

Youth, Rights & Justice

ATTORNEYS AT LAW

February 10, 2020

Chair Sanchez
Vice-Chair Bynum
Vice-Chair Sprenger

Re: HB 4142

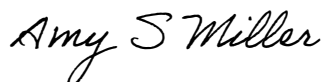
Members of the House Committee on Judiciary,

As Oregon's defense firm dedicated exclusively to juvenile law, YRJ is court-appointed to represent children in foster care, parents whose children have been removed, and youth in the juvenile justice system. We are a team of 34 attorneys, legal assistants, and other specialists. We represent over 800 clients each year. Roughly 80% of our clients are in the child welfare (foster care) system, with the balance in the juvenile justice system. All of our clients come from low income families. Most have suffered significant trauma and many have physical, mental health and/or substance abuse issues. Approximately 45% are children of color.

Over our four-decade history, we have also worked with the systems supporting vulnerable children, youth and families, changing them for the better. Because of our unique position handling court-appointed juvenile cases, we often see the same systemic problems and we work to change the policies that contribute to these problems. Through this, our work has touched hundreds of thousands of Oregonians.

Research shows that fines and fees in the juvenile court system harm young people and their families.¹ Attached to this letter is an article from YRJ's *Juvenile Law Reader* that further explains the adverse impact of fines and fees.² We encourage the committee to consider the impact of fines and fees on youth and families.

Sincerely,



Amy S. Miller
Executive Director

¹ Feerman, Goldstein, Haney-Caron, and Columbo, *Debtors' Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System*, Juvenile Law Center of Philadelphia (2016), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf>.

² See http://www.youthrightsjustice.org/media/3998/yrj_law_reader_summer_2019.pdf

Jackie Winters Dies At 82 Senate Bill 1008 Her Legacy

Oregon is mourning the loss of long-time legislator, Jackie Winters. A well-regarded Oregon state senator, she was the only African-American Republican ever elected to the legislature.

One of her key causes was criminal justice reform, and her final vote came on April 18 when she shepherded SB1008 to passage in the Senate. Winters' office said the bill represents her "crowning legislative achievement."

As reported by Gordon Friedman and Chris Lehman in *The Oregonian* on May 29, Governor Brown said of Winters, "Her commitment to service knew no bounds. It shone through in every project she took on and every issue she tackled. I feel lucky to have had the privilege to call her my friend as well as my colleague for so many years.

"I will always remember her courage in moving forward on Senate Bill 1008 just this session. Her legacy will live on through her family and in her community through the legislation she spearheaded to improve the lives of all Oregonians."

The Negative Effect of Fines and Fees in the Juvenile Justice System

By Amy Miller, YRJ Executive Director

"...Fines and fees in the juvenile justice system harm youth and their families. They also undermine public safety and contribute to racial disparities in the justice system."

In *A Debtor's Prison*, the Juvenile

Law Center of Philadelphia analyzed the impact of costs, fines, fees, and restitution on youth: the significant consequences for failure to pay, the resulting financial stress on youth and their families, and the exacerbation of racial and economic disparities in the juvenile justice system.

As part of the report, Juvenile Law Center reviewed statutes in all 50 states, conducted national surveys of system stakeholders, and interviewed

families and young adults who had experiences with the juvenile justice system. The result of this large-scale project is simple: costs were regularly imposed and they posed significant problems for youth and families.²



Photo courtesy of Negative Space

The report identified seven different types of legal financial obligations that relate to the prosecution and rehabilitation of youth offenders: probation/supervision fees, fees for

informal adjudication or diversion, fees for evaluation or testing, fees for the cost of care (including child support, placement, programming, health care and other support), court costs and fees, fines, fees in expungement/sealing of records, and restitution.

When compared nationally, Oregon ranks high in terms of the number of different categories in which fees are imposed. The median number of categories in which fees are imposed is five, with 34 states imposing fees in five categories or fewer. Oregon joins 16 states in imposing fees in six of the seven categories.³

While costs, fines, fees, and restitution may be burdensome when imposed individually, when considered cumulatively they can be overwhelming to financially-

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stressed youth and families. Even seemingly minimal payments may require families to choose between meeting basic needs and paying fees. According to an Advisory issued by the US Department of Justice, “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.”⁴



Photo courtesy of Negative Space

Judges also recognize the harms and hardships posed by fees, fines, costs, and restitution orders. To ensure youth are not criminalized for poverty, the National Council of Juvenile and Family Court Judges created a bench card to guide judges in addressing financial assessments within the courtroom. Central to the guide is ensuring that financial obligations are conditioned on the youth’s ability to pay. Additionally, the guide warns of unintended consequences tied to imposition of fees. For example, probation supervision fees raise concerns about fundamental fairness and due process that may be counterproductive. Court costs create the impression of the court as a collection agency rather than a neutral arbiter and may erode the sense that the court is impartial and fair.⁵

Earlier this year, the U.S. Supreme Court addressed the issue of fines and fees in *Indiana v Timbs*, 586 U.S. ____ (2019). The issue in the case was whether the Constitution’s ban on excessive fines—part of the 8th amendment that was originally interpreted to apply to the federal government—applies to the states. In the case, Timbs pleaded guilty to drug charges and was sentenced to a year of home detention and

five years of probation. The state court also forced Timbs to forfeit his \$42,000 Land Rover on the theory that it was used to transport drugs. Timbs challenged the forfeiture as a violation of the 8th Amendment’s ban on excessive fines because it was worth four times more than the maximum fine that the state could impose, and therefore the forfeiture was completely disproportional to the gravity of Timbs’ crimes. A unanimous Supreme Court agreed with Timbs, holding that the Constitutional ban on excessive fines applies to the states through the 14th Amendment.⁶

Although Timbs was an adult at the time of his conviction, the Court’s decision is a significant step forward for youth in the juvenile justice system. Ginsburg’s opinion highlights excessive fines as a tool of racial subjugation. The opinion points to the Black Codes enacted in the post-Civil War South as a tool to maintain prewar racial hierarchy though the imposition of “draconian fines” that often demanded involuntary labor from newly freed slaves who were unable to pay imposed fines.⁷

The focus on racial equity is front and center in today’s efforts to

end the practice of imposing fines and fees on poor youth and their families. In Oregon, youth of color are disproportionately represented in Oregon’s Juvenile Justice System at all points of contact, from referral to juvenile departments by law enforcement, to placement in secure Oregon Youth Authority (OYA) facilities.⁸ And because youth of color are punished more often and more harshly, they and their families are liable for higher fee burdens.

Footnotes

¹ Feirman, Goldstein, Haney-Caron, and Columbo, *Debtors’ Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System*, Juvenile Law Center of Philadelphia (2016).

² *Id.* at 4.

³ *Id.* at (i), excluding fees for expunction/sealing of records.

⁴ U.S. Dept of Justice, Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles (2017).

⁵ National Council of Juvenile and Family Court Judges, State Justice Initiative., National Juvenile Defender Center, *Ensuring Young People are not Criminalized for Poverty* (2018), https://njdc.info/wp-content/uploads/2018/04/Bail-Fines-and-Fees-Bench-Card_Final.pdf.

⁶ *Timbs*, 586 US ____ (2019) at 7.

⁷ *Id.* at 6.

⁸ Oregon Youth Development Policy Brief, http://www.oregonyouthdevelopmentcouncil.org/wp-content/uploads/2016/09/Juvenile-Justice_Equity-Considerations-Venngage-Policy-Brief.pdf.

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The following is reprinted from *Debtor's Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System*, published by the Juvenile Law Center. Find the full report [here](#).

CONCLUSION

The juvenile justice system in each state is designed to help young people meet their potential, get back on track, and become productive members of their communities. Across the country, however, the imposition of costs, fines, fees, and restitution hinders these goals. For the many youth and families who cannot afford these payments, consequences can be dire, including recidivism (as shown by criminologists Piquero and Jennings), incarceration, and significant financial strain. As Piquero and Jennings also demonstrate, these policies have a racially disparate impact. This means that youth in poverty and youth of color may face harsher consequences and receive less rehabilitative treatment than their more affluent peers. Moreover, while further research is needed, existing studies suggest that court costs, fees, and fines have limited, if any,

fiscal benefit to states and counties, given the difficulty in collecting from families in poverty and the high administrative costs in trying to do so. It is time to re-focus the juvenile justice system on approaches that work: eliminating costs, fines, and fees placed on youth who are not yet old enough to enter into contracts or take on full-time work; prioritizing restitution payments that go directly to victims and are within the youth's ability to pay; and ensuring that restitution policies are developmentally appropriate by thoughtfully addressing the needs of victims in the context of the juvenile justice system's rehabilitative model. These approaches can hold youth accountable, ensure public safety, and support youth in realizing their own potential.

Practice tip:

Oregon's juvenile code requires that the court, before imposing fines and fees, takes into account the youth's ability pay the fines or fees and the rehabilitative effect of the fine. ORS 419C.449 (2018). ORS 419C.459 (2018). See also ORS 137.286. Attorneys should present evidence regarding these issues at the time of disposition.

Youth, Rights and Justice Names Amy Miller Executive Director

The Youth, Rights & Justice Board of Directors is pleased to welcome Amy Miller as Executive Director effective April 17, 2019. An early experience as a volunteer with the Big Brothers Big Sisters program ignited Miller's career as a champion for children, youth and families in the child welfare and juvenile justice systems.



successful pilot, the program is now on track to receive additional funding and expand to Multnomah County and four other counties.

“Amy Miller is a leader in juvenile law and has been a catalyst for systemic change in the child dependency system in Oregon.

The YRJ board was impressed with her track record of accomplishment, her commitment to diversity, equity and inclusion, and her passion for our mission,” said Board Chair Janet Steverson.

At the Office of Public Defense Services (OPDS) from 2014-2018, Miller served as Deputy General Counsel and Deputy Director. During her tenure, she created the Parent Child Representation Program, which has been effective in reducing caseloads and improving outcomes for juvenile court involved families. In implementing the PCR, Miller oversaw the work of 31 attorneys and case managers, providing training and mentoring, and ensuring that rigorous program outcomes were achieved. After a

Miller's legislative advocacy over the past two budget cycles was instrumental in building momentum for increased funding for the public defense system and passage of substantive legislation. She also participated in many initiatives to improve the quality of dependency representation in Oregon including planning the Juvenile Law Training Academy, updating the Public

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