Public Defenders Call for End to Courts’ Predatory Collection Practices

May 13, 2015 – Today, the National Association for Public Defense (NAPD) issues a POLICY STATEMENT ON THE PREDATORY COLLECTION OF COSTS, FINES, AND FEES IN AMERICA’S CRIMINAL COURTS, calling for an end to assessing excessive fines and fees to fund government operations. The judiciary must embrace their responsibility to protect the poor from being jailed when they have an inability to pay the overwhelming and continuously expanding fines and fees and oppressive monetary bonds routinely set in criminal cases.

The NAPD Statement stresses the need to end the current criminal justice monetary policy: The collection of costs, fines, and fees in criminal courts across the United States are predatory in nature and an economic failure. These predatory practices impact poor people in catastrophic and life altering ways and are disproportionately levied against people of color.

In Ferguson MO, Thomas Harvey, Executive Director of the ArchCity Defenders and NAPD member references the distrust that has developed when a community has the impression that police and courts in the region “engage in low level harassment that isn’t about public safety but instead about money and race. At the time of Mike Brown’s killing, there were over 600,000 warrants for arrest in the St. Louis region, which has roughly 1.2 million people. Most of these warrants are from unpaid fines for non-violent poverty offenses. These warrants, and jailings on the failure to pay fines, act as a barrier to employment and housing. What we are seeing is the connection between the cycle of poverty and the justice system in America."

Joining in the statement, Janene McCabe, a public defender in Colorado and member of NAPD states, “Colorado struggles with the same problem, where municipal courts jail citizens when they do not pay their court ordered fees and fines. The cost to the taxpayers is great and the loss of liberty to citizens means the loss of jobs, housing, and stability. The legislature recognized the courts were spending far more time and money incarcerating people for unpaid fees than they would have collected and acted to change the law. Despite the change, requiring ability to pay hearings, the problem persists in some courts today."

Calling for change now, Tim Young, Ohio Public Defender and Chair of NAPD said, “We depend on courts to be justice courts, not revenue courts. The presumption of innocence pretrial should not be reserved for people with money while the poor stay in jail, disproportionately impacting people of color; especially when there is no evidence that money bail has any correlation with the risk of reoffending or showing up in court. A fair and balanced system of pretrial release ought to be based on public safety, not on the person’s status as rich or poor. In Ohio and everywhere, jails are extremely expensive and should be used only to protect public safety, not to extort money from society’s most vulnerable.”
The NAPD Statement calls for an elimination of monetary bond. The Supreme Court has ruled, "Incarcerating individuals solely because of their inability to pay for their release, whether through the payment of fines, fees, or a cash bond, violates the Equal Protection Clause of the Fourteenth Amendment." It wholly fails to consider the ability of the defendant to pay fines and undermines the constitutional protections against incarceration for costs and fees which are a civil debt. It is a system that favors the wealthy who can make bail over the poor person who cannot.

Criminal justice costs – including resources required to fund court operations, prisons, prosecutor offices and the right to counsel – are an essential government obligation. Assessing exorbitant fines and fees to people whose contact with the criminal justice system might be as minor as a parking ticket without consideration of the ability to pay is predatory and unconscionable. Further, threatening their liberty for failure to pay is illegal, yet it is an endemic practice in courts across the country. NAPD calls for an immediate end to these practices.


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