

**RHODE ISLAND
FAMILY LIFE
CENTER**
May 2007

Court Debt and Related Incarceration in Rhode Island

The Rhode Island
Family Life Center
increases community
safety by supporting
and advocating for ex-
offenders and their
families.

841 Broad Street
Providence, Rhode
Island
02907

PHONE
401.781.5808

FAX
401.781.5361

[www.ri-
familylifecenter.org](http://www.ri-familylifecenter.org)

May 2007

The Family Life Center would like to thank several people for their assistance in this project, without whom this report would not have been possible, including AT Wall, Erin Boyar, and Terry Foley of the Rhode Island Department of Corrections. The advice of Andy Horwitz of Roger Williams Law School, John Hardiman and Mike DiLauro of the Rhode Island Office of the Public Defender, Judy Greene of Justice Strategies, and Rachel McLean of the Council of State Governments was also integral to the ideas in this report.

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Report Summary

In Rhode Island individuals who owe money to the state because of past criminal convictions are frequently incarcerated because they fail to appear at ‘Ability to Pay Hearings’. Every year, thousands of individuals sit in the Rhode Island jail not for crimes, but because they owe money to the state. This report concludes that overall, there is a haste to incarcerate individuals for court debt in this state which causes unnecessary jail time, is an inefficient use of state finances, and disrupts people’s lives.

The debt to the court is either from a fine that is part of a previous sentence or is from court costs which are assessed in all criminal convictions to generate revenue for the state. Individuals with outstanding debt are put on payment plans, and if they fail to appear for a hearing a warrant is put out for their arrest. Once apprehended, they are given another hearing date. They are often put in jail with a bail equal to the total debt until the hearing. This study was undertaken in order to determine the extent to which incarceration is used as a means to collect debt and why people end up in prison for fines.

Department of Corrections and Judiciary data from 2005 and 2006 was analyzed and 25 interviews with individuals in the Intake Service Center of the Adult Correctional Institute were completed.

This study found that incarcerations for court debt currently comprise 17% of all pre-trial commitments in the state of Rhode Island. Individuals are incarcerated for an average of three nights and pay bail in only 19% of the incidents. The average amount owed is \$767. An average cost per incident is approximately \$202, and 15% of the incarcerations cost the state more than the amount owed by the individuals. The state spends an estimated \$489,919 per year on per diem inmate costs, prison staff, court, and police costs combined.

Although Sixth District Court deals with a much larger quantity of cases than any other court in Rhode Island, it generates a disproportionate amount of the incarcerations. 70% of the money spent to incarcerate people for court debt is spent by the Sixth District Court. People incarcerated by Sixth District Court for court debt spend an average of four nights in jail.

Most of the 25 individuals interviewed should not have been incarcerated for as much time as they spent in jail. They either legitimately could not pay their debt or could have been induced to pay through cheaper methods. In addition, the incarcerations create significant obstacles for individuals attempting to establish a stable, prosocial life.

This report recommends four central reforms to decrease unnecessary incarcerations for court debt: 1. Take ability to pay into account when assessing court fines and costs initially and throughout the payment plans. 2. Employ a variety of collection methods before resorting to incarceration. 3. Accept smaller bails from individuals picked up on warrants. 4. Reduce the maximum amount of time people are held in jail awaiting ability to pay hearings to 72 hours.

Background Information

Protocol for the Assessment of Fines and Costs

Debt to the court can be accrued in multiple ways: child support payments which must be made to family court; fines levied as part of a sentence or ticket; restitution levied as part of a sentence; and court costs* which are levied much like user fees to pay for a service. The state of Rhode Island combines restitution, court fines, and court costs when collecting outstanding debt.

Individuals that owe restitution have their restitution debt pooled with debt from fines and costs. People who owe restitution are given separate restitution review hearings. Because of the slightly different nature of restitution debt and because it could be identified separately in the analysis, incarceration for restitution will be discussed separately.

Many criminal charges allow fines to be used in addition to or instead of prison time. For example, sentences for possession of marijuana can include fines of between \$200 and \$500. Sentences for loitering for indecent purposes can include fines between \$250 and \$1,000. Sentences for driving without a license, first offense, can carry a \$250-

* These 'user fees' are generally referred to as 'court costs' in Rhode Island statute. They are alternately called fees or surcharges in other states but they will be referred to as 'costs' throughout this document.

\$500 fine. In addition, some crimes allow for restitution as part of a sentence. All of these fines are punitive.¹

In contrast to the punitive nature of court fines, the court costs system is a way for the courts to use their authority for the purpose of collecting revenue to help fund their operation and other functions related to the criminal justice system. Based on Rhode Island state law, people who are found guilty or plead no contest to a crime in Rhode Island state court are assigned a fee that is owed to the court.

If the crime is only a misdemeanor, then under current law the defendant owes \$93.50 for each charge for which he or she is convicted. Of that money, \$60 goes to the general revenue (Section 12-18.1-3), \$30 goes to a fund that is used to compensate victims of violent crime (Section 12-25-28), and \$3.50 goes to the jurisdiction of the police department or state agency that filed the charge (Section 12-20-6). Those who face multiple charges end up owing several times this amount, though the court may reduce the amount somewhat for defendants with four or more charges (Section 12-18.1-3).

For a felony charge, which is any criminal offense that carries a maximum punishment of more than one year of imprisonment or a fine of more than \$1,000, the fee is over \$270, and for felonies which carry a maximum penalty of over 5 years, it totals over \$450. Additionally, many specific types of charges carry additional fees, such as a \$25 cost for each domestic violence charge (Section 12-29-5), which is paid into the state's general revenue (see appendix 1 for a breakdown of court fines). Anyone who is apprehended on a warrant is assessed a \$125 fee (Section 12-6-7.1), \$25 of which is paid to the arresting agency.

The state also imposes laboratory fines which are combined with court costs as part of a defendant's total debt to the state (Section 23-1-3(g),(h)). Most drug related convictions carry a fine of \$118 and most serious non-drug related felonies carry fines of \$100. These fines go into the general fund.

Debt from punitive fines is combined with court costs when determining an individual's overall debt to the state and it is collected in the same fashion. In contrast,

¹ A full list of all of these fines has not been provided because of the large number of offense types. They are located in Chapters 12, 31 (driving related), and 21-28 (controlled substances) of the Rhode Island General Laws.

traffic tickets are civil offenses, are assessed and collected separately in a separate court, and cannot independently result in incarceration.

The courts' practice is to allow people to gradually repay the amount owed through regular payments. The courts have claimed the power to enforce the collection of this debt by temporarily incarcerating anyone who can afford the payment but fails to pay, though in practice they rarely exercise this authority. More commonly, judges use the power of the court to issue court orders that require people who owe fines or costs to appear before the court on assigned payment dates. Failure to appear on a court ordered date results in a bench warrant and is sufficient cause for being held in the state's prison system. The courts regularly exercise this authority.

Payment plans are generally on a monthly schedule, with scheduled payments ranging as low as five dollars and up to several hundred dollars. However, some judges increase spacing between payments to allow for extra time for individuals to acquire money. For those who are incarcerated, the first payment is not scheduled until after the person has been released from prison. Before a person who has been incarcerated leaves prison, a judge will sometimes meet briefly with them to schedule a court date for the first payment or a court costs review hearing. The scheduled hearing constitutes a court order which requires the person to appear.

The Sixth District court of Rhode Island processes by far the most cases in Rhode Island and thus deals with the majority of individuals that owe court debt to the state. It is protocol in the Sixth District to alert all those with fines and costs of the amount they owe and the date of their first hearing upon sentencing. Defendants sign a form agreeing to pay the set amount and appear at the set date. Individuals must then appear at that date and set up a payment plan and set the next hearing date. For all later hearing dates, individuals must either appear before a judge to discuss their ability to pay or pay the clerk the full amount owed. Individuals must appear in person, even if they can make their payment, to sign an agreement to come the following month. Payment in mail and payments made by others are not accepted by the Sixth District court.

Courtroom 3E, presided over by Judge Jebour, is dedicated every morning between nine and eleven solely to ability to pay hearings. These hearings are designed to assess the person's ability to pay, with the court claiming the authority to incarcerate

those who fail to pay despite being able to pay. In practice, the hearing is cursory and it is extremely rare for people who appear at their scheduled hearing to be held for failure to pay.

The hearing often lasts no more than two minutes, and it is focused on getting the person who is appearing before the judge to agree to a future payment that he or she will be able to make. It frequently also involves some discussion of the person's employment situation. The judge sometimes tells the person to find a job, or a job with longer hours, or a second job that will allow them to make payments to the court. Occasionally, the hearing will involve more extensive demands from the judge, especially if the person has arrived late in court or has not paid the court for a long period of time. The judge might demand that a person who is not employed search for a job and bring a list of a certain length of places that he or she has applied for a job to the next. In most cases, the hearing serves as a way for the court to keep in touch with the person who owes them money and to remind that person of the importance of paying.

If a person fails to make a scheduled payment and then fails to appear at the scheduled review hearing, then the judge issues a bench warrant. Any police officer who has contact with a person with an outstanding warrant will apprehend him or her. The person will be brought into the court where he or she owes costs or fines for its next session, which may involve being held in the Intake Service Center overnight or over the weekend. When the person is taken into court on the bench warrant, the person's treatment is at the judge's discretion. The judge may decide to issue a hold on the person and set the bail at a level they deem appropriate (Section 12-6-7.1). In practice, they set it at a number related to the total amount owed in court fines, including all previous costs plus the \$125 warrant fee². Sometimes judges will offer a smaller bail at court, as low as one half of the total in fines, although afterwards if the person is incarcerated the bail is generally set at the full amount. The bail is always set as cash bail, as opposed to surety bail, which means that the individual must pay the full amount to be released. Some

² RI General Law 12-6-7.1 recommends setting bail at the total amount of fines, however it allows for any bail that will ensure the defendant's appearance at the ability to pay hearing. "Any person apprehended on a warrant for failure to appear for a cost review hearing in the superior court may be released upon posting with a justice of the peace the full amount due and owing in court costs as described in the warrant or bail in an other amount or form that will ensure the defendant's appearance in the superior court at an ability to pay hearing, in addition to the one hundred twenty-five dollars (\$125) warrant assessment fee described above."

judges rarely incarcerate individuals who are brought on such warrants, and have a daily attorney present to represent all people brought in on warrants. Individuals are given their ability to pay hearings immediately at the first appearance. Some judges will also waive the warrant fee if the individual voluntarily comes to court.

If an individual cannot pay the necessary bail and the judge chooses to incarcerate the individual, they are sent to the Intake Service Center. If the bail is paid, then he or she is free to go, and the bail is treated as a payment of the costs and fines that were owed. Often judges will schedule ability to pay hearings for dates several days after incarceration, at which point the court will release the individual on personal recognizance. If the individual owes fines to several courts, they will have to wait for hearings at all courts before being released. While many people are released after several days, many also spend close to a week in jail waiting for an ability to pay hearing. In much less common cases, they will spend several weeks in the Intake Center without any communication from the courts, waiting release or a court appearance.

2006 Legislative Change

The 2006 Rhode Island Congress passed a bill (House Bill 2006-7006, Senate Bill 2006-2326) that amends Rhode Island General Law 11-25-15 and substantially changes how individuals are incarcerated for court fines and costs. According to the previously existing law, individuals were to be credited five dollars per day that they spend in prison as a result of failure to pay court fines and costs or make the proper appearances associated with court fines and costs.³ The intent of the amendment was that if people

³ 11-25-15. **Imprisonment for failure to pay fines or costs or give recognizance.** – Every person who has been or shall be committed or detained in the adult correctional institutions for the nonpayment of his or her fine or costs, or both, or for failure to give the recognizance in the amount required of him or her to keep the peace, shall be detained in the adult correctional institutions after that person has served his or her sentence of imprisonment, if any shall have been imposed, one day for each ~~five~~ one hundred fifty dollars ~~(\$5.00)~~ (\$150) or any fraction of it, of the amount of his or her fine or costs, or both, or of the recognizance so required of and not furnished by that person. However, the director of corrections may order the release of any person held in the adult correctional institutions solely for the nonpayment of his or her costs on any terms that he or she shall fix for the payment of the costs by that person and any person so released may be caused to be reimprisoned by the director of his or her failure to observe the terms of the release, and his or her warrant for imprisonment shall be sufficient authority to all sheriffs, police officer, jailers, and the agents for the director to retake and detain the person who shall upon his or her return to the correctional institutions serve one day for each dollar or any fraction of it of his or her costs then unpaid.

are incarcerated for failure to pay or failure to appear and do not have the ability to make bail they will receive some compensation for the time spent in prison, which will go to decreasing the number of indigent individuals spending time in prison for court fines. This study uses data from after the new law was noticeably in affect—October 2006. Perceivable effects of this new legislation will be discussed in the Results section by comparing 2005 data to data since the onset of the new law.

Other Relevant Rhode Island Statutes

Rhode Island General Law is generally interpreted as giving the court the power to remit costs in criminal cases. Section 12-20-10 states:

“The payment of costs in criminal cases may, upon application, be remitted by a justice of the superior court; provided, that any justice of a district court may, in his or her discretion, remit the costs in any criminal case pending in his or her court, or in the case of any prisoner sentenced by the court, and from which sentence no appeal has been taken.”

In addition, Section 12-20-10 states:

“If, upon complaint or prosecution before any court, the defendant shall be ordered to pay a fine, enter into a recognizance or suffer any penalty or forfeiture, he or she shall also be ordered to pay all costs of prosecution, unless directed otherwise by law.”

Both of these statutes give the court power to waive court costs. Section 12-18.1-3 qualifies the court’s ability by limiting the ability to waive specifically costs to cases where the court finds an inability to pay. The section lays out the specific costs for types of offenses (as discussed in the previous section) and then states:

(b) These costs shall be assessed whether or not the defendant is sentenced to prison and in no case shall they be remitted by the court.

(c) When there are multiple counts or multiple charges to be disposed of simultaneously, the judge shall have the authority to suspend the obligation of the defendant to pay on all counts or charges above three (3).

(d) If the court determines that the defendant does not have the ability to pay the costs as set forth in this section, the judge may by specific order mitigate the costs

in accordance with the court's determination of the ability of the offender to pay the costs.

Rhode Island General Law also makes reference to inability to pay as a necessary condition for waiving costs in Section 21-28-4.01(c)(3)(ii), in regard to drug treatment and education costs. In contrast, statute 12-25-28 currently forbids judges from waiving costs that contribute to the victims' fund, which is roughly one third of all court costs.

The interpretation of these statutes seems to vary across judges, but most statutes are in agreement that costs can be waived if the defendant is found to be unable to pay the costs.

Rhode Island General Law 12-6-7.1 also specifically states that if a warrant is issued for someone's arrest for their "failure to appear or comply with a court order" \$125 in fines is assessed. It also states that their bail shall be set at their total court costs or an amount "that will ensure the defendant's appearance in the superior court at an ability to pay hearing."⁴ This statute uses the word 'costs' but is interpreted to refer to both costs and fines, since the debt is pooled.

This statute as well as the recently amended statute 11-25-15 are the two statutes which specify the ability of the court to incarcerate individuals for failure to appear at court fine hearings or failure to pay court fines or costs.

Court Costs in Three New England States

Massachusetts: In Massachusetts, the standard fees are the victim witness fee (\$50-\$90) and council fee (\$150) per case. Fees can be worked off through community service and

⁴ RIGL Section 12-6-7.1: "Any person apprehended on a warrant for failure to appear for a cost review hearing in the superior court may be released upon posting with a justice of the peace the full amount due and owing in court costs as described in the warrant or bail in an other amount or form that will ensure the defendant's appearance in the superior court at an ability to pay hearing, in addition to the one hundred twenty-five dollars (\$125) warrant assessment fee described above. Any person detained as a result of the actions of the justice of the peace in acting upon the superior court cost warrant shall be brought before the superior court at its next session. Such monies shall be delivered by the justice of the peace to the court issuing the warrant on the next court business day."

they can be waived for indigent defendants. Individuals arrested on warrants are brought immediately to ability to pay hearings

Connecticut: \$20 fee for anyone who commits a felony, \$15 for anyone who commits a misdemeanor. There are also a considerable number of other costs assessed for specific cases, the most significant being a \$200 fee for all people whose sentences include probation. Fines and fees must be paid by the time of sentencing or before release from prison and no payment plans are allowed.

Maine: Maine has a mandatory victims' compensation fund assessment of \$10 for each misdemeanor and \$25 for each felony. There is also a surcharge of around 15% on fines.⁵

Relevant Supreme Court Cases

The Supreme Court has stated that individuals cannot be summarily incarcerated for owing money if they are unable to pay their debt. Alternative measures must be considered before incarceration is employed.

Bearden v. Georgia 461 U.S. 660 (1983) The Supreme Court found that a court cannot summarily jail an indigent probationer for failure to pay a fine unless inquiry reveals willful failure to pay. The ruling stated that

“...in revocation proceeding for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay. If the probationer willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay, the court may revoke probation and sentence the defendant to the imprisonment within the authorized range of its sentencing authority. If the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternative measures of punishment other than imprisonment. Only if alternative measures are not adequate to meet the State’s interest in punishment and

⁵ **Massachusetts:** Chapter 280, sec. 6 of Massachusetts General Laws, phone conversation with Andy Silverman, Deputy Chief Counsel for the Public Defender Division of the Committee for Public Counsel Services. **Connecticut:** Sec. 54-143 of the General Laws, correspondence with public defender’s office. **Maine:** Article 1901 of the General Laws, correspondence with Walter McKee, the president of the Maine Association of Criminal Defense Lawyers.

deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay.”

Tate v. Short 401 U.S. 395 (1971) The Supreme Court found that a court cannot convert a fine imposed under a fine-only statute into a jail term solely because the defendant cannot immediately pay the fine in full.

Payne v. Mississippi 462 So.2d 902, 905 (Miss. 1984) The Supreme Court found that a court may not first fine a defendant and then, because of his indigency, convert the fine into a jail sentence for failure of the defendant to make immediate payment of the fine.

Court Debt Collection

The Rhode Island District and Superior Courts assessed a total of \$15,145,445.00 in court fines and costs in fiscal year 2005. Their four year collection rate is 77% with another 13% of these fines still on payment plans or appealing the charges. 10% of their fines still went uncollected after four years.

District Court reported a significantly higher four year rate of collection, 50% in Superior Court versus 90% in Sixth District. Superior Court maintains a significantly higher portion of people on payment plans, with 32% still on payment plans in Superior Court after four years, versus 3% in District Court. These differences in collection rates could be the result of generally higher fines and costs for people in Superior Court, since they more often face felonies.

The RI Judicial Technology Center calculated the total owed, collected, uncollected, and on payment plans/appealed from fiscal year 2001 to fiscal year 2005 for the Superior Courts, District Courts, and Traffic Courts. This information is provided in appendix 1. The table shows the collection data by court and also for District and Superior Courts combined. This report does not specifically address the collection policies of traffic courts, since all holds that were included in the study were either District or Superior court holds.

Year by year collection data reflects the continual collection activity for fines and costs assessed in that year. For example, in 2001 District and Superior Courts assessed

\$14,766,466.00 in fines. Since then, they have collected \$11,376,077.00, or 77%, of this debt. The percentage collected for each year increases in both District and Superior Court because as years go by the debt is gradually collected.

Methodology:

The information in this report is from either analyzing a large number of electronic files or interviews conducted in the Intake Service Center in the fall of 2006. The goal of the electronic data analysis was to determine which commitments in Rhode Island were the result of ‘failure to pay’ or ‘failure to appear at an ability to pay hearing.’ This was not a trivial task, because no agency in the state expressly records whether a commitment is for failure to appear at an ability to pay hearing.

Data analysis of electronic records was based off of a file of all pre-trial commitments in the state from January 2005 to the end of December 2006. This file was provided by the Department of Corrections and it is a record of all pre-trial commitments to their facility during this time period. Because the state of Rhode Island uses a single, state run jail system, all male individuals awaiting trial are held in the same facility, the Intake Service Center (ISC) and all commitments are recorded in the same manner. All females are held on the same campus and data is stored in the same database.

This large file was processed and analyzed by the Family Life Center to generate the estimates in this report. In addition, it was necessary to incorporate information in the publicly accessible Adult Criminal Information Database, which is made available over the internet by the RI Judiciary. An example of one of these files is included in appendix 5.

The goal was to identify commitments that fit this definition: **An individual is committed to the Intake Service Center at the Adult Correctional Institution of Rhode Island because they, and only because they, previously failed to appear for a court hearing which was scheduled as, and only as, an ‘ability to pay costs’ or ‘cost review’ hearing.** In the rest of this report commitments that fit this definition will be described as ‘court debt’ commitments.

No commitments for failure to pay court debt that did not involve missing an ability to pay hearing could be identified, so these were not included in the study. Based on comparison to the data provided from the Department of Corrections, it appears that commitment specifically for failure to pay is a rare occurrence. The Department of Corrections records ‘commitment type’ for each commitment. ‘Failure to pay court costs and fines’ and ‘Failure to appear’ are both possible commitment types. ‘Failure to pay court costs and fines’ commitments are far less common (3% versus 31% of all commitments). Additionally, inspection indicated that most ‘Failure to pay court costs and fines’ commitments are actually ‘Failure to appear’ commitments or are for failure to pay restitution.

Because court debt bails are often set so high, there is the possibility that courts could use court debt as a way to increase the bail for individuals arrested on smaller charges. For example an individual brought in on a misdemeanor could be held on a bail of \$2000 if that was their fine. This was investigated, but found to represent a very small number of commitments. Less than 1% of pre-trial commitments fit this description. For the rest of the report, these cases are excluded from the analysis.

Cost Estimates

This study estimates the cost of incarceration for court debt in two ways. The first estimate uses the DOC’s estimate of \$95/day per person costs at the intake center to estimate the costs of incarceration. This represents the total daily operating costs of the building divided by the average inmate population. Court and police costs are estimated by using the \$125 warrant fee.

The second method estimates the cost of incarceration based on the estimated marginal costs of incarcerating people for court debt. This includes the per diem costs, which is roughly nine dollar a day, along with the cost of one full-time prison guard salary. This estimate takes into account the number of men and women incarcerated for court debt, since they are housed in different facilities. Based on the number of incidents of court debt every year, one full-time Correctional Officer in the Intake Service Center is

necessary to guard the men incarcerated for court debt.⁶ Because of the much lower number of women involved, no prison staff time in the women's facility was incorporated into the analysis. This is a more conservative estimate of the cost of incarceration, since a large part of the estimated per person costs provided by the DOC are in overhead, and this cost is unaffected by small numbers of inmates. The estimated cost of incarceration is combined with the estimated court and police cost of \$125 per incident to arrive at the total conservative cost estimate.

Identification of Court Fine Commitments

Two steps were necessary to determine how many commitments were court debt commitments. 1). It was necessary to determine if a specific hold was for court fines. 2). It was necessary to determine if the person was being held for reasons other than court fines.

To determine if a hold was for court fines, the date of the commitment was compared to the dates in the event and docket calendar for that case, as indicated by the Adult Criminal Information Database. The event listing includes all scheduled court fine hearings as 'ABILITY TO PAY' hearings or 'COST REVIEW' hearings. The dates for these hearings were compared to the docket. Whenever an individual does not appear for a court hearing of any sort, there will be a 'FAILURE TO APPEAR' entry around that date. When a warrant is issued by the court there will generally be a 'BENCH WARRANT ISSUED' or 'WARRANT ISSUED' listed. When an individual is then picked up there will often be 'WARRANT WITHDRAWN' and 'WANT OF BAIL DEFENDANT IS COMMITTED' events listed that same day. The exact distribution of these indicators differed slightly from case to case. These indicators were all reviewed by looking at a list of ten commitments that were verified as being for failure to appear at a court fines hearing.⁷ The indicators used were:

⁶ Because of the fluctuating population at the ISC, it is difficult to know exactly how many Correctional Officers are needed to guard people inside for court debt, but one CO is a reasonable estimate.

⁷ These ten commitments were identified by a clerk at six district court. Each commitment was caused by a warrant that indicated 'F.T.A for ATP' in the items section.

1. An 'ABILITY TO PAY' hearing is within fifteen days of a 'FAILURE TO APPEAR' docket entry.
2. A 'WARRANT ISSUED' docket entry is within fifteen days of an 'ABILITY to PAY' hearing.
3. The commitment occurred between zero and five days before a 'BENCH WARRANT WITHDRAWN' docket entry.
4. There was no 'WARRANT WITHDRAWN', 'VIOLATION', or 'PAID IN FULL' docket entry between the time of the failure to appear and commitment.

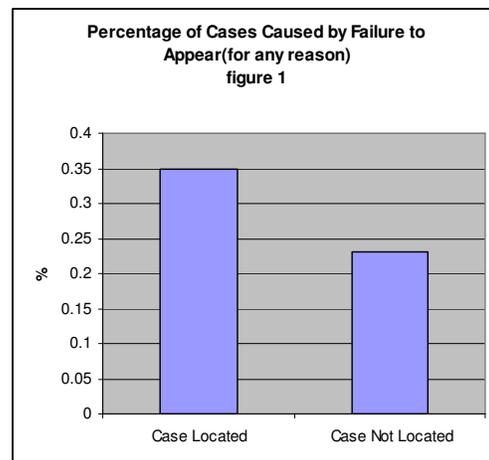
All of these indicators were positive for all but one of the independently verified cases.

If there were other holds placed on the individual that were not for court fines the hold was not counted as a court fine hold, except if the other hold(s) was from traffic court and was for traffic fines.

Details about the commitment were calculated by reviewing the data in the court case record. The information in these records generated estimates about the details of the commitment: the number of missed hearings, how often the individual made appearances, and what type of debt they owed (fine or cost). Appendix 5 shows an example of an incident where a person was incarcerated for court debt for only owing court costs and had appeared at an ability to pay hearing once prior to their first missed appointment. This court record was combined with the DOC pre-trial commitment data to determine the date and length of the commitment.

General Rhode Island Data

The primary data reported in this study is based on all pre-trial commitments between October 2006 and the end of December 2006-- 3,575 commitments. Of these commitments 502 could not be analyzed because the records for at least one related case could not be located. The cases that were not found were more likely to be for failure to appear reason than the cases that



were found, as shown in figure 1. This is according to the DOC 'commitment type.' The exact cause of the 'failure to appear' commitment could not be determined because the court case could not be located. An estimate was made in order to compensate for the impact of the difference in this unknown, however the difference represents less than one percent of the total number of commitments.

The time period of October to December was chosen in order to best estimate what the current level of incarceration for court debt is in Rhode Island. The estimates for the number of incidents in late 2006 were extrapolated to one year in order to provide the best estimate for the number of incidents per year. In addition, an identical analysis was done on all 2005 and 2006 commitments, and this analysis was used in order to estimate the affect of the passage of the 2006 \$150/day credit law and provide a longer time frame for the overall analysis.

Data was provided in part by the Department of Research and Planning of the DOC. The data file provided by the DOC includes: the individual's name, birth-date, gender, race, and unique DOC ID; the date of the commitment; the DOC's 'commitment type' category; and the holds associated with the commitment. Commitments can be caused by one or more than one hold. Each hold is associated with one court case and one case number, such as P2-2006-004456, a description of the cause of the hold, the type of release of the hold (such as bailed or discharged at court), and the bail set for that hold. Each case includes one or multiple charges, depending on how many charges the person was charged with at the same time.

Interviews

25 people were interviewed while they were being held in the Intake Service Center during the months of September and October, 2006. As will be discussed in the results section, about half the people committed for court fines either bail out or are released after a few days. Those people were not in long enough to be contacted. The interviewee pool represents the set of people who were unable to make bail and ended up spending closer to a week in jail. This still represents a significant portion of people committed for court fines. No individuals were refused an interview after contact and no interviewees refused to be interviewed.

Results

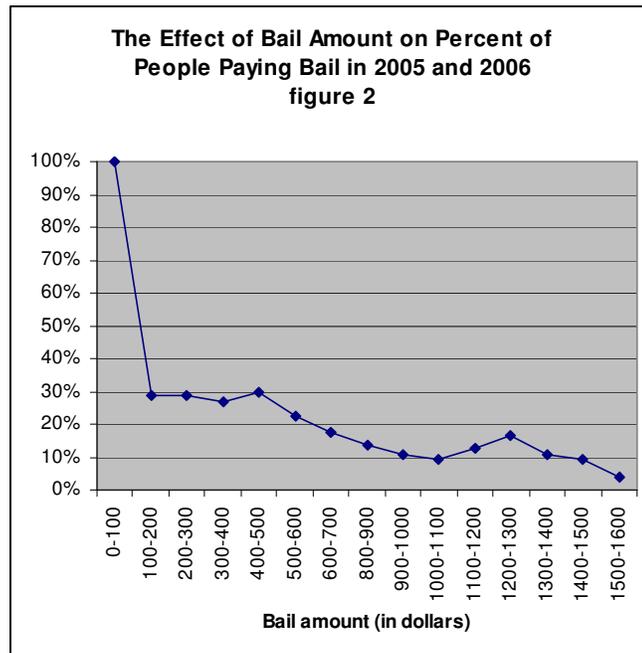
Overall Results

17% ($\pm 1\%$) of all pre-trial commitments in the state of Rhode Island in late 2006 were solely the result of the defendant missing an Ability to Pay hearing. This is greater than the frequency of any other single new charge (15%, driving with suspended license). On average, people committed because of court fines spent three nights in jail and owed \$767. At the current rate of incarceration, there will be 2,420 (± 360) incidents per year. This equates to approximately nineteen “prison years” for men and four “prison years” for women.⁸ In 2005, there were 2,287 (± 380) incidents of incarceration for court debt and 17% ($\pm 1\%$) of all pre-trial commitments were for court debt.

Bail and Time Spent in Jail for Court Debt

A considerable number of people are held on bails that are equal to or lower than the amount of money spent to incarcerate them. 17% of the commitments for court debt were net losses for the state—the money spent incarcerating the individual was worth more than their debt.¹⁰

19% of those incarcerated for court debt make bail. They still remain in prison for an average of two days, and they pay an average of \$547 in bail (the actual amount paid is probably half of that, since judges often offer lower amounts of



⁸ One “prison year” is one person in prison for one year. This is equivalent to four people in prison for three months each.

¹⁰ This uses the estimate, discussed later, that each night costs the state \$23, plus \$125 in police and court costs per incident.

bail while in court). The vast majority cannot pay and demonstrate this by spending an average of four nights in prison. Individuals who do not pay bail owe an average of \$820. Also, 91% of individuals who are bailed pay bail within the first three nights of incarceration. Among the population that is not bailed, although the average stay is four days, there is a wide variety of time spent in prison. A large portion of people spend three nights or fewer in jail and another large portion average seven days inside. Of the individuals who cannot make bail, 33% spend more than three nights in prison and 19% spend a week or more (this is 15% of all incarcerations for court debt).

Figure 2 demonstrates that in 2005 and 2006, people with smaller bails were more likely to pay bail. People were able to pay bails at or below \$500 twenty-seven percent of the time, while people were able to pay higher bails only twelve percent of the time. At very low amounts, less than \$100, all four people were able to pay bail.¹¹

Differences in Rhode Island courts

The court handling the case makes a difference in the level of court debt related incarceration. Individuals whose case originated in Sixth District Court spent more time each in jail. Of the individuals who cannot make bail whose cases originated in Sixth District, 40% spend more than forty-eight hours days in prison and 23% spend a week or more.

One half of all pre-trial commitments in Rhode Island originated in Sixth District Court while 67% of all court debt commitments originated in Sixth District Court. In contrast, Superior Court generates one quarter of pre-trial commitments but only 9% of court debt commitments. The full data by court is show in Appendix 2.

Background factors of incidents

People incarcerated for court fines have generally shown up for several of their previous court fine appearances or missed their very first one. As will be discussed in the interview section, a considerable number of individuals interviewed were not informed of their first ability to pay hearing or were not aware of it by the time they were released

¹¹ The sample sizes for each category in figure 2 vary, but, aside from the first point, all samples are greater than fifty incidents and most are greater than one hundred incidents.

from prison and consequently never went in the first place. Another large segment of interviewees had made significant efforts to pay or appear before missing a hearing. This is reflected in the data as well. Thirty percent of the total commitments for court debt are people who never appeared after their sentence or release from prison. In contrast people who showed up to set up their payment plan had on average appeared at four hearings before missing one. Overall, 51% of the people jailed for court debt either never showed up or showed up at least four times consecutively. This contradicts the notion that judges only use incarceration on people that are serially delinquent.

In Rhode Island court costs and court fines are pooled together when determining an individual’s overall debt to the state. However, 53% of the individuals incarcerated for court debt did not receive a fine as part of their sentence for the case they were being held on. Their debt is comprised only of court costs and warrant fees.

Costs

One night in the Intake Service Center (ISC) costs the state \$95 according to the DOC’s estimated cost per offender.¹² There are an estimated 7,744 nights spend in intake for court debt every year. Additionally, the state assesses a \$125 warrant fee for every incident. Using the warrant fee to estimate the court and police costs, the total estimated cost to the state would be about one million dollars.

	Cost
19 prison-years (men)	\$63,378
4 prison years (women)	\$13,636
One guard position in ISC	\$110,405
Court and police costs	\$302,500
Total	\$489,919

Table 1
Conservative Estimate of Yearly Costs

A more conservative estimate of the cost to the state, taking into account the marginal cost of each prisoner at the ACI, is \$489,919. This estimate relies on the estimate that decreasing the ISC population by nineteen people could result in the reduction of one Correctional Officer. The breakdown of this estimate is shown in table 1. Using this estimate, the average cost per incident is \$202 and the average cost per night is \$23.

¹² 2005, Rhode Island Department of Corrections Costs Per Offender –FY 2005

Results of new \$150/ day credit

According to statute 11-25-15, individuals must now be credited with \$150 for every day they spend in jail because of court debt. Conversations with judges and a review of court records demonstrated that judges are applying the credit in many cases. However, interviews demonstrated that some people were being held in jail for longer than their debt justified. For example, one individual owing less than \$300 was held for eight days, but their debt was erased upon release. A reading of 1-25-15 along with 12-6-7.1 indicates that an individual should not continue to be incarcerated if they have paid off their debt.

To determine if the new law is affecting how judges mete out court debt related jail time, data from October 2005 was compared to data from October 2006. During both periods, court debt related incarceration made up 17% of all pretrial commitments. The change in law does not seem to be affecting the rate that judges jail individuals for court debt. However, average time incarcerated did decrease, from four nights in 2005 to three nights in 2006. This indicates that judges are releasing people faster, possibly in order to save money.

Restitution

Individuals that owe restitution have special restitution review hearings scheduled. If they miss these hearings they are incarcerated similarly to people owing court fines or court costs. However, only about 1% of all pre-trial commitments are for missing a restitution review hearing. This is possibly because restitution is far less likely to be assessed than court costs. An analysis of the types of sentences in court records indicates that only 17% of court cases include restitution as part of the sentence.

Interviews

John Lester (name changed) was sleeping on a bench in Providence, Rhode Island. John is originally from Warwick but took the bus down to Providence to see friends. A couple days ago he had shipped back from a several week long fishing voyage. Since he landed the job a couple months prior he was only off ship five days a month or so.

Unfortunately for John, a Providence police officer decided to ID John, and within hours he was in a holding cell. John owed almost \$2,000 in court debt from prior convictions, his most recent being a disorderly conduct charge a year ago, and he was held on a \$220 bail (his debt to Sixth District Court) which he could not pay. He had missed a court fine hearing the previous month, his first since getting out of alcohol abuse treatment. He stated “I went through hell for the last year, I lost my mother, I spent eight of the last twelve months in prison, then home confinement, then the court made me go through rehab. I just got out [of rehab] in April. Things were getting going, now they just jammed me up. It’s my fault but that doesn’t make it right.” While John was being held his ship set sail without him, potentially causing him to lose his new job, and he was unable to call his federal parole officer about the parole date he had to miss. John was told he would be held for a week while waiting to appear before a judge to discuss his fines. Unfortunately, due to bureaucratic confusion, he was held for 32 days and was only released when a public defender was alerted to the problem.

John’s story, aside from the long time spent in jail, was similar to the stories from the other 24 people interviewed. Ten interview summaries are included in the appendix.

Reasons for missing court date

Almost every person being detained for court fines is being detained for a combination of inability to pay and inability to meet the court schedule. Many could pay some bail but cannot pay the high bail that is set. Only one of the people interviewed could potentially pay their fines and expressed a significant resistance to paying, and even that person was currently unemployed. Table 3.1 shows the reasons that people missed Ability to Pay hearings. Overall, the conditions which had resulted in the incarceration of the people interviewed demonstrated a haste to incarcerate people who missed appointments.

Reasons for Missing Ability to Pay Hearings

knew about date but forgot	6
was never informed of date or did not remember being informed of date	6
refused to go	1
could not pay for transportation	2
did not have money and did not know they should go anyway	5
did not have money and had been threatened to not come back without money	1
could not miss work	2
tried to go, prevented by court	2

The most common reason people miss hearings is they forget about the hearing. One man interviewed had been paying and showing up regularly. He forgot one hearing and had planned on going to visit the court on the same day he went in to family court. The sheriff who came to his door to issue him a summons to his family court date picked him up on his warrant and he spent eight days in jail on a bail of \$1,182 which he could not pay. In the three months prior to the incarceration he had gone to court and made his monthly payments each month.

Several people, such as John, were relatively recently released and had not yet gone to court to set up a payment plan. They had either never received the first court date or had received it prior to being released from prison or entering a rehabilitation program and then were never reminded of the date.

One woman had been released on probation several months ago. She had been seeing her probation officer regularly. She had never been aware of her ability to pay hearing and her probation officer never informed her of the warrant put out for her arrest. At five in the morning police broke into her bedroom looking for her neighbor. They ran her name and brought her to prison where she spent eight days in prison on a bail of \$243.50.

Many people, especially those not living in Providence, stated that transportation necessary to meet court dates was both overly time consuming and expensive. One man from Woonsocket said that to make it to court in Providence by nine in the morning he

has to get up at six in the morning, walk two miles, and take a bus to Providence. He is a veteran and is on SSDI for Post Traumatic Stress Syndrome. He has been incarcerated two other times for court debt. He stated, "If there was a court in Woonsocket I could go to and it was only thirty per month, I would pay it."

While the courts rarely incarcerate people who show up to ability to pay hearings, people who do not have the money to pay their fines sometimes do not go to their hearings because either they are not aware they should go anyway or they have been threatened by the court that if they continue to show up and not pay they will go to jail. The court does not explicitly inform defendants that they can continue to show up and not pay without being imprisoned, so confusion is not surprising.

One man who had been paying and showing up fairly regularly stated "I have a job, it's a moving company, I only make 8.75. Money only stretches so far, I got bills, I got rent. I might miss a month or two. They want to lock you up. Right now I'm losing my job. What can I do? I missed my last hearing because I had rent. No one ever told me that if I went they wouldn't lock me up even if I couldn't pay."

David has been homeless on or off for the last several years. He has not been able to work since 2002, and has SSI pending because of a chronic nerve disease, hepatitis, and diabetes. He has been in prison for court debt many times previously and reports often going to court dates despite the fact that he almost never can pay.

"I can't work because I got a physical condition that keeps me from working. I got SSI and SSDI pending. I got peripheral neuropathy, chronic nerve disease. All the jobs I ever did were outdoors, I can't do that no more, or restaurant work, and I can't do that no more because I got hepatitis. A lot of times they go 'you got to come back to court on such-and-such a date or else' and when they say that 'or else' that means you are going to jail, no matter what, whether you come, whether you show up, or what. So I don't show up. Most of the money I owe is warrants, because I don't show up."

David is an example of a person stuck in a cycle of debt, missed hearings, incarceration, and increased debt. The continued assessments of warrant fines and the continued incarcerations do not result in increased payment.

Some people are incarcerated despite efforts to show up at court and pay their fines. One man reported going to court with shorts on to set up his payment plan and being turned away because of the shorts. He stated:

“The 16th of last month, I had got out. I got out on a Saturday, and I had a court date on a Monday, and I had just done six months. I had got out, and I went to court in shorts, not knowing that I wasn’t supposed to be going to court in shorts. The sheriff wouldn’t let me in, so I just went home and tried to reschedule that appointment. They told me to come back before two, and I live all the way in Pawtucket, so its not an easy thing for me to go and come back like that. I tried, but I didn’t make it. I made it back at like 2:30, but they told me court was over that day for court fines. So I ended up just leaving, trying to call my lawyer, telling him that I think I have a warrant. He told me the best thing for me to do was try to take care of it, knowing that I would probably do seven days. He said there’s no chance of me even taking care of it. So I knew I had a warrant, you know, and I ended up just procrastinating on that warrant.”

He was incarcerated for seven days for owing \$300 to Sixth District Court.

Characteristics of Individuals Interviewed

- 50% (12/25) unemployed
- 16% (4/25) homeless
- 75% (18/25) had been incarcerated for court fines before
- 37 years old on average
- 50%(8/17) that had recently had an extended period in which they owed fines had been paying regularly
- 20%(5/25) had significant mental health problems, including schizophrenia, bipolar disorder, and depression
- 16%(4/25)were on SSI and almost half had significant health problems, including hepatitis, chronic nerve disease of the arms and legs, and seizures.
- Half (12/25)are responsible for children
- Half (6/12) of those with jobs will probably lose their job because of their incarceration.

Collateral Effects of Incarceration

Aside from the cost to the state of jailing individuals, there are other collateral costs to the individual, including time lost from work. This report did not collect enough

data to estimate the number of individuals who lost time from work because of incarceration, however, twelve of the twenty-five of those interviewed were currently employed. Individuals reported many other problems caused by the incarceration, from losing apartments to not being able to take medicine for mental health problems.

Mike was on the point of giving up when he was interviewed in the Intake Center. Mike had a job and was living with his girlfriend when he was picked up by a cop who recognized him while he was leaving the hospital. He has hepatitis and seizures. He is on food stamps and has applied for SSI. Mike has been incarcerated two other times in the past year for court debt, and each time he almost lost his job. While in jail, he stated

“I lost my job, I lost my girl, my apartment. I will probably get violated because I didn’t show up for a probation appointment. They’ll put another warrant out on me. I lost my job twice, they gave it back to me before, I don’t think they will this time. I try so hard but I’m losing everything over and over again. After awhile you just feel like giving up and putting a bullet in your head.”

Mike was in a drug rehabilitation program when he was incarcerated, and will probably not be able to reenter it immediately when released. He owed \$300 to the state.

Mike’s situation is not unique. Several individuals testified to having lost jobs more than once because of court debt incarceration. One man said that his family would not be able to pay rent that month because of his incarceration and he was worried what would happen to his wife and kids while he was in jail. Another man on SSI stated that he would probably get his SSI check stolen while in jail.

Incarceration for court debt is a major obstacle for individuals attempting to reenter society after time in prison or any individual who has a prior history of criminal conviction and is trying to maintain a legal and prosocial life. Incarceration for court debt interrupts medical and rehabilitation treatment, causes individuals to be fired from employment, disrupts families, and disrupts housing situations.

Verification

Comparison to warrant data

The warrants for ten commitments for court fines were obtained. These warrants all indicated ‘F.T.A. for ATP’ in the items section. The court and DOC records for these

commitments were analyzed. Of the ten, nine would have been correctly identified as court fine commitments. The tenth was missing a 'FAILURE TO APPEAR' docket entry.

Interviews

The interviews presented an opportunity for an in-person verification of those commitments which were identified as court fine commitments. This only allowed checking for over-counting, not under-counting. Of the 25 interviews conducted, all were confirmed as court debt commitments.

Comparison to DOC data

The 2005 DOC file of pre-trial commitments includes a 'commitment type' category for each commitment. There are 10 possible values, including 'Hold for Immigration', 'Failure to Appear', 'Failure to Pay Fines/Fees', 'New Commitment', and 'Probation Violator.' Of the 13,882 commitments in this file, 33% indicated 'Failure to Appear.' This number is larger, as it should be, than the 17% estimate for court fine commitments, which are the subset that represents failure to appear for a court fine hearing.

1930 of these 13,882 pre-trial commitments were tested individually. 33 were marked by the DOC as 'Failure to Appear' but not identified as court fine records. All 33 were for failure to appear for a different hearing, mostly pre-sentence court dates. This provides a robust test against undercounting, since the procedure used in this report did not improperly discount any commitments indicated as possible court fine commitments by the DOC.

Error

There are a number of sources of error for these estimates.

Missing or Incorrect Data

The first source of error is that the data provided by the courts is not accessible for all cases. Of the 3,575 late 2006 commitments analyzed, 502 were missing cases. As discussed in the results section, these missing cases were slightly different than the other

cases. As shown in figure 1, they are 37% less likely to be for ‘failure to appear,’ according to the DOC commitment type. In order to compensate, for the unknown cases, the estimated number of court debt commitments was decreased by this proportion, 37%.

It is possible that either the DOC or the Adult Criminal Information Database could provide incorrect data. While no errors were encountered in the study, there was variation in the way that court debt incarceration is recorded in court data which made interpretation less confident in situations. Some courts were less consistent in recording ‘WARRANT ISSUED’ events and some older court records did not record ‘FAILURE TO APPEAR’ events at all. Cases that were missing either of these indicators were reviewed manually and the best estimate was made. The other possible best possible explanations for the commitments, failure to appear for another type of hearing or probation violation, generally generate identifiable indicators in court records. These would also have had to be missing in the records for an incorrect identification to occur.

Undercounting of court fine commitments

To check for undercounting, the previously discussed analysis of 33 commitments from the DOC commitment file was performed. This analysis did not find any undercounting of court fine commitments. Assuming that the DOC is not undercounting ‘Failure to Appear’ commitments, undercounting in this study appears to be low.

Over-counting of court fine commitments

Of the interviews conducted, all individuals confirmed that they were being held only for court fines. In addition, there does not appear to be any scenario that causes an identical pattern in court records. If an individual misses a court fine hearing and is then arrested on a new charge, there will be a new charge associated with the commitment. If they are arrested on a violation of probation or parole, the violation will be indicated in the court record.

In about 10% of the identified incidents, one or more of the indicators was missing. As a result of this potential for over-counting, a 1% possible error is included in the estimate of the rate of court debt incarceration.

Recommendations

Introduction

The current policy should be altered to avoid assessing fines that the defendant cannot pay, decrease the amount of money spent by the courts, police, and prison system to incarcerate these people, and avoid unnecessary incarceration of defendants. It is necessary that the courts still maintain and use the power to incarcerate for delinquency around court fines. This is a necessary measure to ensure that people with court debt that have the ability to pay the debt make efforts to pay it. However, incarceration related to court debt should be a last measure used for people avoiding payment. Incarceration related to court debt contributes to 17% of all pre-trial commitments, a significant part of the ACI's activity and a significant contribution to overcrowding.

Possible changes in policy that might help avoid incarceration for court fines are reported below, including suggestions by interview subjects.

Recommendations from Interviews

Interview subjects offered many suggestions for changes that would make them more likely to appear in court, pay fines, or avoid incarceration. Suggestions included:

- Receive a warning for your first failure to appear—several individuals had never missed a court fine appearance before.
- Ensure that probation and parole make individuals aware of dates and warrants—several individuals were on parole or probation and had no idea of their missed appointment or the warrant out for their arrest.
- Mail a letter after one missed appointment before putting a warrant out—while the majority of individuals interviewed did not have stable addresses, those that did expressed that they could have been informed of their missed appointment through the mail and they would have appeared to pay.
- Make it clear to all individuals that they should show up to court even if they cannot pay their fines—several individuals had no idea that they should come to court even if they could not pay, and most that did know had heard it through rumor and not through the court.

- Accept smaller bail amounts—several individuals testified to offering the court several hundred dollars to stay out of prison.
- Establish an automatic payment plan option with banks.
- Never hold people long enough for them to lose their jobs.
- Lower fine and or monthly payment—half of the individuals interviewed were unemployed, roughly one fifth were on SSI, and almost half had significant mental or physical health problems that made working difficult. As part of the interview I asked people how much they could reasonably pay per month overall, keeping in mind that many owed in several courts. Many individuals suggested clear amounts that they thought they could pay.
- Do not assess a fine for every charge, since generally all charges are heard together. Five charges does not cost the court five times as much to process as one charge.
- Allow people to pay fines in other cities than the city they owe in—this complaint was most common for individuals from Woonsocket.
- Provide incentives for people who miss appointments to voluntarily come in—individuals expressed fear and uncertainty about going to court voluntarily after missing a hearing. After missing one appointment many grew frustrated because of the added \$125 fine and the chance that they would be incarcerated if they went back to court. Courts could guarantee removing the \$125 fine for people who voluntarily come to court after missing a hearing and guarantee that they will not be incarcerated if they have the money to make one payment.
- Credit people for time they serve by removing part of the fine for people who spend time in jail.
- Let people who arrive in court in shorts or other improper attire reschedule their hearing immediately for a nearby date.
- Reduce fines for warrants—some individuals described being stuck in a cycle where they paid off fines only to miss one hearing and owe another \$125.

Recommendations for Reforming the Collection and Assessment of Fees

The State of Rhode Island should alter court protocol and state statutes to more effectively collect court costs and fines and end incarceration for court debt of individuals that are unable to pay. The state should also alter the way it assesses costs and fines to assess them more fairly and in a way that does not assess fines or costs that people are unable to pay.

This report makes four central recommendations which would reduce the number of people incarcerated for court debt who cannot pay the debt, reduce the collateral consequences of incarceration, reduce the number of incarcerations that are net losses to the state, and employ more cost effective collection methods:

1. Take ability to pay into account when assessing court fines and costs initially and throughout the payment plans.
2. Employ a variety of collection methods before resorting to incarceration.
3. Accept smaller bails from individuals brought in on warrants.
4. Reduce the maximum amount of time people are held in jail awaiting ability to pay hearings to 72 hours.

In addition to these primary recommendations, this report makes several other recommendations that would make court debt collection more equitable and more effective.

Consider Ability to Pay when Assessing Court Fines and Court Costs

Judges should take an individual's ability to pay into account when assessing court debt and as they collect court debt. By adjusting court cost and court fine amounts to the ability of the defendant to pay the court is more likely to collect and can maximize revenue. For example, some individuals interviewed have medical conditions which prevent them from working, have been consistently unable to pay court debt, and have qualified for disability insurance from the state. It would be more affective for the court

to assess lower court costs and court fines in these cases instead of establishing a court debt that is unlikely to be paid. In lieu of fines and costs, alternative sentences such as community service could be employed.

Structured or means based fines are a tested and recommended judicial practice. They were demonstrated to be effective methods of punishment and fine collection in pilot studies and are recommended by the US Department of Justice Office of Justice Programs.¹³ These documents lay out specific structures for creating levels of fines based on the offender's ability to pay and the severity of the crime. The New York Bar association recommended two tiers of payment—one for those who qualify for public defense and another for those who do not.¹⁴ This should be seen as a measure to make fines more likely to be collected while still maintaining revenue.

Employ a variety of collection practices before incarceration

The State of Rhode Island currently issues warrants for arrest for a single missed appointment. Although judges exercise restraint when dealing with indigent individuals who appear at ability to pay hearings, they require incarceration for individuals that are brought in on warrants. Many other states employ a variety of intermediate measures for court debt that is delinquent.

Mesa Court in Maricopa County, Arizona published an extensive report “The Facts About Collection Practices at the Mesa Municipal Court” in 2001. This report details an extensive number of collection practices that are effective. They include: late notices mailed to the individual, suspension of license, warning notices that a warrant

¹³ Hillsman, Sally T., 1990. “Fines and Day Fines,” *Crimes and Justice*, vol 12; Turner, Susan and Greene, Judith, 1999. “The FARE Probation Experiment: Implementation and Outcomes of Day Fines for Felony Offenders in Maricopa County,” *The Justice System Journal*, Volume 21/1; Greene, Judith, 1990. “The Staten Island Day-Fine Experiment,” in D.C. McDonald (ed.), *Day Fines in American Courts: The Staten Island and Milwaukee Experiments*. Washington DC: National Institute of Justice; “How to Use Structured Fines (Day Fines) as an Intermediate Sanction/ Bureau of Justice Assistance”. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 1996. <http://www.ncjrs.org/txtfiles/156242.txt>; <http://www.ncjrs.org/pdffiles/156242.pdf>

¹⁴ *Reentry and Reintegration: The Road to Public Safety* Special Committee on Collateral Consequences of Criminal Proceedings of the New York Bar Association. Available at http://www.nysba.org/MSTemplate.cfm?Section=Table_of_Contents1&Site=Special_Committee_on_Collateral_Consequences_of_Criminal_Proceedings&Template=/ContentManagement/HTMLDisplay.cfm&ContentID=80374

will be issued, mass mailing to all individuals with delinquent debts, notifying credit agencies, phone calls to the individual, the place of work, and references such as family and friends. Each of the practices or a combination of these practices is more effective than summary incarceration of individuals who do not appear to hearings.

Interviews demonstrated that some sort of intermediate warning would be useful in many cases. Many individuals stated that they had forgotten about their fines or had forgotten one appointment. According to electronic records, most individuals either never show up to a single ability to pay hearing after their sentence or they show up to an average of three before missing one. Mailed notices or phone calls would help induce many individuals to pay.

Accept smaller bails from individuals brought in on warrants

People in many cases can pay something, but in most cases cannot pay the higher amounts being demanded by the court. Many individuals interviewed stated that they offered the court several payments worth of money as bail and were refused. Instead, they spent a week in prison and then left without paying anything. As demonstrated in figure 2, people are around three times more likely to pay smaller bails. By accepting smaller bails the courts would be more likely to receive some payment immediately and avoid spending money to incarcerate people.

Reduce the maximum amount of time people are held in jail awaiting ability to pay hearings to three days

A significant portion of the people incarcerated are released after several days without paying bail. However, almost one third spend more than three nights incarcerated. Additionally, 91% of the people who make bail pay in the first three days. The time spent incarcerated beyond three nights increases jail costs and increases the disruption to the individual's life, such as the likelihood they will lose their employment. Discharge after three nights should be a rule not a possibility. If all individuals committed to jail-time for court debt had been released after 72 hours in 2005

the state would have saved \$613,800. Judges should have to hold ability to pay hearings within 72 hours of incarcerating someone.

Other Recommendations

1. Clarify statutes to give judges clear discretion to waive costs

Currently, Rhode Island Statutes contain contradictory language regarding the ability of a judge to waive court costs. Language should be changed so that 12-18.1-3 (d) is the controlling language:

(d) If the court determines that the defendant does not have the ability to pay the costs as set forth in this section, the judge may by specific order mitigate the costs in accordance with the court's determination of the ability of the offender to pay the costs.

Currently 12-18.1-3 (b) currently states:

(b) These costs shall be assessed whether or not the defendant is sentenced to prison and in no case shall they be remitted by the court.

12-18-1.3(b) contradicts directly with 12-18-1.3 (d).

2. Modify Court Cost Assessment

Court costs in Rhode Island are a fee for services rendered by the state. They are not a form of restitution or punitive fine, which are legislatively and conceptually distinct from court fines. Some costs are set at levels that parallel costs associated with a specific service, for example laboratory fees are set at a level that attempts to estimate the necessary costs of investigative laboratory work. These changes are recommended to reconcile court fine assessment with the justification for court fines:

Victims' fund fees, which are one third of general court fines, are meant to compensate victims of violent crimes but are assessed against non-violent offenders. Roughly one half of felonies are non-violent. Victim fund fees should only be assessed for violent felonies. They could be increased to compensate for lost revenue.

Costs are assessed according to the number of charges, even if the multiple charges do not reflect an increased level of service. Costs should be associated per case, since increased charges may not reflect increased court costs.

Warrant fees should be reduced. Individuals that have trouble paying court debt are frequently assessed warrant fees over and over again. Warrants not associated with court debt do not generate \$125 fines and \$125 is a very high fee for missing an appointment. A \$50 fee could pay still pay the police \$25 and pay \$25 for the court's efforts.

3. Involve Probation and Parole Officers in debt collection

Currently Probation and Parole officers are not involved in the process of court debt collection. Paying debt to the court is rarely a condition of probation or parole in Rhode Island. This should not be changed, because if individuals could be violated for failure to pay debt or appear at hearings this would increase the number of technical violations and time spent incarcerated. However, probation and parole officers should be aware of an individual's warrants and ability to pay hearings and keep their clients informed.

4. Allow individuals who arrive to court in clothing not acceptable to the court, such as shorts, to reschedule their ability to pay hearing immediately.

Recommended Legislative Action for 2007

In the 2006-2007 legislative session, the RI legislature is considering Senate Bill S0701. This bill alters several portions of section 12 of the Rhode Island general statutes to accomplish the following things:

1. Define the conditions for a defendant to be deemed indigent and clearly provide judges discretion to waive court costs for indigent individuals. The conditions include being on TANF, food stamps, disability insurance, or a government sponsored state supplemental income program.
2. Encourage ability to pay hearings to occur quickly after arrest.
3. Prioritize the payment of restitution over court costs and fines.

S0701 does a good job to address the first of the four recommendations listed at the start of the section—‘Consider Ability to Pay when Assessing Court Fines and Court Costs.’ Several small changes could also address the two other recommendations: ‘Accept smaller bails from individuals brought in on warrants’ and ‘Reduce the maximum amount of time people are held in jail awaiting ability to pay hearings to three days.’ This report would recommend a version of S0701 amended as such:

1. **Require that individuals receive an ability to pay hearing within 72 hours of incarceration:** Generally, after an ability to pay hearing, individuals are released on personal recognizance. Setting a limit to the amount of time an individual can sit in jail for the hearing will do away with unnecessary and costly prison time, as discussed at the beginning of the recommendations section. Superior Court in Providence has an attorney on hand who handles ability to pay hearings of people brought in on warrants immediately. Allowing courts a three day window to schedule and prepare for the hearings is sufficient.
2. **Reduce bails:** Set bail at or below one quarter of the total amount paid, instead of the total amount paid. An allowance is made in cases where the amount owed is less than two hundred dollars, in which case the bail can still be set at fifty dollars. Currently, the bail is automatically set at the total amount owed by the individual. This produces inordinately high bails considering the nature of the offense. If bails were lower, more individuals would be able to pay them, instead of being incarcerated for additional days. This would actually increase the revenue of the courts, since the court would receive some payment immediately, and it would decrease prison costs.

Here is the portion of the recommended bill, with proposed amendments in bold. The original changes to the statute, as made in the bill, are still underlined.

§ 12-6-7.1 Service of arrest warrants. –

(a) Whenever any judge of any court shall issue his or her warrant against any person for failure to appear or comply with a court order, or for failure to make payment of a court ordered fine, civil assessment, or order of restitution, the judge may direct the warrant to each and all sheriffs and deputy sheriffs, the warrant squad, or any peace officer as defined in § 12-7-21, requiring them to apprehend the person and bring him or her before the court to be dealt with according to law; and the officers shall obey and execute the warrant, and be protected from obstruction and assault in executing the warrant as in service of other process. The person apprehended shall, in addition to any other costs incurred by him or her, be ordered to pay a fee for service of this warrant in the sum of one hundred twenty-five dollars (\$125). Twenty-five dollars (\$25.00) of the above fee collected as a result of a warrant squad arrest shall be divided among the local law enforcement agencies assigned to the warrant squad. Any person apprehended on a warrant for failure to appear for a cost review hearing in the superior court may be released upon posting with a justice of the peace ~~the full amount due and owing in court costs as described in the warrant or bail in an other amount or form that will ensure the defendant's appearance in the superior court at an ability to pay hearing, in addition to the one hundred twenty-five dollars (\$125) warrant assessment fee described above~~ **an amount no greater than one quarter of the full amount due and owing in court courts and fines, except for cases in which the amount due is less than \$200, in which case bail may be set at an amount up to \$50.** Any person detained as a result of the actions of the justice of the peace in acting upon the superior court cost warrant shall be brought before the superior court at its next session. Such monies shall be delivered by the justice of the peace to the court issuing the warrant on the next court business day.

(b) Any person arrested pursuant to a warrant issued by a municipal court may be presented to a judge of the district court, or a justice of the peace authorized to issue warrants pursuant to § 12-10-2, for release on personal recognizance or bail when the municipal court is not in session. The provisions of this section shall apply only to criminal and not civil cases pending before the courts.

(c) Any person arrested for failure to make payment of a court ordered fine, fee, assessment, or other costs of prosecution, or order of restitution, shall

(i) be immediately brought before the court

(ii) if the court is not in session then the person shall be brought before the court at its next session

(iii) be afforded a hearing on their ability to pay within 72 hours.

Breakdown of Court Costs
Appendix 1

Warrant	\$125	\$100 general revenue \$25 arresting agency
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Charge*	Amount	Recipient
Misdemeanor	\$93.50	\$60 general revenue \$30 victim's fund \$3.50 arresting agency
Felony punishable by more than one year or a fine more than \$1,000**	\$273.50	\$180 general revenue \$90 victim's fund \$3.50 arresting agency
Felony punishable by more than five years**	\$453.50	\$300 general revenue \$150 victim's fund \$3.50 arresting agency

* each charge is assessed a distinct court fine, although judges can restrict assessments to three charges

** this refers to the potential punishable time period made possible under the statute, not the actual prison time given

Court Fine Commitment by Court
Appendix 2

	Rate of Incarceration for Court Debt	Length of Incarceration(days)	Average Bail/Fine Owed
Statewide	17%	3	\$767
Sixth District	21%	4	\$694
Providence Superior	11%	3	\$1,524
Second District	13%		
Third District	19%		
Fourth District	7%		
Washington Superior	7%		
Kent Superior	11%		

Estimated Costs of Court Fine Related Incarceration by Court
Appendix 3

	Conservative Cost Estimate	Estimated Number of Incarceration Incidents
Statewide	\$489,919(±\$54,700)	2,420(±360)
6th	\$323,342(±\$37,00)	1,488(±230)
Superior	\$42,607(±\$4,864)	188(±32)

Court Collection Data
provided by the Judicial Technology Center
Appendix 4

		assessed	receipts		uncollected		plans	
Superior Court	2005	\$5,072,145.00	\$2,342,387.00	46.18%	\$696,002.42	13.72%	\$2,033,755.58	40.10%
	2004	\$5,186,443.00	\$2,373,929.00	45.77%	\$864,814.19	16.67%	\$1,947,699.81	37.55%
	2003	\$5,464,772.00	\$2,583,205.00	47.27%	\$815,631.42	14.93%	\$2,065,935.58	37.80%
	2002	\$5,439,522.00	\$2,544,722.00	46.78%	\$797,899.34	14.67%	\$2,096,900.66	38.55%
	2001	\$4,929,996.00	\$2,488,968.00	50.49%	\$819,407.00	16.62%	\$1,621,621.00	32.89%
	total	\$26,092,878.00	\$12,333,211.00	47.27%	\$3,993,754.37	15.31%	\$9,765,912.63	37.43%
District	2005	\$10,073,300.00	\$8,233,667.00	81.74%	\$1,054,162.65	10.46%	\$785,470.35	7.80%
	2004	\$9,969,098.00	\$8,434,882.00	84.61%	\$762,299.56	7.65%	\$771,916.44	7.74%
	2003	\$9,819,597.00	\$8,455,574.00	86.11%	\$759,131.71	7.73%	\$604,891.29	6.16%
	2002	\$9,517,491.00	\$8,451,363.00	88.80%	\$655,478.72	6.89%	\$410,649.28	4.31%
	2001	\$9,836,470.00	\$8,887,109.00	90.35%	\$638,530.46	6.49%	\$310,830.54	3.16%
	Total	\$49,215,956.00	\$42,462,595.00	86.28%	\$3,869,603.10	7.86%	\$2,883,757.90	5.86%
District+Superior	2005	\$15,145,445.00	\$10,576,054.00	69.83%	\$1,750,165.07	11.56%	\$2,819,225.93	18.61%
	2004	\$15,155,541.00	\$10,808,811.00	71.32%	\$1,627,113.75	10.74%	\$2,719,616.25	17.94%
	2003	\$15,284,369.00	\$11,038,779.00	72.22%	\$1,574,763.13	10.30%	\$2,670,826.87	17.47%
	2002	\$14,957,013.00	\$10,996,085.00	73.52%	\$1,453,378.06	9.72%	\$2,507,549.94	16.77%
	2001	\$14,766,466.00	\$11,376,077.00	77.04%	\$1,457,937.46	9.87%	\$1,932,451.54	13.09%
	Total	\$75,308,834.00	\$54,795,806.00	72.76%	\$7,863,357.47	10.44%	\$12,649,670.53	16.80%
District+Superior+Traffic	2005	\$27,993,301.00	\$20,950,413.00	74.84%	\$4,000,115.07	14.29%	\$3,042,772.93	10.87%
	2004	\$28,995,115.00	\$22,270,493.00	76.81%	\$3,910,160.50	13.49%	\$2,814,461.50	9.71%
	2003	\$28,166,305.00	\$21,953,111.00	77.94%	\$3,486,915.56	12.38%	\$2,726,278.44	9.68%
	2002	\$26,394,982.00	\$20,560,730.00	77.90%	\$3,315,199.92	12.56%	\$2,519,052.08	9.54%
	2001	\$27,354,491.00	\$21,636,340.00	79.10%	\$3,723,663.93	13.61%	\$1,994,487.07	7.29%
	Total	\$138,904,194.00	\$107,371,087.00	77.30%	\$18,446,054.98	13.28%	\$13,087,052.02	9.42%

Example of Court Case Record. Identifying information has been removed. The commitment that occurred on May 6,2005 is estimated to be caused by failure to appear for the March 31, 2005 Ability to Pay Hearing. This person showed up for one ability to pay hearing, on January 6, 2005, before missing an appointment. Their sentence did not include any court fines, only court costs.

Appendix 5

***** NOT AN OFFICIAL DOCUMENT *****

Case ID:

Court : (DC) District Court **Location :** (6D) 6th District Court

Type: M - MISDEMEANOR

Charge#	Charge	Disposition / Date	Sentence / Judge
1	SIMPLE ASSAULT	PLEA OF NOLO CONTENDERE	SUSPENDED 1 Year HIGGINS,JUDGE PROBATION 1 Year HIGGINS,JUDGE COURT COSTS HIGGINS,JUDGE

Case Event Schedule

Event	Date	Location	Judge
ABILITY TO PAY COSTS	05-JAN-2005	6th District Court	<i>unassigned</i>
ABILITY TO PAY COSTS	31-MAR-2005	6th District Court	<i>unassigned</i>

Docket Entries

Description	
10-NOV-2004	COMPLAINT FILED
10-NOV-2004	DFT APPEARS, ARRN, PLEADS NOLO
10-NOV-2004	DISPOSED/SENTENCED
06-JAN-2005	DEFT TO MAKE FURTHER PAYMENTS
06-JAN-2005	PET WRIT OF HABEAS CORPUS
31-MAR-2005	DEFT DOES NOT APPEAR
31-MAR-2005	BENCH WARRANT ISSUED
09-MAY-2005	BENCH WARRANT WITHDRAWN

Interview Summaries:

These are summaries of ten of the 25 interviews completed. The names have been changed to retain anonymity. They were chosen randomly from the completed interviews and reflect the overall types of situations encountered. All details relating to criminal history, bail, and payment schedule have been verified with court records.

Luke Brite

“The 16th of last month, I had got out. I got out on a Saturday, and I had a court date on a Monday, and I had just done six months. I had got out, and I went to court in shorts, not knowing that I wasn’t supposed to be going to court in shorts. The sheriff wouldn’t let me in, so I just went home and tried to reschedule that appointment. They told me to come back before two, and I live all the way in Pawtucket, so its not an easy thing for me to go and come back like that . I tried, but I didn’t make it. I made it back at like 2:30, but they told me court was over that day for court fines. So I ended up just leaving, trying to call my lawyer, telling him that I think I have a warrant. He told me the best thing for me to do was try to take care of it, knowing that I would probably do seven days. He said there’s no chance of me even taking care of it. So I knew I had a warrant, you know, and I ended up just procrastinating on that warrant. One day I was with my friend, going to another friend of mines, and the police just came right into the apartment we were at.”

Luke was held for eight days on a \$300 bail. He said he might have been able to pay it, but he was hoping to get the \$150/day rebate. The fines were for a misdemeanor assault charge.

John Gomes

Jose has been homeless on or off for the last several years. He has not been able to work since 2002, and has SSI pending because of a chronic nerve disease, hepatitis, and diabetes. When John was arrested he owed a total of \$717 to two courts and also had a warrant for failure to appear for a restitution hearing. The restitution stood at \$450 for a 2004 forgery and counterfeiting charge. Jose’s bail was \$500, and he was held for seven days before being released. Prior to failing to appear for his court fee hearings he had shown up three times.

“I can’t work because I got a physical condition that keeps me from working. I got SSI and SSDI pending. I got peripheral neurapathy, chronic nerve disease. All the jobs I ever did were outdoors, I can’t do that no more, or restaurant work, and I can’t do that no more because I got hepatitis. A lot of times they go ‘you got to come back to court on such-and-such a date or else’ and when they say that ‘or else’ that means you are going to jail, no matter what, whether you come, whether you show up, or what. So I don’t show up. Most of the money I owe is warrants, because I don’t show up.”

David Fernandes

David has never been charged with a felony in adult court, despite a long criminal record as a juvenile. He has been without charge for four years, but has been unemployed up until recently. He regularly would not go to court fine hearings because he did not have money to pay the fines. He has been incarcerated for court fines four times in the last four years. He demonstrated significant paranoia about appearing in court. He had appeared at his hearings two consecutive times prior to the most recent missed hearing, which he missed because of a family emergency. His fines are for a simple assault misdemeanor charge from 2002. He was held on a bail of \$517.

“My son had fell from a chair, he’ll be two next month. He cracked his lip, got a few stitches. I had court, but I was like oh well, my son’s here, he’s happy I’m here with him. I held him while he got stitches. That’s priceless to me, I mean this court can wait, I’m a man, I don’t care a few days in.”

Jesse McCormick

Jesse owes \$1231.50 in fines and court costs from a driving with a suspended license conviction from early 2005. He states he was never aware that he still owed fines and had never gone to set up a payment plan. He says he would have gone and made payments had he known. He offered the court \$150 when he was picked up. Jesse was held for nine days before being released.

“I have fines for driving on a suspended license, I recently moved, totally forgot about the fines, never received anything in the mail. I had a warrant out on me for 18 months I didn’t know about. They wanted half of what I owe, and I can’t come up with that kind of money. Me being in here isn’t doing them any good, they’re not getting any money that way. I keep up with my court dates and my fines, and I haven’t been in any trouble.”

Bob Davis

Robert regularly appears at his court fine hearings and pays when he can, despite the fact that he is currently homeless and unemployed. He just finished drug rehab, and at his last Ability to Pay Hearing the judge had told him he had been doing a good job with appearing and making payments. He has SSI pending due to his Post Traumatic Stress Disorder, hepatitis, and depression, and receives treatment from the Veteran’s Hospital. Bob was held for four days. In 1996 Robert plead no contest to a misdemeanor charge of “Tampering with a Motor Vehicle” and was given one year probation. He was held for four days for \$418 in fees from that charge. Robert has appeared for Ability to Pay Hearings twenty three times for this fine.

“I didn’t have the money and I got scared that I was going to get locked up, so I didn’t go. I pay when I can, I’ve been out of work for a long time. I’ve been homeless for the last twelve years of my life, I get a job here and there. Whatever I do make, I got to use it

to getting something to eat or find a place to stay. I've probably been paying the same fine over and over again for years because of warrants."

Charles Rice

Charles was picked up while driving when a police officer ran his plates. His car was towed and he will owe \$300 to the towing company. He offered the judge \$200 bail, but couldn't pay the \$600 necessary. Charles is on SSI for back problems. Prior to missing his hearing he had appeared and paid at the three previous hearings. He stopped going because he couldn't make the payments anymore. This was the first time he had been incarcerated for court fines.

"I didn't know I would spend seven days, it really surprised me. I expected they'd hold me a little and then let me give them the money. There should be some kind of warning, a letter or something. Credit cards send you a letter."

Steven Deasy

Steven was incarcerated for eight days. He owes \$3500 to sixth district court for a combination of court fees from charges over the last several years—mostly driving with a suspended license charges. He had appeared and paid twice prior to the incarceration. He has been incarcerated several times for failure to appear at court fine hearings in the past several years. He would have paid several hundred dollars to stay out of prison.

Terrence Peterson

Terrence owed sixth district court \$1300 from a 2004 misdemeanor conviction of marijuana possession; he spent eight days in jail. He had appeared at his last five Ability to Pay Hearings and estimated that he had paid the courts over \$2,500 over the last four years. Terrence had just been placed in a new job by a temporary employment agency and he expected to lose the job because of his incarceration. He stated he had been paying regularly and then forgot about his payments after being briefly incarcerated—he recently served three weeks for felony assault from a Superior Court case, and his Ability to Pay hearing was several weeks after he was released.

Lawrence Imbriglio

Several weeks before being incarcerated for court fines Lawrence was picked up for having an open container in the parking lot of a county fair. He was released and given a summons. Lawrence appeared in court for the summons and was given a \$500 bail and sent to Providence because of outstanding failure to appear warrant. His fines are from a 2006 Driving with a Suspended License charge. He stated he had never gone to make a payment plan because he had no money, so he felt it was pointless. Lawrence had never been incarcerated before this incident. When I arrived, Lawrence had very little

understanding of what was going on. He stated, “Why are they holding me here? I don’t have any money. If I had money, I wouldn’t be here.”

Lawrence is homeless, unemployed, and has been diagnosed as a schizophrenic by the Northern Rhode Island Mental Health Center. He was incarcerated for fifteen days.

Rhonda Harris

Rhonda was put on probation recently for a misdemeanor assault charge. She had been seeing her probation officer regularly. She had never been aware of her ability to pay hearing and her probation officer never informed her of the warrant put out for her arrest. At five in the morning police broke into her bedroom looking for her neighbor. They ran her name and brought her to prison where she spent eight days in prison on a bail of \$243.50. Rhonda had never been incarcerated for court fines before and had been without charges since 2003 when she was convicted of possession of marijuana. She works full time and expected she would lose her job. Rhonda has been diagnosed with bipolar disorder.

Stanley Brown

Stanley was pulled over for having old license plates on his car. He spent eight days in prison on a bail of \$1100. He owed fines from a DUI charge from 2003. His only other charge in the last nine years was a misdemeanor assault charge in 2001. Stanley is 59 years old and on SSI for depression and post-traumatic stress syndrome. He receives treatment from the Veteran’s Hospital. Prior to missing his hearing, Stanley has appeared to pay seven times for these fees and been incarcerated four times for failure to appear for these fines. He has only ever been incarcerated for court fines and almost half of his remaining fee is for warrants. Stanley lives in Woonsocket and has to wake up at six in the morning and walk two miles in order to catch the bus to arrive in Providence by nine for hearings. He stated, “If there was a court in Woonsocket I could go to and it was only 30/month, I would pay it.”