

June 14, 2024

**Questions for Mr. Adam Rust, Director of Financial Services, Consumer Federation of America,<sup>1</sup> from Senator John Fetterman:**

1. *Mr. Rust: I have always been a champion of giving people a second chance. Charging fees on people's gate money when they leave prison—that isn't giving them a second chance, it's kicking them when they're down. Can you tell me about the predatory fees people in jails and prisons and their families have to pay? What can Congress do to fix this issue?*

Thank you for the chance to address predatory fees that harm justice-involved people and their families.

Across the United States, incarcerated individuals and their loved ones are held captive to the agreements that correctional institutions make with private companies to provide basic, essential goods and services. Not surprisingly, a system without consumer choice has permitted junk fees attached to these products to flourish. In this response, I will show how the criminal justice system applies junk fees before, during, and after imprisonment.

These fees impose burdens on a disproportionately lower-income population and of color. Incarcerated people and their families are disproportionately poor<sup>2</sup> and people of color.<sup>3</sup> On average, people earned \$19,185 in 2014 before their incarceration (\$25,410 adjusted for inflation to 2024), which is 41% less than their peers who were not incarcerated.<sup>4</sup> While incarcerated, people have virtually no ability to earn

---

<sup>1</sup> The Consumer Federation of America (CFA) is an association of non-profit consumer organizations established in 1968 to advance the consumer interest through research, advocacy, and education. Today, more than 250 of these groups participate in the federation and govern it through their representatives on the organization's Board of Directors. As an advocacy organization, CFA works to advance pro-consumer policies on a variety of issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts. We communicate and work with public officials to promote beneficial policies, oppose harmful ones, and ensure a balanced debate on issues important to consumers.

<sup>2</sup> The median income among people *entering* prison is 41 percent less than the national average, and people have virtually no ability to earn meaningful wages while they are incarcerated. Bernadette Rabuy & Daniel Kopf, Prison Policy Initiative, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned* (2015), <https://www.prisonpolicy.org/reports/income.html> (“We found that, in 2014 dollars, incarcerated people had a median annual income of \$19,185 prior to their incarceration, which is 41% less than nonincarcerated people of similar ages.”); Wendy Sawyer, *How Much Do Incarcerated People Earn in Each State?*, Prison Policy Initiative (Apr. 10, 2017), <https://www.prisonpolicy.org/blog/2017/04/10/wages/> (showing average hourly wages of 14¢ to 63¢ for typical prison jobs).

People leaving incarceration are even worse off financially. See, e.g., Terry-Ann Craigie et al., Brennan Ctr. for Just., *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, 6 (2020), <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal?ref=honeysuckle.com> (finding that “[o]n average, formerly imprisoned people earn nearly half a million dollars less over their careers than they might have otherwise,” that “[t]hese losses are borne disproportionately by people already living in poverty,” and that “they help perpetuate it”).

<sup>3</sup> DeVuono-Powell, Saneta, et al. “Who Pays? The True Cost of Incarceration on Families.” Ella Baker Center, September 2015. <https://ellabakercenter.org/wp-content/uploads/2022/09/Who-Pays-FINAL.pdf>.

<sup>4</sup> Rabuy, Bernadette, and Daniel Kopf. “Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned.” Prison Policy Initiative, July 9, 2015. <https://www.prisonpolicy.org/reports/income.html>.

**Committee on Banking, Housing, and Urban Affairs**  
**“Consumer Protection: Examining Fees in Financial Services and Rental Housing”**  
**May 9, 2024**

meaningful wages.<sup>5</sup> And people leaving incarceration are even worse off financially.<sup>6</sup> The level of incarceration in our country is staggering. At the end of 2021, approximately 1.2 million people were incarcerated in a state or federal prison, and another 647,000 were in a local jail.<sup>7</sup> During the twelve months ending June 30, 2023, 7.6 million people were admitted to a local jail.<sup>8</sup> A 2023 Bureau of Justice Statistics report found that seventy percent of those in jail were unconvicted and awaiting trial or court action.<sup>9</sup> Almost five million people have been incarcerated in a state or federal prison, and approximately 113 million have an immediate family member who has been to prison or jail.<sup>10</sup>

Policymakers should also consider how a system of fines and fees contradicts the purpose of a system identified by the term “corrections.” When these fees compromise the financial stability of justice-involved populations, they may contribute to recidivism and encourage forces contrary to public rehabilitation goals.

I. Prepaid debit cards are used by correctional facilities to return a person’s money and to provide gate money when they exit incarceration. The high fees can drain account balances.

The prepaid debit “release cards” given to people upon release from incarceration are loaded with junk fees. Because of exclusive contracts negotiated between card companies and correctional institutions, people leaving incarceration often receive their “gate money” and outstanding commissary balances—the incarcerated person’s own money—on prepaid “release” cards upon exiting their correctional institutions. These cards often have high fees, including fees for withdrawing cash, making a purchase, using an ATM, or even checking a balance. Many also apply inactivity fees.

The Consumer Financial Protection Bureau (CFPB) has sought to address junk fees on release cards. In 2021, the CFPB acted against JPay to prevent these practices. As a result of the CFPB’s enforcement order, the company will not be able to charge fees to release card accounts for five years, except by applying an inactivity fee after 90 days. Additionally, the CFPB ordered JPay to provide \$4 million in compensation to harmed consumers and to pay a \$2 million civil penalty.<sup>11</sup>

---

<sup>5</sup> Wendy Sawyer, How Much Do Incarcerated People Earn in Each State?, Prison Policy Initiative (Apr. 10, 2017), <https://www.prisonpolicy.org/blog/2017/04/10/wages/>. (showing average hourly wages of 14¢ to 63¢ for typical prison jobs).

<sup>6</sup> See, e.g., Terry-Ann Craigie et al., Brennan Ctr. for Just., Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality, 6 (2020), <https://www.brennancenter.org/ourwork/research-reports/conviction-imprisonment-and-lost-earnings-how-involvementcriminal?ref=honeysuckleimag.com> (finding that “[o]n average, formerly imprisoned people earn nearly half a million dollars less over their careers than they might have otherwise,” that “[t]hese losses are borne disproportionately by people already living in poverty,” and that “they help perpetuate it”).

<sup>7</sup> Vera Institute. “Incarceration Statistics.” Accessed June 13, 2024. <https://www.vera.org/ending-mass-incarceration/causes-of-mass-incarceration/incarceration-statistics>.

<sup>8</sup> Zeng, Zhen. “Jails Report Series: Preliminary Data Release.” Bureau of Justice Statistics, November 2023. <https://bjs.ojp.gov/library/publications/jails-report-series-preliminary-data-release-2023>.

<sup>9</sup> Zeng, Zhen. “Preliminary Data Release” Bureau of Justice Statistics. Accessed June 13, 2024. <https://bjs.ojp.gov/preliminary-data-release-jails-2023>.

<sup>10</sup> Prison Policy Initiative. “Mass Incarceration Directly Impacts Millions of People.” Accessed June 13, 2024. <https://www.prisonpolicy.org/graphs/directlyimpacted2022.html>.

<sup>11</sup> Consumer Financial Protection Bureau. “CFPB Penalizes JPay for Siphoning Taxpayer-Funded Benefits Intended to Help People Re-Enter Society After Incarceration,” October 19, 2021. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-penalizes-jpay-for-siphoning-taxpayer-funded-benefits-intended-to-help-people-re-enter-society-after-incarceration/>.

**Committee on Banking, Housing, and Urban Affairs**  
**“Consumer Protection: Examining Fees in Financial Services and Rental Housing”**  
**May 9, 2024**

Nonetheless, fees are still a problem. The next table shows fees for several active release cards:

Card	State/Year	Maintenance	ATM w/d	ATM b/i	ATM decline	POS	Replacement
Rapid Fin'l by Axiom Bank	AL/2020	\$2.00 (weekly)	\$2.95	\$1.50	\$2.95	\$0	\$2.99
Elan US Bank	NE/2022	\$0	\$0/\$1.25	\$0/\$1.00	\$0	\$0	\$5.00
Way2Go by Comerica	ND/2019	\$0	\$0/\$1.25	\$0	\$0	\$0	\$0
Access Freedom, Axiom Bank	NV/2020	\$1.50 (weekly)	\$2.75	\$1.50	\$2.75	\$0	\$2.99
Prestige/NUMI by Central Bank of Kansas City	?/2020	\$2.50 (weekly)	\$2.95	\$1.00	\$1.00	\$0	Not given
JPay Progress by Metropolitan Commercial Bank	/2024	\$0	\$0	\$0	\$0	\$0	\$0

ATM b/i = balance inquiry, in-network/out-of-network. ATM w/d = withdrawal. POS = point-of-sale purchase. Source: CFPB Prepaid Products Agreements Database<sup>12</sup>

The CFPB has enforcement and rulemaking authority over release cards, and advocates have argued<sup>13</sup> the CFPB should exercise supervisory authority over the largest providers of these services pursuant to the CFPB’s proposed rule on “Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications.”<sup>14</sup>

A complaint filed in a 2021 class action lawsuit revealed the injustice of these fees. In 2019, the lead plaintiff received the remaining \$213.40 balance of his commissary account and \$200 in “gate money” upon release from Chuckawalla Valley State Prison in Riverside County, California. The prison required funds to be distributed on a JPay release card and did not provide the recipient with disclosures revealing the fee schedule. The person had not spent the money, but when he checked his balance a few months later, only \$4.87 remained.<sup>15</sup>

II. Fees are charged throughout an individual’s journey through the justice system. This is true after an arrest through sentencing, during incarceration, and afterward during probation.

*a. Junk fees are prevalent before a person enters a correctional facility. Fees are charged before incarceration—from arrest through sentencing.*

*Commercial bail fees.*

<sup>12</sup> Consumer Financial Protection Bureau. “Prepaid Product Agreements Database.” Accessed May 24, 2024. <https://www.consumerfinance.gov/data-research/prepaid-accounts/search-agreements/>. See also Raheer, Stephen. “Insufficient funds: How prison and jail ‘release cards’ perpetuate the cycle of poverty.” Prison Policy Initiative, May 3, 2022. <https://www.prisonpolicy.org/blog/2022/05/03/releasecards/> (analysis of fee disclosures that release-card companies had filed with the CFPB, including fee disclosures for all active prepaid cards that: (1) were marked with the product-type code “prison release,” or (2) were associated with known release-card issuers, marketers, or program managers).

<sup>13</sup> National Consumer Law Center & Worth Rises, Comments submitted January 8, 2024, re: CFPB’s Notice of Proposed Rulemaking, “Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications, 88 Fed. Reg. 80197, <https://www.nclc.org/wp-content/uploads/2024/01/Larger-Market-Participants-Rule-Docket-No-CFPB-2023-0053-Comments-Concerning-Justice-Involved-Consumers.pdf>.

<sup>14</sup> Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications, 88 Fed. Reg. 80197 (proposed Nov. 17, 2023) (to be codified at 12 C.F.R. pt. 1090), <https://www.federalregister.gov/documents/2023/11/17/2023-24978/defining-larger-participants-of-a-market-for-general-use-digital-consumer-payment-applications>.

<sup>15</sup> Prison Legal News. “HRDC Case Sues JPay Over Fee-Heavy ‘Release Card’ Debit Cards,” October 21, 2021. <https://www.prisonlegalnews.org/news/2021/oct/1/hrdc-case-sues-jpay-over-fee-heavy-release-card-debit-cards/>.

**Committee on Banking, Housing, and Urban Affairs**  
**“Consumer Protection: Examining Fees in Financial Services and Rental Housing”**  
**May 9, 2024**

Commercial bail companies commonly levy fees for various (often ambiguous) expenses beyond the bond premium. The consumer has almost zero bargaining power when entering these fee-laden contracts. Contracts are negotiated at the bail agent’s office—and an accused person who does not sign the agreement under the proffered terms can be taken back to jail. Furthermore, many bail agents allow the consumer to pay for the bond premium in installments, often in return for charging financing fees and costs. The terms and cost of this extension of credit may be murky and devoid of the types of disclosures typically required in consumer contracts. In addition, financing costs may cause the premiums to exceed the jurisdiction’s rate cap.<sup>16</sup> All of this occurs against a backdrop in which these companies have increasingly escaped any financial risk by carving out loopholes to place that burden on the backs of their customers and the taxpayers.<sup>17</sup>

*Fees to have a court-appointed attorney.*

Even the fundamental assumption that all defendants have a right to counsel, regardless of their ability to hire a private attorney, is challenged by the desire to charge fees. In *Gideon v. Wainwright*, the Supreme Court guaranteed the right of a defendant to an attorney, regardless of their ability to afford one, the Supreme Court has found that states can attempt to recoup the costs of providing one. As recently as 2022, forty states had policies to charge fees for indigent defense.<sup>18</sup> A 2024 study of policies in Iowa found that poor people were charged for their legal aid even if they were acquitted or the cases against them were dropped. When those individuals cannot repay the charges, they are vulnerable to severe penalties. The report added that individuals indebted from their defense may have their wages, bank accounts, and tax refunds garnished. If on probation, they may be arrested.<sup>19</sup>

***b. More fees are charged to incarcerated individuals and their loved ones during incarceration.***

*Fees are charged to send money electronically.*

Across federal, state, and county correctional institutions, vendors charge high fees to consumers who send money electronically to incarcerated individuals. Costs to send funds are the norm. A 2021 survey found that only seven states process payments in-house. The rest use private third-party vendors.<sup>20</sup>

Earlier, I outlined some of the costs JPay charged prior to the CFPB enforcement order against its release card. While the order has forced JPay to eliminate virtually all card fees, the company still charges high fees for many other services.

---

<sup>16</sup> Brian Highsmith, Nat’l Consumer L. Ctr., *Commercialized (In)justice: Consumer Abuses in the Bail and Corrections Industry* 26 (2019), available at <https://www.nclc.org/wp-content/uploads/2022/09/report-commercialized-injustice.pdf> (internal citations omitted).

<sup>17</sup> Wendy Sawyer, *All Profit, No Risk: How the Bail Industry Exploits the Legal System*, Prison Policy Initiative (October 4, 2022), available at <https://www.prisonpolicy.org/reports/bail.html>.

<sup>18</sup> Gill, Lauren, and Weihua Li. “Her ‘Free’ Court-Appointed Lawyer Cost Her Thousands of Dollars.” *The Marshall Project*, February 12, 2024. <https://www.themarshallproject.org/2024/02/12/miranda-rights-indigent-defense-iowa>.

<sup>19</sup> Ibid

<sup>20</sup> Raheer, Stephen and Tiana Herring. “Show me the money: Tracking the companies that have a lock on sending funds to incarcerated people.” Prison Policy Initiative, Nov. 9, 2021. <https://www.prisonpolicy.org/blog/2021/11/09/moneytransfers/>. See also Nelson, Ariel, and Stephen Raheer. “Captive Consumers: How Government Agencies and Private Companies Trap and Profit Off Incarcerated People and Their Loved Ones.” *Inquest*, March 19, 2022. <https://inquest.org/captive-consumers/>.

**Committee on Banking, Housing, and Urban Affairs**  
**“Consumer Protection: Examining Fees in Financial Services and Rental Housing”**  
**May 9, 2024**

For example, JPay has contracts with hundreds of prisons, charging high fees to send money. Exact amounts vary according to the contract negotiated by the money transmitter and the correctional institution. For example, it costs \$9.95 to send \$200 to an account at a federal prison.<sup>21</sup> As the funds are sent by ACH, the cost to the provider is less than ten cents. In our view, it is unlikely the fees could be so high if it were not for the fact that a third party determines the prices paid by consumers. Moreover, political interests exist that support these arrangements. Often, these fees are used to meet some of the expenses paid by governments to manage prisons or cross-subsidize other public services. When fees are sent through a card network, a fee to cover the cost of interchange and other fees related to merchant processing may be reasonable, but not fees that are significantly greater.

Concerns about high fees are further reinforced by the fact that some correctional institutions offer money transmission services with identical vendors but at very different rates. This underscores the likelihood that contracts permit predatory profiteering by money-transfer companies; differing rates may also be a reflection of these companies paying commissions—sometimes called “kickbacks”—to correctional facilities.<sup>22</sup> For example, a Georgia state prison charges 5 cents to send up to \$500,<sup>23</sup> but the same vendor working with the Louisiana Department of Corrections charges \$12.50 to send up to \$300 online.

Not all correctional systems rely on exclusive contracts; some provide more than one choice. Nonetheless, these are still not markets where new entrants can easily participate. The choice of several providers is better than one, but it may still present concerns over oligopolistic coordination. In addition, in some correctional facilities that offer multiple options for sending money, this does not mean there is true competition. For example, a prison system could contract with JPay to handle all money transfers, and JPay could subcontract with Western Union to handle in-person cash payments. In such a circumstance, it may seem that consumers can choose between JPay and Western Union, but in actuality, Western Union is acting as JPay’s agent, not its competitor.<sup>24</sup>

Moreover, the few companies that dominate the market add to their market power by selling their services in bundles. A single contract may permit a provider to have exclusive arrangements to offer communication, financial services, education, entertainment, and other services.<sup>25</sup> This approach results in correctional institutions having little meaningful way to negotiate better prices or even compare bidders’ prices.

Again, because incarcerated individuals are disproportionately likely to come from low-wealth households, many payment orders are for relatively small amounts. Flat fees range from \$3.49 to

---

<sup>21</sup> LLC, JPay, and JPay LLC Support@JPay.com. “Available JPay Services Send Money Rates.” JPay LLC. Accessed May 5, 2024. <https://www.jpayers.com/>.

<sup>22</sup> Raher and Herring, *supra* note 20.

<sup>23</sup> LLC, JPay, and JPay LLC Support@JPay.com. “Available JPay Services Metro State Prison.” JPay LLC. Accessed May 22, 2024. <https://www.jpayers.com/>.

<sup>24</sup> Raher and Herring, *supra* note 20.

<sup>25</sup> Technologies, Aventiv, and Q2FzZXkgV2F0a2lucw==. “Securus Technologies Realigns Business Units, Diversifies Product Offerings Under New Corporate Parent: Aventiv Technologies.” *Aventiv Technologies* (blog), October 10, 2019. <https://www.aventiv.com/securus-technologies-realigns-business-units-diversifies-product-offerings-under-new-corporate-parent-aventiv-technologies/>.

**Committee on Banking, Housing, and Urban Affairs**  
**“Consumer Protection: Examining Fees in Financial Services and Rental Housing”**  
**May 9, 2024**

\$6.95, while seemingly small fees can consume a large percentage of small-dollar transfers. One report estimates that fees capture one of every five dollars sent to an incarcerated person.<sup>26</sup>

*Costs of communication: Fees for phone calls, email, and video calls.*

Incarcerated individuals pay dearly for the opportunity to communicate with friends and family. There is cruelty embedded in this system, as most jobs available to incarcerated individuals may pay less than one dollar per day.<sup>27</sup> The magnitude of fees burdens the loved ones of incarcerated individuals. One report estimated that one in three families of an incarcerated individual goes into debt to pay for phone calls and visits.<sup>28</sup>

In some institutions, the fee to send a one-page email is roughly equivalent to the cost of a new postage stamp. A longer email could require a second “stamp.”<sup>29</sup> It is a perfect example of a fee whose justification is based on false logic. Some correctional institutions may contend that the prices of electronic messages are now close to the price of a stamp, but the comparison is not legitimate. The cost of mailing a letter is much greater than the cost of sending an email. In fact, the latter is virtually costless and remains costless even when an email has an attachment.

The vast majority of correctional systems also charge incarcerated people to communicate with their loved ones via phone or video calls, and often at exorbitant rates. As of late 2021, the average jail charged about \$3 for a 15-minute call, and some county jails charged as much as \$12.99 for a twenty-minute video call.<sup>30</sup>

One positive development is that efforts by the Federal Communications Commission (FCC) to limit exorbitant junk phone call fees have succeeded. In 2014, the FCC capped the costs of interstate phone calls at 21 cents per minute. Even more promisingly, due to the passage of the Martha Wright-Reed Just and Reasonable Communications Act of 2022, the FCC now has the authority—and mandate—to also limit the exorbitant costs of *intrastate* phone calls for incarcerated people, as well the excessive costs of inter- and intrastate video calls for this population. Several jurisdictions have gone even further, requiring free communications to be made available to incarcerated people.

Nevertheless, much work remains. Most jurisdictions still do not provide free communication to their incarcerated residents. The FCC’s regulations following the Martha Wright-Reed Act will merely set a *cap* for phone and video calls—a cost that may still be unaffordable for many incarcerated people and their families. In addition, these regulations will not apply to electronic messaging at all.

---

<sup>26</sup> Nelson, Ariel, and Stephen Rahe. “Captive Consumers: How Government Agencies and Private Companies Trap and Profit Off Incarcerated People and Their Loved Ones.” *Inquest*, March 19, 2022. <https://inquest.org/captive-consumers/>.

<sup>27</sup> Jallow, Ahmed. “Burden of High Prices behind Bars in NC.” Carolina Public Press, December 22, 2023. <http://carolinapublicpress.org/62619/burden-of-high-prices-behind-bars-in-nc/>.

<sup>28</sup> deVuono-Powell, Saneta, et al. *supra* note 3.

<sup>29</sup> Law, Victoria. “How Companies Make Millions Charging Prisoners to Send An Email.” *Wired*, August 3, 2018. <https://www.wired.com/story/jpay-securus-prison-email-charging-millions/>.

<sup>30</sup> Wagner, Peter, and Wanda Bertram. “State of Phone Justice 2022: The problem, the progress, and what’s next.” Prison Policy Initiative, December 2022. [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice\\_2022.html](https://www.prisonpolicy.org/phones/state_of_phone_justice_2022.html).

**Committee on Banking, Housing, and Urban Affairs**  
**“Consumer Protection: Examining Fees in Financial Services and Rental Housing”**  
**May 9, 2024**

Communicating with friends and family benefits the health of incarcerated individuals, may decrease their odds of recidivism,<sup>31</sup> and can strengthen important social and familial ties.<sup>32</sup> These fees compromise important social priorities.

*Fees to pay for the costs of imprisonment.*

Many correctional systems coerce incarcerated individuals to pay for the costs of their imprisonment.<sup>33</sup> Room and board fees—also called “pay-to-stay” fees—are found in many of our country’s prisons and jails. They are typically charged at a per diem rate for the length of incarceration, commonly \$20 to \$80 per day. For example, in Michigan, any county can seek reimbursement of up to \$60 a day for expenses incurred in relation to a charge for which a person was sentenced to county jail time.<sup>34</sup>

*Fees for essential goods and services during incarceration.*

In many cases, incarcerated individuals must purchase essential goods and services because, increasingly, correctional institutions fail to provide adequate access to necessities such as hygiene products, adequate food, stamps, and over-the-counter medicines.<sup>35</sup> Whereas the state once paid for the cost of providing things like aspirin or toothpaste to those in its custody, now correctional facilities sometimes receive commissions (or “kickbacks”) from private vendors who have exclusive contracts to sell those goods at the facility’s “commissary.” A New York study found that approximately three in four incarcerated individuals buy basic necessities, spending at least \$175 monthly and approximately \$300 monthly on average.<sup>36</sup>

*Fees for medical care*

In addition, many (perhaps most) incarcerated people are charged copays for their medical care. In Texas prisons, for example, incarcerated people must pay \$13.55 per medical visit, a fee that stands out as especially egregious considering Texas is one of a handful of states that does not pay its incarcerated workers anything for their labor.<sup>37</sup>

In the federal prison system, a proposed rule issued by the Bureau of Prisons in January 2023 (“Inmate Financial Responsibility Program: Procedures”) would further deplete the limited financial resources incarcerated people earn through wages or receive from friends and family members. It would allow for the Bureau to garnish up to 50% of incarcerated people’s wages to put toward their outstanding legal

---

<sup>31</sup> “Holt Miller Prisoner and Family Relationship Recidivism Study 1972 | Prison Legal News.” Prison Legal News, January 1972. <https://www.prisonlegalnews.org/news/publications/holt-miller-prisoner-and-family-relationship-recidivism-study-1972/>.

<sup>32</sup> Wang, Leah. “Research Roundup: The Positive Impacts of Family Contact for Incarcerated People and Their Families.” Prison Policy Initiative, December 21, 2021. [https://www.prisonpolicy.org/blog/2021/12/21/family\\_contact/](https://www.prisonpolicy.org/blog/2021/12/21/family_contact/).

<sup>33</sup> Eisen, Lauren-Brooke. “America’s Dystopian Incarceration System of Pay to Stay Behind Bars.” Brennan Center for Justice, April 19, 2023. <https://www.brennancenter.org/our-work/analysis-opinion/americas-dystopian-incarceration-system-pay-stay-behind-bars>. Brennan Center research indicates that nearly every state takes a portion of the meagre salary that incarcerated workers may earn to compensate the corrections agency for the cost of feeding, housing, and supervising them.

<sup>34</sup> *Ibid*

<sup>35</sup> Nelson, and Raheer. *supra* note 26.

<sup>36</sup> Bardelli, Thommaso, Zach Gillespie, and Thuy Linh Tu. “Blood from a Stone: How New York Prisons Force People to Pay for Their Own Incarceration.” Prison Policy Initiative, October 27, 2021. [https://www.prisonpolicy.org/blog/2021/10/27/ny\\_costs/](https://www.prisonpolicy.org/blog/2021/10/27/ny_costs/).

<sup>37</sup> Lauren-Brooke, *supra* note 33.

**Committee on Banking, Housing, and Urban Affairs**  
**“Consumer Protection: Examining Fees in Financial Services and Rental Housing”**  
**May 9, 2024**

financial obligations (such as fines and court costs), and it would allow for the seizure of 75% of the funds sent by their loved ones, for the same purpose. Federally incarcerated people technically participate voluntarily but may do so only because of the coercive forces of facing severe consequences for opting out.<sup>38</sup>

*c. After incarceration, more fees and fines are charged. These fees can impact the ability of formerly incarcerated individuals to successfully transition back into society.*

*Junk fees are applied in the supervision context.*

When individuals exit incarceration, they may face a new set of junk fees. Over the last two decades, many judicial systems have introduced policies to charge fees to people subject to supervision. Some services where fees are charged include electronic monitoring (e.g., ankle bracelets), drug testing, and treatment programs. Forty-eight states permit a supervision fee generally. Supervision fees can range from as little as \$10 to as much as \$150 per month.<sup>39</sup> Not surprisingly, many people are unable to pay these debts. When they cannot, they face severe consequences, potentially even reimprisonment.

Fee policies are not sensitive to age. In twenty-one states, at least one jurisdiction charges a supervision fee for children on juvenile probation. In eight states where supervision is costless, fees may be charged for services used during probation.<sup>40</sup>

*Fees for post-arrest/pretrial diversion programs.*

Post-arrest diversion programs typically allow—at the state’s discretion—selected individuals to avoid criminal charges if they follow a prescribed program of treatment, restitution, or community service. These programs can often have much to recommend them. But recent investigations have revealed a troubling new pattern: jurisdictions often outsource pretrial diversion programs to private companies that charge exorbitant costs to participate, in addition to myriad ancillary fees. A ProPublica investigation found that course fees in Illinois ranged from \$125 to \$175; administrative fees added another \$25 to \$35. Companies also charge additional fees for conveniences like rescheduling a missed class—or even enrolling in a payment plan.<sup>41</sup>

---

<sup>38</sup> Wessler, Mike. “A Sledgehammer Instead of a Scalpel: New Rules Proposed by the Biden Administration on Money Earned by or Sent to People in Federal Prison Are the Wrong Way to Go.” *Prison Policy Initiative* (blog), March 13, 2013. [https://www.prisonpolicy.org/blog/2023/03/13/bop\\_rules/](https://www.prisonpolicy.org/blog/2023/03/13/bop_rules/).

<sup>39</sup> Brett, Sharon, Neda Khoshkhoo, and Mitali Nagrecha. “Paying on Probation: How Financial Sanctions Intersect with Probation to Target, Trap, and Punish People Who Cannot Pay.” *Fines and Fees Justice Center*, June 9, 2020. <https://finesandfeesjusticecenter.org/articles/financial-sanctions-intersect-with-probation/>.

<sup>40</sup> National Juvenile Defender Center. “The Cost of Juvenile Probation: A Critical Look into Juvenile Supervision Fees.” Issue Brief, February 25, 2024. <https://finesandfeesjusticecenter.org/articles/the-cost-of-juvenile-probation-a-critical-look-into-juvenile-supervision-fees/>.

<sup>41</sup> *Id.* at 27–28 (citing Rebecca Burns, *Diversion Programs Say They Offer a Path Away from Court, but Critics Say the Tolls Are Hefty*, ProPublica Illinois (Nov. 13, 2018), available at <https://www.propublica.org/article/diversion-programs-illinois-criminal-justice-system-bounceback-correctivesolutions#:~:text=Illinois%20Reporting%20Project-Diversion%20Programs%20Say%20They%20Offer%20a%20Path%20Away%20From%20Court,ways%20they%20might%20not%20otherwise>).



**Committee on Banking, Housing, and Urban Affairs**  
**“Consumer Protection: Examining Fees in Financial Services and Rental Housing”**  
**May 9, 2024**

**Conclusion**

*Prison should not be a profit-making enterprise.* Non-essential goods and services offered in prison should be priced at reasonable costs. But even “at-cost” may be too high in some cases. Today, many incarcerated individuals say they need to receive money from outside sources to avoid hunger, remain clean, and conduct basic activities such as reading and exercising. Correctional facilities must provide all essential goods and services to incarcerated people for free.

*Disclosures are not an effective remedy.* Without competition, consumers become price-takers. In far too many cases, clear and conspicuous price listings will not lead to behavior change in these markets. Vendors have exclusive rights. The balance of power is not relative but instead absolute. Meanwhile, loved ones know that their relatives living in prison are hungry or lonely. Accordingly, any law or regulation that solely mandates disclosures of fees and prices as a proposed remedy for junk fees will fail to address many junk fees that harm justice-involved people.<sup>42</sup>

*Excessive fees should be prohibited.* Correctional facilities should prevent private companies from charging excessive fees. Fees are excessive if they are not reasonable and proportional to the cost of the good or service provided. Other considerations to help determine whether a fee is excessive include the reason for which the fee is charged and the degree of available consumer choice for the good or service.

*Congress should provide support to states and local governments to reform fines and fees practices.* Current policies undermine rehabilitation after exit.

- State debt-based driver’s license suspensions can make it harder for formerly incarcerated individuals to find and maintain employment. To remedy this problem, the Senate should pass S2313, the Driving for Opportunity Act.
- The presence of criminal justice debt may become a barrier to accessing housing or finding employment. Congress should pass the Fresh Start Act (H2983) to correct this. In the 117<sup>th</sup> Congress, the House version of this bill (HR 5651) had 32 cosponsors with substantial bipartisan support. In this Congress, it has 20 cosponsors from parties.
- Eliminate all fines and fees in the juvenile system. Congress should pass the Eliminating Debtor’s Prison for Kids Act of 2023 (S2448/HR4975).
- Require collectors of criminal justice debt to comply with the federal Fair Debt Collection Practices Act. In the 117<sup>th</sup> Congress, the Debt Collection Practices Act was introduced in the House (HR2628). It applied consumer protections for the collection of debts owed to a state. The Stop Debt Collection Abuse Act of 2021 (HR2572) prevents federal agencies from selling or transferring debt to a private agency until 90 days after delinquency or default and caps fees and charges charged by collectors of these debts.

The list of fees charged to justice-involved individuals is cruel. Their existence reflects an imbalance of power. Ultimately, these fees run contrary to the aim of rehabilitation and may increase recidivism.

---

<sup>42</sup> See National Consumer Law Center, et al. Comments submitted February 7, 2024, re: Federal Trade Commission’s Notice of Proposed Rulemaking, “Rule on Unfair or Deceptive Fees,” R207011. Pp. 10–11. [https://www.nclc.org/wp-content/uploads/2024/02/2024.02.08\\_combined-comments-appendices.pdf](https://www.nclc.org/wp-content/uploads/2024/02/2024.02.08_combined-comments-appendices.pdf) (arguing the FTC’s “proposed rule’s focus on transparency and disclosure will fail to address many of the junk fees that affect justice-involved people”).

**Committee on Banking, Housing, and Urban Affairs**  
**“Consumer Protection: Examining Fees in Financial Services and Rental Housing”**  
**May 9, 2024**

Thank you for your interest and concern in these issues and their impacts on incarcerated individuals and their loved ones.

Sincerely,

A handwritten signature in black ink that reads "Adam M. Rust". The signature is written in a cursive style with a clear, legible font.

Adam Rust  
Director of Financial Services  
Consumer Federation of America  
[arust@consumerfed.org](mailto:arust@consumerfed.org)