forty dollars a month from these probationers and that isn’t enough to do the kind of supervision that most people expect. We monitor them, we have them take drug tests, we have them come in and see us. We have them call in and we have them do a lot of things. Is that what you want? I don’t know but if it is that, it takes more than forty dollars a month.

I think it probably all came together thirty three or four years ago when I started in the office of the district attorney. I believe I started at forty thousand dollars a year, fresh out of law school. Today when I start a prosecutor, a new lawyer fresh out of law school, I start him at 40 to 45 thousand a year. 3 or 4 years later however long it is, we don’t have the money to



pay them that. The legislature has changed the pay, the legislature has changed the retirement system. It used to be, "yeah well it's a state job but the retirement's great." Not so much anymore. **We need to look at, we being the state legislature mainly I guess, a way to fund the entire system without relying on unreliable funds. I think it's going to take more than an interim study.** I think it's going to have to take something like a commission where we actually look at the whole picture. We don't piecemeal it like we've been doing. We don't look at, "are we keeping them in jail too long before certain hearings?" We don't look at, "are we charging them too much?" Let's look at the whole system and see how we fund it.

Should the legislature be funding all of these things? I think so. Other states do it. Why can't Oklahoma fund it? Well I think they can but it's going to take a long study. We didn't get here overnight. We're not going to fix it by the day after tomorrow, it's going to take somebody, some people. I don't think it needs to be a large number of people but it needs to be some people that have the resources to get things done, without taking into consideration politics and whose ox is getting gored and that sort of thing. It's not going to be a six-month study. It'll probably be a one or two-year study but if we get there isn't it going to be worth it?

Well let me tell you a story. When I was growing up, I was kind of poor but I saved up my money for weeks. I saved 50 cent pieces in a domino box. I saved it up for weeks and weeks and weeks and my dad went in half with me and I bought a huge 26 inch Schwinn bicycle, no fenders. I learned to work on that. I tore it apart and often repainted it almost every weekend. I learned how to work on it. I had a lot of flat tires and I'd take the entire tire off, take the tube out, and I'd patch it. There's a filling station close by that would let me use their stuff for free, and I went and patched those tires, and that reminds me a lot of what we're doing here in Oklahoma. We keep putting a patch on things.

Well what are we going to do? Let's take some of the burden off of the defendants. That's great and we keep patching it and we keep patching it but we don't ever fix it. We need a new inner tube in this tire, we need to do something that addresses the entire problem. Do we take the fines and that sort of thing away from the defendants? Not necessarily. We hold them accountable for it. If you take the fines away, who's going to stop speeding? We don't speed because we don't want that 100 or 300 dollar fine. Fines work. Do they apply to all people? I don't know. Should we base it on someone's ability to pay? Should two people committing the same crime yet get fined differently? In other words, if Chris Kennedy can pay the fine - you know he's got a lot more money than a lot of my defendants - so does he get fined a thousand dollars and we fine my defendants ten dollars? That seems to kind of lie in the face of equal protection. It should be fairly well leveled of course.

Judges need discretion. They have a lot of ways to deal with the different issues that come before them. The defense lawyers bring up those issues all the time. The best thing in the world for a criminal justice system is a good defense lawyer. Does that seem strange? No, because they are there to make sure I do my job to make sure that I can prove beyond a reasonable doubt what I've alleged. We need to approach this differently than I think we have in the past. Can we take a hit like that? Yeah, probably, so we're going to have to come up with money from some other source to fill in the gap. Not a problem.

We just have to figure out where that money source is and we've done that over the years. Whether we look at taxes or whatever source. I can tell you in my district - we don't over fine people. Often those fines are at least waived in part. They're given a chance to get on their feet. One of the best things we can do is some kind of work program. When these defendants have a job, have a vocation, and can make money and people expect them to and they get a pat on the back for what they are doing, they feel as if they've accomplished something and they're more likely to not be recidivists. We put them in prison. We housed them for a while. We let them out early, because gosh we're overcrowded, and we won't build new prisons because that takes more tax dollars. We've got to hire guards and guards are underpaid.

Of course we got guards smuggling stuff into the inmates because we can't pay a guard really a living wage oftentimes. We can't pay our deputies a living wage sometimes. I was talking to a deputy last week and uh he was bragging that between his deputy job and his second job he made almost 49 000 a couple years ago. Now how many of you would like to have two jobs and not make fifty thousand dollars from two jobs. I dare say probably none of you. We don't fund our government. We don't fund deputy prosecutors like they should. We can't hire lawyers to come in and be prosecutors and pay them 45 000 or 75 000 when they go out in the public sector and make 100 to 300 000 a year. Can't do it. Do we expect that no decent retirement system that'll attract a lot of people? We keep moving the goalposts. Firefighters, most of them, if not all of them, have two jobs. Most of them work one day on and two days off. They have to work two jobs.

What's so strange about that is, those are the people we rely on the most, when they're needed. You have a car crash, you want to see three people out there; a cop, a paramedic, and a fireman, to take care of you, to keep you from dying, to keep your loved ones from dying. Then we turn around and say hey we can't afford to pay you because all you're doing is saving lives. We need to look at the government because the government's main function is to protect its citizens.

I feel very strongly about this and I have for a long time. We need to effectively deal with it. Wouldn't it be great as legislators that every time you saw somebody, you didn't say "no he's going to ask for more money again" or "he's going



to fuss about the funding he needs." That's your job. In large part, finding the money and dishing it out. I think we need to be responsible for what we ask for. It certainly doesn't need to be on the backs of the defendants like it is now, at least in theory. In practice it doesn't happen that way. The defendants largely can't pay, or don't pay, or won't pay. Do we take the possibility of fines away from a jury? Well what happens then? Fines are punishment, so does the jury then say "well he ain't getting the fines so let's just double up on the time." Well as we don't want people in there longer than they should be because jurors are exacting a certain pound of flesh. That isn't what we want but when someone is in prison, we should be trying to get them a vocation. Teaching them a skill, finding them a job.

I talked last night to a former Assistant Deputy Director of DOC and he said that when he was with DOC, he set up a program where the people in prison were given training, and found jobs on the outside while imprisoned. They got out, they were outside working, and they had to come back every night to the prison. Most of them did and they were given a ride to and from work. So they were pretty reliable to be there. We're not doing anything like that as far as I know. Why? The goal of prison should not be to house prisoners except when they're violent et cetera, et cetera. Yeah, we want to house them and house them for a long long time because we don't want them hurting other people but if the people are going to get out in a reasonable amount of time, let's give them a chance to succeed. Most of them haven't. Prisons are a terrible place to be, I hear. I don't want to go. I do things to keep from going. Other people get used to it and you know they are there for a short period of time and they get a little healthier. They get they get their meds and dental stuff taken care of and they get out and go committing crimes because they go back to doing the same things, with the same people because that's all they know.

When we talk about how the fines go largely on the poor people - and it's the poor people that are committing crimes to get by. They steal stuff, etc. You don't usually see anyone doing the crimes. We shouldn't focus our or shouldn't base our funding system on indigent people in my opinion.

I don't think the system is as broken as we talk about. It's been in the national spotlight but I think the proposed solutions are not really solutions. I think they're band-aids. They're patches on a leaky spare tire or inner tube. I think the approach needs to be changed. I think we need to rethink this. I think we need to get out of the box.





GREG MASHBURN

Greg Mashburn is the District Attorney for District 21 which is McClain, Garvin, and Cleveland Counties. Previously he served as an Assistant District Attorney in Oklahoma County.

“Do we make the offenders pay for kind of a user fee? I mean they made the decision to commit the crime. They brought themselves into the situation. They’re not walking down the street and a police officer just pulls up and says “Hey I’m deciding to take you to jail today.” They’re making the decision to commit a crime and there’s consequences to that crime-whether it’s being locked up or having to pay some money. Or do you move it to a taxpayer who did not make a decision to commit those crimes?”

I’m Greg Mashburn and I’m the elected District Attorney for District 21 which is McClain, Garvin, and Cleveland Counties, so I have everything south of Oklahoma City almost down to Ardmore. So what I’m gonna kind of try to do is break it down from just a practical standpoint like how I see it. Obviously it’s going to be from the District Attorney’s perspective about how it kind of plays out in a courtroom, or in the court system, all the way down to trying to collect from somebody.

Do we make the offenders pay for kind of a user fee? I mean they made the decision to commit the crime. They brought themselves into the situation. They’re not walking down the street and a police officer just pulls up and says “Hey I’m deciding to take you to jail today.” They’re making the decision to commit a crime and there’s consequences to that crime - whether it’s being locked up or having to pay some money. Or do you move it to a taxpayer who did not make a decision to commit those crimes? Move it to where the taxpayers are paying that bill. I know there’s a balance there somewhere and that’s why you guys get paid the big bucks to try to figure out how all that works.

Obviously there are competing factors when you’re talking about who’s going to pay for it. The taxpayer or a person who decided to commit the crime. So when we have that arrest, somebody goes to jail and they’ll get a bond put on them. What’s always interesting to me is that the person gets let’s say a ten thousand dollar bond so they have to come up with a thousand dollars of it, and man, they can come up with a thousand dollars. I mean they’ll call every friend. They’ll call mom, dad, brother, and sister and they will get themselves out of jail. Then they’ll get two or three court dates and the court will say “Okay now go hire an attorney.” They respond, “Oh I have no money for an attorney.” The court will give you 30 more days to come back with an attorney. Well they couldn’t get an attorney and you know they have to fill out the applications to say, “I talked to these three attorneys about hiring them and I can’t afford those three or whatever.” The judge is faced with a tough decision. We have to get this case moving. You have victims wanting a resolution to their case and so a lot of times they’ll just get assigned an attorney, and so then they get a free attorney, and the attorney comes in and they talk to us and we negotiate a deal. Part of that negotiation process is the money involved right? So we’ll sit down across from the defense attorneys like okay let’s do community service or well will you move the community service down a little bit? We’ll pay a little bit more or can we do more community service and pay a little bit less, because I can do work, but I can’t afford to pay.



So that back and forth will happen during the negotiation process. Each judge is different but as a general rule in my district if you got an OIDS attorney all your fines are getting waived.

There are judges who are just like, "Well if you have an OIDS attorney." They don't even ask. They just waive all the fines and fees. So that just comes straight off the top and **it could be an able-bodied person that pulled up to the courthouse in their new car, having their iphone in their hand, but all their stuff's getting waived because they didn't take the time to go hire an attorney. They told the judge they didn't have time or the money to do it and so all their fines get waived. They didn't ask to waive it.** Or they just say, "Yes judge, I will do all of those things that you asked me to do. I'll do community service. I'll pay all that money. I can do all that stuff, judge, I'm good to go." Then they just don't pay it. The judges will bring them back in for the Rule Eight hearings. The only way they can kill them is for a willful failure to pay. That could be up to interpretation of what's a willful failure. Am I just down on hard times or I really just cannot pay that? They cannot go to jail for failing to pay unless there's evidence that they're willfully failing to do it. So what you see sometimes is if you just ask to waive your stuff, so you paid a private attorney, and you get up in front of the judge, we'll have negotiated a deal and the defense attorney's ask the judge, "You mind waiving those?" If the judge is feeling generous, the judge will waive it. So they paid their attorney, they had the money to do it, you know University of Oklahoma, **I have a lot of college kids that have access to mom and daddy's checkbook. They can pay for their stuff but sometimes it's just an ask and it gets waived.**

I don't want to come off as kind of a hard case on some of this stuff because I absolutely believe that these fees and stuff should be waived when the person can't pay. If they're on social security, if they're on disability, if they're in between jobs. I mean there's definitely certain times that this stuff is very appropriate to do. I'm not down on anybody for waiving them or anything like that. It's appropriate to do that when it can be shown that they don't have the ability to do it.

We have an example of a case we just finished last Friday. It was a capital murder case, where a guy strangled an eight month along, pregnant lady in the back of a pickup, in McClain County. He sat in jail for three years. He spent forty thousand dollars, and I know it's closer to \$50,000, in his commissary at the McClain County jail. He had two boys. Here's a guy who's cashing the stimulus checks while he's in custody and and and buying all the bologna sandwiches and everything and he's probably gonna get all of his fees waived. I mean he's gonna be on death row. He went to death row, so it's not going to be a deal where we're going to be looking for him but there are examples.

I guess what I'm trying to tell you is that there's times when we aren't doing a good enough job as a system figuring out who can pay. We need to have a more of a consistent system and say "Look dude, you work at Chesapeake, I think you can pay this stuff." You have the ability to pay. **You made a \$20,000 bond which means you came up with two grand. I know all the restaurants in Norman are hiring. I came back across Arkansas and Oklahoma and every convenience store had a huge help wanted sign. I know there's jobs available. We got to be able to figure out who is just not wanting to go to work and pay for their stuff.** I mean it's hard because the judges have enough to do without being somebody's personal accountant. We don't need to be looking over people's bank statements. I mean judges have a hard enough job in dealing with what they have to do. I certainly don't want to get into the nickel and diming people on what they can afford but there's got to be a more consistent way. If you're making X amount of money, you ought to be able to afford this every month, or something like that.

There's probably a better way to track someone's court costs. Cleveland County offenders don't just stay in Cleveland County so they're going to owe Max Cook money [DA for Creek County who spoke earlier in the day], they're going to owe me money, they're going to owe maybe somebody else money on different cases and so there's got to be a better way that we can track people from county to county. Then they can go to Max's office and pay one payment and not have to drive down to Norman to make that next payment. Right now, I don't think we have a very good idea of how much people even owe. I've asked my Court Clerk this year, just how much money we've been waiving, just in court costs. She gave me the last four years. **In 2017 we waived \$900,000 and this is just court costs. In 2018 we waived \$953,000 in court costs. In 2019 we waived \$2.2 million in court costs and then in 2020 we waived \$2.3 million in court costs. So obviously that number is tracking up. We're waiving more. I don't think people are necessarily becoming poorer in our state, or in my area, but I think a lot more people are asking just to get a waiver.**

There has to be a better way than just taking someone's word for it. I mean, surprise, surprise, there are criminal defendants that'll lie to you. There's got to be a way that we can kind of figure out are you telling the truth. It's been my experience especially in my District, I mean I was 10 years in Oklahoma County. I've been the DA for almost 15 years in Cleveland County. No one that has a legitimate hardship is being forced to pay money. No one that has a legitimate hardship is going to jail for that. Again, that's just my experience, but that's 25 years worth that I've seen. I've seen far more people that have the ability to pay and could go get a job and go to work, not fulfill their obligations, than than people who have the hardships being forced to pay.





STEVE LEWIS

Steve Lewis served as Speaker of the Oklahoma House of Representatives from 1989-1990. He currently practices law in Tulsa and represents clients at the Capitol.

“Back in the 70’s, I spent most of that decade as an assistant DA and an elected DA in Pottawatomie and Lincoln Counties. Court costs were \$60 on a felony, and I think about \$22 on a misdemeanor. None of the rest of these fees and so forth were there. Somebody had to pay a \$50 fine, they knew it’s going to be \$72 dollars because it was \$50 plus \$22. Then I got elected to the House of Representatives, and I got to confess, I think I’m part of the problem. During the 80’s, we had the big oil bust and we had tax increases and we also added a heck of a lot of fees to just about everything.”

I’ve been here all day listening. This kind of feels like a closing argument because this morning, we had all the charts, and the people talking about how the system was kind of broken. We were making people pay. We’re putting the cost of the system on people that can’t afford it and so forth. Now we got the DA’s. They’re saying this thing is not really all that broken. These guys got plenty of money and they just don’t want to pay. I can see your dilemma, your problem because you just got points of view here on fines, costs, fees and assessments that you have to deal with.

Back in the 70’s, I spent most of that decade as an assistant DA and an elected DA in Pottawatomie and Lincoln Counties. Court costs were \$60 on a felony, and I think about \$22 on a misdemeanor. None of the rest of these fees and so forth were there. Somebody had to pay a \$50 fine, they knew it was going to be \$72 because it was \$50 plus \$22. Then I got elected to the House of Representatives, and I got to confess, I think I’m part of the problem. During the 80’s we had the big oil bust and we had tax increases and we also added a heck of a lot of fees to just about everything. I ran for the senate, one time a long time ago, and Don Nichols just ate me alive with all those fees and so forth that we passed. So I’ve been held accountable for that already and the one I remember the most is the automated fingerprint information system which we added. It’s ten dollars and it’s still there. I don’t know whether we did it because we didn’t have enough money to buy the latest technology in fingerprinting. We naturally decided to put it on the criminals and that’s what we did. It’s still there anyway.

I saw a story in Oklahoma Watch about how this whole fee system structure developed. I recognized that I was really part of the problem. I was gone by 1999 but the legislature added the Council on Law Enforcement in 1999. They started making people pay for their own emergency medical treatment in 2005. They also require people to pay for their own electronic monitoring. These are not even part of the standard fines and fees. These are just things that courts can require people to pay. We have spent a lot of time today talking about the \$40 per month DA fee which was added in 2013. It hasn’t really been that long.

Scott Biggs, some of you probably know, was the author of that bill and what he was quoted here saying is, “I don’t believe



that district attorneys were funded in the past like they should be.” **The DA’s were looking for creative ways to keep their offices open. So if you want to get to the meat of the coconut, it really wasn’t a supervision fee, it was just a way to replace the bogus check money that had gone away because people didn’t write checks anymore.** I’ll make one more confession, I was actually the author of the bogus check restitution program in about 1981. I came out of the DA’s office and it was a great program. I was always getting in trouble with the auditor inspector’s office because they didn’t like us collecting restitution and putting it in the county treasurer’s office and they had to audit. So I decided I’d make a bill out of it. I had no idea that it would raise millions and millions and millions of dollars statewide and that the DA’s would actually become dependent on that money. That’s when the legislature saw that money coming in, and they backed off on the appropriations and in a way that’s kind of how all this got started. These fees that got passed fairly early on and legislatures would take the opportunity to say, “make us a report please, on how much you brought in,” and then they would either deduct it from their appropriation or they would not appropriate it in the future.

I want to give you two examples, just get started here, of cases that came up in Tulsa County this past weekend. This is not old information. **The first one is Mr. B, who is a 40 year old white male. He was arrested this past Sunday night, the day before yesterday, on a cost warrant for failure to pay \$1,690. The booking sheet shows his address as homeless. Mr. B was charged in 2015 with one count each of possession of drug paraphernalia and destroying evidence. He pled guilty and received an eighteen month deferred sentence plus costs. The costs were sixteen hundred and ten dollars and he was supposed to do 40 hours of community service. He got through the 18-month deferred sentence, didn’t get into any trouble, and he did his 40 hours of community service. So the way that works is, if you’ve made it through your eighteen month period of time and you’re all copacetic, did your community service, the case is dismissed and the record is expunged. This guy hadn’t paid a bit. He was supposed to pay \$90 a month and he hadn’t paid it. A warrant was issued in 2017. So the case started in 2015, and he was all the way through his probation. When it came time to expunge, the court noticed that he hadn’t paid it and so they issued a warrant in 2017. Here it is four years later, this weekend he gets arrested, and is in jail now in Tulsa County.** They now have seven day a week court, a bond court there, so he didn’t end up staying in jail very long. He at least spent the night and may have spent more than that if a defendant has a cost warrant from some other county, which you’ve heard this morning - a lot of times that happens, they might spend several days in jail waiting to be picked up and taken to the other county. So the idea that nobody spends any time in jail on cost warrants really isn’t right. People get arrested and they get taken to jail and in some counties, I mean this was Labor Day weekend, so in most counties, he would have been in jail until today if he was picked up Friday night or Saturday night or Sunday night.

That’s one case, **the next one is Mr. J, a 50 year old white male, who was arrested in Tulsa yesterday, on labor day, on a failure to appear at a cost hearing warrant. Mr. J pled guilty to a misdemeanor assault and battery on May 8, 2008. He received 30 days in the county jail and \$500 in fines and costs. Over the past 13 years he’s paid zero in fines and costs. Over those years - 11 claims were filed to intercept tax refunds - with no result. His booking sheet shows his address as homeless which really brings me to what I want to say today to hopefully contribute to the committee’s conversation here.**

I’m going to assume that everybody in the room would like to see a time when the legislature is able to appropriate enough money to support the court system and support the DA’s and the executive branches that are getting all this fine and fee money now. I’d love to see the legislature be able to appropriate the 30 or 40, or 50 million dollars that it might take to fully fund the courts and to take care of these executive agencies. News flash - I don’t think that’s going to happen right away. I know you all are talking about getting started and I sincerely hope you do but I’ve been around here for quite a while and I’ve never seen a five year plan that ever made it five years.

I do think there’s some things that this committee and this legislature can do to be more efficient in collecting fines, costs, fees, and assessments, and at the same time be more fair to individual defendants. To be less oppressive in people’s lives. I think that’s a worthy goal between now and that bright day over the horizon when the legislature is fully funding the state government. You know what? It’s already the law. We’ve heard from several people this morning, and perhaps this afternoon too, that you can’t lock people up if you haven’t had a hearing to find out if they’re able to pay or not or if they’re just willfully not paying.

I want to read Title 22 Section 983, which says:

“any defendant found guilty of an offense in any court of this state may be imprisoned for non-payment of fine, cost, fee, or assessment, when the trial court finds, after notice and hearing, that the defendant is financially able but refuses or neglects to pay the fine, costs, fee, or assessment. A sentence to pay a fine, cost, fee, or assessment may be converted into a jail sentence only after a hearing and a judicial determination, memorialized of record, that the defendant is able to satisfy the fine, cost, fee, or assessment...”

The same statute, section D, directs the court of criminal appeals to make some rules about how to deal with indigents. They call it indigents in the rule, and so the Court of Criminal Appeals put out some rules a long time ago. I don’t know when the Rule 8 came out but it’s been on the books for quite a while. Rule 8.1 provides explicitly that when the judgment and sentence of a court either in whole or in part imposes a fine and or cost upon a defendant a judicial hearing



shall be conducted and a judicial determination made as to the defendant's ability to immediately satisfy the fine and costs. Rule 8.3 provides, after a judicial finding that the defendant may be able to pay the fine and costs and installments, the court may order the defendant to make payment of installments in reasonable amounts and fix the due date of each payment. They also may order the defendant to appear before the court on each due date. I don't think any judges do that because I don't think anybody wants defendants coming back to the courthouse once a month. Most of them, if they've got a job, would have to take off and it's pretty disruptive.

Rule 8.4 says if the defendant fails to make an installment payment when due, he or she must be given an opportunity to be heard, as to the refusal or neglect to pay the installment when due. If no satisfactory explanation is given at the hearing on failure to pay, the defendant may then be incarcerated. If the defendant has the ability to pay, but due to extreme circumstances or misfortune, fails to make a payment or a particular installment when due, he or she may be given further opportunity to satisfy the fine, costs, etc.

I think that's what we're calling Rule 8 hearings nowadays. If they missed an installment. The only problem is they issued a warrant for the arrest of the person to get them back for the hearing and that's when people end up in jail. They are not supposed to be in jail unless there's already been a finding that they're willfully not paying. So that is a problem. Rule 8.5 says, in the event the defendant, because of a physical disability or poverty, is unable to pay a fine and/or cost, either immediately, or in installments, he or she must be relieved of the fine and or costs or in the alternative be required to report back to the court at a time fixed by the court to determine if a change of condition has made it possible for the defendant to commence making installment payments. So we got a court rule by the court of criminal appeals that pretty well lays this out. We got a statute that tells them to and I don't know exactly why that's happening.

The judges say they don't have time to have these hearings and I believe them. I mean if you've ever gone to a plea docket, especially in one of the larger counties, these guys come in orange suits, and they don't have time to have a hearing on whether a person is able to pay. So maybe Rule 8 and 983 are either unclear, just not workable in the real world, or to some extent, they're just not being followed.

They've kind of come up with a workaround on it. We have this form that the defendants fill out, but from the cases I've looked at in OSCN, if you look at the documents, very seldom does the form have much relationship to what actually gets done in the order of payment of cost and assessments and so forth. I mean you can have somebody that's homeless - no assets - and they'll end up with \$1,500 or \$2,000 worth of costs to pay.

I think it's safe to say that it's fairly routine - courts order these payments in cases where they really bear no real relationship to the amount that they can afford to pay. The other thing that happens is, and I've talked to several judges, about this. I don't know how it is in Seminole County but a big part of the problem, and I think the public defender mentioned it this morning, is neither defendants nor the judge apparently even knows how much the costs are at the time that they stand in front of the judge and the judge orders them to pay the costs. I'm told by different people that, "well we just can't do that, the computer won't do that." I still can't understand why they can do it 30 minutes later in the clerk's office but they can't do it 30 minutes earlier before they go to court, so that the judge can say your order here is going to be for 2500 or 2600 dollars, tell me about what your assets and liabilities are. I don't know why that can't happen but I believe what I'm told that it's going to take some kind of investment in the computer system to make that possible. I don't know. There's no way that you're complying with Rule 8, and having a hearing of any kind on ability to pay, if the judge, the prosecutor, the defense attorney, and the defendant, don't know when the police entered how much the costs are.

Then what happens generally is - when they miss enough payments - they give up and they tell the judge to issue a cost warrant. Somehow that happens. I don't exactly know how it happens but I'm pretty sure there's no hearing before the warrant is issued. I know there's no hearing before the warrant is issued to determine whether the person is willfully not paying or is not able to pay. So then a cost warrant gets issued, and usually sheriffs and police departments don't grab a whole handful of cost warrants and go out and try to find people. I don't think they do that. What happens is somebody gets stopped on a traffic stop, or in this case, these homeless people, they pull up and see what's going on, check them out and find out if they got a warrant. That's how people actually get arrested and then they put them in jail and there's no earthly way that any court has made a finding that they are able to pay and just won't pay.

There was one recent case in Tulsa, where a man called the police because his house was being broken into. The police came out and arrested him because he had a cost warrant outstanding. People do get arrested. They do go to jail and that's incarceration. Some don't stay very long, some stay for a while, and just in the last two years it's changed a lot because of all the lawsuits being filed and all the advocacy and so forth.

There are a lot of good judges and prosecutors that are trying to do the right thing and they've come up with ways to try to comply, try to work around, try to get people arraigned quickly or get them in front of a judge fairly quickly. That way they can get out but a lot of that just pretty much depends on the judge. I know in a lot of counties especially in the big counties you can have a judge that he was assigned to this cost docket or he was assigned some docket for a year or



two and he really got into it, he made a bunch of reforms, and he's taking care of people. The next guy that comes in and he couldn't care less. It's like these people could have paid, they should have had the money, they knew what they were doing. So then all that good stuff that was happening doesn't happen anymore. The only people that can really fix this are sitting right around this table.

Here's the problem and I'm not going to have solutions because I've tried quite a few solutions. Every time I put one out there, it's like "we can't do that." Defendants are not given judicial hearings to determine ability to pay according to Rule Eight. Defendants are told for the first time how much they owe after they're already been sentenced to it and they go down to the clerk's office at which point they have little option but to agree to a payment plan. They've already been ordered. Defendants are routinely ordered to pay fines, costs, fees, and assessments that they have no ability to pay. Defendants are often, in addition, required to pay all this other stuff, which doesn't even count restitution. Some kind of district attorney fee, I guess the supervision fee has been made part of this but there's some kind of district attorney fee that they also have to pay. Probation fees, counseling fees, drug testing fees, mental health, anger management, or drug and alcohol assessment fees, monitoring device fees, and a multitude of other fees that people get put on them. Then you people can't wonder why they didn't make their \$2,500 cost fee and they got a cost warrant out for them. When defendants fall behind, they are arrested on a cost warrant, and there's been no determination of willfulness. Defendants are burdened for years with the debt that will never be paid and entangled in the court system for years over debt they can't pay. Courts and law enforcement waste millions of hours of time trying to collect money that is never going to be collected and there's no uniformity in the referrals to the contract cost collectors.





HONORABLE TIMOTHY OLSEN

The Honorable Timothy Olsen is an Oklahoma associate district court judge for Seminole County, which is located in District 22. He has served in this position since 2007.

“I’ve been on the court for 15 years where I felt indirect pressure to collect more money. You’d go to the judicial conference or you’d open up emails and the budget doesn’t look good. We’ve got to collect more, DA’s have got to collect more. I can tell you one thing about being a DA and a judge - it’s not good for the DA’s assistant, the DA’s, or the judges, to feel pressure to collect money, to find their paycheck.”

I appreciate being able to be here and the fact that this committee is looking at alternative ways to fund the court system. I think that’s something that needs to be looked at. I’m not only a current judge, I’m also a retired assistant DA. I was assistant DA for 14 years in Seminole County and then I was associate judge for 12 years. I’ve been district judge for this one term. When I went to work in the DA’s office, there were two assistants, there was one secretary, and there was a bogus check secretary. Well now there’s DA supervision, and victims and witness coordinators. This is a different job than it used to be 29 years ago. The DA’s office and the court system, and I’ve been through the times, when to be honest with you as an assistant DA, I was probably never directly pressured but probably had kind of indirect pressure to seek drug forfeiture money for the drug task force, and DA supervision for funding.

I’ve been on the court for 15 years where I felt indirect pressure to collect more money. You’d go to the judicial conference or you’d open up emails and the budget doesn’t look good. We’ve got to collect more, DA’s have got to collect more. I can tell you one thing about being a DA and a judge - it’s not good for the DA’s assistant, the DA’s, or the judges, to feel pressure to collect money, to find their paycheck. It’s just not a good situation, so it’s a good thing that you’re looking at this. I will say the last three or four years, there’s been more funding. In the last three or four years I haven’t felt that pressure to collect money for the budget, so that is a good thing. That’s something we do not like to feel and I think it impedes our ability to do the best job that we can, as a DA and as a judge. I believe that the DA’s, being a former DA, ought to be fully funded, and as a judge I still believe the DA’s should be fully funded and I believe the court system should be fully funded.

I think what we’re looking at is, “What are the appropriate costs and fines and fees in a criminal case?” Not everybody’s going to be able to pay it. Some people are going to be able to pay it. I still believe a criminal defendant ought to be responsible for some court costs, fines, and fees, but I think we’ve gotten to the point, as it’s been brought out today numerous times, where on some of these fines and fees, the punishment does not fit the crime.

I’m upset that DA Mashburn left, because I was kind of shocked and surprised that there are judges that are just waiving all these fines and costs because that’s something that we don’t do in Seminole and Hughes County. **I can tell you, if you go**



to 77 different counties in Oklahoma - you're going to see 77 different methods of fine, costs, and fees, collection. So I can only speak for Seminole and Hughes County. I looked at that statute again, and it establishes costs to be assessed in every criminal case. It says, "shall be assessed" and the statute also says that it cannot be dismissed or waived. That is statutory law from the legislature so I'm not sure where judges are getting the authority to just say, "Well, they're not going to pay their court costs or fees." I'm not saying they shouldn't have that authority. I'm saying that they don't have that authority now. There's some language in Rule 8, that if they meet the poverty level and cannot make an installment payment, then it should be discharged. The last time I checked, statutes override court rules and, even if they are indigent, they can make a \$5 a month payment. So you got 77 different counties doing things in different ways. Maybe we need to be educated as judges a little bit more often on what the fine and cost rules are.

The court costs are so high, so courts hate to impose an additional fine on people. The fines are optional while the court costs are not. Fines all go to the court. So if the court costs could be lowered, and some of these other obligations are lowered too, maybe the fines could be raised a little bit and there would be more money to fund the court. So if you reduce the amount of costs that are assessed from some of these executive branch fees then maybe the court can raise more money.

As to the payment of jail costs, the statute sequence uses the word "shall." It doesn't say "may" so it's going to depend on your sheriff. Our sheriff wants his incarceration fees so how can I tell our sheriff, "Oh I'm not going to assess those because I don't want to," and he says, "Well, the language says shall." The statute mandates the court to assess and collect jail and incarceration fees. The actual cost is assessed by the sheriff so the sheriff basically sets the incarceration fee. We have a little hearing, he brings his accounting sheet of paper over, and they go through all the costs of operating the jail. He then comes up with a per person fee. Our per person fee right now is \$64 a day.

The statute also says, "The court cannot waive in its entirety the incarceration fees." If you reduce the incarceration fees - you have to reduce the fines and costs by the same percentage. So if somebody has \$4,000 in incarceration fees and you reduce it to a \$1,000, then you have to reduce the costs and fines by 75% and that takes away a lot of money from the court system.

If a defendant is released from DOC, the court can set them up on a monthly payment plan. If they make all 24 installment plans and full compliance with their probation or supervision then you can waive the remainder of the fees, fines, and costs. I think if we had something like that for people that weren't sentenced to DOC, if we put them on a payment plan for 24 months and they made all their payments and they complied with all their rules of probation, why couldn't we have the authority to waive their fines, costs, and fees?

In Seminole County we have the ability to see what their costs are on the computer when we sentence somebody. Now most of the time we don't have the incarceration fees yet, but we do have the court costs. The initial court costs aren't that high but when you start adding in all the sheriff's fees, including every paper that is issued, every subpoena, every paper issued to the sheriff is a \$50 fee so if you have a preliminary hearing and you've got five witnesses that are served or attempted to be served, that's \$250. If the preliminary hearing doesn't take place for some reason - it could be either the defendant wants a continuance or the state wants a continuance or the judge needs to pass it - that fee stays in there. Then the next hearing they get another \$250 so a lot of these court costs are run up - not as a result of what the defendant does but could be as a result of the court or very rarely the state.

We put everyone on a Rule 8 hearing when they're sentenced and we offer them a payment plan. It's normally \$40 to a \$150 a month. Now they are ordered to appear at the monthly fine and cost docket, if they cannot make their monthly payment. If they do make their monthly payment then they don't have to show up to that docket. Warrants are only issued if they don't make their payment and they don't show up to the fine and costs docket. That's the way that Seminole and Hughes County operate and I think a lot of counties probably operate that way.

Our Court Clerk sends out letters to remind people, and during the pandemic, we came up with a text messaging system for our drug court. The Court Clerk has started using it to find people who owe costs and fees, and sending them a text message saying, "Hey, your payment is due so you need to get up here and do something." No one in Seminole or Hughes County gets arrested for failure to pay. The question is - if they don't pay and they don't show up to a docket - well they can show up about any time and we'll take care of the warrant. How else do you get people in, other than a warrant? At that point, you've given them a schedule, you've given them a payment plan, and you've sent them texts and letters. At some point, the only alternative is probably to issue a warrant. We try to not punish people for not paying their fines and costs. We just try to get their money out of it but I would like to see some changes.

Seminole County collected, from 2019-2020, \$114,000 and \$94,000. That's for the service of papers and different things like that and we collected \$131,000 and \$107,000 in incarceration fees in Seminole County. **Now incarceration fees are kind of my pet peeve. I hate to bring it up but someone's in jail because they can't afford to post a bond.** Now there are some people, a violent criminal, or child abuse, or whatever the charge - it's a good thing they can't post the bond, but there are a lot of people that are in jail because they cannot post a bond and they get assessed a fee at the end of that case when they either plead guilty or convicted. They were not able to post a bond and that's basically what



the fee is. So if you take somebody that's got a \$5,000 bond that they could post - all they need is \$500 cash - but they don't have that, so they sit in jail for six months and they end up with three thousand dollars in incarceration fees because they can't post a bond.

I understand the sheriffs need money and the concept of criminal defendants paying something, I don't really have an issue with, but I think that's something that ought to be addressed. There was a time when it was a flat fee of \$25 a day. I remember when I was assistant DA and a guy was being arraigned on a fine and costs warrant. The judge told him he was going to have to sit it out in jail, that's back when they made everybody sit it out, and he said, "How much am I going to get in credit per day for sitting this out judge?" The judge said, "\$5 a day." He said, "Well, how much is it costing me being incarcerated?" The judge said, "\$25 a day." That guy said, "Well I'll never get out of here." It was costing him \$25 a day and he was getting credit for \$5 a day. I think if there was a cap or we'd go back to that flat fee, you know figure out what the statewide cost is for incarcerating somebody and have a set fee. Go back to the \$25 or \$30 and cap it out at \$500 or a \$1,000.

I brought three cases. I had the Court Clerk randomly pull these case numbers. First, I was the judge on this case and the lady was charged with 64 counts of cruelty to animals. She pled guilty, so she immediately had \$14,313 in court costs because the court cost is per count. There's no per case court costs, it's all per count. I didn't see where I had authority to do anything different on that so when she got out of prison she owed \$14,313.50.

Case number two is probably a case that would be all misdemeanors now. On three counts, they got a seven year suspended sentence and \$7,292 in fines and court costs. Thirty one hundred of that is incarceration fees and collection fees. We've got this collection agency, and anytime these warrants go to the collection agency it automatically increases the fee 30% or 33% or something like that.

Case number three. I prosecuted this gentleman and he's now in drug court on a DUI. He was convicted in 1998 for drug trafficking. He was fined \$50,000. He still owes \$48,000 but he's paying on it. Some of those minimums might need to be looked at. He wasn't this huge, big time, out of state drug dealer. He was probably kind of small time but when he was convicted of trafficking, it had a mandatory minimum fine. It was either a 25 or 50 thousand dollar fine at the time.





HONORABLE NATALIE MAI

Honorable Natalie Mai is an officeholder of the Oklahoma Judicial District 7, Oklahoma County. She assumed office in 2018. Her current term ends in 2022.

Mai ran for election to the Oklahoma Judicial District 7. She won in the general election on November 6, 2018.

“...we do have issues of people who are indigent, who are very obviously indigent, and they are going to go to DOC for a number of years. When they come out their ability to pay is minimum, so when they come out they still won't have any ability to pay. So what do you do?”

Thank you for having me today. I am here to speak of my experience on the felony docket in Oklahoma County. I had that docket for about two years or so. Now I'm on the civil docket so I can speak from that side as well. From the felony perspective, I agree with everything that's been said and that it is difficult for judges to determine exactly how much a defendant owes at that moment in time when we are doing the plea. There's a list of fees, including the VCA fee, the dna fee, and all of the fees that we are required to collect on behalf of other agencies. That is fine except that it feels like it is put on the court system to do the collection. The only one that I feel like we, as judges, have any discretion on really is the defined portion - which is the top line in our plea agreement or plea paperwork - and that is the only one that we have discretion over. That is also the only portion that goes to the judicial fund.

It was my practice when I was on the bench to assess \$50 per count. I just felt like, if you are going to commit more crimes, more counts, or do different things that you should probably pay a little more for each item. However we do have issues of people who are indigent, who are very obviously indigent, and they are going to go to DOC for a number of years. When they come out their ability to pay is minimum, so when they come out they still won't have any ability to pay. So what do you do? Our county is large enough to where we have one judge who actually handles all of the hearings and it's similar to Seminole County where we don't put anyone in jail just because they don't pay before you even get to the Rule 8 hearing. I would tell the defendant at the time that the plea agreement is taken, that they are required to show up to set up a payment plan and I give them additional time. The longer they're incarcerated, the longer I give them. The form says they have five days. I don't believe that people really have the ability or maybe the transportation to even come back within five days so my standard was 30 days. I can go up to three months for them to show up and start making that first payment plan. If they get on a payment plan, it doesn't matter what their amount is, as long as they pay each month. It's my understanding that our Court Clerk does not send it to collection if they call and say they can't afford to make a payment that month. It's only when they don't call or don't show up and just we don't hear from them. A lot of time their address is out of date or the phone numbers have changed and they're homeless. There's just no way to find them.

So in our county there are all those steps and then the next step would be collections. Finally, then there would be a Rule



8 type situation so the only time you really get a cost warrant out is when you don't show for court and there's no other way to bring you into court other than that. I don't know what the solution is - it's a very difficult situation for a lot of the defendants that I see.

I find that there are perhaps situations where they may be a co-defendant in a crime but also a victim of some sort - either domestic violence or trafficking or some other situations. I will tell you one of the cases that has always stuck in my mind. **A lady was a co-defendant in a robbery, it was a robbery involving a gun, so it's a violent crime, and evidence showed that she was a victim of domestic violence but nevertheless she participated in the crime. So I sentenced her and she is not from Oklahoma, she's homeless, and it's in the middle of the winter. She has no shoes, no jackets, or anything like that for safety and health. So she had to go to DOC because if I allowed her to go out on probation, if I released her that day, she would be out in sub-zero temperature without any ability to find shelter or food or just warmth. So for people like that - I at that moment in time, with the way that our system is set up - I cannot find a way.** It's my understanding that I'm not authorized to waive any of these fees, fines, or costs, even though I know her situation and that she would get more services coming out of DOC than if I released her that evening or that day.

I don't know how we can change that or at what level judges are authorized to make those types of decisions but those are some of the situations that really need addressing. It can only be done through the legislature because, I think I can speak for a lot of judges, we like to know what we're authorized to do. We like clear laws. So if you tell us that we have the ability to waive up to this much or that the minimum per count is \$50 as opposed to saying well for general felonies the fine is \$0 to \$10 000. That's a really wide window and by the time they get to our stage and they are incarcerated the zero looks like it's the option that should be chosen. Then it sounds like we're waving everything for everyone but sometimes that's just the situation that we're faced with. So if the legislature tells me, "Hey, charge \$50 per count no matter what it is," and then we can deal with the collection later on, I would feel so much more comfortable in doing that because I'm authorized to do so. I have a minimum to work with and obviously the discretion to go up to ten thousand should the situation warrant it. For the most part what I see in front of the docket is that's where we're headed. Most of these people that are on my docket are indigent generally.

I only see it from the ground and we're the largest county in terms of cost collections. I know it's enormous for a lot of these people and not only do we have all of these fees, we also have probation fees. So they can't get to probation and do all the things they're required to do for probation because they can't pay the probation fee to even go in for an assessment. The choice would be - do I have \$200 to feed my kids or do I pay \$200 to go and get an assessment for probation? If they choose to feed their children, they don't go to probation, their DA files a violation and tries to revoke the probation and they end up back in our court. There will be a warrant, they get picked up on the violation and it's called a revocation. I had at the time that I took my docket and had to split my revocation docket into the mornings for violations for new crimes and other non-monetary type issues. The afternoon was just all monetary. I did not want the defendants to sit there through the entire docket, waiting, just to show that they're making payments on a payment plan and doing everything else that they're supposed to do. **So I moved all the cost issues to the afternoon docket and I told the lawyers that I expect for them to be prepared with the docket, as well as the cases, and the paperwork, just to process these people to come in and out if they're proving that they're on a payment plan and they're making payments. That way they can get back to work. The very reason why they're there is because they can't afford to pay and we're taking time from their day from work to be in court - it just doesn't make sense.**



KEY TAKEAWAYS

\$50 A DAY

The average cost assessed on Oklahomans who are in county jails awaiting their trials or sentencing. These fees are often assessed on the poorest Oklahomans who cannot afford bail for the crimes alleged against them. The \$50 per day is added to their court fines and fees, making the total assessed against them even higher, and increasing the likelihood that they will never fully pay off their court debt.



\$27.6 BILLION

The total amount of court debt in America according to a report by the Fines and Fees Justice Center released in April 2021.

✦ The report also found that some Texas and New Mexico counties spend 121 times what the IRS spends to collect taxes on fines and fees collection efforts.



20 YEARS

The amount of time just one of Mr. Laughlin's clients has been on the cost docket in Woodward County, Oklahoma paying off his criminal fines and fees. Many defendants have such high fines that if they are paying \$50.00 per month they would never pay off the balance in their lifetimes.



Summation

Legal financial obligations are the combined total of criminal fines, court costs, restitution, probation costs, incarceration costs, and any other financial cost associated with a criminal conviction.

By the numbers...

\$1.17

The amount of money it costs on the dollar to collect legal financial obligations. It costs taxpayers to collect the money owed to the courts that will never be realized income.

40,000

The number of Failure-to-Pay warrants issued in Tulsa and Oklahoma Counties from 2018 to 2020. Failure-to-Pay warrants can serve as the basis for arrest during a routine traffic stop or can be executed by officers at a defendant's address. Most often, these warrants serve to attenuate an illegal traffic stop, thus making the stop valid and a legal basis to arrest.

\$630,000,000

The amount of court debt outstanding from 2012 to 2018 in Oklahoma. This is money that the court system and the DA's offices rely on to be fully funded, but that will likely never be realized. The defendants who owe this money either do not have the disposable income to pay, have been incarcerated on other grounds, or have possibly left the state

- In recent years it has become apparent that funding our court system off the backs of criminal defendants leaves the system starved for resources and creates more harm to society through perpetuating a cycle of incarceration.
- Funding the courts through the general fund is a more reliable and sustainable way to fund our court's essential services. Prosecutors and Judges should never feel they need to collect more from defendants in order to receive their paychecks.

Criminal fines and fees place an undue burden on criminal defendants.

Arresting someone on the basis of failing to pay fines and fees is unconstitutional under *Bearden v. Georgia*, which says the failure-to-pay must be willful, not just an inability to pay.

Actions

01

Fund the court system from the general fund. Crucial state services should never be forced to collect their own paychecks

02

People who are recently released from prison or who are homeless should not be assessed fines and fees or should have their fines and fees waived.

03

Eliminate juvenile fines and fees, which trap kids in the carceral system after they have been adjudicated as children, and often the burden to pay rests with their parents.

04

End arrests for failure-to-pay and create a "willfulness standard" consistent with *Bearden v. Georgia*. Passing SB 951 from the 2021 general legislative session would accomplish these goals.

