



# U.S. DEPARTMENT OF JUSTICE

**OFFICE FOR CIVIL RIGHTS  
OFFICE OF JUSTICE PROGRAMS**

**OFFICE FOR ACCESS TO JUSTICE**

## **Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles**

**Considerations for Compliance with Title VI of the Civil Rights Act of 1964,  
the Omnibus Crime Control and Safe Streets Act of 1968, and Related Statutes**

January 2017

The Office for Access to Justice (ATJ), U.S. Department of Justice (Department or DOJ) and the Office for Civil Rights (OCR) at the Office of Justice Programs (OJP), DOJ jointly issue this Advisory to recipients of financial assistance from the OJP, the Office of Community Oriented Policing Services (COPS Office), and the Office on Violence Against Women (OVW) to remind them of their constitutional and statutory responsibilities related to collecting fines and fees from youth involved with the juvenile justice system. The Advisory also summarizes the enforcement actions available to the Department and offers recommendations to improve the administration of juvenile fines and fees.

On March 14, 2016, the DOJ distributed a letter to state and local courts on the enforcement of fines and fees in criminal justice proceedings.<sup>1</sup> Many of the practices addressed in the March 14, 2016, letter also occur in juvenile courts where, in addition to fines, courts often impose fees on children for diversion programs, counseling, drug testing and rehabilitation programs, mental health evaluations and treatment programs, public defenders, probation, custody, and court costs. These fines and fees can be economically debilitating to children and their families and can have an enduring impact on a child's prospects.

Young people will ordinarily be unable to pay fines and fees themselves. Families burdened by these obligations may face a difficult choice, either paying juvenile justice debts or paying for food, clothing, shelter, or other necessities. The cost of fines and fees may foreclose educational opportunities for system-involved youth or other family members. When children and their families are unable to pay fines and fees, the children often suffer escalating negative consequences from the justice system that may follow them well into adulthood. Perhaps not

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<sup>1</sup> U.S. Dep't of Justice, *Dear Colleague Letter: Law Enforcement Fines and Fees* (Mar. 14, 2016), <http://go.usa.gov/x9nd7>.

surprisingly, given the collateral negative consequences, there is evidence that fines and fees increase the risk of recidivism.<sup>2</sup>

The intent of this Advisory is to assist recipients of financial assistance from the Department—especially the leadership of juvenile courts, juvenile probation departments, and other juvenile justice agencies—in ensuring that the imposition and enforcement of fines and fees on juveniles does not violate their constitutional rights, violate the nondiscrimination provisions associated with the acceptance of federal financial assistance, or impose undue hardships on the development and rehabilitation of system-involved youth.

## **Constitutional Obligations**

Youth in the justice system are entitled to all of the constitutional protections that adults receive when it comes to fines and fees. “[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone.”<sup>3</sup> The Department’s March 14, 2016, letter identified seven constitutional principles relevant to the enforcement of fines and fees. All seven principles apply to juveniles.<sup>4</sup>

When it comes to youth, however, courts cannot stop at the protections afforded to adults. Indeed, the Constitution demands unique protections for juveniles in the justice system due to “children’s ‘diminished culpability and greater prospects for reform.’”<sup>5</sup> “The law has historically reflected the . . . assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.”<sup>6</sup> Our legal system is “replete with laws and judicial recognition that children cannot be viewed simply as miniature adults.”<sup>7</sup> As society’s understanding of children’s unique needs and vulnerabilities has grown over time, the Supreme Court has expanded protections for children.

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<sup>2</sup> See Jessica Feerman, Juvenile Law Center, *Debtors’ Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System* 7-8 (2016), <http://debtorsprison.jlc.org> (discussing results of a criminology study “showing that youth of color in Allegheny County, Pennsylvania, were more likely to have costs or fees owed after case closing, which, in turn, was related to higher recidivism rates, even after controlling for a host of other demographics and case characteristics” (citing Alex R. Piquero & Wesley G. Jennings, *Justice System Imposed Financial Penalties Increase Likelihood of Recidivism in a Sample of Adolescent Offenders* (2016)).

<sup>3</sup> *In re Gault*, 387 U.S. 1, 13 (1967).

<sup>4</sup> The seven principles are as follows:

1. Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing that the failure to pay was willful.
2. Courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees.
3. Courts must not condition access to a judicial hearing on the prepayment of fines or fees.
4. Courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees.
5. Courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections.
6. Court must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release.
7. Courts must safeguard against unconstitutional practices by court staff and private contractors.

The Department’s March 14, 2016, letter discusses these principles and their legal basis in greater detail. Recipients should familiarize themselves with these legal requirements.

<sup>5</sup> *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016) (quoting *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012)).

<sup>6</sup> *J.D.B. v. North Carolina*, 564 U.S. 261, 273 (2011) (citation omitted).

<sup>7</sup> *Id.* at 274 (citation and internal quotation marks omitted).

In *Roper v. Simmons*, the Court deemed children ineligible for the death penalty because of their “lack of maturity and an underdeveloped sense of responsibility,” their vulnerability “to negative influences and outside pressures,” and their “more transitory, less fixed” personalities.<sup>8</sup> Five years later when the Court struck down life-without-parole sentences for juveniles who committed non-homicide offenses in *Graham v. Florida*, the Court noted that scientific research “continue[s] to show fundamental differences between juvenile and adult minds.”<sup>9</sup> Accordingly, as in virtually every other context, the justice system, with respect to fines and fees, must recognize and protect the special vulnerabilities of children.

### **Statutory Civil Rights Obligations for Recipients of Department Financial Assistance**

Federal statutes protect the rights of beneficiaries in federally assisted programs, including young people who receive services from Department-funded juvenile courts and other agencies in the juvenile justice system. Recipients of financial assistance from the OJP, the COPS Office, and the OVW must comply with the following federal cross-cutting statutes that apply to all recipients of federal financial assistance:

- Title VI of the Civil Rights Act of 1964 (Title VI), as amended, and its implementing regulations;<sup>10</sup>
- Title IX of the Education Amendments of 1972 (Title IX), as amended, and its implementing regulations;<sup>11</sup>
- Section 504 of the Rehabilitation Act of 1973, as amended, and its implementing regulations;<sup>12</sup> and
- The Age Discrimination Act of 1975, as amended, and its implementing regulations).<sup>13</sup>

Depending on the legislative source of authorized funding from the Department, recipients of financial assistance from the OJP, the COPS Office, and the OVW may also need to comply with the nondiscrimination provisions in the following DOJ program statutes:

- The Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), as amended, and its implementing regulations;<sup>14</sup>
- The Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP), as amended, and its implementing regulations;<sup>15</sup>

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<sup>8</sup> 543 U.S. 551, 569–70 (2005) (citations omitted).

<sup>9</sup> 560 U.S. 48, 68 (2010); *see also Montgomery*, 136 S. Ct. at 734 (noting that “the distinctive attributes of youth” should have some bearing on the punishment that children receive); *J.D.B.*, 564 U.S. at 277 (holding that children must be given special consideration in the context of *Miranda* waivers because “[a] child’s age is far more than a chronological fact”).

<sup>10</sup> 42 U.S.C. § 2000d (2012); 28 C.F.R. pt. 42, subpts. C & D (2016).

<sup>11</sup> 20 U.S.C. § 1681; 28 C.F.R. pt. 42, subpt. D & §§ 54.105, .125(a), .605.

<sup>12</sup> 42 U.S.C. § 793; 28 C.F.R. pt. 42, subpt. G.

<sup>13</sup> 42 U.S.C. § 6102; 28 C.F.R. pt. 42, subpt. I.

<sup>14</sup> 42 U.S.C. § 3789d; 28 C.F.R. pt. 42, subpt. D.

<sup>15</sup> 42 U.S.C. § 5672(b); 28 C.F.R. § 31.202(b)(3), (4) & pt. 42, subpt. D.

- The Victims of Crime Act of 1984 (VOCA), as amended, and its implementing regulations;<sup>16</sup> and
- The Violence Against Women Act of 1994 (VAWA), as amended.<sup>17</sup>

Collectively, in addition to other protections, the federal cross-cutting statutes and the Department's program statutes prohibit discrimination in the delivery of services or benefits based on race, color, national origin, sex, religion, disability, sexual orientation, or gender identity. Title VI and the other federal civil rights statutes applicable to Department recipients prohibit not only intentional discrimination but also discrimination resulting from a neutral policy that adversely impacts a protected class, such as people of a particular race or national origin.<sup>18</sup>

The analysis of disparate-impact discrimination claims under Title VI follows the same burden-shifting scheme for employment discrimination claims under Title VII of the Civil Rights Act of 1964.<sup>19</sup> A discrimination claim based on adverse impact ordinarily relies on statistical data showing that the neutral policy of a federally funded service provider has a significantly negative effect on a protected class in comparison to another similarly situated group.<sup>20</sup> Despite the disparate impact on the protected class, the funded service provider may nonetheless legally retain the challenged policy if it can present a substantial legitimate justification for the policy.<sup>21</sup> Even if the recipient can meet this requirement, it may still run afoul of Title VI and other related federal statutes, if "there exists a comparably effective alternative practice which would result in less disproportionality, or . . . the [recipient's] proffered justification is a pretext for discrimination."<sup>22</sup>

Recent investigative findings by the Department, as well as a number of comprehensive surveys, underscore state and local courts' and juvenile justice systems' responsibility to review data related to the assessment of fines and fees to ensure that they are providing nondiscriminatory services to juveniles and their families. The Department's investigation of the Ferguson Police Department in St. Louis County, Missouri, concluded that the local practices of levying fines and fees on adults had an unlawful discriminatory impact on African Americans.<sup>23</sup> Following a lengthy investigation, the Department similarly found in its review of the St. Louis County Family Court that, "compared to national data, Black children in St. Louis County have a higher

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<sup>16</sup> 42 U.S.C. § 10604(e); Victims of Crime Act Victim Assistance Program, 81 Fed. Reg. 44,515, 44,532 (July 8, 2016) (to be codified at 28 C.F.R. § 94.114).

<sup>17</sup> 42 U.S.C. § 13925(b)(13).

<sup>18</sup> See 28 C.F.R. §§ 42.104(b)(2), .203(e), .710(a); see also *Alexander v. Sandoval*, 532 U.S. 275, 281–82 (2001); see generally U.S. DEP'T OF JUSTICE, TITLE VI LEGAL MANUAL (Jan. 11, 2011), <http://go.usa.gov/x9QPC> (updated sections available at <http://go.usa.gov/x9QQf>).

<sup>19</sup> See, e.g., *N.Y. Urban League, Inc. v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995).

<sup>20</sup> *Ga. State Conf. of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985).

<sup>21</sup> *Id.*

<sup>22</sup> *Elston v. Talladega Cty. Bd. of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993).

<sup>23</sup> CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF FERGUSON POLICE DEP'T (Mar. 4, 2015), <http://go.usa.gov/x9CJF>.

rate of disparity in every decision point in the juvenile justice system.”<sup>24</sup> The Policy Advocacy Clinic associated with the School of Law at the University of California at Berkeley analyzed data on the allocation of fines and fees on juveniles in Alameda County, California, and found that African American youth were overrepresented at each step in the juvenile justice system, exposing them to significantly higher fees.<sup>25</sup> These findings suggest that courts and other entities receiving financial assistance from the Department should carefully consider whether their collection of fines and fees from juveniles may have an unlawful discriminatory effect based on race or another protected class.

## **Enforcement and Technical Assistance**

The Department is committed to protecting the rights of youth in the juvenile justice system, and it has a range of options at its disposal to do so, including the administrative process, litigation, and technical assistance.

Through the regulatory administrative process, the OCR has principal responsibility within the Department for enforcing Title VI and related federal civil rights statutes that apply to recipients of financial assistance from the OJP, the COPS Office, and the OVW. The OCR has the authority to investigate administrative complaints alleging that Department-funded courts and other agencies in the juvenile justice system are unlawfully discriminating against youth of a protected class who have been adversely affected by the assessment of fines or fees.<sup>26</sup> The OCR may also independently initiate compliance reviews (i.e., investigative audits) of Department-funded agencies to determine whether their administration of juvenile fines or fees may violate applicable federal civil rights laws.<sup>27</sup> Significantly, the implementing regulations for the Safe Streets Act, which the OCR follows in enforcing not only the Safe Streets Act but also Title VI, Title IX, the JJDP, VOCA, and VAWA,<sup>28</sup> also contain a provision that defines prohibited discrimination in reference to constitutional standards: a recipient of financial assistance from the Department may not “deny any individual the rights guaranteed by the Constitution to all persons.”<sup>29</sup> If the OCR finds evidence of a violation, it works with the funded agency to achieve

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<sup>24</sup> CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE, INVESTIGATION OF THE ST. LOUIS CTY. FAMILY CTS., ST. LOUIS, MO. 39 (July 31, 2015), <http://go.usa.gov/x9CJe>; see also Katherine Beckett, Alexes Harris & Heather Evans, Washington State Minority & Justice Coalition, *The Assessment and Consequences of Legal Financial Obligations in Washington State* (2008), available at <http://faculty.washington.edu/kbeckett/Legal%20Financial%20Obligations.pdf> (concluding that “convictions involving Hispanic defendants are associated with significantly higher fees and fines than those involving white defendants, even after controlling for relevant legal factors”).

<sup>25</sup> Jeffrey Selbin & Stephanie Campos, *High Pain, No Gain: How Juvenile Administrative Fees Harm Low-Income Families in Alameda County, California* (Mar. 2016), <http://ssrn.com/abstract=2738710>; see also note 2, *supra*.

<sup>26</sup> See, e.g., 28 C.F.R. § 42.205.

<sup>27</sup> *Id.* § 42.206.

<sup>28</sup> 42 U.S.C. § 13925(b)(13)(C) (implementing enforcement of VAWA’s nondiscrimination provisions in accordance with the Safe Streets Act); 28 C.F.R. § 42.201(a) (implementing the Safe Streets Act, Title VI, Title IX, and the JJDP); Victims of Crime Act Victim Assistance Program, 81 Fed. Reg. 44,515, 44,532 (July 8, 2016) (to be codified at 28 C.F.R. § 94.114) (implementing VOCA’s nondiscrimination provisions in accordance with 28 C.F.R. pt. 42 and OCR guidance).

<sup>29</sup> 28 C.F.R. § 42.203(b)(8).

voluntary compliance.<sup>30</sup> If negotiations for voluntary compliance fail, however, the OCR may seek the suspension or termination of the Department's financial assistance.<sup>31</sup>

The Department also has litigation authority to enforce the rights of juveniles in the justice system pursuant to the Violent Crime Control and Law Enforcement Act of 1994.<sup>32</sup> Through this statute, the Department is currently enforcing the rights of juveniles through a comprehensive settlement<sup>33</sup> with Shelby County, Tennessee, following findings of serious and systemic failures in the juvenile court that violated the due process and equal protection rights of juvenile respondents.<sup>34</sup> Similarly, the Department is enforcing the rights of juveniles in St. Louis County Family Court<sup>35</sup> after finding systemic violations of children's rights under the Due Process and Equal Protection Clauses.<sup>36</sup> In 2015, the Department's Civil Rights Division, the ATJ, and the U.S. Attorney for the Middle District of Georgia filed a Statement of Interest in the case *N.P. v. State of Georgia*, a class action seeking to vindicate juveniles' constitutional right to counsel in delinquency proceedings.<sup>37</sup> The OJP and the other DOJ grantmaking components also have discretion to refer administrative investigations, which might include matters alleging disparate impact discrimination resulting from the imposition of fines and fees, to the Civil Rights Division for litigation.<sup>38</sup>

The Department also has resources that are available to juvenile courts and juvenile justice agencies to help them comply with their constitutional and statutory civil rights obligations. In addition to the technical assistance that the OCR routinely provides to DOJ recipients, the OJP's Office of Juvenile Justice and Delinquency Prevention works "to develop and implement effective and coordinated prevention and intervention programs and to improve the juvenile justice system so that it protects public safety, holds justice-involved youth appropriately accountable, and provides treatment and rehabilitative services tailored to the needs of juveniles

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<sup>30</sup> *Id.* §§ 42.205(c)(3)(iii), .206(e)(3).

<sup>31</sup> *Id.* §§ 42.210, .212(b)(1)(ii).

<sup>32</sup> The statute provides, *inter alia*, as follows:

It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by . . . employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

42 U.S.C. § 14141(a). If the Department finds a "pattern or practice" of constitutional violations in a juvenile justice system, the attorney general can file a lawsuit seeking "appropriate equitable and declaratory relief to eliminate the pattern or practice." *Id.* § 14141(b).

<sup>33</sup> CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, MEM. OF AGREEMENT REGARDING THE JUV. CTS. OF MEMPHIS & SHELBY CTYS. (Dec. 17, 2012), <http://go.usa.gov/x9nfa>.

<sup>34</sup> CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE SHELBY CTY. JUVENILE CT. I (Apr. 26, 2012), <http://go.usa.gov/x9nft>.

<sup>35</sup> CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, MEM. OF AGREEMENT BETWEEN THE UNITED STATES DEP'T OF JUSTICE AND THE ST. LOUIS FAMILY CT. (Dec. 14, 2016), <http://go.usa.gov/x9nfb>.

<sup>36</sup> INVESTIGATION OF THE ST. LOUIS CTY. FAMILY CT., note 24, *supra*.

<sup>37</sup> No. 2014-CV-241025 (Fulton Cty. Super. Ct., filed Jan. 7, 2014), *available at* <http://go.usa.gov/x9CJv>.

<sup>38</sup> 28 C.F.R. §§ 42.108(d)(1), .215(a).

and their families.”<sup>39</sup> OJP’s Diagnostic Center also provides customized technical assistance resources to local community leaders, providing access to relevant data and experienced subject-matter experts to help communities develop the capacity to address emerging public safety and criminal justice issues, including matters related to juvenile justice.<sup>40</sup>

### **Recommendations to Recipients on Assessing Fines and Fees Involving Juveniles**

Because children in the juvenile justice system are particularly vulnerable, they warrant special protections in regard to the imposition of fines and fees. Mindful of the needs of young people, the ATJ and the OCR offer five recommendations to Department-funded juvenile courts and juvenile justice agencies based on the principles articulated in the Department’s March 14, 2016, letter.

1. Juvenile justice agencies should presume that young people are unable to pay fines and fees and only impose them after an affirmative showing of ability to pay.

Young people typically have no meaningful resources of their own. For this reason, the Department’s comprehensive settlement with Shelby County, Tennessee, involving its juvenile court includes the acknowledged presumption that children are indigent for the purposes of appointing counsel and setting bond.<sup>41</sup> Pennsylvania, Louisiana, and North Carolina likewise presume that all children are eligible for the appointment of counsel.<sup>42</sup>

The juvenile justice system should also presume that children are unable to pay fines and fees. Absent an affirmative showing of the ability to pay, imposing fines and fees will serve no useful purpose. Instead, assessing these costs may force juveniles into a cycle of further involvement with the justice system and have collateral consequences that inhibit rather than advance rehabilitation.

Presuming that children are unable to afford fines and fees will also help juvenile courts and other juvenile justice agencies comply with their legal obligations. If fines and fees are only imposed on those rare children who are able to afford them, courts and other agencies are far less likely to enforce fines and fees in a way that punishes children for their poverty in violation of the Fourteenth Amendment. In addition, because of the well-documented correlations between poverty and race in the juvenile justice system,<sup>43</sup> conditioning the imposition of fines and fees on a demonstrated ability to afford them may also reduce the chances that the imposition or

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<sup>39</sup> Vision & Mission, OJJDP, <http://go.usa.gov/x9nfW> (last visited Jan. 9, 2017).

<sup>40</sup> About Us, OJP Diagnostic Ctr., <https://www.ojpdagnosticcenter.org/about> (last visited Jan. 9, 2017); *see generally* OJP Diagnostic Ctr, Resource Guide: Reforming the Assessment and Enforcement of Fines and Fees, <http://go.usa.gov/x9QQR> (last visited Jan. 10, 2017).

<sup>41</sup> MEM. OF AGREEMENT BETWEEN THE UNITED STATES DEP’T OF JUSTICE AND THE ST. LOUIS FAMILY CT. note 35, *supra*.

<sup>42</sup> *See* 42 PA. CONS. STAT. ANN. § 6337.1; LA. CHILD. CODE ANN. art. 320(A), 848; N.C. GEN. STAT. ANN. §§ 7B-2000(b), 7A-450.1, 7A.450.3.

<sup>43</sup> Annie E. Casey Foundation, *Race Matters: Unequal Opportunities for Juvenile Justice* (2006), <http://www.aecf.org/m/resourcedoc/aecf-RACEMATTERSjuvenilejustice-2006.pdf> (noting correlations between race and poverty in juvenile and adult justice systems).

enforcement of fines and fees will have a disparate racial impact on beneficiaries of federally assisted programs in violation of Title VI, the Safe Streets Act, and other related statutes.

2. Before juvenile justice agencies punish youth for failing to pay fines and fees, they must first determine ability to pay, considering factors particularly applicable to youth.

As emphasized repeatedly in the Department's March 14, 2016, letter, courts must not incarcerate people solely because they are unable to pay fines or fees, because doing so violates their rights to equal protection and due process.<sup>44</sup> The Constitution requires that before punishing someone for failing to pay a fine or fee, a court must inquire into the individual's ability to pay.<sup>45</sup>

When the person who has failed to pay a fine or fee is a child, courts should consider the unique circumstances that inhibit the child's ability to pay. As noted above, children are presumptively unable to pay fines and fees, and, of course, young children cannot legally work. Requiring a teenager to work to pay fines and fees is often counterproductive: there are often negative consequences resulting from missing school to work, and there are also negative consequences resulting from missing work to attend school. Juveniles often lack their own means of transportation, which can make getting and keeping a job difficult. Many states restrict work for those under eighteen and limit their ability to enter into contracts. Finally, and most importantly, juveniles under probation or in a diversion or other program will likely find it extremely difficult to fulfill simultaneously the obligations related to their probation or program, school, and a job.

An ability-to-pay inquiry that recognizes the unique characteristics of children will help to ensure that juvenile courts and other juvenile justice agencies do not punish children for their poverty in violation of the Constitution and may also prevent the kind of disparate racial impact that may violate Title VI, the Safe Streets Act, and other related statutes.

3. Juvenile justice agencies should not condition entry into a diversion program or another alternative to adjudication on the payment of a fee if the youth or the youth's family is unable to pay the fee.

Due process and equal protection plainly prohibit juvenile courts and other juvenile justice agencies from treating two similarly situated children differently based solely on their economic status or the economic status of their parents.<sup>46</sup> Yet across the country, diversion programs or other alternatives to adjudication or detention for youth are accessible only to those who can afford the required fees. Such practices result in what the Constitution forbids: the incarceration

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<sup>44</sup> *Bearden v. Georgia*, 461 U.S. 660, 671 (1983).

<sup>45</sup> *E.g.*, *Turner v. Rogers*, 131 S. Ct. 2507, 2518–19 (2011) (court violates due process when it finds a parent in civil contempt and jails the parent for failure to pay child support, without first inquiring into the parent's ability to pay).

<sup>46</sup> *Bearden*, 461 U.S. at 671; *Griffin v. Illinois*, 351 U.S. 12, 24 (1956) (holding that the Fourteenth Amendment prohibits denial of right to appeal based on inability to pay fee); *M.L.B. v. S.L.J.*, 519 U.S. 102, 124 (1996) (holding that indigent person could not be denied appeal of decision terminating parental rights based on inability to pay court costs); *Boddie v. Connecticut*, 401 U.S. 371, 382–83 (1971) (holding that married couple's divorce could not be denied based on inability to pay court costs).



or punishment of children based solely on poverty.<sup>47</sup> Conditioning diversion and other alternatives to formal adjudication or detention on ability to pay also means that the negative consequences of adjudication and detention fall more heavily on children living in poverty. Formal adjudication and a juvenile record can prevent youth from pursuing educational opportunities, participating in school-related activities, living in subsidized housing, obtaining employment, and even obtaining a driver's license,<sup>48</sup> while detention separates youth from positive influences like family and school and increases the risk of recidivism.<sup>49</sup> In addition, if a disproportionate number of children who are unable to pay for diversion are also minorities,<sup>50</sup> making diversion programs available to all regardless of financial resources may help to prevent disparate racial impacts that could violate Title VI, the Safe Streets Act, and other related statutes. For these reasons, juvenile courts and juvenile justice agencies should not deny access to diversion programs and other alternatives to adjudication solely based on inability to pay the fees associated with the programs.<sup>51</sup>

4. Juvenile justice agencies should collect data on race, national origin, sex, and disability to determine whether the imposition of fines and fees has an unlawful disparate impact on juveniles or their families.

Juvenile justice agencies should collect and analyze demographic data related to the imposition of fines and fees on juveniles to assess compliance with the nondiscrimination requirements that accompany acceptance of Department financial assistance. Establishing data-collection and maintenance procedures are critical mechanisms for evaluating the impact that fines and fees may have on a protected class over a period of time. Regular analysis of the relevant data would allow recipients to take affirmative measures to identify and eliminate discrimination.

In tandem with gathering information on the national origin of beneficiaries, Department-funded juvenile justice agencies should also collect data on the primary languages spoken by the children and their families involved with the juvenile justice system. The data will allow funded entities to determine, consistent with the Department's language-access guidance for recipients on complying with Title VI, whether they are taking reasonable steps to provide limited English proficient (LEP) youth and LEP families meaningful access to the services that the recipient offers.<sup>52</sup> If a funded entity decides to translate vital documents into the commonly encountered

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<sup>47</sup> Bearden, 461 U.S. at 671; Tate v. Short, 401 U.S. 395, 398 (1971); Williams v. Illinois, 399 U.S. 235, 241–42 (1970).

<sup>48</sup> Collateral consequences of adjudications of delinquency vary based on state laws. For some examples, see the resources collected on the National Juvenile Defender Center (NJDC) website. Collateral Consequences, NJDC, <http://njdc.info/collateral-consequences/> (last visited Dec. 23, 2016).

<sup>49</sup> See JAMES AUSTIN ET AL., OJJDP, ALTERNATIVES TO THE SECURE DETENTION AND CONFINEMENT OF JUVENILE OFFENDERS 2–3 (Sept. 2005), available at <http://go.usa.gov/x9n7E>.

<sup>50</sup> See, e.g., Alex R. Piquero & Wesley G. Jennings, *Justice System Imposed Financial Penalties Increase Likelihood of Recidivism in a Sample of Adolescent Offenders* 29 (2016) (noting, in study of Allegheny County, Pennsylvania, “that Non-Whites were more likely to still owe costs and restitution upon case closing”).

<sup>51</sup> Aside from barring access to diversion programs and other alternatives to adjudication, the inability to pay should also not result in harsher consequences at any stage of a young person's interaction with the juvenile justice system, including access to rehabilitative services or the length of probation.

<sup>52</sup> Dep't of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002).

languages in its service population, it should translate into the appropriate languages notices related to the assessment of fines and fees, including information on ability to pay, economic assessment procedures, and appeal rights.<sup>53</sup>

5. Juvenile justice agencies should consider whether the imposition or enforcement of fines and fees in any particular case comports with the rehabilitative goals of the juvenile justice system.

One overriding difference between the juvenile justice system and the criminal justice system is the former's primary focus on rehabilitation. Before courts impose fines and fees on juveniles—even on those rare juveniles who might be able to pay—they should consider whether such financial burdens serve rehabilitation. In many cases, fines and fees will be more punitive than rehabilitative, and they may in fact present an impediment to other rehabilitative steps, such as employment and education.

### Conclusion

The ATJ and the OCR find encouraging the innovative efforts that juvenile courts and other juvenile justice agencies around the country have taken to address the legal and practical harms that can result from the imposition of fines and fees. This Advisory supports the effort to ensure that the assessment of fines and fees on juveniles comports with federal law and the juvenile justice system's rehabilitative goals.

Recipients of financial assistance from the Department seeking additional information, resources, or referrals related to the administration of fines and fees in the juvenile justice system may contact the OCR.<sup>54</sup>



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<sup>53</sup> See *id.* at 41,463–64.

<sup>54</sup> Civil Rights (Oficina de Derechos Civiles), OFFICE OF JUSTICE PROGRAMS, <http://go.usa.gov/x9nGD> (last visited Jan. 8, 2017).