Caught Up in Court Costs:

An Investigation into Court Costs Charged to Criminal Defendants and the Impact on State and County Budgets in Oklahoma

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ABOUT THE AUTHORS

A team of students from the Lobeck Taylor Community Advocacy Clinic at the University of Tulsa College of Law, Alia Heintz, Miroslava Radieva, and Hannah Scandy (the GKFF Team), developed this report and two other products for public distribution for the George Kaiser Family Foundation (our client), and Women In Recovery (a program funded by the George Kaiser Family Foundation) in the spring of 2015. The GKFF team was supervised by Professor Anna Carpenter, Director of the Lobeck Taylor Community Advocacy Clinic at the University of Tulsa College of Law. The clinic gives law students the opportunity to gain hands-on experience in legal practice through an intensive one-semester course.

Between February and April of 2015, the GKFF Team conducted a two-part research project analyzing 1) the source (authorizing statutes) of all court fines and fees assessed on non-violent offenders in Oklahoma, and 2) the role these court fines and fees play in different state and county budgets once collected by the court clerk, with a specific focus on Tulsa County.

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1 The scope of our project did not include analyzing violent offenders, however, our research showed that courts impose certain fines and fees on both violent and non-violent offenders.
EXECUTIVE POINTS SUMMARY

Our key findings include:

Assessment of Court Costs:

✓ All fines and fees assessed to non-violent offenders in Tulsa County are authorized by statute and assessed consistently.
  0 Certain fines and fees, such as fines payable to the county, have a statutorily defined range (for example, between $10 and $250) and are authorized to be assessed based on the judge’s discretion within that range.
✓ Oklahoma Court of Criminal Appeals Rule 8 authorizes waiver of the fines and fees associated with a criminal conviction if a defendant is found to be impoverished or physically disabled; our research shows that waiver is also possible if the defendant completes a specialty alternative court program such as Women in Recovery.2
  0 Rule 8 requires that when a defendant pleads guilty and is given a suspended or deferred sentence, his or her ability to pay fines and fees be considered. This is done by the judge at an informal hearing at the time of sentencing. He or she uses a standardized paper form called an “Order of the Court-Rule 8 Hearing.” Each judge approaches the implementation of Rule 8 differently.
    ▪ If a defendant is remanded to the Department of Corrections, he or she may seek a waiver of fines and fees or establish a payment plan within two weeks of his or her release.
  0 Judges will not waive restitution costs.
  0 Judges rarely alter any fines or fees a jury assesses after convicting a defendant.
  0 Currently, Rule 8 is an under-utilized tool for lessening the burden of fines and fees on defendants. Current practices must change if Rule 8 is to have any meaningful impact.

Court Costs in State and County Budgets:

✓ Defendants can set up payment plans with the court administration desk at the court clerk’s office; those plans can be amended with judicial permission if circumstances change.
✓ The Tulsa Court Fund is funded by fines and fees other than those allocated to specific agencies
✓ The Public Defender’s Office employee salaries are fully funded by the Tulsa Court Fund.
✓ It is difficult to find the exact amount of court fines and fees assessed and collected in Tulsa County, and difficult to determine exactly how that money is later distributed to different state funds and agencies.
✓ Court fines and fees are authorized by Oklahoma law and assessed in all Oklahoma jurisdictions. Any effort to change the amount of fines and fees charged to defendants must ultimately be a statewide campaign.

INTRODUCTION

We, the GKFF team, researched two complex issues related to court fines and fees assessed in criminal cases in Tulsa County, specifically those assessed to people charged with non-violent crimes. The project quickly evolved as we began our research. We developed a two-part research project, specifically focusing on (1) finding the legal source of all court fines and fees\(^3\) assessed on non-violent offenders in Tulsa County, and (2) where those fines and fees go after they are collected and how they influence state and county budgets. We began investigating the source of each fine and fee assessed on non-violent defendants in the system, and then spoke with various state and county representatives to track the destinations of these fines and fees after the court clerk collects them. Over the course of the semester, our research evolved as we ran into many roadblocks. We had difficulty finding reliable numbers regarding the extent to which the fines and fees fund different state agencies in Tulsa County, and in the state of Oklahoma more broadly.

First, we located the statutory source of all fines and fees assessed in non-violent criminal cases in Oklahoma.\(^4\) We then analyzed a random sample of 60 Tulsa County criminal cases (12 random cases for each of the top five crimes in Tulsa County: burglary, DUI, larceny, uttering a forged instrument, and possession of a controlled substance) to confirm that courts uniformly applied the fines and fees, and to look for any fines and fees not authorized by statute. We determined (a) that the Tulsa County District Court consistently assesses fines and fees in non-violent criminal cases, except for those in which the court has discretion;\(^5\) (b) that the fines and fees assessed in criminal cases in Tulsa County are authorized by Oklahoma statutes, and (c) that Oklahoma Court of Criminal Appeals Rule 8, which provides for a waiver

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\(^3\) In this report, the term “fines and fees” will be used interchangeably with the term “court costs” to describe administrative and other charges assessed to criminal defendants by criminal courts. These charges are separate from any monetary criminal penalty that may result from a conviction. For example, a defendant may be sentenced to a month in jail and $150 associated with a specific charge and then charged $350 in court costs for a given misdemeanor crime.

\(^4\) While our team focused on non-violent offenders, our research showed that the fines and fees that we analyzed are assessed to both non-violent and violent offenders. Some fines and fees (such as the DA Council Prosecution Assessment) are assessed to all offenders regardless of crimes while others (such as the Victim's Compensation Fund Assessment) are assessed to only certain crimes described by the statute.

\(^5\) Many court costs are set by the legislature; however, with respect to court costs explained later, the legislature gives courts discretion to assess what the court deems to be an appropriate amount on defendants.
or reduction of fines and fees for defendants who are poor or physically disabled, is rarely used for this intended purpose.

The second phase of our research was determining what happens to monies from fines and fees after the court clerk collects them from defendants. We examined the budgets for Tulsa County and the State of Oklahoma, and analyzed comprehensive annual financial reports to determine the revenue stream for each state and county agency budget. In addition to compiling and reviewing this data, we reached out to a wide variety of sources including a reporter from Oklahoma Watch, Vice Chief Justice Combs of the Oklahoma Supreme Court, and administrators at the Oklahoma Office of State Finance, various Tulsa County entities, and Professor Robert Butkin at The University of Tulsa College of Law.⁶

While we discovered answers to many of our client’s questions, several issues surfaced as we began speaking with our contacts, and some of the answers remain outside our sphere of knowledge. The biggest hurdle we faced was that no one we spoke with knew how much the fines and fees influenced various budgets. We went into the project believing that a state or county agency would track the revenue and expenditures from court costs—but that turned out not to be true. Many of the contacts with whom we spoke provided contradictory or inconsistent information.

We created two final products to meet the needs of both the George Kaiser Family Foundation and Women in Recovery. We created an educational pamphlet to encourage both attorneys and defendants to use Rule 8 hearings as a meaningful opportunity for requesting a waiver or reduction in fines and fees. The second product is a grassroots campaign flyer, targeted towards young adults, to spark enthusiasm and begin a movement to change the role of fines and fees in the criminal justice system.

Section I of this report explains the various fines and fees imposed on non-violent offenders in the criminal justice system, summarizing our initial research and our analysis of criminal case data. In Section II, we investigate the role of these fines and fees in state and county budgets and explore the challenges we faced. Section III addresses the limitations we faced in our research. Section IV offers

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⁶ See app. I, at 33 for a full list of contacts.
questions for future research. Finally, in Section V we address our final conclusions. Appendix I describes the two final products and their intended use. Included in a digital format of this report is Appendix II with numerous reports created by different agencies within the State of Oklahoma and Tulsa County as easy reference to our work.
1. **FINES AND FEES ASSESSED TO CRIMINAL DEFENDANTS IN OKLAHOMA**

   *a. Convicted Defendants Face Steep Fines & Fees*

   We located the statutory bases of all fines and fees assessed to defendants in criminal cases in Tulsa County and in the state of Oklahoma. All court costs charged to defendants are authorized by statutes scattered across various titles, particularly Titles 18 through 20. The legislature enacted these fines and fees, via statute, as an alternative means to fund state and county agencies, supplementing the legislature’s appropriation of monies from the State of Oklahoma’s general fund. While the legislature also created mechanisms for the indigent to have their fines and fees waived, those tools are currently under-utilized. These options will be discussed more fully later in this report.

   According to a report issued by the Department of Justice, between 60 and 90 percent of criminal defendants are considered indigent.\(^7\) Because so many criminal defendants are indigent, they are unable to pay their fines and fees. Failure to pay leads to the issuance of bench warrants, which then leads to more court fines and fees. Indigent defendants become trapped in a cycle of debts and arrests. This issue is not new and continues to gain media attention. Over the last year, Oklahoma Watch published a series of articles detailing the difficulties the indigent have in repaying their court costs and how they are arrested for failure to pay.\(^8\) Furthermore, the issue of exponential court costs is not one isolated to Oklahoma. This research question came on the heels of the Department of Justice’s exposure of the Ferguson, Missouri, municipal court’s discriminatory use of court costs\(^9\). Unlike the DOJ’s investigation of Ferguson, Missouri, the team was unable to determine if any law enforcement agency was arresting or issuing citations in a racially discriminatory way. The answer to that question lies outside the scope of the current project.

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b. The Statutory Research

We discovered several documents that provide detailed summaries of the fines and fees assessed on criminal defendants, and these documents additionally list the statutory basis and amount set by the legislature for each administrative fine and fee. For the last several years, and most recently in 2014, the Oklahoma Supreme Court Network (OSCN) published a “Fee Schedule” detailing the fines and fees a non-violent offender can expect to pay, and it also included the specific statutory bases for each fine and fee. Moreover, the Oklahoma Judiciary created a more comprehensive report explaining many of the fines and fees found under Oklahoma law.

c. Data & Analysis of Fines and Fees Assessed on Non-Violent Offenders

We researched whether fines and fees are uniformly assessed on each offender. Each team member analyzed 20 random defendants, for a total of 60 defendants, both male and female, in Tulsa County with varying charges including DUI, larceny, uttering a forged instrument, second-degree burglary, and possession of a controlled substance. Based on this sample, we conclude that Tulsa County imposes fines and fees in conformance with the Oklahoma statutes. We determined that all defendants face a minimum of 13 court costs, no matter the offense. These costs appear below in Table 1. As explained in greater detail in Section II, if the purpose of the fine or fee is not specified in the statute, the fine or fee is deposited into the “court fund.” Once the clerk’s office collects court costs, the clerk deposits the monies into the court fund, which can then be used to “defray[] the expenses of [the] holding court in said county.” In plain language, the fines and fees the court clerks collect pay for the court to operate.

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12 Notes on file with authors.
13 20 O.S. § 1301.
14 Id.
Table 1. The 13 fines and fees assessed on all non-violent offenders in Tulsa County and the *minimum* an offender can expect to pay per count. In instances where two numbers appear, the top amount represents the 10% added by the court clerk, as authorized by 19 O.S. §220, and the bottom number represents the amount paid to the specified agency.

<table>
<thead>
<tr>
<th>Felony</th>
<th>Misdemeanor</th>
<th>Fee</th>
<th>Allotment</th>
</tr>
</thead>
<tbody>
<tr>
<td>$103</td>
<td>$83</td>
<td>Court Costs 28 O.S. §153(A)(3), (4)</td>
<td>Under 28 O.S. §153(J), the whole fee is deposited into the court fund.</td>
</tr>
<tr>
<td>$25</td>
<td>$25</td>
<td>Oklahoma Court Information System Revolving Fund 28 O.S. §153(D)</td>
<td>Under 20 O.S. §1315, the fee is used for the upkeep and maintenance of the Oklahoma Court Information System.</td>
</tr>
<tr>
<td>$2.50</td>
<td>$1.50</td>
<td>DA Council Prosecution Assessment 28 O.S. §153(C)</td>
<td>Under 19 O.S. §220, the Court Clerk’s office charges an additional 10% as administrative costs for this fee. Under 28 O.S. §153(J), the whole fee is deposited into the court fund.</td>
</tr>
<tr>
<td>$25</td>
<td>$15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$10</td>
<td>$10</td>
<td>Sheriff Service Fee for Courthouse Security 28 O.S. §153(E)</td>
<td>Under 28 O.S. §153(E), the fee is collected from all people convicted of a traffic violation, misdemeanor, or felony and is used to enhance existing or provide additional courthouse security.</td>
</tr>
<tr>
<td>$1</td>
<td>$1</td>
<td>Medical Expense Liability Revolving Fund 28 O.S. §1313.7(A)</td>
<td>Under 19 O.S. §220, the Court Clerk’s office charges an additional 10% as administrative costs for this fee. Under 20 O.S. §1313.7, the whole fee goes into the State and Education Employees Group Insurance Board for qualified medical expenses for inmates or persons in the custody of a county or city jail.</td>
</tr>
<tr>
<td>$10</td>
<td>$10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$0.90</td>
<td>$0.90</td>
<td>C.L.E.E.T. (Council on Law Enforcement Education and Training) Assessment 20 O.S. §1313.2(B)</td>
<td>Under 19 O.S. §220, the Court Clerk’s office charges an additional 10% as administrative costs for this fee. Under 20 O.S. §1313.2(D), 60.53% stays in the C.L.E.E.T. fund, 5.83% of fee goes to the General Revenue Fund, and 33.64% goes to C.L.E.E.T. Training Center. *If a county has its own basic law enforcement academy, it may retain $2 from each $9 fee for that purpose (20 O.S. §1313.3).</td>
</tr>
<tr>
<td>$9</td>
<td>$9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$6</td>
<td>$6</td>
<td>Law Library 28 O.S. §153(B)</td>
<td>Under 20 O.S. §1203, the fee goes into a continuing fund for the Law Library.</td>
</tr>
<tr>
<td>Service Description</td>
<td>Fee</td>
<td>Description</td>
<td>Remarks</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------</td>
<td>-----</td>
<td>------------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Forensic Science Improvement Assessment</td>
<td>$0.50</td>
<td>$0.50</td>
<td>Under 19 O.S. §220, the Court Clerk’s office charges an additional 10% as administrative costs for this fee. Under 74 O.S. §150.35, the whole fee is put into a fund to be used by the Oklahoma State Bureau of Investigation for the purpose of improving forensic science services. *In municipal court, the municipal clerk may withhold 5% of the fee (20 O.S. §1313.4).</td>
</tr>
<tr>
<td>Sheriff Service Fee on Arrests</td>
<td>$0.50</td>
<td>$0.50</td>
<td>Under 19 O.S. §220, the Court Clerk’s office charges an additional 10% as administrative costs for this fee. Under 28 O.S. §153.2, the whole fee is deposited into the Sheriff’s Service Fee Account of the sheriff of the county in which the arrest was made.</td>
</tr>
<tr>
<td>A.F.I.S. (Automated Fingerprint Identification System) Fee</td>
<td>$0.50</td>
<td>$0.50</td>
<td>Under 19 O.S. §220, the Court Clerk’s office charges an additional 10% as administrative costs for this fee. Under 20 O.S. §1313.3(A), $0.50 of each $5 fee goes to the General Revenue Fund and $4.50 of the fee goes to the A.F.I.S. fund.</td>
</tr>
<tr>
<td>Child Abuse Multidisciplinary Account (C.H.A.B.)</td>
<td>$0.30</td>
<td>$0.30</td>
<td>Under 19 O.S. §220, the Court Clerk’s office charges an additional 10% as administrative costs for this fee. Under 28 O.S. §153(G), the whole fee is deposited into the Child Abuse Multidisciplinary Account and cannot be used to employ or hire law enforcement officers.</td>
</tr>
<tr>
<td>Attorney General Victim Services Unit</td>
<td>$0.30</td>
<td>$0.30</td>
<td>Under 19 O.S. §220, the Court Clerk’s office charges an additional 10% as administrative costs for this fee. Under 28 O.S. §153(F), the whole fee is deposited into the Office of the Attorney General Victim Services Unit.</td>
</tr>
<tr>
<td>Trauma Care Assistance Revolving Fund</td>
<td>$10</td>
<td>$10</td>
<td>Under 63 O.S. §1-2511, this fund is for the reimbursement of trauma facilities and services and for emergency response systems.</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>$216</strong></td>
<td><strong>$196</strong></td>
<td></td>
</tr>
</tbody>
</table>
All of the fees enumerated in Table 1, except for the Trauma Care Assistance Revolving Fund fee, have statutorily set amounts that are not within the court’s discretion. Thus, of the 13 fees in Table 1, the court has control only over the Trauma Care Assistance Revolving Fund fee, which can range from $50 to upwards of $10,000. As an additional caveat, these 13 fines and fees are assessed per count. Many times, a non-violent criminal defendant may have several charges against him or her; thus, the seemingly small amount quickly multiplies.

However, the cumulative amount charged by these 13 baseline fines and fees is merely the minimum amount that a non-violent criminal defendant can expect to pay. As represented in Table 1, Oklahoma statutes impose extra “hidden” fees, such as a supplemental 10% payable to the Court Clerk when the specific fine or fee is collected for an agency other than the court. Examples of fines and fees paid to other agencies include the Attorney General Victim Services Unit fee, the Sheriff Service Fee on Arrests, the Child Abuse Multidisciplinary Account (CHAB), among others listed in Table 1. Moreover, there are additional charge-specific fines and fees that courts must assess on defendants as prescribed by Oklahoma law. While these additional fees theoretically are not “automatic” since they do not apply in every criminal case, in practice this theory is quite different. Based on our analysis, we found that Oklahoma law requires automatic application of the charge-specific fees upon conviction or receipt of a deferred sentence.

Table 2 below describes certain fines and fees associated with specific non-violent offenses. Instead of set amounts, the Oklahoma legislature provided ranges of fines and fees. In some cases, the court has the discretion to choose what it deems an appropriate amount as indicated in Table 2; however, in other instances like possession, the statute provides solid guidelines for what a court may assess.

<table>
<thead>
<tr>
<th>Table 2. A sample of specific fines and fees automatically charged depending on the offense.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court Clerk Administrative fee on collections:</td>
</tr>
<tr>
<td>19 O.S. §220</td>
</tr>
<tr>
<td>Fines to County depend on the crime charged:</td>
</tr>
<tr>
<td>-Grand Larceny</td>
</tr>
<tr>
<td>10% of fees collected for agency other than the court</td>
</tr>
</tbody>
</table>

Neither statute that governs the Trauma Care Revolving Fund clarifies how judges should determine how much to assess defendants. From our observations, defendants were assessed differing numbers; it is unclear what goes into this decision outside of judicial discretion.

See infra Table 2.

-17-
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>21 O.S. §1705</td>
<td>Petit Larceny</td>
<td>$10-$500</td>
</tr>
<tr>
<td>21 O.S. §1706</td>
<td>Public Intoxication</td>
<td>$10-$100</td>
</tr>
<tr>
<td>37 O.S. §8</td>
<td>Possession</td>
<td>Up to $5,000 for the first offense and up to $10,000 for the second offense</td>
</tr>
<tr>
<td>63 O.S. §2-402</td>
<td>Schedule I or II substance (not including marihuana)</td>
<td>Up to $1,000 for the first offense and up to $5,000 for the second offense</td>
</tr>
<tr>
<td></td>
<td>Schedule III, IV, or V substance, marihuana or preparation</td>
<td>Up to $10,000</td>
</tr>
<tr>
<td></td>
<td>Possessing or purchasing a controlled substance within 1,000 feet of a school, park, or in the presence of a child under 12</td>
<td>Up to $1,000 for the first offense; up to $2,500 for the second offense; up to $5,000 for the third offense</td>
</tr>
<tr>
<td>47 O.S. §11-902</td>
<td>Driving Under the Influence</td>
<td>Up to $10,000</td>
</tr>
<tr>
<td>21 O.S. §64(B)</td>
<td>Uttering a Forged Instrument</td>
<td>Up to $10,000</td>
</tr>
<tr>
<td>21 O.S. §64(B)</td>
<td>Burglary</td>
<td>Up to $10,000</td>
</tr>
<tr>
<td>21 O.S. §142.18</td>
<td>Victim’s Compensation Assessment:</td>
<td>$50-$10,000</td>
</tr>
<tr>
<td>21 O.S. §1220</td>
<td>Trauma Care</td>
<td>$100</td>
</tr>
<tr>
<td>28 O.S. §153(A)(3)</td>
<td>Drug Offenses</td>
<td>$100</td>
</tr>
<tr>
<td>20 O.S. §1313.5(B)</td>
<td>Traffic Offenses</td>
<td>$20</td>
</tr>
<tr>
<td>20 O.S. §1313.6(B)</td>
<td>DUI Offenses</td>
<td>$155</td>
</tr>
</tbody>
</table>
The fines and fees in Tables 1 and 2 have a foundation in statute; but the county also has the ability to charge an additional amount that often appears on a defendant’s court docket as “Fines Payable to County” — and our case research indicates that the amount ultimately charged by the court is discretionary. These fines are distinct from the statutorily set fines and fees defined in Tables 1 and 2. Fines Payable to the County have a wide range depending on the crime involved (for example, our data shows that the typical Fines Payable to the County for a DUI offense averaged $150), but we did not discover what factors into that determination.\textsuperscript{17}

d. The Poor Cannot Pay Fines and Fees

Between 60 and 90 percent of criminal defendants are poor or low-income, making it difficult, if not impossible, to pay court costs. Interim Chief Public Defender Robert Nigh, estimates his office serves 60 percent of felony defendants in Tulsa County.\textsuperscript{18} For many of these defendants, paying their court costs is a choice between feeding their families and staying out of jail.\textsuperscript{19} Trapped in a losing situation, many defendants fail to pay their court costs.\textsuperscript{20} We believe that instead of approaching the court to ask for assistance via a payment plan, most defendants shy away from the system believing that they will go to jail if they set foot in the courthouse.

e. Rule 8 Hearings

Oklahoma law expressly provides for waiver of fees for those offenders the court finds to be impoverished or disabled under Oklahoma Court of Criminal Appeals Rule 8.\textsuperscript{21} Rule 8 also requires a hearing and judicial finding on a defendant’s ability to pay at the time of sentencing in a criminal case.\textsuperscript{22} At the time of sentencing, a Rule 8 hearing form, called an “Order of the Court - Rule 8 Hearing,” is signed by the district judge, the defendant, and his attorney, if he has one. The form specifies the different

\begin{itemize}
\item \textsuperscript{17} Notes on file with authors.
\item \textsuperscript{18} Robert Nigh, supra note 7.
\item \textsuperscript{20} Id.
\item \textsuperscript{21} 22 O.S.A. ch. 18, app., OK ST CR A CT Rule 8.1.
\item \textsuperscript{22} Id.
\end{itemize}
amounts that are to be paid for each of the criminal offenses or if there has been any reduction or waivers.\textsuperscript{23} Generally, when a defendant pleads and is not immediately remanded to the Department of Corrections, a Rule 8 Hearing form is signed and then the defendant goes to the court clerk to file it. Payment plans and schedules are set up with the court clerk at the time the forms are filed. In cases where defendants are taken into custody\textsuperscript{24}, they are given two weeks from the time of their release to set up a payment plan.\textsuperscript{25} If at any time a payment plan becomes unmanageable, a defendant can come back to the court to make new arrangements.\textsuperscript{26} Because there is so little statutory guidance and case law on the issue of how Rule 8 should be implemented, there is a lot of discrepancy in the procedure. The lack of Rule 8 statutory guidance and stare decisis has become a huge hurdle to proper implementation.

For example, when a defendant requests a cost hearing in front of Judge Hiddle, who is normally in charge of that docket, he will let them make their argument after the rest of the docket is done. But if a defendant requests the same hearing in front of Judge Ludi-Leitch, who sometimes takes over the docket, she requires that the defendant file a motion explaining the request and why it should be granted.\textsuperscript{27} The same inconsistencies between judges is true for the initial Rule 8 hearing at sentencing. None of the district court judges follow the same procedures; as such, defendants - and often, their legal counsel - are unaware that a Rule 8 hearing is going on.\textsuperscript{28} When we spoke to the Interim Chief Public Defender, he acknowledged that Rule 8 was not being utilized as it should be and that many defendants were either unaware of their options or so focused on the potential jail time that they were unable to provide the

\textsuperscript{23} Other than the statutorily required waivers for poverty or physical disability, fines and fees are often waived for those defendants who successfully complete specialty court programs such as Women in Recovery or Drug Court. However, restitution is never waived. See infra n.29.

\textsuperscript{24} An important distinction for defendants is how they are sentenced: if they are convicted in a jury trial, their fines, fees, and any other jury-assessed charges cannot be waived. Judges are unwilling to change the verdict from a jury when it comes to the financials unless they have a professional duty to do such. However, a defendant can still set up a payment plan if needed.

\textsuperscript{25} See app. II-C, at 62 for blank Rule 8 Hearing form.


\textsuperscript{27} See Ludi-Leitch, supra note 26.

\textsuperscript{28} Id.; Robert Nigh, supra note 7.
sentencing judges with the “right answers” necessary to prove their indigency.\textsuperscript{29} Without standardized procedures, Rule 8 can do little to help the defendants who so desperately need relief from the steep costs associated with a criminal conviction.

\textsuperscript{29} Robert Nigh, \textit{supra} note 7.
II. WHERE DOES THE MONEY GO: OKLAHOMA AND TULSA COUNTY BUDGETS

a. How Tulsa County Collects Court Fines and Fees and Where the Money Goes

The Tulsa County District Court generally uses two options to collect court costs from defendants—either the payments are made directly to the court by defendants, or in the case of a defendant’s failure to pay, the court contracts out to a collection agency to seek out these individuals and collect the money. Generally, if a defendant fails to pay for 60 days, Tulsa County hires Aberdeen Enterprizes II, Inc., for collections.\(^30\) When Tulsa County uses Aberdeen, the collection agency tacks on an additional 30 percent of the total amount owed by defendants. It then retains the extra 30 percent and returns the full amount owed to the court. For example, if John Doe owes the court $1000 and Tulsa County hires Aberdeen to collect this money, Aberdeen will charge John Doe $1,300—holding the additional $300 for itself and returning the $1000 to Tulsa County court. Just in March 2015 alone, Aberdeen collected over $250,000 from defendants.\(^31\) Each year, Oklahoma courts—including Tulsa County District Court—fail to collect the total amount assessed on defendants—some defendants either simply cannot or do not pay even if repeatedly harassed.

b. Where Do These Fees Go?

For most court costs, the budgetary allocation of monies collected is determined by the statute. Generally, if not determined by the statute, the fines and fees are funneled into the “court fund” for the county in which the court sits. Title 20 of the Oklahoma Statutes, section 1301 dictates that “[a]ll fees, fines, costs and forfeitures shall, when collected by the court clerk, be deposited in a fund in the county treasury designated as the court fund, and shall be used, from year to year, in defraying the expenses of holding court in said county.” As Table 1 indicates, the Court Costs Fee and the DA Council Prosecution Assessment Fee both go directly into the court fund. Additionally, the court clerk charges 10% on costs that do not go directly to the court system in addition to the actual fee—this 10% charge goes into the


\(^{31}\) See app. II-D, at 65.
Each county has their own court fund. There is also a State Judicial Revolving Fund which “consists of all monies appropriated to it by the Legislature, as well as the first 80% of the amount by which receipts exceed expenses in each county court fund for a set period.” In Tulsa County, the district court clerk is required to transfer these monies each month. At the end of each fiscal year, the legislature compels the district court clerks to transfer the “remaining amount that gross receipts exceed expenses, less the amounts already transferred to the Fund throughout the fiscal year.”

Alternatively, in some instances, the statute defines the exact purpose of the fine or fee and applies it to a certain fund. For example, the legislature specifically created the CHAB fee for the sole purpose of creating a fund for child abuse. Another case of a fine or fee carved out by legislature is the Trauma Care Assistance Revolving Fund, created to reimburse trauma facilities and services for emergency medical expenses. However, as previously explained, the court clerk assesses an extra 10% when the fine or fee goes to a different agency other than the court. For example, as seen in Table 1, when a defendant pays $3 for the CHAB statutory fee, the clerk adds 30 cents to inject back into the court system. Tables 1 and 2 explain when the fine or fee is used for a specific fund rather than deposited directly into the court fund.

c. How Much Do Different State and County Budgets Rely on These Fines and Fees?

The legislature, via statute, has created revolving funds in which many fines and fees are deposited. Many of the revolving funds include the language “[a]ll monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Supreme Court for...” The language implies that the purpose of these statutes that impose fines and fees is “to replace general revenue

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32 19 O.S. § 220.
33 Summary of Court Finance, supra note 11, at 4.
34 Id.
35 Id. at 4-5.
36 See supra Table 1.
37 28 O.S. §153.G.
38 63 O.S. §1-2511.
39 28 O.S. § 153(D).
appropriations.”40 However, each year, the legislature generally appropriates portions of the State’s General Fund to finance various state and county agencies. But, from the perspective of the GKFF Team, the creation of the specific revolving funds are just another avenue of “supplementing” the budgets for state and county agencies. While the legislature partially funds budgets with a portion of the general fund, it also chooses to charge defendants like customers to help pay for the criminal justice system and other agencies.

During our research, we focused on the budgets of two key players in Tulsa County’s criminal justice system: The District Attorney and the Public Defender. Both entities largely influence the system, and we postulated that they had the biggest stake, other than the judiciary, in the fines and fees imposed on criminal defendants.

d. The District Attorney

According to Steve Kunzweiler, the District Attorney (DA) for Tulsa County, the legislature partially funds the DA budget, but the budget is also supplemented by court costs and federal grants. While we believe Mr. Kunzweiler’s statement to be true, we could not support his statement with any reported data. Mr. Kunzweiler did not know the precise breakdown of the 50 percent of the DA budget not funded by the State that comes from court costs and federal grants. He mentioned fines and fees, but the DA’s office also receives federal grants. Mr. Kunzweiler actively advocates for legislative change to relieve criminal defendants of paying for the criminal justice system. In the case of fines and fees, Mr. Kunzweiler may be an ally in the fight to move the burden of fines and fees off of criminal defendants. Interestingly, Mr. Kunzweiler admitted that he believed the DA supervision program presents a conflict of interest between the DA’s office and the criminal defendants in the system, and that the supervision program is not an effective allocation of the DA’s resources.41

40 E-mail from Cary Cundiff, Budget Analyst, Office of Mgmt. & Enter. Servs. (Apr. 16, 2015) (on file with author).
The Tulsa County DA budget struggles are not isolated to Tulsa County. Across the state, only ½ of one percent, or 0.50 percent, of the state general fund is set aside for prosecution in all seventy-seven counties. By refusing to adequately fund prosecution and instead passing the costs to defendants, the legislature has put state prosecutors offices between a rock and a hard place: either they can continue on the current fines and fees based system or cease to exist.

e. The Public Defender

We reached out to the Tulsa County Public Defender (PD) on two occasions. We first spoke with Stuart Southerland, the vice chief public defender. He revealed that the salaries of all of the PDs within Tulsa County come directly from the court fund. Robert Nigh, Jr., the interim chief public defender for Tulsa County, confirmed this statement in a telephone interview. He further revealed the PD derives most of its budget from the court fund, and Tulsa County only provides minor appropriations from the county general fund to pay for office supplies. Oklahoma statutes validate Mr. Nigh and Mr. Southerland’s statements, revealing that the legislature appropriates the PD’s budget from the Tulsa County fund and the Tulsa County general fund.

Mr. Southerland expressed displeasure with the current system and how the PD relies on its own clients to fund most of its budget. We believe that it presents another conflict of interest because it hypothetically benefits the PD when courts place high fines and fees on defendants because it is a main source of the PD’s revenue; however, the imposition of these court costs hurts the clients of the PD. If the PD’s clients cannot afford their costs and then subsequently default, the PD is burned in two ways because its revenue stream decreases and its clients can be placed in jail for failure to pay.

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42 Id.
44 Robert Nigh, supra note 7.
46 Stuart Southerland, supra note 43.
III. LIMITATIONS

During the course of our research, we encountered two main hurdles. First, our research indicates that the State of Oklahoma does not consolidate and communicate accounting information across state agencies. Even something as simple as determining the Tulsa County PD’s budget was difficult. For example, to determine both the amount and revenue stream for the PD’s budget, we searched through a couple of individual sources to find a complete answer.\(^{47}\) We inferred from the obstacles we faced in finding data that state and county entities fail to provide an accurate accounting of collections to each other despite that fines and fees can benefit more than one county or agency. In the last several years, especially in 2014, a report from the Oklahoma State Auditor and Inspector confirmed our suspicions.\(^ {48}\)

Over the past five years, Oklahoma State Auditor and Inspector continuously audited Tulsa County for different reasons. We particularly note an audit of the Tulsa County Court Clerk that took place in 2013, covering the clerk’s accounting from July 1, 2009, through June 30, 2013.\(^ {49}\) While we lack special expertise in accounting, we understand the report to recognize the problem that the Tulsa County Clerk relies on a single individual to account and report all of the court costs collected by the court, not limited to the court costs examined in this report, and found that this person failed to accurately report the total amount collected.\(^ {50}\) The audit report then criticizes Tulsa County’s lack of procedural safeguards to properly segregate collections and deposits.\(^ {51}\)

A second limitation stems from the composition of the team researching the questions. We do not have a background in accounting or finance. We believe that a full picture of the financing of Oklahoma and Tulsa County’s justice system requires an in-depth review, by a trained accountant or budget analyst, of the revenues and budgets across the state court system. We believe that such a review is necessary to

\(^{47}\) 19 O.S. § 138.4; 20 O.S. § 1301; Gerard, supra note 45, at 13.  
\(^{50}\) Gary A. Jones, supra note 48, at 6.  
\(^{51}\) Id.
verify our interpretation of the budget information presented here and to further research the questions posed in this project.
IV. Further Questions

For further study of these issues, we advise a more extensive review of state, county, and municipality court budgets, revenues, and expenditures by a trained accountant or budget analyst. Oklahoma makes raw data regarding the budgets openly available; however, without proper training or accounting knowledge, it is difficult for us to properly analyze the figures. 52

Another consideration is the collections process. Aberdeen Enterprizes II is highly effective—and undoubtedly profitable given that the company continues to work with the Tulsa County District Court. We do not know exactly what collection tactics Aberdeen uses, but we are concerned that they may be using aggressive, potentially questionable methods to collect the court costs and their high collections fees. After all, Aberdeen is only brought in when the defendant has fallen behind on payments and yet Aberdeen is able to collect more than the original balance.

Finally, while Tulsa County was the focus of this project, our findings and the questions raised here have wider applicability. The Oklahoma statutes, not local laws, authorize all of the court costs assessed in Tulsa County, and throughout the state. Our research suggests that both Tulsa County and Oklahoma County bring in a majority of their revenue from court costs, and then disburse these aggregated costs to different agencies. 53 We narrowed our inquiry to Tulsa County, but the issue of low-income criminal defendants funding the court system is a statewide problem.

53 See discussion supra pp. 23-25.
V. **Conclusion**

Stakeholders within the criminal justice system recognize that a lack of legislative support for the judiciary and the subsequent reliance on defendants to fund the court system (not to mention law enforcement and unrelated state agencies) is a serious concern. All the sources we interviewed, from district attorneys to defense attorneys to judges, disagree with the current system. While they all had varying views on how to correct the system and its injustices, one idea was consistent: the legislature needs to increase the allotment of the general fund dedicated to the criminal justice system.

Based on this feedback, we think that a grassroots movement with advocates from the general public and the court system may be very effective. If the public and the courts can figure out a way to work together, they may be able to convince the legislature to change how the courts are funded. One of the more immediate solutions can easily start in Tulsa County: defense attorneys, both in private practice and the public sector, need to start advocating for their clients with Rule 8 hearings. The lack of case law or standardized judicial procedure is harmful to defendants in Tulsa County and can only be solved with attorney advocacy.
APPENDIX I

An Explanation of the “One-Pager”

The GKFF Team created a grassroots campaign poster coined the “One Pager.” The purpose of the one pager is to raise awareness in the local community regarding the issue of fines and fees assessed on non-violent defendants in Tulsa County.

Target Demographic: College students, graduate students, and young professionals ranging from ages 20-35. We believe that this demographic is more likely to form a grassroots movement and actively advocate for a cause.

Design: We designed this one pager to be aesthetically pleasing and catch the eyes of the target demographic. Our theory is that the typographic design is the initial hook and will encourage the target audience to read the one pager and learn more. The team carefully crafted the typographic design to cater to current trends and what we believe would best attract an audience.

Use: We believe that the best use of the one pager is wide distribution at local coffee shops, universities, and other popular venues. Many popular restaurants and bars in the Tulsa area utilize ads in bathrooms; several attorneys and legal services utilize them for their services (i.e. - Zach Smith “the DUI guy”) and they are in very noticeable, hard-to-ignore places. In addition, gyms, places of worship, and Tulsa’s vibrant music venues could be good places for distribution.

An Explanation of the Educational Pamphlet

The GKFF team also created an educational pamphlet designed to help major players in the criminal justice system understand the options available for high court costs.

Target Demographic: This pamphlet is designed to hit two main targets: criminal defense attorneys (both private and public sector) and criminal defendants.

Design: The pamphlet is a bi-fold. The majority of the information is on the inside panels; the back contains important court contact information for the court as well as a disclaimer. The overall design is simple but bright enough to be immediately interesting.

Use: One side of the pamphlet is targeted towards attorneys and addresses how to get their client manageable fines & fees either through waiver or by setting up a payment plan. The other side of the pamphlet is targeted towards defendants. The defendant side gives them strong advice to consult with their attorneys (if they have one), but also gives them general guiding advice.

In addition to making this pamphlet available to public defenders’ offices, alternative courts, private criminal defense attorneys, and the Oklahoma Indigent Defense System, this pamphlet should also be made available to defendants. Suggested locations include courthouses, legal resource centers such as Legal Aid, public libraries, and community centers or outreaches.
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APPENDIX II

Due to the volume of information contained in Appendix II, it is provided in digital format.