

Fines and Fees Justice Advocacy at the Detroit Justice Center

[“Highway Robbery”](#) Detroit Justice Center’s 2020 White Paper

Speaker:

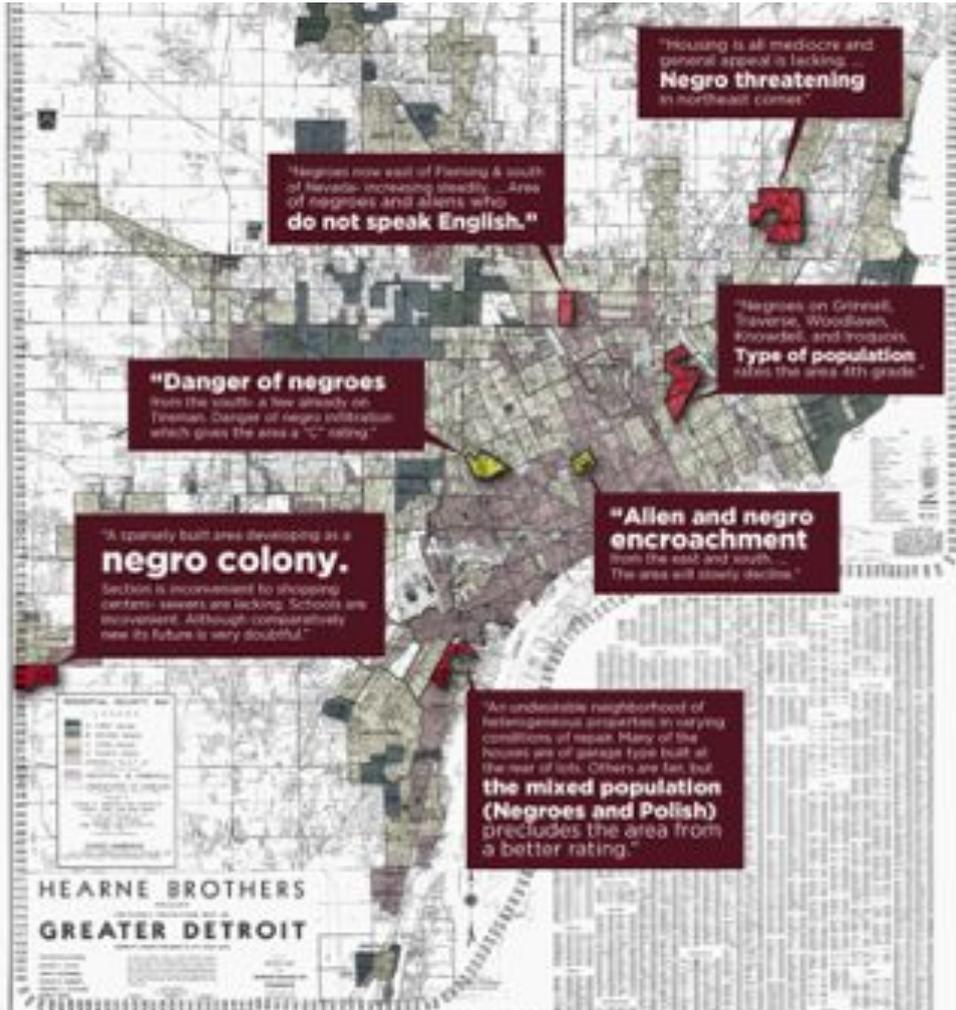
Rubina S. Mustafa, Senior Staff Attorney, Detroit Justice Center

(she/her/hers)

Poverty is a Critical Problem

- A. Detroit's poverty level is 33.2%
- B. Detroit has the highest percentage of people living at or below the poverty level of any major city in the U.S.
- C. Michigan's poverty level is 13.7 %
- D. Nationally, the poverty level is 11.5%, with 37.9 million people living at or below the poverty level.
- E. Nearly 75 percent of expenditures for families living in or near poverty goes to basic needs- food, transportation, rent, utilities, and cell phone service.

Background & Context



Historic Discrimination & Wealth Migration Created Transportation Barriers

“The Motor City’s transit-starved condition is not simply the outcome of its automakers’ political influence, but an extreme example of how transportation systems in U.S. cities have been shaped by race and class divisions, divisions that transportation systems reinforce in turn” Joel Batterman, Race, Class and Public Transit in the Motor City, Progressive Planning, Fall 2011

- A. Wealth and opportunity has developed outside the City since the 1960s
- B. Public transit in the city is neither reliable nor adequate.
- C. Detroiters must go to the suburbs for essentials like food and healthcare.
- D. Rural counties face similar challenges as with not only a shortage of providers but also the need to travel great distances to access care.
- E. Long commutes for employment are the norm for Detroiters.

THE STRUGGLE: Policing in the suburbs and smaller cities

Police routinely stop Black drivers disproportionately. [MSP REPORT](#)

Examples include:

- Failing to stop at a stop sign when the person stopped or did a rolling stop
- “Randomly” ran their plate and saw they didn’t have insurance - sometimes even when they did have insurance
- Broken windows, headlights or taillights
- Allegedly not wearing a seatbelt

Police routinely arrest when they could just ticket, and impound vehicles with no public safety justification.

Infractions for Unrepaired Vehicles

OFFENSE	STATUTE	ESTIMATED COST TO REPAIR	EXAMPLE FINE (36TH DISTRICT) ¹⁰⁶
Expired plate	MCL § 257.255(2)	\$120 ¹⁰⁷	\$145, \$185 after 14 days
Broken windshield	MCL § 257.709(c)	Up to \$300 ¹⁰⁸	\$120, \$160 after 14 days
Broken headlight	MCL § 257.685(1)	\$50 for bulb replacement, up to \$700 for entire headlight assembly ¹⁰⁹	\$120, \$160 after 14 days
Brakes that decelerate too slowly	MCL § 257.705(2)	Up to \$1,000 ¹¹⁰	\$200, \$240 after 14 days
Quiet or broken horn	MCL § 257.706(a)	\$100 ¹¹¹	\$120, \$160 after 14 days
Damaged muffler or exhaust system; car causing "excessive" noise/fumes/smoke	MCL § 257.707(1); MCL § 257.707c(1); MCL § 257.707c(3); MCL § 257.707c(5)	\$160-\$240 ¹¹²	\$120, \$160 after 14 days
Broken mirror	MCL § 257.708	\$290-\$420 ¹¹³	\$120, \$160 after 14 days
Broken windshield wiper	MCL § 257.709(4)	\$230-\$310 ¹¹⁴	\$120, \$160 after 14 days
Defective bumper	MCL § 257.710(c)	\$890-\$1390 ¹¹⁵	\$120, \$160 after 14 days

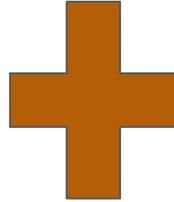
Crimes of Driving while Poor

OFFENSE	STATUTE	PENALTY
Driving without auto insurance	MCL § 500.3102(2)	Up to 1 year in jail and/or a \$200-\$500 fine
Driving an unregistered vehicle	MCL § 257.215	Up to 90 days in jail and/or up to a \$100 fine ¹⁷
Driving without a license ¹⁸	MCL § 257.904a	Up to 90 days in jail and/or a \$50-\$100 fine for a first offense; after a prior conviction, 2-90 days in jail and/or a \$100 fine
Driving with a suspended, revoked, or denied license ¹⁹	MCL § 257.904(3)(a-b)	Up to 93 days in jail and/or up to a \$500 fine for a first violation; after a prior conviction, up to 1 year in jail and/or up to a \$1,000 fine

Case Study: Driving While Poor

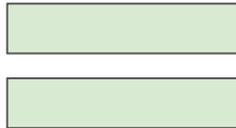
Barriers to Driving Legally

- No drivers ed in school
- Unaffordable repairs on your car
- Unaffordable tickets for repairs
- Unaffordable insurance
- Suspended license for unpaid tickets



A Need to Drive

- No reliable public transit
- Only available jobs are in another city
- Inadequate access to healthcare, grocery stores
- Inability to move homes



Crime to be Poor

Mistakes were Categorized as Failures Before Reform

- A. Two of the most common reasons for driver's license suspension occurred if someone didn't show up for a required court date (FAC) or didn't pay the judgment on the ticket (FCJ) .
- B. The license was automatically suspended until the ticket was fully resolved, usually paid in full.
- C. The trial court's funding is dependent on monies from defendants in courts.
- D. This was an indefinite suspension for most traffic violations, until 10-1-21.

Devastating Court Debt for Working People is a National Problem

- More than seven million Americans have lost their driver's licenses for nonpayment of a ticket or fine. [American Constitution Society, Issue Brief, March 2019, p 1.](#)
- Most of these individuals are low income and the working poor, and they simply cannot afford to pay courts the fines and costs.
- One in three Americans have been directly impacted by fines or fees related to traffic, criminal, juvenile, or municipal court in the past ten years. ["Debt Sentence, How Fines and Fees Hurt Working Families." Fines and Fees Justice Center and the Wilson Center for Science and Justice at Duke Law, May 2023.](#)

CLEAN SLATE TO DRIVE - 2021

A New Beginning

- A. Michigan's 2021 "Clean Slate to Drive" laws became effective Oct. 1, 2021.
- B. More than 100 moving vehicle infractions would no longer suspend a person's license.
- C. The retroactive removal of suspensions for the "failure to comply" sanction impacted over 350,000 Michiganders.

THE TRIAL COURT FUNDING PROBLEM (JUDGES USE FINES TO FUND THEIR COURTS)

- A. The Trial Court Funding Statute created a court funding structure that became a revenue generating system for local governments.
- B. It was enacted after the Michigan Supreme Court's decision in *People v Cunningham*, 496 Mich 145 (2014), which held that without specific statutory authority, judges could not order defendants to pay court costs.
- C. For the last 10 years, cities embraced this system to raise money both for the courts and the cities' general funds. For many judges, the pressure to be government revenue raisers overshadowed their judicial role.
- D. Michigan citizens have felt the sting of this injustice and have feared going to court for low level offenses such as traffic matters. If they couldn't pay, they would be jailed, leading to a cycle of joblessness and homelessness.

THE TRIAL COURT FUNDING PROBLEM (JUDGES USE FINES TO FUND THEIR COURTS)

- A. Revenue generated by subsection MCL 769.1k(1)(b)(iii) accounts for millions of dollars in revenue to local cities and counties, which have become increasingly reliant on this funding and exert pressure over judges to maintain and increase that revenue.
- B. The Legislature created a commission to study the impact of this act. The Trial Court Funding Commission (“TCFC”).
- C. The TCFC found that the monies raised from this statute alone accounted for 26% of the total funds raised for court budgets.
- D. “Michigan residents going to court should not face a judge who needs money from a defendant to satisfy demands for court operating expenses.” Trial Court Funding Commission Final Report (September 6, 2019), p 4.

Constitutional Challenge to Trial Court Funding

- A. Advocates brought an “as applied” challenge to the constitutionality of the statute MCL 769.1k(1)(b)(iii) arguing that it violated due process under US Supreme Court precedent as well as violated the “separation of powers” clause.
- B. The State Legislature recently reauthorized the statute until December 2026, leaving Michigan residents with no constitutional protection to have an impartial jurist
- C. The Supreme Court has agreed to hear oral arguments on this issue in *People v Ormsbee* this year.
- D. The Detroit Justice Center and the ACLU of Michigan will be submitting an Amicus Brief.
- E. The problems of this scheme disproportionately impacts the poorest residents of the State.

Advocating For Waiver of Fines and Costs

- A. ASSESS ABILITY TO PAY BEFORE IMPOSING FINES/ COSTS
 - 1. [Fowler v Johnson Consent Decree](#)
 - 2. No current mandate
- B. ELIMINATE LATE OR SUPPLEMENTAL FEES
 - 1. The late fee: a 20% late penalty added to total balance
 - 2. Warrant Fee
- C. ELIMINATE WARRANTS
 - 1. Missed Court Date
 - 2. “Show Cause” Hearing
- D. ELIMINATE AND RETROACTIVELY WAIVE THE \$45 CLEARANCE IN MCL 257.321A
 - 1. For suspensions retroactively terminated effective 10-1-21
 - 2. Dismissed Cases
- E. **PREVENT FURTHER HARM AND END DEBTOR’S PRISON**

Successful Advocacy in Other States

- Beck v Elmore County- Idaho Supreme Court
 - Advocates challenged the court's authority to issue a warrant solely on the basis of the defendant's failure to pay.
 - The Supreme Court in Idaho decided that issuing a warrant based solely on the defendant's failure to pay was a violation of the defendant's constitutional rights.
 - First, it's a violation of equal protection rights to incarcerate someone without first determining that they had the ability to pay fines and also did not make good faith efforts to pay their fines.
 - Second, the court did not have the authority to issue a warrant for their arrest without first determining the reasons that the defendant failed to pay. A warrant could only be issued if the court had facts that the person had the ability to pay AND failed to make good faith efforts to pay.

A Driver's License is a Lifeline

- A. Lack of transportation is a key determinant that impacts residents by limiting access to healthy food and medical care as well as employment or other economic opportunities.
- B. Drivers are able to accomplish everyday activities easily and with dignity. Business owners, parents, employees and caregivers can engage in their communities, participate in our state economy more fully and complete everyday tasks without fear of being pulled over by the police.
- C. Roads are safer and accidents are resolved more smoothly when more drivers have passed a standardized driving test and are insured.
- D. Auto Insurance could be more affordable. When more drivers are insured, everyone's cost of auto insurance decreases.
- E. In addition, access to a driver's license means access to amenities and opportunities beyond one's immediate community, including new businesses and higher-paying jobs.
- F. It also would mean increased revenue for the local governments and the State of Michigan.



**THANK
YOU!**