

PAYING ON PROBATION

How Financial Sanctions Intersect with Probation to
Target, Trap, and Punish People Who Cannot Pay



Sharon Brett, Neda Khoshkhoo, and Mitali Nagrecha | June 2020

CRIMINAL JUSTICE
POLICY PROGRAM

HARVARD LAW SCHOOL

ACKNOWLEDGMENTS

This report was prepared by the Criminal Justice Policy Program (CJPP) at Harvard Law School, with generous funding from Arnold Ventures. CJPP is led by Executive Director Brook Hopkins and Faculty Director Professor Carol Steiker. The authors are grateful to students from the 2018–2019 *Race and Poverty in the Criminal Justice System* seminar at Harvard Law School for their early contributions to this report, to Sandra Okonofua and Benjamin Grossman for research support, and to the entire CJPP staff for their research and editing assistance. This project was made possible because many attorneys, judges, probation officers, and advocates agreed to share their experiences with us—we thank each person we interviewed, and all of our colleagues across the country who helped to connect us with people willing to contribute to this project. The authors are especially grateful to Kendra Bradner, Emily Dindial, Leah Nelson, Amreeta Mathai, and Dr. Michelle Phelps for their helpful comments and suggestions. Finally, we thank Paragini Amin and Chris Edley III for their beautiful design work and innovative communications support.

ABOUT THE CRIMINAL JUSTICE POLICY PROGRAM

The Criminal Justice Policy Program at Harvard Law School conducts research and advocacy to support criminal justice reform. It generates legal and policy analysis designed to serve advocates and policymakers throughout the country, convenes diverse stakeholders to diagnose problems and chart concrete reforms, and collaborates with government agencies to pilot and implement policy initiatives.

For more information, please visit: Criminal Justice Policy Program at Harvard Law School at <http://cjpp.law.harvard.edu>.

Cover art by Neda Khoshkhoo.

© Copyright 2020, Criminal Justice Policy Program at Harvard Law School. All rights reserved.

TABLE OF CONTENTS

I. INTRODUCTION	1
II. METHODOLOGY	4
III. BACKGROUND	5
A. Overview of financial sanctions	5
B. Overview of probation	5
C. The use of probation to monitor payment of financial sanctions	7
D. Probation as a black box	8
IV. PROBATION AND THE OVERALL AMOUNT OWED	10
A. Probation departments influence how financial sanctions are paid, often without policy guidance.	10
B. Probation supervision fees and other fees associated with conditions of probation increase debt and cause harm.	11
i. Supervision fees add additional debt.	11
ii. Other fees associated with probation are difficult to pay.	11
iii. Fee waivers are difficult to obtain.	13
V. PROBATION AND GENERAL FINANCIAL STABILITY	16
VI. PROBATION AND ADDITIONAL PUNISHMENT FOR PEOPLE WHO CANNOT PAY	18
A. Graduated sanctions do not address the underlying reasons for nonpayment.	20
B. Graduated sanctions can be very punitive.	21
C. Graduated sanctions for nonpayment allow for punishments without meaningful consideration of ability to pay.	24

VII. PROBATION AND THE RISK OF ARREST, ADDITIONAL CRIMINAL CHARGES, AND INCARCERATION	25
VIII. FINANCIAL SANCTIONS AND PROBATION REVOCATION	27
A. Constitutional protections are not enough.	28
B. Probation departments combine nonpayment violations with other alleged probation violations to argue for revocation.	29
C. The court often accepts the probation department’s allegations and revocation recommendations without independent analysis.	31
D. Probation officers threaten revocation to compel payment and fear over missed payments may lead to more serious violations.	32
IX. FINANCIAL SANCTIONS AND THE LENGTH OF THE PROBATION TERM	34
X. PROBATION AND CIVIL JUDGMENTS	37
XI. PROBATION AND DEMOCRATIC PARTICIPATION	38
XII. CONCLUSION	39
APPENDIX A: Payment of Financial Sanctions as a Condition of Probation	45
APPENDIX B: Supervision Fees Charged	47
APPENDIX C: Graduated Sanctions for Nonpayment or Other Probation Violations	50
APPENDIX D: Probation Extensions	54
APPENDIX E: Revocation for Nonpayment of Financial Sanctions	59

I. INTRODUCTION

Across the United States, over 3.5 million people are serving terms of probation.¹ Probation is a sentence imposed in misdemeanor and felony cases in which people must comply with stipulated conditions—such as reporting to a government agency, undergoing electronic monitoring, or taking classes—while living in the community. Many people on probation also owe fines, fees, and/or restitution (together, “financial sanctions”) as part of their criminal sentence.² Over the last several decades, the use of both probation and financial sanctions across the United States has grown.³ Financial sanctions and probation are significant punishments in their own right, and each comes with the strong threat of additional punishments, including incarceration, if a person violates their probation conditions or if they miss payment towards their financial sanctions.⁴

When probation and financial sanctions are linked together, the result is an even more punitive system that disproportionately burdens people who cannot afford to pay. The link between financial sanctions and probation is a function of both formal statutes and informal practice. Some courts sentence people to pay financial sanctions and put them on probation specifically to monitor their payment. More widespread is the practice of making payment of financial sanctions a condition of probation,⁵ and attaching other probation conditions that come with explicit or de facto financial costs and restrictions on daily life that make compliance difficult.⁶ Failure to comply with these payment conditions, as with any probation condition, comes with significant consequences, including additional sanctions, probation violations, extensions of probation, probation revocation, and, ultimately, incarceration.⁷ Falling behind on payment of financial sanctions in many states also means that probation is extended until all the debt is paid off. As financial sanctions continue to be imposed at rates far beyond what people can afford,⁸ and as courts continue to rely on probation as a sentence for many misdemeanors and certain felonies, more and more people are trapped in the criminal legal system under probation supervision simply because they cannot pay.

Our research at the Criminal Justice Policy Program at Harvard Law School has previously focused on how courts disproportionately impose and enforce financial sanctions against low-income, predominantly minority communities.⁹ Across the country, financial sanctions are used to generate revenue to fund basic government functions. Financial sanctions are frequently imposed without consideration of a person’s actual ability to pay them and result in harsh penalties for those who cannot pay on time or pay at all. Financial sanctions may have an even more harmful impact in our current climate, with the COVID-19 pandemic further straining people’s financial stability and forcing millions of people to file for unemployment benefits.¹⁰ In recent years, some states and cities have eliminated certain fees¹¹ or passed

legislation to end the practice of suspending driver’s licenses due to unpaid court debt.¹² But these changes—while very important—have not solved the multitude of other problems associated with financial sanctions, particularly within the probation context. Court-centered reforms of financial sanctions rarely target the probation apparatus. As this report will demonstrate, a person serving a term of probation may functionally be outside the reach of the court and instead subject to the practices and preferences of their probation department or officer.

CJPP’s last report, *Proportionate Financial Sanctions: Policy Prescriptions for Judicial Reform*, laid out a new framework for how courts should enact financial sanctions reform even in the absence of legislative action.¹³ The report suggested an approach for courts to impose and enforce financial sanctions more proportionately within the confines of state law. There, we began to explore the connection between financial sanctions and probation supervision, and called for jurisdictions to decouple payment of financial sanctions and probation by eliminating payment as a condition of probation, abolishing supervision fees, and ending the use of private companies as probation providers.

Our subsequent research for this report has demonstrated how probation as it currently exists is fundamentally incompatible with efforts to end the harms caused by financial sanctions. Even on its own, probation as an institution is significantly flawed. Because probation often comes with many onerous conditions, and because probation officers have great authority and discretion, probation obligations interfere with daily life, cause significant loss of privacy and liberty, and impose additional financial costs. Probation also often leads to incarceration—even if it was imposed precisely to avoid that type of punishment—when people violate one or more of the multitude of probation conditions. So when probation and payment of financial sanctions are intertwined, the resulting system creates even more onerous problems and trip wires for people who are unable to pay.

For these reasons, probation should not be used to monitor or enforce payment of financial sanctions. So long as criminal fines and fees continue to exist,¹⁴ we must radically rethink how we are using probation supervision to enforce payment, because current practices are magnifying the harms caused by both systems. This report will not explore all of the problems of financial sanctions and probation as distinct systems, but rather focus on the intersection of these two punishments. Our examination makes clear that probation and financial sanctions should be decoupled: probation in its current form, with its myriad conditions and punitive consequences for violations, entrenches and punishes people who cannot pay.

This project fills a notable gap in the literatures of both financial sanctions and probation,¹⁵ and advocacy to address the harms caused by these systems. Researchers and advocates studying or addressing fines and fees have generally noted how owing outstanding court debt likely impacts a person’s probation status and places them at risk for violations related to nonpayment.¹⁶ The more in-depth discussion

of these issues tends to center on the harms caused by monthly probation supervision fees¹⁷ and the use of private probation companies to collect court debt.¹⁸ Currently, the literature on fines and fees does not focus significantly or in detail on the intersection between outstanding financial sanctions and probation supervision.¹⁹ Similarly, some probation literature touches on payment of financial sanctions as a condition of probation or notes that probation supervision may be extended or revoked for nonpayment—but this literature tends to explore the issue in the context of a broader critique highlighting the shortcomings of probation.²⁰ Few pieces directly and concretely study how probation functions when it comes to the payment of financial sanctions, and the harms that result from the use of probation to supervise the payment and enforcement of such debts.²¹

When probation and payment of financial sanctions are intertwined, the resulting system creates even more onerous problems and trip wires for people who are unable to pay.

This report attempts to fill some of the knowledge gaps regarding probation and financial sanctions and draw conclusions about what the trends in state policies and practices mean for people on probation who are unable to pay financial sanctions. To do this, we studied law and policy across the country, and conducted interviews with defense attorneys, advocates, probation officers, and judges to learn about state and local practices. We present our findings by first providing a brief overview of what financial sanctions are, how probation operates, and how payment of financial sanctions is tied to probation supervision.

We then discuss several critical issues at the intersection of probation and financial sanctions. First, we discuss how probation impacts the total amount of criminal legal system debt people owe, as well as people's financial stability and their ability to pay off debt. We then spend the bulk of this report discussing how probation increases a person's total punishment exposure when they owe financial sanctions. This includes the use of "graduated sanctions," which are punishments for noncompliance that the probation officer can impose without court oversight; extensions of the length of the probation term; probation officers' discretion to search and arrest people, which heightens people's risk of accruing new charges; and the risk of probation revocation and incarceration. Finally, we explore a few ways in which probation impacts daily

life and democratic participation. For many of these topics, we provide examples of statutes across the fifty states, including five appendices listing the relevant statutory provisions for core research questions. For others, we draw on robust qualitative data collected through interviews, documents, and specific case studies.

Following this discussion, we explain why decoupling probation and financial sanctions is necessary to reduce the harms we describe, and suggest areas for future research. We also detail the specific policies that jurisdictions should critically examine to both identify areas in need of solutions and generate a plan for reform.

II. METHODOLOGY

Our research for this report focused on adult misdemeanor and felony probation systems run by states, counties, and municipalities. Our study did not include a review of juvenile probation, federal probation, or parole. We analyzed relevant statutory provisions for all fifty states and reviewed publicly available information contained on state websites, in court rules, and in some cases, in implementing regulations issued by state or local lawmakers.

We also sent document requests to all state probation departments requesting policies and information concerning the role of probation officers in the enforcement of financial sanctions. In states that have decentralized probation systems—meaning there is no state entity responsible for probation—we sent requests to between three and five local probation departments with varying population sizes. Thirty state or local probation departments responded to our requests, and most responses consisted of short summary information from a staff member rather than the requested policies, directives, or manuals.²²

We supplemented this research by interviewing²³ over 100 public defenders, private defense attorneys, probation officers, judges, and advocates working primarily in ten target states: Arkansas, Alabama, Colorado, Georgia, Idaho, Kentucky, Mississippi, Ohio, Pennsylvania, and Rhode Island.²⁴ We asked each interviewee over thirty questions about their observations concerning the intersection of probation and financial sanctions.

III. BACKGROUND

A. Overview of financial sanctions

“Financial sanctions” is an umbrella term used to refer to fines, fees, and restitution that a court may impose on a person as part of a criminal sentence or civil judgment. Financial sanctions can be quite high. Over the last decade, virtually every state has increased the number of criminal and civil court fees²⁵ that courts and government entities can impose, and/or added new fees.²⁶ Over time, due to high and unaffordable sanction amounts, missed payments, and interest accrual, people can accumulate hundreds—or even thousands—of dollars’ worth of debt for a single misdemeanor charge. People who miss payments can face punitive enforcement efforts to collect outstanding debt, including driver’s license suspension, warrants, arrests, and incarceration. Recent reform efforts have not been able to do enough to rein in high amounts or reduce the harms caused by state and local governments’ practices of imposing and punitively enforcing financial sanctions.²⁷

B. Overview of probation

Probation supervision varies widely by state, and often by county within a single state. Many states have separate systems for overseeing felony probation and misdemeanor probation.²⁸ Felony probation is usually run by a statewide executive branch or judicial branch agency, whereas misdemeanor probation is more often run locally (by municipal or county government), or outsourced to private companies.²⁹ This means that many probation systems lack centralized control,³⁰ and instead operate according to a patchwork of policies and practices.

There are some basic, common elements of probation supervision across the country: all jurisdictions require people on probation to satisfy or follow certain conditions of supervision, and nearly every state charges people on probation some type of probation supervision fee.³¹ Probation conditions frequently include reporting to the probation officer, maintaining employment, avoiding drugs and alcohol, submitting to drug tests, completing specific classes or programs, and not committing new crimes.³² The specific list of probation conditions for each person is generally the product of some combination of statutes and court rules, probation department policy, and the discretion of judges and individual probation officers.³³ For example, although the court may set the condition that the person must pay their court debt, some statutes allow the probation officer to determine the *manner* in which payment must occur.³⁴

Some states also differentiate between different “levels” or “types” of probation. Each level carries different conditions, requirements, or even fees, meaning that a person

who owes financial sanctions will experience probation differently depending on their level or type of probation.³⁵ Specifically, some states offer different forms of “unsupervised,” “non-reporting,” or “administrative” probation supervision, for which people rarely (if ever) report to a probation officer, and which include a reduced number of conditions overall.³⁶ In some states, judges can sentence people outright to this type of probation—particularly when the person owes financial sanctions but is considered to be “low risk.”³⁷ In others, people can be “moved down” to unsupervised probation after a successful period of supervised probation,³⁸ or if all the other probation requirements have been met but the person still owes financial sanctions.³⁹

In most states, the probation entity has a significant amount of discretion to determine the details or parameters of conditions, fees, consequences for noncompliance, and other common elements of probation. This can significantly impact a person’s experience on probation, particularly when it comes to the intersection of their probation term and their payment of financial sanctions.

Moreover, all states provide probation departments with authority to address violations of probation conditions (although the scope of permissible responses varies significantly from state to state, as discussed later in section IV). This may include imposing graduated sanctions (punishments that fall short of revoking probation, but can still be quite punitive),⁴⁰ filing a petition requesting that the court take a person off probation and impose a harsher or different sentence,⁴¹ or asking the court to extend the term of probation.⁴²

In most states, the probation entity has a significant amount of discretion to determine the details or parameters of conditions, fees, consequences for noncompliance, and other common elements of probation.⁴³ This discretion is afforded through statute and judicial deference. Probation entities sometimes also have the discretion to alter

conditions initially set by the court, waive fees due to inability to pay, and administer graduated sanctions for nonpayment.⁴⁴ This can significantly impact a person's experience on probation, particularly when it comes to the intersection of their probation term and their payment of financial sanctions.

C. The use of probation to monitor payment of financial sanctions

In many jurisdictions, the probation department is responsible for overseeing a person's payment of financial sanctions because payment is a probation condition.⁴⁵ That means that the probation department keeps track of whether payments are made on time and is authorized to take action if people do not pay.⁴⁶

When a person does not (or cannot) comply with probation conditions requiring payment of fees, fines, or restitution, probation staff can impose additional punishments,⁴⁷ request an extension of the probation term,⁴⁸ or petition the court to revoke probation altogether.⁴⁹ In this way, the probation officer and the probation department possess a high level of discretion over what happens to a person on probation when they owe financial sanctions. In many states, the court does not become involved in these decisions until the probation department requests that the court either revoke or extend the length of probation.

The way that probation is used to collect financial sanctions varies significantly across jurisdictions. In most states, payment is made a condition of probation.⁵⁰ But some states also have special probation levels or rules for people who owe financial sanctions. For example, Alabama and Mississippi have a history of using private probation companies to enforce financial sanctions.⁵¹ Georgia has formally codified a type of probation that is imposed solely to ensure payment (known as "pay-only" probation).⁵² In other states, judges may sentence someone to "inactive" probation, under which the probation entity tracks a person's payment, but there are usually no other conditions or obligations that the person must follow apart from refraining from committing another offense.⁵³ People on inactive probation are still subject to correctional control⁵⁴ until all of their debt is paid.⁵⁵ These types of probation are purely debt collection tools.

ADMINISTRATIVE MONITORING IN SOUTH CAROLINA

One example of how probation is used as a debt collection mechanism, and thus expands the duration of correctional control, comes from South Carolina. According to state policy, people on probation in South Carolina must be moved to “administrative monitoring” at the end of a term of probation if, upon the completion of the term, they have outstanding financial obligations.⁵⁶ Administrative monitoring comes with a fee of \$10 per month. Probation department policy states that people should be required to pay \$50 per month toward their financial sanctions, but does not specify if or when probation staff may depart downward from that amount. While on administrative monitoring, none of the usual probation conditions under South Carolina law apply, but probation department policy specifies certain conditions that must be followed, including the payment of mandated monitoring fees and continued “reasonable progress” towards payment of all outstanding financial obligations.⁵⁷

Administrative monitoring of debt payment can last for a period of up to 50 years.⁵⁸ If reasonable progress is not made, the probation department can petition the court to hold the person in civil contempt for nonpayment.⁵⁹ Probation department policy states that the court has the discretion to incarcerate a person held in civil contempt for nonpayment for a period of up to 90 days.⁶⁰

D. Probation as a black box

Across the country, probation systems vary in their structure, organization, conditions, fees, and consequences of probation, depending on the relevant statutes, regulations, court rules, and how probation officers exercise their discretion. Within all this variation, there is very little transparency about how probation departments make key decisions that impact the duration and severity of probation supervision when someone owes financial sanctions.

Probation departments are given considerable discretion to make key decisions regarding payment of financial sanctions—particularly when it comes to determining the consequences for nonpayment.⁶¹ Moreover, many key decisions are influenced by internal probation department guidelines and policies that are not publicly available. Some states, like Idaho, post the majority of their probation department policies online. But others post nothing. In some jurisdictions, there are policies circulating that were “leaked” at some point,⁶² or became public as part of litigation—but these policies are singular and represent only a fraction of what might govern probation officers’ decision making in those jurisdictions. As noted in the methodology section above, our requests to obtain copies of these internal policies and documents in all fifty states were largely unsuccessful.

Moreover, our review of statutes in all fifty states revealed only a partial picture of how probation operates, in part because, as we learned from our interviews, statutes are not followed and common practice differs from written policy.⁶³ And many of these statutes and internal policies leave important decisions to the subjective determination of the probation officer. The way a person experiences probation will therefore be influenced by the incentives,⁶⁴ training,⁶⁵ and even the implicit or explicit bias of their specific probation officer.⁶⁶ Innumerable variations in policies and practices, coupled with the vast discretion of system actors, make probation a black box.

Though questions remain, it is clear that making payment of financial sanctions a condition of probation exacerbates the harms of both systems for those who are unable to pay.

Drawing on our extensive research, the information presented in this report is our best effort to understand how probation supervision interacts with enforcement of financial sanctions. Though questions remain, it is clear that making payment of financial sanctions a condition of probation exacerbates the harms of both systems for those who are unable to pay. Most financial sanctions reforms have focused on the actions of judges by requiring more robust ability-to-pay determinations and limiting punitive enforcement mechanisms such as warrants, driver's license suspensions, and incarceration. But our research reveals that much of how a person on probation experiences the consequences of being unable to pay is determined not only by the judge, but also by the probation department. Financial sanctions reforms that do not address probation therefore may not do much to improve how people are treated when they are unable to pay.

In the following sections, we explore our main findings regarding how probation supervision impacts payment of financial sanctions, noting key areas where the discretion of various system actors, including judges and probation officers, likely impacts outcomes.

IV. PROBATION AND THE OVERALL AMOUNT OWED

Being on probation can significantly impact how much people owe each month and the total amount of financial sanctions that they must pay.⁶⁷ In some jurisdictions, the probation department sets payment plan terms, including how much the person must pay each month. These decisions are often made without formal or concrete guidance. Probation also comes with its own hefty fees that further compound debt, and there is significant variation in statutes and practice regarding whether the probation department can or will waive or reduce those fees due to inability to pay. How jurisdictions approach both of these issues for people on probation determines whether people are able to afford their monthly payments.

A. Probation departments influence how financial sanctions are paid, often without policy guidance.

In many places the probation department plays some role in determining people's monthly payment amounts—and sometimes even the overall amount. In some jurisdictions, the court decides on a total amount owed but then defers to probation staff to set up the payment plan terms.⁶⁸ In Colorado, state law provides specific circumstances that the court must consider in determining whether the person has the ability to pay any financial sanctions owed,⁶⁹ but “collections investigators,” who are employees of the local probation departments, work with probation officers to set the terms of a person's payment plan.⁷⁰ Notably, one attorney reported that collections investigators have influence over the total amount owed because they can recommend that courts waive or forgive financial sanctions, but collections investigators rarely make this recommendation, no matter how dire the person's financial circumstances may be.⁷¹

When the probation department determines payment plan terms, it often does so without formal policies or guidance. Many states lack concrete, objective standards for determining ability to pay that would help the probation department set affordable amounts.⁷² Despite our document requests and multiple interviews, we did not receive a single internal policy governing how probation officers should evaluate a person's ability to pay. Without meaningful guidance, probation officers may rely on inappropriate criteria, such as the car the person drives, or the clothes they wear, to determine ability to pay.⁷³ This can result in monthly payments that are not based on a person's actual financial circumstances,⁷⁴ and when the person is unable to make the payments on time, their probation can be extended, or they can suffer additional

punishments. These responses, in turn, increase the total amount owed over time due to additional fees charged to people on probation, as discussed below.

B. Probation supervision fees and other fees associated with conditions of probation increase debt and cause harm.

In every state, probation supervision comes with additional monetary costs. Some costs are explicit, such as monthly supervision fees, while others are associated with completing certain conditions, such as drug and alcohol testing, classes, and treatment. These costs increase already staggeringly high debt amounts, adding to the pressure on people who are financially unstable.

i. Supervision fees add additional debt.

Being on probation increases the total amount a person owes because states charge high supervision fees. All but two states have statutes authorizing the imposition of supervision fees on people sentenced to some or all types of supervised probation.⁷⁵ Most supervision fees are assessed monthly, and can be quite high, ranging from \$10 to \$150 per month.⁷⁶ This means that a person on probation for five years could pay as much as \$9,000 in supervision fees alone over the course of their sentence. Other states charge a fixed supervision fee for each period of supervision, which can range from \$30 to \$600.⁷⁷ Even in jurisdictions that impose a one-time fee, the fee might exceed the underlying financial sanction imposed by the court.⁷⁸ These supervision fees increase the total amount owed, and also increase how much a person must pay each month.

ii. Other fees associated with probation are difficult to pay.

In addition to paying supervision fees, probation typically requires complying with other conditions that come with fees.⁷⁹ Courts may require people on probation to attend classes, submit to drug or alcohol testing, or complete programs—each of which costs money to complete and over time adds an additional financial burden. When a person cannot pay, they may be unable to comply with the ordered condition, risking additional punishment.

Every probation system in the United States allows for conditions that come with underlying costs⁸⁰ that add to the debt people owe: courts may require that a person on probation undergo frequent drug testing,⁸¹ pay for electronic monitoring,⁸² and/or complete specialized classes and programs,⁸³ many of which require multiple

sessions and require a fee per session.⁸⁴ For example, if an anger management class requires 10 sessions, and each session costs \$20, complying with that condition will cost the person an extra \$200, on top of all the other financial sanctions they owe and their monthly supervision fee. People on probation cannot complete these classes and programs unless they pay those fees, and if they do not complete these requirements, they may be found in violation of their probation and subject to punishment.

Every probation system in the United States allows for conditions that come with underlying costs that add to the debt people owe: courts may require that a person on probation undergo frequent drug testing; pay for electronic monitoring; and/or complete specialized classes and programs, many of which require multiple sessions and require a fee per session.

Moreover, people must complete all sessions of a required class or program—despite the associated fees—to satisfy the probation condition and avoid additional punishment. In places like Rhode Island and parts of Georgia, if a person on probation has already paid for and attended several sessions of a court-ordered class, but then misses a few classes because they are unable to pay, they are required to start the program from the beginning and pay for each session again.⁸⁵ And in parts of Idaho, the providers of the classes decide how many sessions a person on probation needs before they have satisfied the court order to participate in the program.⁸⁶ According to our interviews with defense counsel, these providers sometimes keep people in their programs longer to extract more money from them.⁸⁷

Mandated drug and alcohol testing for people on probation also comes with significant costs.⁸⁸ Courts may require that a person on probation submit to such testing as a condition of probation, but allow the probation department to determine the frequency of testing.⁸⁹ In parts of Colorado, for example, the probation officer can require that a person on probation pay for and submit to a drug test every two weeks

during a two-year probation term.⁹⁰ Each drug test costs between \$9 and \$11, if provided by a vendor sponsored by the probation department, or as much as \$25 if provided by a non-sponsored vendor.⁹¹ As a result, a person on probation can end up paying between \$468 and \$1,300 just for drug tests over two years in order to be in compliance with their probation conditions.⁹² And, in that two year period, if they do not submit to the testing a handful of times because they cannot afford to pay the fee, their probation officer can file a petition stating that the person is in violation of their probation conditions, which could lead to additional punishment.⁹³

We also heard examples of courts and probation departments broadly ordering drug and alcohol testing, even for people convicted of offenses that had nothing to do with substance use. One attorney in Georgia told us that drug and alcohol testing is a regular probation condition for everyone, regardless of the offense of conviction.⁹⁴ An attorney in Colorado told us that courts frequently impose sobriety monitoring and drug testing as standard probation conditions, and defense attorneys must file motions challenging these conditions as unnecessary based on the underlying facts of the case.⁹⁵ In some jurisdictions, including parts of Idaho, probation departments can order these requirements even if a court has not done so.⁹⁶

Inability to pay these additional fees has consequences. Interviewees consistently reported that judges are far more likely to revoke probation when people do not complete required drug tests or special classes than when they are unable to pay supervision fees.⁹⁷ The reason for this difference in treatment seems to be that some judges equate completion of these conditions and requirements with a person's willingness to take responsibility, even if the reason for noncompliance was financial.⁹⁸

iii. Fee waivers are difficult to obtain.

People who are unable to pay the costs associated with conditions, or unable to pay the probation supervision fee itself, are sometimes able to request a fee waiver—but waivers are hard to come by due to vague policies and a lack of understanding of peoples' ability to pay.

Generally, the court is responsible for determining whether to waive or reduce a supervision fee or program fee.⁹⁹ Some statutes imposing or authorizing supervision fees provide that a court should consider a person's ability to pay before imposing the fee, but they rarely provide sufficient guidance on how to do so.¹⁰⁰ And some states like Florida place the burden on people on probation to prove by clear and convincing evidence that they cannot pay despite "sufficient bona fide efforts" to do so.¹⁰¹ This can often be an insurmountable burden to meet, especially for people who lack documentation of their financial circumstances or do not know how to document their efforts in the first place. Moreover, these rudimentary statutory protections are often ignored. Interviewees reported that some judges do not consider waiving or reducing supervision fees unless defense counsel specifically requests a waiver.¹⁰²

CONDITIONS WITH COSTS: “I DIDN’T ORDER HIM TO PAY . . . I JUST ORDERED HIM TO GO.”

An attorney we spoke with who practices in Virginia told us about a client, Jordan,¹⁰³ who was sentenced to a term of incarceration and a subsequent period of probation for misdemeanor sex offenses.¹⁰⁴ Jordan’s conditions of probation included the requirement to participate in a series of sex offender treatment classes.¹⁰⁵ Jordan’s main source of income was Social Security Income and money from the occasional odd job.¹⁰⁶ He complied with every condition of his probation apart from the sex offender treatment classes—he was unable to complete that condition because he could not afford the prescribed classes.¹⁰⁷ But Jordan was eager to complete probation. On his own initiative, Jordan regularly attended a low-cost group therapy program and found it very helpful as part of his recovery.¹⁰⁸ Jordan nevertheless faced a revocation hearing for failing to attend the classes that the judge had ordered.¹⁰⁹ At the hearing, Jordan’s attorney argued that Jordan could not attend the sex offender treatment classes because he could not afford them; the attorney urged the court to accept Jordan’s alternative group therapy as treatment or waive the payment for the treatment classes.¹¹⁰ But the judge refused to do either, and responded, “I didn’t order [Jordan] to pay . . . I just ordered him to go” to the classes. The judge did not acknowledge that Jordan was unable to attend without paying—in other words, that compliance with the condition was impossible.¹¹¹ Even though Jordan had complied with all other probation conditions, the court revoked his probation for failing to attend the sex offender treatment classes.¹¹²

Even when advocates do make such arguments, some judges are unsympathetic.¹¹³ Other judges refuse to waive supervision fees or program and class fees as a matter of course.¹¹⁴ In Kentucky, judges in some jurisdictions have said in court that if a person on probation cannot pay for the cost of these programs, then they should be incarcerated instead.¹¹⁵ In Colorado, interviewees reported that judges often do not trust people on probation who self-report that they cannot complete these programs because of the cost.¹¹⁶ Therefore, in many places, people must pay these high fees for as long as they are on probation, which can be for several years.

We also heard that judges frequently underestimate the financial burden of these conditions and requirements, and are therefore less willing to waive or lower the associated fees. For example, in Kentucky, some judges say that cost is not a sufficient justification for noncompliance because the providers of these programs have sliding scale fees.¹¹⁷ Advocates noted, however, that even under the sliding scale, a fee as “low” as \$20 per session is too high for many people to pay.¹¹⁸ In Colorado, judges often deny requests for waivers because there are publicly funded “vouchers”

available for those who qualify as indigent to offset such costs.¹¹⁹ But probation officers control access to these funds, and attorneys reported that some probation officers make the money available to the people on probation that the officers like best, rather than those with the greatest need.¹²⁰ We also heard that probation officers will give these vouchers only as rewards; for example, a person on probation might have to pay for and test “clean” in twelve drug tests (which cost between \$9 and \$25 each, depending on the provider¹²¹) before a probation officer will give them just one free drug test.¹²²

Judges frequently underestimate the financial burden of [probation] conditions and requirements, and are therefore less willing to waive or lower the associated fees.

In some states, the probation department has authority to grant a waiver of supervision fees due to inability to pay, sometimes with court approval.¹²³ The probation officer’s authority to waive usually applies only to the supervision fee itself¹²⁴; waiver of fines, restitution, and other types of costs and fees is generally left to the sentencing court.¹²⁵ The probation department has an inherent conflict of interest in determining whether to waive or reduce the very supervision fees that often fund the department. Indeed, interviewees in parts of Alabama observed that probation officers prioritize collecting the supervision fees over all else.¹²⁶ They told us that probation officers are more likely to react harshly to violations and more likely to report violations to the court when a person on probation is behind in paying supervision fees.¹²⁷ Private probation companies are particularly aggressive and unforgiving about missed or late supervision fee payments, likely because they are generally for-profit companies that are focused on collecting money to turn a profit.¹²⁸

V. PROBATION AND GENERAL FINANCIAL STABILITY

Probation furthers the harm of financial sanctions beyond the total amount owed because it often requires people to expend time and effort complying with various conditions. All of the time required to report to probation officers, participate in classes or programs, and otherwise follow the rules of probation is time taken away from jobs, caregiving, and other activities that can help people improve their financial position. Probation also impacts eligibility for certain public benefits. For these reasons, probation is counterproductive for those who owe financial sanctions: it inhibits their ability to make ends meet and thrive in their communities.

First, with the exception of the least restrictive forms of unsupervised probation, probation comes with onerous reporting requirements. Sometimes checking in with a probation officer can be done by kiosks located in different government buildings or the court,¹²⁹ but often reporting must be done in person at a probation office. This means people must take time off work to attend these appointments or complete electronic check ins.¹³⁰ Hourly workers lose income and salaried employees might be required to take unpaid leave, and they may also risk losing their job for repeated requests for time off—making it harder for those who are already struggling with financial sanctions to make payments.

Meeting reporting requirements is burdensome for people with limited financial means in ways beyond loss of income. Reporting in person requires having transportation to and from the reporting office. In places with public transit, check-ins require roundtrip bus or subway fare, which may seem like a small amount on its own, but when added to all the other costs a person on probation faces, it may be unattainable.¹³¹ Some probation departments offer travel vouchers, but these vouchers are difficult to obtain and are not standard across counties.¹³² It can also take a long time to commute from point A to point B, which adds to the time that people must take off work for each appointment. In places without public transit, people must have access to a car¹³³ (which comes with costs as well, like gas and insurance, and may not be an option for those with suspended driver's licenses¹³⁴) or figure out alternatives, many of which are unpredictable or unsafe (like relying on friends or family members, or biking and walking long distances, even in bad weather). People may also have to arrange for childcare or find alternatives for other caregiving responsibilities; this can create additional financial obligations and family hardships.

Second, repeatedly requesting time off to attend probation check-ins may come with stigma that disadvantages the person in the work place,¹³⁵ which may in turn result in decreased work opportunities or lost wages. Some people on probation also report that it is hard to find a job that will accommodate their probation reporting sched-

ules.¹³⁶ Attorneys we interviewed repeatedly decried the negative effects that probation reporting has on their low-income clients, particularly those with inflexible jobs or who lack access to reliable transportation.¹³⁷ For people who owe financial sanctions and are already struggling to pay, these additional costs and risks impose additional burdens that make earning sufficient money to pay financial sanctions all the more difficult.¹³⁸

Probation also frequently comes with requirements to participate in certain classes and programs, which not only require money to participate (as outlined above), but also involve taking additional time off work, especially when the required classes and programs are offered only during business hours.¹³⁹ And, in places with limited transit options, complying with programmatic requirements of probation is as hard (and expensive) as attending regular check-ins with probation officers.¹⁴⁰ Those who do not enroll in or complete these programs—even if due to inability to take time off work, or inability to pay the enrollment fee—can face harsh graduated sanctions,¹⁴¹ or worse, probation revocation.¹⁴²

Attorneys we interviewed repeatedly decried the negative effects that probation reporting has on their low-income clients, particularly those with inflexible jobs or who lack access to reliable transportation.

Finally, if a person on probation is found to be in violation of the terms of their probation, they may lose eligibility for certain public benefits, including Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families, Social Security Disability Insurance, and public housing benefits—further threatening their financial stability.¹⁴³ States craft their own implementing regulations for how these federal requirements are carried out, and in many states, public benefits can be turned off if a person fails to report to their probation officer over a period of time, or if a warrant is issued because the person failed to comply with a condition of probation.¹⁴⁴ Someone who misses their payments towards financial sanctions because they could not afford them could then also lose their public benefits income—income that they rely on to pay for housing, food, and other basic life necessities. Without these important public benefits, many who are living at, near, or under the poverty line will suffer significant harms and be further penalized for their inability to pay.

VI. PROBATION AND ADDITIONAL PUNISHMENT FOR PEOPLE WHO CANNOT PAY

Probation exposes people to cumulatively more punishment when they owe financial sanctions that they cannot afford. Probation departments are responsible for ensuring conditions are met, and under most statutory regimes, individual officers have wide discretion to decide how to enforce conditions—discretion that is constrained, if at all, only by internal department directives that are usually unknown to the public. In the vast majority of states, the sentencing court oversees *revocation* of probation—meaning the incarceration of the person for all or part of their original sentence term.¹⁴⁵ But usually, the probation department has the authority to impose additional punishments or sanctions short of probation revocation without involving the court.¹⁴⁶

When probation officers have the authority to respond to nonpayment violations by imposing graduated sanctions, the court may never be informed that a person is struggling to pay.

These sanctions are usually referred to as graduated sanctions,¹⁴⁷ because they escalate with each violation.¹⁴⁸ At the “low” end of the spectrum, such sanctions can include a verbal or written reprimand. More punitive graduated sanctions include electronic monitoring,¹⁴⁹ curfews,¹⁵⁰ substance use testing,¹⁵¹ and periods of incarceration.¹⁵² In many states, the graduated sanctions system allows probation officers to impose very harsh punishments, even for violations like nonpayment,¹⁵³ with little to no oversight by the court.

Whether a probation department can impose graduated sanctions, and to what degree, varies from state to state. Thirty-five states provide for some system of graduated sanctions via statute.¹⁵⁴ Some states apply graduated sanctions to all violations—including violations of conditions related to payment of financial sanctions or probation supervision fees. In other states, the ability of the probation officer to

resolve probation violations through graduated sanctions is dependent on the type of violation.¹⁵⁵

As described in more detail below, graduated sanctions present difficulties for people who are struggling to pay their financial sanctions. First, people on probation are subjected to escalating and highly punitive responses to nonpayment. They could face heightened reporting requirements, additional classes or programs, or electronic monitoring for missing monthly payments—and each of those punishments would come with additional burdens and financial costs, as described above.

Second, because probation officers are tasked with responding to violations, people may not be able to raise their payment problems with the court—which is generally the one entity that can reduce or waive a person’s financial sanctions due to inability to pay. People on probation are generally not represented by court-appointed counsel unless they are facing revocation and incarceration—and even then, the right to counsel is limited.¹⁵⁶ To raise inability to pay with the court, a person would need to file a motion on their own accord without legal assistance. People may not know how or when to file a petition in the first place, and may reasonably assume that they have to raise concerns with the probation department rather than the court. Taken together, this means that when probation officers have the authority to respond to nonpayment violations by imposing graduated sanctions, the court may never be informed that a person is struggling to pay.

In general, the appropriate response to nonpayment is to examine the reasons for nonpayment, and if it is due to inability to pay, adjust the amount owed accordingly. Usually, only the court can do that. But if people do not have assistance in petitioning the court to have their financial sanctions adjusted, they likely will continue to face an ever-escalating cycle of punishment simply because they cannot afford to pay. Our interviews confirmed that the authority given to probation departments often prevents people from having their payment problems addressed by the court. One attorney we interviewed told us that “probation is its own master,” meaning that if the probation officer does not bring an issue to the court’s attention, the court will never know.¹⁵⁷

Graduated sanctions are also counterproductive for responding to nonpayment because many states lack meaningful guidance for probation officers on how and when to use these punishments, meaning that people will be subjected to harsh punishment without regard for their ability to pay. Few states require or ensure robust ability-to-pay determinations for violations of payment-related conditions prior to imposing graduated sanctions. And, in states where clear policies exist, they are not binding. Graduated sanctions are a disproportionate response to nonpayment regardless of the circumstances surrounding the nonpayment, because they allow probation departments to punish people—often severely—for nonpayment while also making it difficult for people to obtain relief from their debts, if needed. The fact that these punishments can be imposed without any attention to the person’s ability to pay only underscores how counterproductive they can be.

A. Graduated sanctions do not address the underlying reasons for nonpayment.

Graduated sanctions allow probation officers to impose various punishments, but these responses do little to assist people who are struggling to comply with probation conditions that require unaffordable payments.¹⁵⁸

Whenever possible, nonpayment should be addressed through reconsideration of the amount owed and waiver. Graduated sanctions regimes simply do not allow for this type of response. Take, for example, someone who owes financial sanctions for simple assault and misdemeanor drug possession charges. Assume that the terms of that person's probation require them to pay \$20 a month towards their financial sanctions. In month six of probation, that person is struggling to pay the \$20 installment amount *in addition to* the monthly supervision fee and mandatory drug testing fee. The person has enough money to cover drug testing and supervision fees, but not enough to also cover payment towards their court debt—perhaps because their car needed a new transmission, or they had an emergency medical bill that month. The same thing happens the next month. The person is now out of compliance with the terms of their probation by failing to make full payments for two months. Under a graduated sanctions regime, the probation officer does not have the authority to waive those payments or reduce the amount the person owes. Instead, the officer may choose from the available graduated sanctions options, starting with a letter of reprimand, and then requiring an additional reporting session each week. This additional reporting does not help the person earn more money to make the payments, but instead requires the person to take additional time off work each week, which results in lost wages. It is now even harder for them to make payments each month. The person falls further and further behind on payments, so the officer then requires the person to obey a curfew and puts the person on an ankle monitor to ensure compliance with the curfew. The ankle monitor costs \$15 a month. If the curfew is violated—or if they fail to pay the ankle monitoring fee—the person could be incarcerated for up to 10 days.

In the above hypothetical, the probation department never reexamined the person's total debt or the amount they were required to pay each month towards supervision and drug testing (or ankle monitoring). Nor did the probation department consider why the person was struggling to meet the payment obligations, or how to help the person comply with or reduce payment conditions. We did not find any probation policy guidance instructing probation officers to consider ability to pay before imposing a graduated sanction, much less provide guidance for officers on how to conduct that determination. Instead, graduated sanctions focus on *punishment*, and do nothing to address the underlying reasons for noncompliance. Many agencies have formal graduated sanctions matrices,¹⁵⁹ but (1) no meaningful external or internal policies governing their use, or (2) policies that are non-binding.¹⁶⁰ Policies

vary nationwide from strict lists of punishments corresponding to each violation type,¹⁶¹ to policies that are “less directive, and provide a menu of options from which correctional agents may select when responding to rule violations.”¹⁶² But all of these regimes allow individual officers to impose additional punishments without considering the reasons for payment-related violations, or whether compliance was even possible.

There is one notable exception: in Nebraska, if a person is accused of a non-criminal probation violation, probation officers may elect to “restructur[e] court-imposed financial obligations to mitigate their effect on the probationer”¹⁶³ rather than impose additional punishments. Under the plain language of this statute, if a person has fallen behind on their probation-required payments towards financial sanctions, the probation officer is empowered to adjust the payment terms so that they are actually affordable.¹⁶⁴ Although this is a step short of the best solution—reducing the overall amount owed—all other graduated sanctions regimes that we studied lacked this option.

B. Graduated sanctions can be very punitive.

In addition to failing to assist people who are unable to pay, graduated sanctions permit probation officers to respond with harsh punishments without judicial oversight. Indeed, in many states, graduated sanctions allow for incarceration, at times without any involvement of the court.¹⁶⁵ Nineteen states statutorily authorize periods of incarceration as a graduated sanction.¹⁶⁶

A closer look at the graduated sanctions schemes in some of the states we researched shows just how punitive graduated sanctions can be for violations like nonpayment, and how much authority these systems delegate to probation officers. In Arkansas, for example, probation officers respond to violations through an administrative process, without involving the court; this process can result in up to 90 days in a correctional facility for nonpayment, apparently without ever requesting court approval.¹⁶⁷

Under Mississippi’s graduated sanctions matrix, failure to pay financial obligations lower than \$200 is considered “minor,” failure to pay between \$200 and \$399 is “intermediate,” and failure to pay \$400 or more is “major.”¹⁶⁸ The matrix then overlays violation frequency and type (e.g., 1st minor violation, 2nd minor, 1st intermediate, and so on) with a person’s “risk” level to determine which category of sanctions the person will face. Under this complex policy, a person who misses just one payment towards \$300 worth of court debt could be subjected to anything from additional community service to short-term detention in jail for up to four days per month.¹⁶⁹ A person who owes more than \$400 worth of debt and misses a single payment could be incarcerated in a state facility where they must reside at night after working a state-mandated job to pay off their debts.¹⁷⁰ People can be incarcerated in such facilities for up to 90 days.¹⁷¹

Kentucky has a similar response matrix that provides a range of punishments for violations, depending on their frequency and type, and on the person’s “risk” level.¹⁷² Failure to pay court-ordered financial obligations constitutes a “minor violation.”¹⁷³ Under this matrix, a person who is considered low risk and misses just one payment could face three days of “discretionary detention” in jail by a probation officer, so long as it is approved by a probation supervisor (not the court).¹⁷⁴ Other responses in this scenario include increased reporting, loss of travel privileges, curfew for up to 30 days, and up to eight hours of community service.¹⁷⁵ For two or more missed payments, the person could face up to 60 days of curfew, electronic monitoring, up to 30 hours of community service, and up to five days of jail with supervisor approval.¹⁷⁶

Graduated sanctions permit probation officers to respond with harsh punishments without judicial oversight. Indeed, in many states, graduated sanctions allow for incarceration, at times without any involvement of the court.

In some states, the graduated sanctions regime allows for long periods of incarceration. Attorneys we interviewed in Alabama told us about “dips” and “dunks” as graduated sanctions for violations, including nonpayment of financial sanctions.¹⁷⁷ Dips are jail stays of two to three days, which probation officers can impose for a variety of low-level probation violations, including nonpayment.¹⁷⁸ Probation departments can use dips without court oversight, though they sometimes require the local Sheriff’s approval.¹⁷⁹ Dunks, on the other hand, are statutorily-permitted periods of up to 45 days’ confinement in prison.¹⁸⁰ Although dunks must be authorized by a judge, they are still considered graduated sanctions short of revocation.¹⁸¹ According to state statute, a person can be dunked three times before a judge must revoke their probation.¹⁸² But dunks still constitute a lengthy, severe punishment for nonpayment: while some judges impose shorter periods of incarceration, advocates told us that others routinely impose the 45-day maximum.¹⁸³

THE PUNITIVENESS OF GRADUATED SANCTIONS: MISSISSIPPI'S RESTITUTION CENTERS

Mississippi's graduated sanctions scheme for handling technical violations, including nonpayment of financial sanctions, is incredibly punitive. This punishment is usually imposed by judges, and shows how harsh responses to probation violations for nonpayment can be, despite the Supreme Court's holding in *Bearden v. Georgia* in 1983.¹⁸⁴ Judges in Mississippi can sentence people to technical violation centers¹⁸⁵ or restitution centers¹⁸⁶ in response to nonpayment or as a condition of probation.¹⁸⁷

Technical violation centers are detention facilities where people convicted of low-level offenses are incarcerated if they violate certain probation conditions.¹⁸⁸ A person can be sentenced to a technical violation center for up to 90, 120, or 180 days, depending on the number of violations.¹⁸⁹

Restitution centers are detention facilities where people convicted of low-level offenses are housed when they violate payment-related probation conditions. While there, they are forced to work in low-wage jobs for third-party employers until they have paid off their restitution or other court debt.¹⁹⁰ Judges in Mississippi almost never conduct ability-to-pay determinations before sending people to a restitution center, even though they are constitutionally required under *Bearden* to find that nonpayment is willful before incarcerating a person.¹⁹¹ Since people in restitution centers have to pay for room and board, as well as transportation and medical costs, their debts continue to grow while they are detained.¹⁹² Restitution centers extract room and board costs, as well as monthly payments toward financial sanctions, from a person's wages before giving them the remaining amount, if any.¹⁹³ According to a recent study, people spend an average of nearly four months, and a maximum of nearly five years, at restitution centers.¹⁹⁴ An attorney in Mississippi who is familiar with the system estimates that it would take a person at least six to nine months in a restitution center to pay off a few thousand dollars' worth of restitution, depending on their wages.¹⁹⁵

Attorneys we spoke with reported that there is no meaningful oversight of restitution centers, and the centers have discretion to decide when a person may be released.¹⁹⁶ Interviewees referred to restitution centers using terms such as "convict leasing" and "work camps,"¹⁹⁷ noting that people in restitution centers have no choice but to spend their days at job sites and their nights in detention.¹⁹⁸ There are only a handful of restitution centers in the state, so often people who are sent to restitution centers are forced to relocate far from their families and pre-existing jobs.¹⁹⁹

Though not all judges use technical violation centers and restitution centers,²⁰⁰ such institutions are among the most egregious means a state can use to punish people who cannot pay; they allow for indentured servitude and remain a dangerous tool by which many of the most vulnerable people on probation are punished most harshly because of their lack of income.²⁰¹

C. Graduated sanctions for nonpayment allow for punishments without meaningful consideration of ability to pay.

The punishments available to probation departments to respond to nonpayment of financial sanctions would be harsh in many circumstances even for *willful* nonpayment. But the punishments are even more draconian when imposed without regard for the reason for nonpayment. *Bearden v. Georgia* requires the court to evaluate whether nonpayment was willful before revoking probation and incarcerating someone for not paying financial sanctions. Yet many graduated sanctions regimes allow probation officers to impose periods of incarceration without requiring such an inquiry.²⁰²

Beyond violating the constitutional requirements laid out in *Bearden*—a significant problem in and of itself—graduated sanctions systems impose punishments that compound debt without considering a person’s ability to pay. Classes, programs, electronic monitoring, and other sanctions are potentially outside the scope of *Bearden* protections, but nonetheless can be expensive and harmful.²⁰³ Others sanctions, such as increased reporting, result in lost income and additional expenses, as described earlier in this report. When these sanctions are imposed (1) without regard for the reasons behind the violation, and (2) without regard for the additional financial burdens they will place on people or people’s financial circumstances, these systems of graduated sanctions further entrench the problem of unpayable debt and create a cycle of increasingly harsher punishments.

In these ways, the punishments available through graduated sanctions allow probation officers to impose significant consequences on people without affording even the minimum due process required by the Constitution. A concrete, objective ability-to-pay analysis based on specified, meaningful criteria would not address all of the harms attendant to the use of graduated sanctions, but the absence of such determinations exposes people to a wide range of additional punishments simply because they cannot not afford to make timely payments towards their financial sanctions.²⁰⁴ Overall, the punishments permitted under graduated sanctions systems are unnecessary and counterproductive responses to nonpayment; but without any consideration of ability to pay built in, they are particularly harmful for those who are struggling financially.

VII. PROBATION AND THE RISK OF ARREST, ADDITIONAL CRIMINAL CHARGES, AND INCARCERATION

Nonpayment should never be grounds for arrest, as arrest is an extreme response with significant and long-term consequences.²⁰⁵ Arrests subject people to invasive searches and periods of incarceration that can have destabilizing effects on the health and well-being of the person and their family. Yet, statutes in several states grant probation officers the authority to arrest, or order any police officer to arrest, any person on probation without a warrant, usually when the probation officer has probable cause to believe the person violated a condition of probation.²⁰⁶ This means that if a person misses a single payment, the probation officer can arrest or have the person arrested. These rules also apply when people on probation fail to report, even though (as detailed later) failure to report may be due to a person's inability to pay their financial sanctions.

Probation officers' arrest power is harmful in several ways. First, arresting a person will generally mean that they are booked into jail, at least for a short period of time (often called a "probation detainer"),²⁰⁷ before they can appear before the court for a hearing. Attorneys in several different jurisdictions described probation officers arresting people for failing to pay financial sanctions, and holding them in jail until they can be brought to a hearing before the court, at which point the prosecutor will argue for credit for time served, and the person will be released and continue on probation.²⁰⁸ In this scenario, the person would have suffered the punishment attendant to a probation violation without ever having been determined guilty of the violation. The person is deprived of due process and the ability to prevent the harms that incarceration might cause.

In some jurisdictions, arrests for alleged probation violations are a huge contributor to the jail population.²⁰⁹ Probation officers in Pennsylvania detain people on probation "sometimes for a week or two, sometimes for longer than a year."²¹⁰ Interviewees from Pennsylvania reported that probation departments incarcerate people for weeks, if not months, for nonpayment of court debt, or for failure to comply with court-ordered drug testing and classes (even if the reason for the noncompliance was financial).²¹¹ People detained under these circumstances are forced to wait in jail until the judge hears their case.

These probation detainees likely violate the protections afforded by *Bearden v. Georgia*, because our research suggests that ability to pay is not typically assessed

prior to incarceration.²¹² Attorneys in Pennsylvania made clear that at no point does the probation department—or any other government actor—consider ability to pay before holding someone on a probation detainer.²¹³ This practice is not only unconstitutional, but it is also potentially harmful to the person detained, their family, and their community. Incarceration for even small periods of time following arrest can have drastic consequences that further impede people’s ability to pay off court debt.²¹⁴ Incarceration may result in the loss of a job or lost wages for work days missed. It may also have significant health consequences for the person detained.²¹⁵

Allowing probation officers to arrest people for nonpayment also exposes those people to searches. Under Fourth Amendment law, whenever a person is arrested, the arresting officer has the authority to search the person and the immediate area around the person for contraband or other evidence of crimes.²¹⁶ This is called a “search incident to arrest.” As a result, if a person is arrested by a probation officer for missing a payment towards monetary sanctions, the officer will be permitted to search the person—including the person’s pockets and the area immediately surrounding them—prior to bringing them into custody. Conversely, if a person had the money to pay off their financial sanctions, they would never have been targeted for such an invasive search.

Probation officers can also pursue revocation of a person’s probation based on evidence discovered during searches incident to arrest, even if the prosecutor declines to file new criminal charges, because nearly all probation systems require as a condition that people on probation refrain from committing new crimes.²¹⁷ In places like Rhode Island, interviewees reported that people on probation are often denied the right to a trial on the new charges; instead, the new charges are treated as probation violations and dealt with summarily as part of the revocation hearing.²¹⁸ Unlike new criminal charges which must be proved beyond a reasonable doubt, the burden of proof for a probation violation is typically only preponderance of the evidence²¹⁹—even if the alleged violation is the commission of a new crime.²²⁰ Prosecutors may also pursue new criminal charges using the evidence obtained through the search incident to arrest. In this way, an arrest for failure to pay financial sanctions erodes a person’s procedural rights simply because the person was too poor to meet that condition of their supervision.

VIII. FINANCIAL SANCTIONS AND PROBATION REVOCATION

In addition to facing graduated sanctions, a person on probation who is unable to pay financial sanctions is at risk of having their probation revoked—meaning the sentencing judge could take them off probation and incarcerate them for the remainder of their sentence.²²¹ Although interviewees reported that revocation solely on the basis of nonpayment is not common, under many statutory schemes it is available as an option,²²² thereby allowing probation officers to threaten revocation and pressure people who are struggling to pay. And in some cases, probation *is* revoked for nonpayment when nonpayment allegations are combined with other alleged violations.

If a probation officer²²³ decides to file for revocation, and the court grants the petition, the person’s probation will typically end and they will be sentenced to a period of incarceration.²²⁴ State statutes vary widely as to when and how a person’s probation may be revoked for nonpayment. Eight states have statutes explicitly permitting revocation and/or incarceration for nonpayment of fees, fines, and/or restitution without mention of ability to pay. Twenty-three more state statutes remind judges of their responsibilities under *Bearden* and permit revocation and/or incarceration so long as the nonpayment was willful, not for good cause, or not due to inability to pay.²²⁵ Six of those states put the burden on the person on probation to prove nonpayment was not willful or was due to inability to pay.²²⁶ Only three states completely forbid revocation or incarceration solely on the basis of nonpayment of fees, fines, and/or restitution.²²⁷ One of these states, Nevada, only recently enacted such legislation, which goes into effect in July 2020, as part of a comprehensive bill intended to lower prison populations.²²⁸ The remaining states do not directly address revocation in the context of nonpayment of financial sanctions, although some of these states have statutes stating that probation can be revoked for a violation of any probation condition.²²⁹

States also vary in terms of the length of incarceration that follows revocation. In some states, people get “credit” against the length of incarceration for months or years they spent on probation prior to any revocation proceedings.²³⁰ In other jurisdictions, the term of incarceration ordered after probation is revoked will depend on the amount of outstanding debt, or some other statutory standard.²³¹ In some states, if a person is sentenced to a period of incarceration that is suspended while the person is on probation, revocation can mean that the person must serve out the full suspended prison sentence, even if they had already been on probation for a significant amount of time.²³² In those states, a person sentenced to four years of probation as a suspended sentence who has their probation revoked in year three would have to serve the full four years of their sentence in prison—even though they had already

spent three years under correctional control on probation. This nearly doubles the length of time the person must spend in the criminal legal system.

People under probation supervision live in constant fear that their probation will be revoked for nonpayment, and in many cases, attorneys told us that nonpayment does increase the chances that their probation will be revoked.²³³ Probation departments can easily work around procedural protections designed to avoid revocation for nonpayment due to inability to pay. Even if nonpayment is not the only reason the probation officer moves for revocation, it becomes part of the case and provides further evidence in favor of revocation. Below, we detail several ways that people on probation who owe financial sanctions are at risk of revocation when they are unable to pay.

A. Constitutional protections are not enough.

Bearden v. Georgia requires that a court engage in an ability-to-pay analysis before revoking probation and incarcerating a person for nonpayment of financial sanctions.²³⁴ If the person failed to pay because they lacked the ability to do so, the court can revoke probation and incarcerate them only if there are no “adequate alternative forms of punishment.”²³⁵ But this standard does not provide enough protection, because it is often implemented without objective or meaningful consideration of people’s ability to pay.

Some interviewees reported that ability-to-pay determinations by the court are rare, and rarely robust, even though they are required by *Bearden*. As noted above, quite a few states have codified *Bearden*’s holding through statute or court rule, directing courts to consider a person’s “willfulness” in failing to pay before revoking probation for nonpayment,²³⁶ but the standards for when a court may revoke probation for nonpayment vary greatly. One attorney estimated that in her county, a person on probation’s ability to pay is assessed less than 10% of the time.²³⁷ When such determinations do occur, judges may use inappropriate criteria. In Arkansas, for example, attorneys with the Lawyers’ Committee for Civil Rights Under Law observed judges determining ability to pay based on their observations about a person’s clothing, cell phones, or cigarettes,²³⁸ rather than objective criteria. And in Kentucky, numerous attorneys told us that courts hold contempt hearings for nonpayment, rather than revocation hearings, during which courts enforce “pay or stay” rules—the person either needs to pay at the hearing, or they will be incarcerated for a short period of time in lieu of payment,²³⁹ regardless of the standards required by *Bearden*.

B. Probation departments combine nonpayment violations with other alleged probation violations to argue for revocation.

People on probation who miss payments are at high risk of revocation. Many of the judges, defense attorneys, and other advocates we interviewed said that in practice, courts generally will not revoke probation for nonpayment alone.²⁴⁰ But probation departments have discretion to delay filing for revocation when faced with a single violation (known as “holding” the violation), and instead wait for multiple violations to accumulate and then combine them into a single petition for revocation (known as “stacking” violations). These other violations may themselves be minor, and also potentially connected to the person’s inability to pay. As a result, probation officers often use the fact of nonpayment against the person in combination with other violation claims, and the incident(s) of nonpayment contribute to the revocation petition.

Probation departments have significant discretion regarding whether, when, and on what basis to file for revocation.²⁴¹ As discussed in section III.b, people on probation must abide by a litany of conditions that affect their daily life, such as reporting requirements, residency or travel restrictions, and more, in addition to payment-related conditions. In most jurisdictions, probation departments can file for revocation on the basis of failure to comply with any of those conditions. As a result, probation officers’ ability to add nonpayment violations to a package of other alleged violations—even if those other violations are also minor—helps make a stronger argument in favor of revocation, because the multiple allegations make it seem like the person is not taking their probation obligations seriously.²⁴²

Although multiple defense attorneys stated that revocation petitions are rarely filed on a single violation alone (unless the violation is serious, such as the commission of a new crime), they also noted that probation officers hold violations, especially violations like nonpayment, until there is a critical mass of other violations, and then file for revocation on all of them at once, so the case for revocation is stronger.²⁴³ Interviewees also noted that probation officers are more likely to bring other low-level violations to a court’s attention if a person on probation is behind in paying supervision fees, as opposed to other types of financial sanctions.²⁴⁴ So, although the probation department will not usually file a revocation petition solely on the basis of nonpayment of fines or court fees, if the person falls behind on supervision fees as well, the probation department will frequently move for revocation on both types of violations.

There is seemingly no limit on how long probation officers can hold onto violations. Sometimes probation officers sit on violations such as missed payments without notifying the court for the entire duration of the original probation term, and *then* ask the court to revoke probation (or extend it) just days or weeks before the probation

term would otherwise have ended. We heard from several people—including judges and probation officers—that this is common practice in their jurisdictions.²⁴⁵ This practice lulls people on probation into a false sense of security; they think they are approaching the end of their criminal legal system involvement, only to have the probation department bring down the hammer of enforcement at the last minute.²⁴⁶

Probation officers' ability to add nonpayment violations to a package of other alleged violations—even if those other violations are also minor—helps make a stronger argument in favor of revocation, because the multiple allegations make it seem like the person is not taking their probation obligations seriously.

We also heard from many defense attorneys that even if local law or policy prevents a probation officer from filing for revocation on the basis of nonpayment alone, probation officers will allege other probation violations as pretext for the issue of nonpayment because they believe the nonpayment merits punishment.²⁴⁷ We heard several stories from attorneys whose clients faced multiple violations at a revocation hearing, and those attorneys believed that the additional violations were added in order to seek punishment because the client was unable to make the requisite payments.²⁴⁸ One defense attorney in Pennsylvania told us about a client who owed a large amount in restitution, but was unable to pay.²⁴⁹ The probation officer moved for revocation, which the court granted without an ability-to-pay determination, on the basis of failure to pay restitution and a single failed drug test.²⁵⁰ On appeal, the higher state court held that the trial court should have evaluated the person's ability to pay before revoking probation.²⁵¹ The interviewee explained that the higher court, in her view, implicitly agreed with the client's argument: based on statements made by the probation officer during the revocation proceedings, the revocation for the failed drug test was pretextual.²⁵² The court vacated and remanded the case due to the failure to conduct an ability-to-pay hearing.²⁵³

When violations are stacked in a single revocation petition, it is much more likely that the petition will be granted²⁵⁴ because the multitude of violations makes a more

compelling case. Ability to pay is usually not considered, according to our interviewees, despite the protections afforded by *Bearden*,²⁵⁵ when nonpayment is just one of many violations alleged together in a single revocation petition.²⁵⁶ In those situations, judges often reason that ability-to-pay determinations are not needed because the person's inability to pay will ultimately not make a difference in keeping them out of jail.²⁵⁷

C. The court often accepts the probation department's allegations and revocation recommendations without independent analysis.

Defense attorneys and other advocates also expressed concern about the amount of influence that the probation department has over the court's consideration of the facts underlying a petition for revocation. We heard from several defense attorneys that the court will defer to the probation department's factual allegations and its assessment of whether a condition was violated.²⁵⁸ By filing for revocation, the probation department has already determined that the facts merit that probation be revoked; if the court merely accepts the probation department's facts as alleged, without independent inquiry, revocation is virtually guaranteed.

One attorney told us that probation officers' violation reports and recommendations are not closely scrutinized by either the prosecutor or the court, and that in that attorney's jurisdiction, courts will order whatever consequence the probation officer requests, without independent inquiry.²⁵⁹ As a result, the probation department's position about the person's ability to pay matters a great deal. If the probation department dismisses a person's financial struggles and argues that they willfully failed to pay (based on subjective standards), and the judge defers to that account, the revocation petition will likely be granted.

Courts also frequently defer to probation officers' recommended punishments.²⁶⁰ Some interviewees reported that probation officers have so much sway in court that even if the defense and the prosecution agree to a particular consequence, a probation officer can convince a judge to impose a harsher penalty.²⁶¹

HOW UNPAID FINANCIAL SANCTIONS IMPACT THE CHARGES PEOPLE FACE

Not only do people on probation who miss payments risk probation revocation, but, in some states, they will also end up with a more serious offense on their record than those who can pay. Some states have laws that reduce people's charges from felonies to misdemeanors upon completion of probation. But when a person is unable to pay off court debt, it prevents them from completing probation and being eligible for such reductions. For example, one attorney in Arizona told us about a recent client, John,²⁶² who was charged with driving under the influence.²⁶³ The State offered John an opportunity to plead to what is called an "undesigned offense."²⁶⁴ This means that while on probation, the offense would be treated as a felony, but if John successfully completed probation, he would be eligible to have the offense designated a misdemeanor after eighteen months.²⁶⁵ Through his insurance company, John was able to pay restitution in full, but his insurance would not cover his financial sanctions, which amounted to approximately \$4,000.²⁶⁶ John was unable to pay off these fees and fines quickly because of the high interest the state charged on his outstanding debt each month.²⁶⁷ After John paid his restitution in full, the probation department did not oppose the misdemeanor designation, and his lawyer argued for the misdemeanor designation on the ground that poverty was John's only barrier to successful completion of probation.²⁶⁸ Though John had complied with all other probation conditions, the judge refused to give him the misdemeanor designation due to the unpaid debt.²⁶⁹ Thus, John was left with a felony charge on his record solely because he could not pay his financial sanctions.

D. Probation officers threaten revocation to compel payment and fear over missed payments may lead to more serious violations.

We heard in our interviews that probation officers in many places use the threat of revocation and incarceration to compel payment—a practice presumably intended to intimidate people into paying.²⁷⁰ This practice can have the counterproductive effect of instilling fear—and therefore avoidance—of their probation officer. One attorney reported seeing probation officers pressure people to pay by telling them that their probation may be revoked when they are just one month behind in their payments.²⁷¹ Even if the statutes in a jurisdiction would not allow for revocation based on nonpayment alone (and revocation on this basis alone is rare in practice), many people on probation do not know that and are vulnerable to this pressure. Researchers have found that people will forgo food, medical care, and other basic life necessities when faced with the possibility of revocation for nonpayment.²⁷² Sometimes these threats

are even printed on billing statements from probation departments²⁷³—the statement of the amount owed each month will include warnings such as “failure to pay this on time will result in incarceration.”

Fear of punishment for nonpayment or other payment-related conditions can also lead people to act in ways that constitute more serious probation violations.²⁷⁴ Several attorneys we spoke with in different states reported that their clients stopped showing up for check-ins with their probation officer out of fear that they would be punished because they were struggling financially.²⁷⁵ One attorney reported that local probation officers recently received a memo instructing them to increase fee collections.²⁷⁶ The attorney said that when word about this reached people on probation, they became fearful of attending probation check-ins when they did not have money to pay their monthly fees.²⁷⁷

Several attorneys we spoke with in different states reported that their clients stopped showing up for check-ins with their probation officer out of fear that they would be punished because they were struggling financially.

When people avoid their probation officers, even out of fear, probation departments have grounds for seeking increased punishments. Failing to report in many states is considered a more serious violation than failing to pay.²⁷⁸ Moreover, failure to report, as opposed to failure to pay, is not subject to any constitutional protections such as a *Bearden* hearing (as limited as those protections might be). A consistent theme that emerged from our interviews is that people on probation fall behind on payments, fear the consequences, and fail to appear at supervision check-ins, which results in violations and revocation of probation that are technically based on the failure to report, rather than on the nonpayment.²⁷⁹ When revocation is the ultimate result of inability to pay and fear of reprisal, it is easy to see how linking probation to enforcement of financial sanctions sets people up for harsh punishments without much recourse.

IX. FINANCIAL SANCTIONS AND THE LENGTH OF THE PROBATION TERM

In addition to revoking probation, judges regularly extend the length of people's probation due to outstanding financial sanctions,²⁸⁰ turning a sentence of probation into prolonged years of involvement in the criminal legal system. When probation is extended, people must continue to abide by probation conditions, pay supervision fees, and otherwise be subject to the oversight of their probation officer for months—and sometimes years—longer than their original sentence. Extensions of probation increase the likelihood that a person will violate *some* term of their probation, since the other conditions attached to probation continue as well.

When probation is extended because a person previously missed payments or did not pay financial sanctions in full by the end of the probation term, some courts will change the person's level of supervision from supervised to unsupervised probation, which may come with fewer conditions and fees.²⁸¹ But whether on supervised or unsupervised probation, people whose probation terms have been extended will be under surveillance and feel the weight of criminal control until they can pay off their debt.²⁸²

Many states have a statute authorizing extension of probation when financial sanctions are not paid in full. Thirteen states have statutes specifically authorizing extensions of probation for nonpayment of restitution, and five others permit extensions for nonpayment of financial sanctions in general.²⁸³ Among the states that do not specifically address extensions for nonpayment, eight permit extensions for violations of probation conditions (which often include payment of financial sanctions), and 17 others give judges authority to extend probation for any reason.²⁸⁴

Some states have statutory caps on how long probation can be extended. In states that have statutes permitting probation extensions, 31 states have a statutory cap on the length of the extensions (or a cap on the length of probation *including* any extensions). In these states, probation can be extended for only a certain period of time, or can be extended only up to a certain amount of time.²⁸⁵ Six more of these states just provide a maximum amount of time that a person can be on probation, without noting limitations on the duration of extensions.²⁸⁶ Occasionally, judges have the authority to override those caps.²⁸⁷

Some states, including Pennsylvania,²⁸⁸ currently have no meaningful cap on the length of extensions, so people can be kept on probation for decades simply for nonpayment. In other jurisdictions, caps on probation are ignored. In Kentucky,

for example, which has a statutory cap on the length of probation extensions,²⁸⁹ several advocates nevertheless reported that they have seen probation extended indefinitely.²⁹⁰

Depending on the jurisdiction, probation can be extended by motion of the probation officer to the sentencing court, through plea deals, or by probation officers compelling the person on probation to sign an agreement with the probation department. In most of the states we studied in depth, probation officers typically file a motion with the court alerting them to the outstanding financial sanctions near the end of the probation term—this can be through a motion to revoke probation or a notice of a probation violation. At the hearing on that motion, the probation officer requests an extension

When probation is extended [for nonpayment], people must continue to abide by probation conditions, pay supervision fees, and otherwise be subject to the oversight of their probation officer for months—and sometimes years—longer than their original sentence.

of probation to continue payment, which the judges routinely grant.²⁹¹ In Mississippi and Kentucky, people sentenced to probation also often agree to a plea deal or post-sentencing document that provides that their probation may be extended in the event they have not paid off their debt at the end of the original probation term.²⁹² And in Colorado, probation officers often encourage people on probation to sign a document waiving their right to a hearing and authorizing the probation officer to extend their probation on grounds of nonpayment; attorneys we interviewed understood that implicit in this process was the threat that if people do not sign the waiver, they could face revocation and other serious consequences.²⁹³ In parts of Alabama, advocates noted that extensions of probation were common when people owed outstanding financial sanctions, and were rarely used for any other reason.²⁹⁴

RESTITUTION AS PROBATION'S THIRD RAIL

There was a general consensus among interviewees that courts and probation officers respond to nonpayment of restitution even more seriously than nonpayment of fees and fines. Restitution is typically assessed as a payment to the victim of a crime, but it is sometimes part of the total financial sentence a court imposes even where there is no specific crime victim, or the victim is the state.²⁹⁵

This more punitive approach toward restitution is also reflected in state codes, and persists even if the person on probation is unable to make payments and the victims had insurance that covered the loss.²⁹⁶ When people are unable to pay their financial sanctions, it makes little difference which type of financial sanctions are part of their case; punishing their inability to pay any type of financial sanction is punishing their poverty. Treating inability to pay restitution more harshly ignores the reality of people struggling to meet their payment obligations, whatever they may be.

Rather than engaging in ability-to-pay determinations and issuing waivers or reductions of restitution, as judges should for all financial sanctions, we learned that judges are more inflexible and impose harsher sentences when a person on probation owes large amounts of restitution and is unable to pay. Interviewees in Colorado, Idaho, Georgia, and Ohio reported that judges frequently impose longer probation lengths at the outset (and in Idaho and Georgia, up to the maximum length allowed by law) when the person owes restitution.²⁹⁷ In parts of Colorado, Kentucky, Idaho, and New Hampshire, judges place people on unsupervised probation solely because they owe victim restitution, and do not release them until their restitution is paid.²⁹⁸ Judges are also more likely to extend a person's probation at the end of the probation term if they have remaining unpaid restitution amounts, as opposed to unpaid fees and fines.²⁹⁹ Thirteen of the 18 states that permit extensions of probation for nonpayment focus on nonpayment of restitution.³⁰⁰ Ten states have statutes specifying that nonpayment of restitution is grounds for a probation violation, revocation, contempt, and/or incarceration, and 14 more allow for such consequences if the nonpayment was willful or not due to inability to pay.³⁰¹ Courts are also more likely to impose civil judgments³⁰² or turn a case over to a collections agency³⁰³ for any remaining restitution owed at the end of a person's probation term than they are for outstanding fees or fines.

Courts' inflexibility regarding restitution trickles down to probation officers and prosecutors, who follow suit in their own interactions with people on probation. Probation officers and prosecutors are more likely to file probation violation notices for nonpayment of restitution than for other court debt,³⁰⁴ especially when victims call and ask about the status of their payments.³⁰⁵ High restitution amounts can also inform plea negotiations. One interviewee in Mississippi reported that a prosecutor recently told him that, because a defendant owed \$75,000 and would never be able to pay it, the "only" option for that person was to serve time in jail.³⁰⁶

X. PROBATION AND CIVIL JUDGMENTS

In some jurisdictions, a person can complete probation even if they still owe financial sanctions—but the debt that remains continues to impact their life in the form of a civil judgment,³⁰⁷ which comes with its own punitive consequences. The use of civil debt collection tools at the end of the probation term may shield people from having their probation revoked and incarceration imposed, but it brings other harms: civil judgments can result in liens, tax garnishments, and other debt collection mechanisms that can make it difficult for people to support themselves and their families.³⁰⁸ Collections agencies typically charge interest as high as 30%, which can affect a person’s credit and further compound debt and entrench poverty.³⁰⁹ This, of course, further increases the amount owed and makes it that much harder for people to pay off their debts.

The use of civil debt collection tools at the end of the probation term may shield people from having their probation revoked and incarceration imposed, but it brings other harms[.]

Civil judgments can also indirectly lead to incarceration. When financial sanctions are turned over to state or local debt collection agencies, those agencies can pursue additional remedies in court, and some courts may require that those debts be fulfilled by spending time in jail. According to lawyers we interviewed, in parts of Kentucky, those who finish probation but continue to owe court debt have their debts converted to civil judgments.³¹⁰ The remedies available to enforce a civil judgment include incarceration—if a person does not complete their payments after several contempt hearings, they may be forced to “pay or stay,” meaning that if they cannot pay, they will have to “sit out” their debt in jail at a rate of \$50 per day.³¹¹ Similarly, in parts of Mississippi, outstanding court debt continues to be enforced through “show cause” hearings, even after people are released from probation.³¹² People who used to be on probation are forced to attend show cause hearings every few months to explain why they have not made their court debt payments; if they are unable to pay, a judge may require them to sit out their debts in jail.³¹³

XI. PROBATION AND DEMOCRATIC PARTICIPATION

The connection between probation and payment of financial sanctions also has implications for a person's ability to participate in the democratic process. Currently, over half the states require that a person complete their sentence—including any probation term—before they can regain the right to vote following a criminal conviction.³¹⁴

When people remain on probation because they are unable to pay off their financial sanctions, they are disenfranchised because of their inability to pay. This form of wealth-based penal disenfranchisement gained public attention in Florida in 2018 and 2019, when Florida residents passed a referendum intended to re-enfranchise hundreds of thousands of formerly incarcerated voters—only to have the Florida legislature pass a statute requiring that all financial sanctions be paid off in order to regain the right to vote.³¹⁵ This severely restricted the number of people who could benefit from the referendum, as a large percentage of formerly incarcerated people in Florida still had outstanding court debt. Given how many states allow people to be trapped in the criminal legal system until they pay off their debt, this kind of wealth-based penal disenfranchisement tied to probation is happening in many jurisdictions every single day.

Conditioning vote restoration [on repayment of financial sanctions]—results in a large number of people being removed from democratic participation due solely to their poverty.

Conditioning vote restoration on completion of probation—and conditioning completion of probation on full payment of financial sanctions—results in a large number of people being removed from democratic participation due solely to their poverty. And, because of the overall disproportionate impact of the criminal legal system on minority communities, this intersection predominantly disenfranchises people of color. This consequence is yet another way that probation inflicts harms on people who owe financial sanctions, but are struggling to pay them off, and reinforces the broader injustices of our criminal legal system.

XII. CONCLUSION

Our current systems of financial sanctions often create insurmountable burdens for people who want to complete their criminal sentences and move on with their lives. The same is true for probation. When these two systems combine, people who owe financial sanctions remain trapped in the criminal legal system, and are exposed to greater debt, harsh punishments, longer involvement in the system, financial tumult, barriers to obtaining wealth and stability, and the near-constant threat of incarceration. Many of the issues we identified in our research stem from problems inherent in how probation generally operates across the country—signaling particular concerns for using that institution to enforce financial sanctions.

When [probation and financial sanctions] combine, people who owe financial sanctions remain trapped in the criminal legal system, and are exposed to greater debt, harsh punishments, longer involvement in the system, financial tumult, barriers to obtaining wealth and stability, and the near-constant threat of incarceration.

For these reasons, the link between payment of financial sanctions and probation supervision should be severed. Specifically, jurisdictions should address the problematic interactions between probation and financial sanctions that further punish people for their inability to pay. Probation should not lead to an increase in the amount of money a person owes, whether through additional supervision fees, fees for other programs and classes, or harsh payment plan terms after lackluster ability-to-pay determinations by probation officers. And probation officers should not have the discretion to punish people who fail to abide by conditions that directly or indirectly unduly burden people who are unable to pay their financial sanctions. Nor should probation officers have the power to arrest, search, incarcerate, threaten, or punish

people for the act of nonpayment or for other violations that are connected to their financial means. Because these are the common ways in which probation is used to enforce financial sanctions, in many jurisdictions, severing the link between financial sanctions and probation supervision will mean removing financial sanctions from the probation department's purview.

Given the harms we identified, jurisdictions must examine their laws and policies to identify how probation is linked to financial sanctions, the extent of and harms caused by the link, and ways to decouple these systems to ensure that people who owe financial sanctions are not treated more harshly simply because they lack wealth. In particular, jurisdictions should consider certain principles and questions, set forth at the end of this report, when examining their statutes, internal policies, and practices so that they are able to identify the necessary policy shifts to decouple these systems.

While our research shows that the way probation works today is generally incompatible with fair monitoring of financial sanctions, more research is needed so that we can better understand how judges and probation departments exercise their discretion regarding the enforcement of financial sanctions through probation, and the differences in these practices across the country.³¹⁶ Given the wide variety in how probation operates from state to state and county to county, and how little information is publicly available, more in-depth study of many jurisdictions is necessary to understand how exactly probation and financial sanctions are interacting across the country so that reforms may effectively address harmful practices.

In general, financial sanctions should be collected and enforced through a proportionate process rather than punishing noncompliance.³¹⁷ This will require changes to state laws, internal probation policies, and both court and probation practices, to ensure probation is not used as a debt collection mechanism. Many of the problems with probation and financial sanctions are hidden. It is therefore imperative that reforms penetrate both systems and ensure that these aspects of the criminal legal system do not continue to entrap people because they cannot pay.

PRINCIPLES AND CONSIDERATIONS FOR REFORM

1.

Payment of financial sanctions should not be a probation condition.

- Is payment of financial sanctions either a required or optional condition of probation?
- Can payment of financial sanctions be handled more fairly without the burdens that come with probation (e.g., by an administrative entity or the court creating a realistic payment plan)?

2.

Jurisdictions should not charge supervision fees or impose conditions that cost money to fulfill. Jurisdictions should make sure that judges and probation officers consider the additional financial burden that reporting, participating in classes and programs, and drug and alcohol testing create before imposing those conditions, and consider whether such conditions are necessary, even if direct fees and costs are eliminated or waived.

- Does the jurisdiction, or any entity tasked with overseeing probation in the jurisdiction, charge a supervision fee? Is the fee regularly waived if the person is unable to afford it? Is the standard for waiver clear, objective, and concrete? Is the burden on the person to ask for a waiver, or is waiver automatically considered?
- Are people on probation required to pay fees associated with any other probation condition, such as classes, programs, or drug and alcohol testing? If these are currently fee-based, can the programs be provided free of charge? Or, at the very least, does the court or probation department waive the participation fee or testing costs based on inability to pay?
- Will compliance with other conditions, such as in-person reporting, drug testing, or completing classes, interfere with a person's ability to work, provide dependent care, or otherwise meet their responsibilities? Are there alternatives that could be imposed that would minimize or eliminate this interference?

3.

Nonpayment-related violations should not be a part of any system of graduated sanctions. Instead, people should be able to address their outstanding debt with the court when they lack ability to pay and obtain a reduction or waiver.

- Does the jurisdiction have a graduated sanctions program? Does it apply to nonpayment of financial sanctions? Does it require ability-to-pay determinations for nonpayment violations?
- Does the graduated sanctions system allow for punishments—such as additional conditions, electronic monitoring, or incarceration—for nonpayment?
- Does the program include responses to nonpayment that would alleviate the burden of debts that people cannot afford to pay, such as waiver? Or, does the program assist people with approaching the court for relief when they are unable to pay their financial sanctions?

4.

Probation officers should not arrest or incarcerate people who are behind on their financial sanctions payments or otherwise out of compliance with their probation conditions due to their financial circumstances.

- Can probation officers arrest, search, and/or detain people on probation for low-level violations such as nonpayment of financial sanctions? Are there any meaningful limits on this power?
- Can people be incarcerated—even temporarily—before a judge decides whether to grant a petition to revoke probation?

PRINCIPLES AND CONSIDERATIONS FOR REFORM

5. Probation departments should not petition the court to revoke a person's probation, in whole or in part, due to their inability to pay financial sanctions, probation supervision fees, or other costs associated with complying with probation conditions.

- How are probation violations brought to the court's attention? When filing notices with the court, can probation officers hold onto or stack nonpayment violations in ways that increase the likelihood of revocation?
- Is there a separate inquiry into each alleged probation violation, with independent fact finding by the judge?
- Is ability to pay considered for all alleged violations that may have occurred due to lack of sufficient resources to comply with the condition?

6. Probation departments and the courts should not extend probation, convert debt to civil judgments, or prevent people from obtaining benefits or voting because they are unable to pay outstanding financial sanctions.

- Can probation be extended, and if so, can it be extended for nonpayment? Is there a cap on such extensions? Is there an ability-to-pay determination prior to extension, and is modification of the amount owed an alternative option?
- Can people complete probation if they still owe financial sanctions? What happens to their outstanding debt if probation ends, but debt remains? Are they subject to civil debt collection mechanisms or punishment if they are unable to pay that debt?
- Are people able to receive public assistance benefits even though they are still on probation and/or owe financial sanctions? Are they able to vote in local or national elections?

APPENDICES

APPENDIX A: PAYMENT OF FINANCIAL SANCTIONS AS A CONDITION OF PROBATION

Can payment of financial sanctions be a condition of probation by statute?

State	Can payment of financial sanctions be a condition of probation by statute?	Statute(s)
AL	Yes	Ala. Code § 12-14-13(d)(7)–(8); Ala. Code § 15-18-70; Ala. Code § 15-22-52(7)–(8).
AK	Yes – Fines and Restitution	Alaska Stat. Ann. § 12.55.100(a)(2)(A)–(B).
AZ	Yes	Ariz. Rev. Stat. Ann. § 13-808(B); Ariz. Rev. Stat. Ann. § 13-901(A).
AR	Yes – Restitution	Ark. Code Ann. § 5-4-205(f).
CA	Yes – Restitution	Cal. Penal Code § 1202.4(m).
CO	Yes	Colo. Rev. Stat. Ann. § 18-1.3-204(2)(a)(VI); Colo. Rev. Stat. Ann. § 18-1.3-205.
CT	Yes – Restitution	Conn. Gen. Stat. Ann. § 53a-30(a)(4).
DE	Yes	Del. Code Ann. tit. 11, § 4104(a)(3).
FL	Yes – Restitution and Certain Fees	Fla. Stat. Ann. § 948.03(1)(f); Fla. Stat. Ann. § 948.09(1)(a); Fla. Stat. Ann. § 960.17(2).
GA	Yes	Ga. Code Ann. § 42-8-34(d)(1); Ga. Code Ann. § 42-8-102(c).
HI	Yes – Fines and Restitution	Haw. Rev. Stat. Ann. § 706-624(1)(g); Haw. Rev. Stat. Ann. § 706-642(2).
ID	Not Specified in Code*	N/A
IL	Yes	730 Ill. Comp. Stat. Ann. 5/5-6-3(b)(2); 730 Ill. Comp. Stat. Ann. 5/5-6-3.1(c)(2), (9).
IN	Yes - Fines and Restitution	Ind. Code Ann. § 35-38-2-2.3(a)(6), (8); Ind. Code Ann. § 35-50-5-3(a).
IO	Yes - Restitution	Iowa Code Ann. § 910.4(1).
KS	Yes	Kan. Stat. Ann. § 21-6607(b)(7), (c)(2).
KY	Yes – Restitution and Certain Costs	Ky. Rev. Stat. Ann. § 532.032(3); Ky. Rev. Stat. Ann. § 533.020(1).
LA	Yes – Restitution and Certain Fees	La. Code Crim. Proc. Ann. art. 895(A), (A)(7); La. Code Crim. Proc. Ann. art. 895.1(A)(1).
ME	Yes	Me. Rev. Stat. tit. 17-A, § 1708(2); Me. Rev. Stat. tit. 17-A, § 1752; Me. Rev. Stat. tit. 17-A, § 1807(2)(B), (6), (7).
MD	Yes	Md. Code Ann., Crim. Proc. § 6-220(b)(2)(i).
MA	Yes – Fines and Restitution	Mass. Gen. Laws Ann. ch. 276, § 92; Mass. Gen. Laws Ann. ch. 279, § 1; Mass. Gen. Laws Ann. ch. 279, § 1A.
MI	Yes	Mich. Comp. Laws Ann. § 771.3(1)(d)–(g).
MN	Yes – Restitution	Minn. Stat. Ann. § 609.135, subd. 1a.
MS	Yes	Miss. Code. Ann. § 47-7-35(1)(h); Miss. Code. Ann. § 99-37-5(2).
MO	Yes – Restitution	Mo. Ann. Stat. § 559.021(2)(1).
MT	Yes	Mont. Code Ann. § 46-18-233(1); Mont. Code Ann. § 46-18-241(1).

* While Idaho's code is silent on this issue, Idaho's court rules do state that payment of financial sanctions may be a condition of probation. Id. Crim. R. 33(d)(1)–(2).

APPENDIX A: PAYMENT OF FINANCIAL SANCTIONS AS A CONDITION OF PROBATION

NE	Yes	Neb. Rev. Stat. Ann. § 29-2262(2)(l), (m), (o), (r), (s).
NV	Yes – Restitution	Nev. Rev. Stat. Ann. § 176A.400(1)(a).
NH	Yes – Restitution and Certain Fees	N.H. Rev. Stat. Ann. § 604-A:9(IV); N.H. Rev. Stat. Ann. § 651:2(V)(g).
NJ	Yes	N.J. Stat. Ann. § 2C:45-1(b)(11), (c).
NM	Yes – Restitution and Certain Fees	N.M. Stat. Ann. § 31-20-6(E); N.M. Stat. Ann. § 31-17-1(B).
NY	Yes – Restitution	N.Y. Penal Law § 65.10(2)(g).
NC	Yes	N.C. Gen. Stat. Ann. § 15A-1340.34(b); N.C. Gen. Stat. Ann. § 15A-1343(b)(6), (9).
ND	Yes	N.D. Cent. Code Ann. § 12.1-32-07(4)(e), (f), (p).
OH	Yes – Supervision Fees	Ohio Rev. Code Ann. § 2951.021(A)(1).
OK	Yes	Okla. Stat. Ann. tit. 57, § 515a(3)(d); Okla. Stat. Ann. tit. 22, § 991c(A)(1)–(3), (6)–(9).
OR	Yes	Or. Rev. Stat. Ann. § 137.540(1)(a); Or. Rev. Stat. Ann. § 161.675(2).
PA	Yes	37 Pa. Code § 65.4(6); 18 Pa. Stat. Ann. § 11.1102(c)–(e).
RI	Yes	12 R.I. Gen. Laws Ann. § 12-19-8.1(a)(8).
SC	Yes – Fines and Supervision Fees	S.C. Code Ann. § 24-21-80; S.C. Code Ann. § 24-21-430(6).
SD	Yes	S.D. Codified Laws § 23A-27-12.1; S.D. Codified Laws § 23A-27-18.3(1), (3).
TN	Yes	Tenn. Code Ann. § 40-28-303(a); Tenn. Code Ann. § 40-35-304(a).
TX	Yes	Tex. Code Crim. Proc. Ann. art. 42.037(h), (i); Tex. Code Crim. Proc. Ann. art. 42A.301(b)(8).
UT	Yes – Restitution and Certain Costs	Utah Code Ann. § 77-18-1(8)(f)–(g), <i>amended by 2020 Utah Laws H.B. 367.</i>
VT	Yes – Restitution and Fines.	Vt. Stat. Ann. tit. 28, § 252(b)(6)–(7).
VA	Yes	Va. Code Ann. § 19.2-303; Va. Code Ann. § 19.2-305(A).
WA	Yes	Wash. Rev. Code Ann. § 9.95.210(2).
WV	Yes	W. Va. Code Ann. § 62-12-9(a)(5), (b)(1)–(2).
WI	Yes	Wis. Stat. Ann. § 973.05(2); Wis. Stat. Ann. § 973.09(1)(b).
WY	Yes	Wyo. Stat. Ann. § 7-13-1102(b)(ii)–(iii).

APPENDIX B: SUPERVISION FEES CHARGED

Does the state charge supervision fees, and if so, how often are they charged and are there any statutory provisions governing the amount?

State	Are supervision fees authorized by statute?	Monthly vs. One Time	Amount	Statute(s)
AL	Yes	Monthly	\$40 per month	Ala. Code § 15-22-2(a)(1).
AK	Not Specified in Code	N/A	N/A	N/A
AZ	Yes	Monthly	Not less than \$65 per month	Ariz. Rev. Stat. Ann. § 13-901(A).
AR	Yes	Monthly	\$35 per month	Ark. Code Ann. § 16-93-104(a)(1).
CA	Yes	Not Specified in Code	Not Specified in Code [†]	Cal. Penal Code § 1203.1b(a).
CO	Yes	Monthly	\$50 per month	Colo. Rev. Stat. Ann. § 18-1.3-204(2)(a)(V).
CT	Yes	One Time	\$200	Conn. Gen. Stat. Ann. § 53a-29(c).
DE	Yes	One Time	\$200	Del. Code Ann. tit. 11, § 6504(14).
FL	Yes	Monthly	Not less than \$40 per month for misdemeanors (felonies not specified in code)	Fla. Stat. Ann. § 948.09(1)(b).
GA	Yes	Other	\$23 per month, plus a one-time fee of \$50 if convicted of any felony	Ga. Code Ann. § 42-8-34(d)(1).
HI	Yes	One Time	\$150 if term of probation is more than one year; \$75 if term of probation is one year or less	Haw. Rev. Stat. Ann. § 706-648(1).
ID	Yes	Monthly	Not more than \$75 per month	Id. Code Ann. § 20-225.
IL	Yes	Monthly	\$50 per month	730 Ill. Comp. Stat. Ann. 5/5-6-3(i).
IN	Yes	Other	For felonies, a \$25–\$100 one-time fee plus a \$15–\$30 monthly fee; for misdemeanors, not more than a \$50 one-time fee plus a \$10–\$20 monthly fee	Ind. Code Ann. § 35-38-2-1(d)–(e).
IO	Yes	One Time	\$300	Iowa Code Ann. § 905.14(1).
KS	Yes	One Time	\$120 for felonies; \$60 for misdemeanors	Kan. Stat. Ann. § 21-6607(c)(3)(A).
KY	Yes	Monthly	For felonies, not less than \$10 per month or more than \$2,500 per year; for misdemeanors, generally not less than \$10 per month nor more than \$500 per year	Ky. Rev. Stat. Ann. § 439.315(1)–(2).

[†] In California, the amount of the supervision fee varies by county. See SANDRA BLANCO ET AL., LET'S GET FREE LA, COSTS OF INJUSTICE: HOW CRIMINAL SYSTEM FEES ARE HURTING LOS ANGELES COUNTY FAMILIES 10 (Nov. 2019), http://ebcl.org/wp-content/uploads/2020/03/letsgetfreeLA_costs_of_injustice.pdf.

APPENDIX B: SUPERVISION FEES CHARGED

LA	Yes	Monthly	Not less than \$60 per month or more than \$110 per month	La. Code Crim. Proc. Ann. art. 895(A); La. Code Crim. Proc. Ann. art. 895.1(C).
ME	Yes	Monthly	Between \$10 per month and \$50 per month	Me. Rev. Stat. tit. 34-A, § 9887.
MD	Yes	Monthly	\$50 per month	Md. Code Ann., Crim. Proc. § 6-226(b).
MA	Yes	Monthly	\$60 per month for regular probation; \$45 per month for administrative probation	Mass. Gen. Laws Ann. ch. 276, § 87A.
MI	Yes	Monthly	\$30 per month (for up to 60 months) without electronic monitoring; \$60 per month (for up to 60 months) with electronic monitoring	Mich. Comp. Laws Ann. § 771.3c; Mich. Comp. Laws Ann. § 791.225a(3).
MN	Yes	One Time	Not specified in code, but provided by DOC policy [‡]	Minn. Stat. § 241.272 subd. 1(b)(3); Minn. Stat. § 244.18 subd. 1(b)(3).
MS	Yes	Monthly	\$55 per month	Miss. Code Ann. § 47-7-49(1).
MO	Yes	Monthly	Between \$10 per month and \$50 per month, depending on the entity imposing probation	Mo. Ann. Stat. § 549.525(1); Mo. Ann. Stat. § 559.604; Mo. Ann. Stat. § 559.607.
MT	Yes	Other	Not less than \$120 per year and not more than \$360 per year, prorated at not less than \$10 per month	Mont. Code Ann. § 46-23-1031(1)(a)(i).
NE	Yes	Monthly	\$25 per month	Neb. Rev. Stat. Ann. § 29-2262.06(3)(b).
NV	Yes	Monthly	At least \$30 per month	Nev. Rev. Stat. Ann. § 213.1076(1).
NH	Yes	Monthly	Not less than \$40 per month	N.H. Rev. Stat. Ann. § 504-A:13(I).
NJ	Yes	Monthly	Not more than \$25 per month	N.J. Stat. Ann. § 2C:45-1(d)(1).
NM	Yes	Other	Not more than \$1800 per year, prorated between \$25 and \$150 per month	N.M. Stat. Ann. § 31-20-6.
NY	Yes	Monthly	\$30 per month fee for people on probation for conviction of crime under the vehicle and traffic code	N.Y. Exec. Law § 257-c(1).
NC	Yes	Monthly	\$40 per month	N.C. Gen. Stat. Ann. § 15A-1343(c1).
ND	Yes	Monthly	Not less than \$55 per month	N.D. Cent. Code Ann. § 12.1-32-07(2).
OH	Yes	Monthly	Not more than \$50 per month	Ohio Rev. Code Ann. § 2951.021(A)(1)–(2).
OK	Yes	Monthly	\$40 per month	Okla. Stat. Ann. tit. 22, § 991c(A)(7); Okla. Stat. Ann. tit. 22, § 991d(A)(1).
OR	Yes	Monthly	At least \$25 per month	Or. Rev. Stat. Ann. § 423.570(3).
PA	Yes	Monthly	At least \$25 per month	18 Pa. Stat. Ann. § 11.1102(c).

[‡] See Minn. Dep't of Corr., *Report on Supervision Fees 2* (Jan. 16, 2018), https://mn.gov/doc/assets/Supervision%20Fees%20Report_tcm1089-323768.pdf. There is a one-time fee of \$300 for each felony, \$200 for each gross misdemeanor, and \$100 for each misdemeanor. *Id.*

APPENDIX B: SUPERVISION FEES CHARGED

RI	Yes	Not Specified in Code	Not specified in code, but provided by DOC policy [§]	13 R.I. Gen. Laws Ann. § 13-8-32(c).
SC	Yes	Other	\$20–\$100 per month for regular supervision; \$10–\$30 per week for intensive supervision	S.C. Code Ann. § 24-21-80.
SD	Not Specified in Code	N/A	N/A	N/A
TN	Yes	Monthly	\$15 per month	Tenn. Code Ann. § 40-28-201(a)(1).
TX	Yes	Monthly	Not less than \$25 per month or more than \$60 per month	Tex. Code Crim. Proc. Ann. art. 42A.652(a).
UT	Yes	Monthly	\$30 per month	Utah Code Ann. § 64-13-21(6)(a).
VT	Yes	Monthly	Not more than \$30 per month	Vt. Stat. Ann. tit. 28, § 102(c)(14).
VA	Yes	Not Specified in Code	Not Specified in Code	Va. Code Ann. § 9.1-182(D).
WA	Yes	Other	Not more than \$100 per month for county-level probation; one-time fee between \$400 and \$600 for state-level probation	Wash. Rev. Code Ann. § 9.94A.780(2); Wash. Rev. Code Ann. § 9.95.214.
WV	Yes	Monthly	Not more than \$20 per month	W. Va. Code Ann. § 62-12-9(a)(5).
WI	Yes	Not Specified in Code	Not specified in code, but provided by DOC policy [¶]	Wis. Stat. Ann. § 304.074(2).
WY	Yes	Not Specified in Code	Not specified in code	Wyo. Stat. Ann. § 7-13-1102(b)(iii).

[§] See Rhode Island Dep't of Corr., *Probation and Parole FAQ*, <http://www.doc.ri.gov/probation/faq.php> (last visited Apr. 2, 2020). Everyone on probation is charged a \$20 monthly supervision fee. *Id.*

[¶] See Wisconsin Dep't of Corr., *Financial Obligations and Supervision Fees* § 3, <https://doc.helpdocsonline.com/financial-obligations> (last visited Apr. 2, 2020). Everyone on probation is charged a monthly supervision fee between \$20 and \$60, depending on their income. *Id.*

APPENDIX C: GRADUATED SANCTIONS FOR NONPAYMENT OR OTHER PROBATION VIOLATIONS

Does the state allow probation departments to impose graduated sanctions for violations, and if so, are there any statutory limits on the types or severity of sanctions they can impose?

State	Are graduated sanctions available by statute?	Any statutory limitations?	Statute(s)
AL	Yes	Yes – graduated sanctions must first go through administrative review and be approved by the probation officer’s supervisor. There are also limits on the length and frequency of any period of confinement imposed by a probation officer.	Ala. Code § 15-22-52(10); Ala. Code § 15-22-54(f).
AK	Yes	Yes – graduated sanctions procedures must include notice of the negative behavior, an opportunity to dispute the accusation and the sanction, and an opportunity to request a review of the accusation and the sanction. Enhanced sanctions must be approved by the commissioner or the commissioner’s designee.	Alaska Stat. Ann. § 33.05.020(g).
AZ	Not Specified in Code	N/A	N/A
AR	Yes	Yes – the person on probation may opt out of graduated sanctions and elect to have a probation sanction heard in circuit court instead. There are also limits on the length and frequency of any period of confinement imposed by the probation officer.	Ark. Code Ann. § 16-93-306(d), (h).
CA	Yes	Yes – a probation officer may impose flash incarceration if the person on probation waives the right to a hearing. There are limits on the length and frequency of any period of “flash incarceration” imposed by a probation officer. Periods of flash incarceration must be approved by a probation department supervisor.	Cal. Penal Code § 1203.35(a).
CO	Not Specified in Code	N/A	N/A
CT	Not Specified in Code	N/A	N/A
DE	Yes	Yes – there are limits on the length and frequency of periods of home confinement and “Accountability Level IV” sanctions imposed by a probation officer.	Del. Code Ann. tit. 11, § 4334(d).
FL	Yes	Yes – alternative sanctions must be submitted to the court by the probation officer for approval before imposition. There are also limits on the length of certain sanctions such as jail, curfew, electronic monitoring, house arrest, and residential treatment. Participation in the alternative sanctioning program is voluntary, and does not convert a withheld adjudication to an adjudication of guilt. Recommended sanctions under this program must be approved by the court.	Fla. Stat. Ann. § 948.06(9).
GA	Yes	Yes – imposition of graduated sanctions requires approval of the chief probation officer. The person on probation may appeal the sanction the sentencing court.	Ga. Code Ann. § 42-8-23(c).
HI	Not Specified in Code	N/A	N/A

APPENDIX C: GRADUATED SANCTIONS FOR NONPAYMENT OR OTHER PROBATION VIOLATIONS

ID	Yes	Yes – there are limits on the length of confinement imposed by a probation officer.	Id. Code Ann. § 20-219(7)(b).
IL	Yes	Yes – the person on probation must have notice of the violation and an opportunity to accept or reject the intermediate sanctions that the probation officer plans to impose.	730 Ill. Comp. Stat. Ann. 5/5-6-4(i); 730 Ill. Comp. Stat. Ann. 5/5-6-1.
IN	Not Specified in Code	N/A	N/A
IO	Yes	Not Specified in Code.	Iowa Code Ann. § 901B.1.
KS	Yes	Yes – the person on probation must waive their right to a hearing before graduated sanctions are imposed. There are limits on the length and frequency of any period of confinement imposed by the probation officer.	Kan. Stat. Ann. § 22-3716(b)(4).
KY	Yes	Yes – incarceration for more than 10 consecutive days or 60 days in one year is not permitted without prior court approval.	Ky. Rev. Stat. Ann. § 439.551; Ky. Rev. Stat. Ann. § 439.3107; Ky. Rev. Stat. Ann. § 439.3108(6), <i>amended by 2020 Ky. Laws Ch. 44 (H.B. 284)</i> .
LA	Yes	Yes – the person on probation must have notice of their right to a hearing and right to counsel, waive the hearing, admit or fail to contest the violation, and consent to the administrative sanction.	La. Code Crim. Proc. Ann. art. 899.2.
ME	Yes	Yes – the person on probation must agree to the sanction in writing. There are limits on the length of confinement.	Me. Rev. Stat. tit. 17-A, § 1814.
MD	Yes	Yes – the Department of Corrections must establish policies and programs to “ensure that due process protections are in place” for people to challenge graduated sanctions imposed. Graduated sanctions may not include incarceration or involuntary detention.	Md. Code Ann., Corr. Servs. § 6-121.
MA	Yes	Not Specified in Code.	Mass. Gen. Laws Ann. ch. 211E, § 3(a)(3).
MI	Yes	Yes – there are limits on the length of confinement imposed by a probation officer.	Mich. Comp. Laws Ann. § 769.31(b); Mich. Comp. Laws Ann. § 769.34(4).
MN	Yes	Not Specified in Code.	Minn. Stat. Ann. § 609.135, subd. 1(a)–(b).
MS	Yes	Yes – there are limits on the length and frequency of any period of confinement imposed by a probation officer.	Miss. Code. Ann. § 47-7-38.
MO	Yes	Yes – The person on probation is entitled to a written report of their violations and notice of their right to a hearing. There are limits on the length and frequency of any period of confinement imposed by a probation officer.	Mo. Ann. Stat. § 217.718(1)–(2).
MT	Yes	Yes – before a sanction may be imposed, a violation by a preponderance of the evidence must be established in an informal probation violation intervention hearing before a hearing officer designated by the probation department. The hearing officer must notify the person on probation of their right to have the matter referred by petition for revocation instead.	Mont. Code Ann. § 46-23-1015; Mont. Code Ann. § 46-23-1028.

APPENDIX C: GRADUATED SANCTIONS FOR NONPAYMENT OR OTHER PROBATION VIOLATIONS

NE	Yes	Yes – administrative sanctions must be approved by the chief probation officer. The person on probation must acknowledge the violation in writing and agree to the sanction.	Neb. Rev. Stat. Ann. § 29-2266.01(1)–(2); Neb. Rev. Stat. Ann. § 29-2266.02(3).
NV	Yes	Yes – the person on probation is entitled to notice of the violation and any sanction that will be imposed.	Nev. Rev. Stat. Ann. § 176A.510 (<i>eff.</i> July 1, 2020), <i>added by</i> 2019 Nev. Laws Ch. 633 (A.B. 236).
NH	Yes	Yes – the person on probation must be advised of and waive their right to counsel and to a preliminary hearing and a violation hearing before they are jailed by a probation officer. The person must also have notice of the violation and the number of days in jail. There are limits on the length of confinement.	N.H. Rev. Stat. Ann. § 504-A:4(III).
NJ	Not Specified in Code	N/A	N/A
NM	Not Specified in Code	N/A	N/A
NY	Not Specified in Code	N/A	N/A
NC	Yes	Yes – before confinement, the person on probation must receive a report of the violations alleged and notice of the right to a hearing and to present evidence, to counsel, to request witnesses, and to examine witnesses and evidence. There are limits on the length and frequency of any period of confinement imposed by probation officer. The person on probation may file a motion with the court to review the action taken by the probation officer unless they signed a written waiver of that right.	N.C. Gen. Stat. Ann. § 15A-1343.2(e), (f).
ND	Not Specified in Code	N/A	N/A
OH	Yes	Not Specified in Code.	Ohio Rev. Code Ann. § 2301.30(D)(2).
OK	Yes	Yes – the Department of Corrections must hold a hearing before sanctions are imposed unless the person on probation waives their right to a hearing. The Department must provide written notice of the violation, the evidence relied upon, and the reason the sanction was imposed. The hearing officer must determine by a preponderance of the evidence whether the violation occurred. The person on probation can appeal the decision to the district court.	Okla. Stat. Ann. tit. 22, § 991b(D).
OR	Yes	Yes – the person on probation must first waive in writing the right to a violation hearing after being advised of the right to one, admit or not contest the violations alleged in a report, and consent to the sanctions. There are limits on the length and frequency of any period of confinement imposed by probation officer.	Or. Rev. Stat. Ann. § 137.595.
PA	Not Specified in Code	N/A	N/A

APPENDIX C: GRADUATED SANCTIONS FOR NONPAYMENT OR OTHER PROBATION VIOLATIONS

RI	Not Specified in Code	N/A	N/A
SC	Yes	Yes – the person on probation must agree to administrative sanctions in writing.	S.C. Code Ann. § 24-21-110.
SD	Yes	Yes – the person on probation may seek review of any moderate or serious sanction imposed by a chief court services officer.	S.D. Codified Laws § 16-22-13; S.D. Codified Laws § 23A-48-4; S.D. Codified Laws § 23A-48-7; S.D. Codified Laws § 23A-48 App. A.
TN	Yes	Yes – the person on probation is entitled to notice of the violation and the sanction to be imposed, and an opportunity to reject the sanction. If the person rejects the sanction, they are entitled to administrative review.	Tenn. Code Ann. § 40-28-303; Tenn. Code Ann. § 40-28-305(a).
TX	Not Specified in Code	N/A	N/A
UT	Yes	Yes – there are limits on the length and frequency of any period of incarceration imposed by a probation officer. The Department of Corrections must request approval from the court or Board of Pardons and Parole to impose incarceration.	Utah Code Ann. § 64-13-21.
VT	Yes	Yes – “no probationer shall be incarcerated except pursuant to the provisions of subchapter 3 of this chapter [concerning probation revocation].”	Vt. Stat. Ann. tit. 28, § 256.
VA	Not Specified in Code	N/A	N/A
WA	Not Specified in Code	N/A	N/A
WV	Not Specified in Code	N/A	N/A
WI	Yes	Yes – confinement may be imposed if the person on probation signs a statement admitting to the violation. There are limits on the length of the confinement imposed by a probation officer.	Wis. Stat. Ann. § 973.10(2s).
WY	Yes	Yes – an administrative hearing is required before a sanction is imposed, and violations must be established by a preponderance of the evidence. There are limits on the length of any period of confinement imposed by a probation officer.	Wyo. Stat. Ann. § 7-13-1801; Wyo. Stat. Ann. § 7-13-1802; Wyo. Stat. Ann. § 7-13-1803.

APPENDIX D: PROBATION EXTENSIONS

Does the state allow for extensions of probation by statute, and if so, is there any limit to how long probation can be extended?

State	Can the length of probation be extended by statute?	If yes, any cap on extensions or on the length of probation in general?	Statute(s)
AL	Yes – allowed for any reason	Yes – probation plus any extensions may not exceed 2 years for misdemeanors and 5 years for felonies.	Ala. Code § 15-22-54(a).
AK	Yes – allowed for any reason	Yes – probation plus any extensions may not exceed 25 years for sex offenses and 10 years for any other offense.	Alaska Stat. Ann. § 12.55.090(b)–(c); Alaska Stat. Ann. § 33.05.050.
AZ	Yes – allowed explicitly for nonpayment of restitution	Yes – for unpaid restitution, a court may extend probation for up to 2 years for misdemeanors and up to 5 years for felonies.	Ariz. Rev. Stat. Ann. § 13-902(C).
AR	Yes – allowed explicitly for nonpayment of restitution	Yes, in general – the period of probation may not exceed the maximum period of incarceration for the offense.	Ark. Code Ann. § 5-4-306; Ark. Code Ann. § 16-93-309(a)(2); Ark. Code Ann. § 16-93-311(2)(A).
CA	Yes – allowed for any reason	Yes, in general – the period of probation may not exceed the maximum period of incarceration for the offense.”	Cal. Penal Code § 1203.1(a); Cal. Penal Code § 1203.3(a), (b)(3).
CO	Yes – allowed explicitly for nonpayment of restitution	Yes, in general – the court has discretion to extend probation beyond the maximum period of incarceration, except that probation cannot exceed 5 years for misdemeanors or petty offenses.	Colo. Rev. Stat. Ann. § 16-18.5-105(3)(d)(III); Colo. Rev. Stat. Ann. § 18-1.3-202(1)(a).
CT	Yes – allowed for violation of probation conditions	Yes, in general – probation term can be 3 to 5 years for felonies, or six months to 2 years for misdemeanors; certain enumerated offenses have higher minimums.	Conn. Gen. Stat. Ann. § 53a-32(d); Conn. Gen. Stat. Ann. § 53a-29(d)(f), <i>amended by</i> 2019 Conn. Legis. Serv. P.A. 19-189 (H.B. 7396).
DE	Not Specified in Code	N/A	N/A
FL	Not Specified in Code ^{††}	N/A	N/A
GA	Yes – allowed explicitly for nonpayment of restitution	Yes, in general – probation may not exceed the maximum period of incarceration for the offense.	Ga. Code Ann. § 17-10-1(a)(2)(A)(i); Ga. Code Ann. § 42-8-34(c).

** The relevant statutes say that the court has the authority to “modify” probation; we infer that this includes the power to extend probation because the statute goes on to say, “In all probation cases, if the court has not seen fit to revoke the order of probation and impose sentence or pronounce judgment, the defendant shall at the end of the term of probation or any extension thereof, be discharged by the court subject to the provisions of these sections.” Cal. Penal Code § 1203.3(a), (b)(3) (emphasis added).

†† The court has the authority to “modify” probation, but it is unclear whether this includes the power to extend the length of probation. See Fla. Stat. Ann. § 948.06(e).

APPENDIX D: PROBATION EXTENSIONS

HI	Not Specified in Code ^{‡‡}	N/A	N/A
ID	Yes – allowed for any reason	Yes – probation plus any extensions may not exceed the maximum period of incarceration.	Idaho Code Ann. § 20-222(1).
IL	Yes – allowed explicitly for nonpayment of restitution	Yes, in general – probation may not exceed 2 years.	730 Ill. Comp. Stat. Ann. 5/5-6-2(e); 730 Ill. Comp. Stat. Ann. 5/5-6-3.1(b).
IN	Yes – allowed for violation of probation conditions	Yes – probation may be extended for 1 additional year.	Ind. Code Ann. § 35-38-2-3(h)(2).
IO	Yes – allowed explicitly for nonpayment of restitution	Yes – probation may be extended for up to 1 year including 1 year beyond the maximum period of incarceration.	Iowa Code Ann. § 907.7(1); Iowa Code Ann. § 908.11(4); Iowa Code Ann. § 910.4(1)(b).
KS	Yes – allowed for any reason	Yes – misdemeanor probation can be extended for additional fixed periods of 2 years; the maximum for felony probation extensions is the longer of 5 years or the maximum period of incarceration, inclusive of the original supervision term.	Kan. Stat. Ann. § 21-6608(a), (c) (8).
KY	Yes – allowed explicitly for nonpayment of restitution	Yes – probation plus any extension cannot exceed 5 years for felonies and two years for misdemeanors, or the time necessary to complete restitution, whichever is longer.	Ky. Rev. Stat. Ann. § 533.020(4).
LA	Yes – allowed for violation of probation conditions ^{§§}	Yes – probation plus any extension cannot exceed the statutory maximum probation lengths, which is generally 2 years, but up to 8 years if probation requires the completion of certain programs.	La. Code Crim. Proc. Ann. art. 893(H)(5); La. Code Crim. Proc. Ann. art. 894(1)–(2), (6)–(7); La. Code Crim. Proc. Ann. art. 900(A) (7).
ME	Not Specified in Code ^{¶¶}	N/A	N/A
MD	Yes – allowed explicitly for nonpayment of restitution	Yes – extension for failure to pay restitution is permitted for up to 5 years in circuit court or 3 years in district court, unless the person on probation consents in writing to a longer extension.	Md. Code Ann., Crim. Proc. § 6-222(b)–(c).
MA	Yes – allowed explicitly for nonpayment of court debt	Not Specified in Code.	Mass. Gen. Laws Ann. ch. 279, § 1; Mass. Gen. Laws Ann. ch. 279, § 1A.

‡‡ The court has the authority to “modify” probation, but it is unclear whether this includes the power to extend the length of probation. See Haw. Rev. Stat. Ann. § 706-625(4).

§§ When the person on probation is required to complete certain programs, “[t]he court may not extend the duration of the probation period solely due to unpaid fees and fines.” La. Code Crim. Proc. Ann. art. 893(G) (emphasis added).

¶¶ The court has the authority to “modify” probation, but unclear whether this includes the power to extend the length of probation. See Me. Rev. Stat. tit. 17-A, § 1804(7).

APPENDIX D: PROBATION EXTENSIONS

MI	Yes – allowed for any reason	Yes – extensions are permitted so long as the maximum probation period is not exceeded (2 years for misdemeanors and 5 years for felonies).	Mich. Comp. Laws Ann. § 771.5(1); Mich. Comp. Laws Ann. § 771.2(1).
MN	Yes – allowed explicitly for nonpayment of restitution	Yes – extensions are possible for nonpayment of restitution for up to 1 additional year, after a hearing, and 1 year after that, after a second hearing.	Minn. Stat. Ann. § 609.135, subd. 2(g).
MS	Yes – allowed for any reason	Yes – probation plus any extensions cannot exceed 5 years, but may be longer for offenses involving desertion and/or failure to support minor children.	Miss. Code. Ann. § 47-7-37(1).
MO	Yes – allowed explicitly for nonpayment of restitution	Yes – for nonpayment of restitution, probation may be extended up to the statutory maximum probation period for the offense; for other reasons, the court may extend probation once, but the court may extend probation by 1 additional year if the person violated a probation condition, and probation plus any extensions cannot exceed the statutory maximum probation period for the offense plus 1 year.	Mo. Ann. Stat. § 559.016(3); Mo. Ann. Stat. § 559.036(2); Mo. Ann. Stat. § 559.105(2).
MT	Not Specified in Code***	N/A	N/A
NE	Yes – allowed for violation of probation conditions	Yes in general – probation cannot exceed 2 to 5 years, depending on the violation.	Neb. Rev. Stat. Ann. § 29-2263(1); Neb. Rev. Stat. Ann. § 29-2268(3) (e).
NV	Yes – allowed for any reason	Yes – probation plus any extensions cannot exceed 12 months to 60 months, depending on the offense; probation may be extended up to 12 months beyond the statutory maximum to complete a specialty program.	Nev. Rev. Stat. Ann. § 176A.500(1)–(2) (<i>eff.</i> July, 1, 2020), <i>amended by</i> 2019 Nev. Laws Ch. 633 (A.B. 236).
NH	Yes – allowed for any reason	Yes – probation plus any extensions cannot exceed 5 years for a felony and 2 years for a class A misdemeanor.	N.H. Rev. Stat. Ann. § 651:2(V)(a), (VII)(a)(3).
NJ	Yes – allowed explicitly for nonpayment of court debt	Yes – probation plus any extensions cannot exceed 5 years.	N.J. Stat. Ann. § 2C:45-2(a), (c).
NM	Yes – allowed explicitly for nonpayment of restitution	Yes – probation plus any extensions cannot exceed 5 years for cases in district court or the maximum incarceration sentence for cases in magistrate or metropolitan courts.	N.M. Stat. Ann. § 31-17-1(H); N.M. Stat. Ann. § 31-20-5(A).

*** The code does state that a “hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified unless . . . the relief to be granted is favorable to the offender and the prosecutor. . . . An extension of the term of probation is not favorable to the offender for the purposes of this subsection. . . .” Mont. Code Ann. § 46-18-203(5)(b) (emphasis added).

APPENDIX D: PROBATION EXTENSIONS

NY	Yes – allowed for violation of probation conditions	Yes – some probation terms are fixed by law and may not be extended; where the law permits a range of probation length, a person’s term may be extended to the maximum of that range.	N.Y. Penal Law § 65.00(4); N.Y. Crim. Proc. Law § 410.70(1), (5).
NC	Yes – allowed explicitly for nonpayment of restitution	Yes – probation may be extended to complete a program of restitution for no more than 3 years longer than original probationary period; for other reasons, probation may be extended up to the statutory maximum of 5 years.	N.C. Gen. Stat. Ann. § 15A-1342(a); N.C. Gen. Stat. Ann. § 15A-1344(d).
ND	Yes – allowed for any reason	Yes – probation plus any extensions for violations cannot exceed 10 years for serious felonies, 5 years for all other felonies, and 3 years for misdemeanors.	N.D. Cent. Code Ann. § 12.1-32-06.1(6).
OH	Yes – allowed for violation of probation conditions	Yes – probation plus any extensions cannot exceed 5 years.	Ohio Rev. Code Ann. § 2929.25(A)(2), (A)(3)(a), (D)(2)(a).
OK	Yes – allowed explicitly for nonpayment of court debt	Yes – probation may be extended for up to 3 years for nonpayment of restitution; for other reasons, probation may be extended up to the statutory maximum probation period.	Okla. Stat. Ann. tit. 22, § 991c(B); Okla. Stat. Ann. tit. 22, § 991a(E).
OR	Yes – allowed for any reason	Yes – in general, a term of probation may not exceed 5 years, but for felonies, probation plus any extension may not exceed 6 years.	Or. Rev. Stat. Ann. § 137.010(4); Or. Rev. Stat. Ann. § 137.545(1)(a).
PA	Not Specified in Code	N/A	N/A
RI	Yes – allowed for any reason	Yes – probation plus any extensions cannot exceed 1 year unless the maximum incarceration sentence for the offense is longer than 1 year; then the maximum period of probation must match the maximum possible sentence.	12 R.I. Gen. Laws Ann. § 12-19-13.
SC	Yes – allowed for any reason	Yes – probation plus any extensions may not exceed 5 years.	S.C. Code Ann. § 24-21-440.
SD	Yes – allowed for any reason	Not Specified in Code.	S.D. Codified Laws § 23A-27-20.1.
TN	Yes – allowed for any reason	Yes – the court has the authority extend probation for any period not in excess of 2 years.	Tenn. Code Ann. § 40-35-308(c).
TX	Yes – allowed explicitly for nonpayment of court debt	Yes – the maximum term of probation is 3 years for misdemeanors, but it can be extended for an additional 2 years for nonpayment of court debt; the maximum term of probation for felonies is 10 years.	Tex. Code Crim. Proc. Ann. art. 42A.753(a), (b)(1).
UT	Yes – allowed for violation of probation conditions	Yes in general – probation cannot exceed the maximum possible incarceration sentence for the offense.	Utah Code Ann. § 77-18-1(10)(a)(i)(A), (12)(a)(i)–(ii).
VT	Yes – allowed for violation of probation conditions	Yes – probation can be extended up to one year to give the person on probation more time to complete “programming consistent with special conditions of probation.”	Vt. Stat. Ann. tit. 28, § 205(a)(5).

APPENDIX D: PROBATION EXTENSIONS

VA	Yes – allowed for any reason	Not Specified in Code.	Va. Code Ann. § 19.2-304.
WA	Not Specified in Code ^{†††}	N/A	N/A
WV	Yes – allowed for any reason	Yes – probation plus any extensions may not exceed 7 years.	W. Va. Code Ann. § 62-12-11.
WI	Yes – allowed explicitly for nonpayment of court debt	Yes in general – the term of probation may not exceed the statutory maximum (for misdemeanors, generally 6 months to 2 years; for felonies, generally 1 year to 3 years or the maximum incarceration term, whichever is greater).	Wis. Stat. Ann. § 973.09(2), (2m), (3).
WY	Yes – allowed explicitly for nonpayment of restitution	Yes – probation plus any extensions may not exceed the maximum incarceration sentence unless the court establishes good cause; for nonpayment of restitution, probation may generally be extended for up to 10 years.	Wyo. Stat. Ann. § 7-9-109; Wyo. Stat. Ann. § 7-13-302(b); Wyo. Stat. Ann. § 7-13-305(a).

^{†††} The court has the authority to “modify” or “change” a probation sentence, but it is unclear whether this includes the power to extend the length of probation. *See* Wash. Rev. Code Ann. § 9.95.230.

APPENDIX E: REVOCATION FOR NONPAYMENT OF FINANCIAL SANCTIONS

Is nonpayment of financial sanctions specifically grounds for probation violations, revocation of probation, or incarceration of people on probation by statute? If so, is inability to pay considered, and by what standard?

State	Statutory carve-out for nonpayment?	Details	Statute(s)
AL	Yes	<p>“When a defendant whose sentence has been suspended and placed on probation by the court, and ordered to make restitution, defaults in the payment thereof or of any installment, the court on motion of the victim or the district attorney or upon its own motion shall require the defendant to show cause why his default should not be treated as violation of a condition of his probation.”</p> <p>“In the event of over two months’ arrearage or delinquency in making a contribution [toward supervision fees], the arrearage or delinquency shall constitute sufficient ground for revocation of the . . . probation of the person in arrears.”</p>	Ala. Code § 15-18-72(a); Ala. Code § 15-22-2(a)(2).
AK	Yes	<p>“If the defendant defaults in the payment of a fine or any installment or of restitution or any installment, the court may order the defendant to show cause why the defendant should not be sentenced to imprisonment for nonpayment and, if the payment was made a condition of the defendant’s probation, may revoke the probation of the defendant. In a probation revocation proceeding brought as a result of failure to pay a fine or restitution, it is an affirmative defense that the defendant was unable to pay despite having made continuing good faith efforts to pay the fine or restitution. If the court finds that the defendant was unable to pay despite having made continuing good faith efforts, the defendant may not be imprisoned solely because of the inability to pay. If the court does not find that the default was attributable to the defendant’s inability to pay despite having made continuing good faith efforts to pay the fine or restitution, the court may order the defendant imprisoned until the order of the court is satisfied.”</p>	Alaska Stat. Ann. § 12.55.051(a).
AZ	Yes	<p>“If the court finds that the defendant has willfully failed to pay a fine, a surcharge, a fee, an assessment, restitution or incarceration costs or finds that the defendant has intentionally refused to make a good faith effort to obtain the monies required for the payment, the court shall find that the default constitutes contempt and may. . . [o]rder the defendant incarcerated . . . [or] refer the defendant for revocation of probation. . . . If the court finds that the default is not willful and that the defendant cannot pay despite sufficient good faith efforts to obtain the monies, the court may take any lawful action including . . . Modify the manner in which the restitution, fine, surcharge, fee, assessment or incarceration costs are to be paid.”</p> <p>“If the court finds that a defendant has wilfully failed to pay a fine, a surcharge, a fee, an assessment, restitution or incarceration costs or finds that a defendant has intentionally refused to make a good faith effort to obtain the monies required for the payment, the court may revoke the defendant’s probation and sentence the defendant to prison pursuant to law.”</p>	Ariz. Rev. Stat. Ann. § 13-810(E)–(F); Ariz. Rev. Stat. Ann. § 13-915.

APPENDIX E: REVOCATION FOR NONPAYMENT OF FINANCIAL SANCTIONS

AR	Yes	<p>“(1)When an offender on probation defaults in the payment of supervision fees or any installment thereof, the court may require the offender to show cause why he or she would not be imprisoned for nonpayment.</p> <p>(2) The offender shall not be imprisoned if the offender is financially unable to make the payments and states so to the court in writing, under oath, and the court so finds.</p> <p>(3) Unless the offender shows that his or her default was not attributable to a purposeful refusal to obey the sentence of the court or to a failure on his or her part to make a good faith effort to obtain the funds required for payment, the court may order the defendant imprisoned until the payments are made.</p> <p>(4) If the court determines that the default in payment is not attributable to the causes specified in subdivision (b)(3) of this section, the court may enter an order allowing the offender additional time for payment, reducing the amount of each installment, or revoking the fees or the unpaid portion thereof in whole or in part.”</p>	Ark. Code Ann. § 16-93-104(b).
CA	Yes	<p>“Supervision shall not be revoked solely for failure of a person to make restitution, or to pay fines, fees, or assessments, imposed as a condition of supervision unless the court determines that the defendant has willfully failed to pay and has the ability to pay. Restitution shall be consistent with a person’s ability to pay.”</p>	Cal. Penal Code § 1203.2(a), <i>amended by</i> 2019 Cal. Legis. Serv. Ch. 111 (A.B. 1421).
CO	Yes	<p>“Whenever a defendant fails to make a payment of restitution within seven days after the date that the payment is due pursuant to a payment schedule established pursuant to this article, in addition to any other remedy, the collections investigator may . . . Request that the court issue a notice to show cause requiring the defendant to appear before the court and show cause why the required payment or payments were not made. Upon a finding of the defendant’s failure to pay, unless the defendant establishes that he or she was unable to make the payments, the court may . . . revoke probation and impose any other sentence permitted by law.”</p> <p>“Failure to pay a fine imposed pursuant to this subparagraph (III) is grounds for revocation of probation or revocation of a sentence to community corrections, assuming the defendant’s ability to pay.”</p>	Colo. Rev. Stat. Ann. § 16-18.5-105(3)(d)(I); Colo. Rev. Stat. Ann. § 18-1.3-401(1)(a)(III) (B).
CT	Not Specified in Code	N/A	N/A
DE	Yes	<p>“The Bureau Chief of Community Corrections shall develop policies and procedures with regard to determining an offender’s ability to pay the [supervision] fee. Such policies and procedures shall be applied on a consistent basis to all offenders, and shall be subject to approval by the Commissioner of Correction. In the event the Department determines an offender is unable to pay the fee due to lack of employment or other significant extenuating circumstances, such as an offender’s responsibility to remit payment for victim compensation, restitution or child support, said inability shall not constitute a violation of supervision. The offender shall remain liable to pay the fee at such time as the Department determines offender is able to do so.”</p>	Del. Code Ann. tit. 11, § 6504(14).

APPENDIX E: REVOCATION FOR NONPAYMENT OF FINANCIAL SANCTIONS

FL	Yes	<p>“The court may revoke probation . . . if the defendant fails to comply with such order [to pay restitution].”</p> <p>“In any hearing in which the failure of a probationer or offender in community control to pay restitution or the cost of supervision . . . is established by the state, if the probationer or offender asserts his or her inability to pay restitution or the cost of supervision, it is incumbent upon the probationer or offender to prove by clear and convincing evidence that he or she does not have the present resources available to pay restitution or the cost of supervision despite sufficient bona fide efforts legally to acquire the resources to do so. If the probationer or offender cannot pay restitution or the cost of supervision despite sufficient bona fide efforts, the court shall consider alternate measures of punishment other than imprisonment. Only if alternate measures are not adequate to meet the state’s interests in punishment and deterrence may the court imprison a probationer or offender in community control who has demonstrated sufficient bona fide efforts to pay restitution or the cost of supervision.”</p> <p>“Any failure to pay contribution as required under this section may constitute a ground for the revocation of supervision by the court or by the Florida Commission on Offender Review, the revocation of control release by the Control Release Authority, or the removal from the pretrial intervention program by the state attorney. The Department of Corrections may exempt a person from the payment of all or any part of the contribution if it finds any of the following factors:</p> <ul style="list-style-type: none"> (a) The offender has diligently attempted, but has been unable, to obtain or maintain employment that provides him or her sufficient income to make such payments. (b) The offender is a student in a school, college, university, or course of career training designed to fit the student for gainful employment. Certification of such student status shall be supplied to the offender’s probation officer by the educational institution in which the offender is enrolled. (c) The offender has an employment handicap, as determined by a physical, psychological, or psychiatric examination. (d) The offender’s age prevents him or her from obtaining employment. (e) The offender is responsible for the support of dependents, and the payment of such contribution constitutes an undue hardship on the offender. (f) The offender has been transferred outside the state under an interstate compact.” 	<p>Fla. Stat. Ann. § 775.089(4); Fla. Stat. Ann. § 948.06(5); Fla. Stat. Ann. § 948.09(3).</p>
----	-----	---	--

APPENDIX E: REVOCATION FOR NONPAYMENT OF FINANCIAL SANCTIONS

GA	Yes	<p>“When the sole basis for a probation revocation is for failure to pay fines, statutory surcharges, or probation supervision fees, the probationer shall be scheduled to appear on the court’s next available court calendar for a hearing on such issue. No prehearing arrest warrant shall be issued under such circumstances. Absent a waiver, the court shall not revoke a probationary sentence for failure to pay fines, statutory surcharges, or probation supervision fees without holding a hearing, inquiring into the reasons for the probationer’s failure to pay, and, if a probationary sentence is revoked, making an express written determination that the probationer has not made sufficient bona fide efforts to pay and the probationer’s failure to pay was willful or that adequate alternative types of punishment do not exist. Should the probationer fail to appear at such hearing, the court may, in its discretion, revoke the probated sentence. . . . A person otherwise found eligible to have his or her probation modified or terminated pursuant to paragraph (1) of this subsection shall not be deemed ineligible for modification or termination of probation solely due to his or her failure to pay fines, statutory surcharges, or probation supervision fees. . . . At any revocation hearing, upon proof that the probationer has violated probation . . . [f]or failure to report to probation or failure to pay fines, statutory surcharges, or probation supervision fees, the court shall consider the use of alternatives to confinement, including community service, modification of the terms of probation, or any other alternative deemed appropriate by the court. The court shall consider whether a failure to pay court imposed financial obligations was willful. In the event an alternative is not warranted, the court shall revoke the balance of probation or a period not to exceed 120 days in confinement, whichever is less.”</p>	Ga. Code Ann. § 42-8-102(f)(2), (f)(4)(A).
HI	Yes	<p>“When a defendant . . . is ordered to pay a fee, fine, or restitution . . . as a condition of probation or deferred plea, and the defendant defaults in the payment thereof or of any installment, the court, upon the motion of the prosecuting attorney or upon its own motion, may require the defendant to show cause why the defendant’s default should not be treated as contumacious and may issue a summons or a warrant of arrest for the defendant’s appearance. Unless the defendant shows that the defendant’s default was not attributable to an intentional refusal to obey the order of the court, or to a failure on the defendant’s part to make a good faith effort to obtain the funds required for the payment, the court shall find that the defendant’s default was contumacious and may order the defendant committed until the fee, fine, restitution, or a specified part thereof is paid.”</p>	Haw. Rev. Stat. Ann. § 706-644(1).

APPENDIX E: REVOCATION FOR NONPAYMENT OF FINANCIAL SANCTIONS

ID	Yes	<p>“Any failure [to pay a supervision fee] shall constitute grounds for the revocation of probation by the court. . . . The division of probation and parole in the department of correction may exempt a person from the payment of all or any part of the foregoing contribution if it finds any of the following factors to exist:</p> <p>(1) The offender has diligently attempted but been unable to obtain employment.</p> <p>(2) The offender has a disability affecting employment, as determined by a physical, psychological or psychiatric examination acceptable to the division of probation and parole.” For misdemeanor probation, “[a]ny failure to pay [a supervision] fee shall constitute grounds for the revocation of probation by the court, but this shall not be the exclusive remedy for its collection. The court for good cause may exempt a person from the payment of all or any part of the [supervision] fee.”</p>	Idaho Code Ann. § 20-225; Idaho Code Ann. § 31-3201D(1).
IL	Yes	<p>“Probation . . . shall not be revoked for failure to comply with conditions of a sentence or supervision, which imposes financial obligations upon the offender unless such failure is due to his willful refusal to pay.”</p>	730 Ill. Comp. Stat. Ann. 5/5-6-4(d), <i>amended by</i> 2019 Ill. Legis. Serv. P.A. 101-406 (S.B. 1583).
IN	Yes	<p>“Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay. . . . Failure to pay fines or costs (including fees) required as a condition of probation may not be the sole basis for commitment to the department of correction.”</p>	Ind. Code Ann. § 35-38-2-3(g), (m).
IO	Yes	<p>“Failure of the offender to comply with the plan of restitution, plan of payment, or community service requirements when community service is ordered by the court as restitution, shall constitute a violation of probation and shall constitute contempt of court. . . . If an offender fails to comply with [payment] requirements during probation, the court may hold the offender in contempt, revoke probation, or extend the period of probation.”</p>	Iowa Code Ann. § 910.4(1).
KS	Not Specified in Code	N/A	N/A
KY	Yes	<p>“Upon the failure of a person to pay an installment on a [supervision] fee set forth in a release agreement, the releasing authority shall hold a hearing to determine why the installment has not been paid. Failure without good cause to pay an installment pursuant to a release agreement shall be grounds for the revocation of probation.”</p>	Ky. Rev. Stat. Ann. § 439.315(4).
LA	Yes	<p>“Probation shall neither be revoked nor extended based solely upon the defendant’s inability to pay fines, fees, or restitution to the victim.”</p>	La. Code Crim. Proc. Ann. art. 894.4.
ME	Yes	<p>“When a person on probation fails to pay the supervision fee [or other fees associated with probation], the court may revoke probation . . . unless the person shows that failure to pay was not attributable to a willful refusal to pay or to a failure on that person’s part to make a good faith effort to obtain the funds required for the payment.”</p>	Me. Rev. Stat. tit. 17-A, § 1807(6)–(7).

APPENDIX E: REVOCATION FOR NONPAYMENT OF FINANCIAL SANCTIONS

MD	Yes	<p>“The court may revoke probation for failure to make the required payment of the [supervision] fee. . . . If the supervisee does not comply with the fee requirement, the Division of Parole and Probation shall notify the court. . . . The court shall hold a hearing to determine if there are sufficient grounds to find the supervisee in violation. . . . At a hearing under this subsection, the court may consider:</p> <ul style="list-style-type: none"> (i) any material change in the supervisee’s financial status; (ii) good faith efforts of the supervisee to pay the fee; and (iii) alternative means to ensure payment of the fee before the period of supervision ends.” <p>“Failure to make a payment required for drug or alcohol abuse testing may be considered grounds for revocation of probation by the court. . . . The Division of Parole and Probation may exempt a supervisee as a whole or in part from a payment for testing if the Division determines that any of the criteria in subsection (d) of this section apply.” The criteria in subsection (d) are:</p> <ul style="list-style-type: none"> “(1) the supervisee has diligently tried but has been unable to obtain employment that provides sufficient income for the supervisee to pay the fee; (2)(i) the supervisee is a student in a school, college, or university or is enrolled in a course of vocational or technical training designed to prepare the student for gainful employment; and (ii) certification of student status is supplied to the court by the institution in which the supervisee is enrolled; (3) the supervisee has a handicap limiting employment, as determined by a physical or psychological examination accepted or ordered by the court; (4) the supervisee is responsible for the support of dependents and the payment of the fee is an undue hardship on the supervisee; or (5) other extenuating circumstances exist.” 	Md. Code Ann., Crim. Proc. § 6-226(f)–(g).
MA	Not Specified in Code	N/A	N/A
MI	Yes	<p>For restitution, “a defendant shall not be imprisoned, jailed, or incarcerated for a violation of probation . . . for failure to pay restitution as ordered under this section unless the court . . . determines that the defendant has the resources to pay the ordered restitution and has not made a good faith effort to do so.”</p> <p>“The court may revoke probation if the probationer fails to comply with the order [to pay costs] and if the probationer has not made a good faith effort to comply with the order. In determining whether to revoke probation, the court shall consider the probationer’s employment status, earning ability, and financial resources, the willfulness of the probationer’s failure to pay, and any other special circumstances that may have a bearing on the probationer’s ability to pay.”</p>	Mich. Comp. Laws Ann. § 769.1a(14); Mich. Comp. Laws Ann. § 771.3(8).

APPENDIX E: REVOCATION FOR NONPAYMENT OF FINANCIAL SANCTIONS

MN	Yes	<p>“If the court orders payment of restitution as a condition of probation and if the defendant fails to pay the restitution in accordance with the payment schedule or structure established by the court or the probation officer, the prosecutor or the defendant’s probation officer may, on the prosecutor’s or the officer’s own motion or at the request of the victim, ask the court to hold a hearing to determine whether or not the conditions of probation should be changed or probation should be revoked.”</p>	<p>Minn. Stat. Ann. § 609.135, subd. 1a.</p>
MS	Yes	<p>“Incarceration shall not automatically follow the nonpayment of a fine, restitution or court costs. Incarceration may be employed only after the court has conducted a hearing and examined the reasons for nonpayment and finds, on the record, that the defendant was not indigent or could have made payment but refused to do so. When determining whether a person is indigent, the court shall use the current Federal Poverty Guidelines and there shall be a presumption of indigence when a defendant’s income is at or below one hundred twenty-five percent (125%) of the Federal Poverty Guidelines, subject to a review of his or her assets. . . . If the judge determines that a defendant who claims indigence is not indigent and the defendant could have made payment but refused to do so, the case file shall include a written explanation of the basis for the determination of the judge. In justice and municipal court, such finding shall be included in the court’s order. . . . If it appears to the satisfaction of the court that nonpayment is not willful, the court shall enter an order that allows the defendant additional time for payment, reduces the amount of each installment, revokes the fine, in whole or in part, or allows the defendant to perform community service at the state minimum wage per hour rate. If the court finds nonpayment is willful after consideration of the defendant’s situation, means, and conduct with regard to the nonpayment, the court shall determine the period of incarceration, if any.”</p> <p>“[T]he intentional refusal to obey the restitution order or a failure by a defendant to make a good faith effort to make such restitution may be considered a violation of the defendant’s probation and may be cause for revocation of his probation or suspension of sentence.”</p>	<p>Miss. Code. Ann. § 99-19-20.1(1)–(2); Miss. Code. Ann. § 99-37-5(2).</p>
MO	Yes	<p>“[P]robation . . . may be revoked . . . for failure to pay restitution or for failure to conform his or her behavior to the conditions imposed by the circuit court.”</p>	<p>Mo. Ann. Stat. § 559.100(2).</p>
MT	Yes	<p>“[W]hen a failure to pay restitution is the basis for [a revocation] petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender’s part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.”</p>	<p>Mont. Code Ann. § 46-18-203(6)(b).</p>
NE	Yes	<p>“If a probationer defaults in the payment of monthly probation programming fees or any installment thereof, the court may revoke his or her probation for nonpayment, except that probation shall not be revoked nor shall the offender be imprisoned for such nonpayment if the probationer is financially unable to make the payment, if he or she so states to the court in writing under oath, and if the court so finds after a hearing.”</p>	<p>Neb. Rev. Stat. Ann. § 29-2262.06(5).</p>

APPENDIX E: REVOCATION FOR NONPAYMENT OF FINANCIAL SANCTIONS

NV	Yes	“The commission of one of the following acts by a probationer must not, by itself, be used as the only basis for the revocation of probation: . . . Failing to pay any required fines or fees.”	Nev. Rev. Stat. Ann. § 176A.630(4) (e) (<i>eff.</i> July 1, 2020), <i>added by</i> 2019 Nev. Laws Ch. 633 (A.B. 236).
NH	Yes	“This [monthly supervision] fee shall be considered a condition of release, and failure to satisfy this obligation shall be grounds for a violation hearing, unless the probationer . . . has been found to be indigent and, for that reason, unable to pay the fee.”	N.H. Rev. Stat. Ann. § 504-A:13(I).
NJ	Yes	“The court, if satisfied that the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order or if he has been convicted of another offense, may revoke the suspension or probation and sentence or resentence the defendant, as provided in this section. No revocation of suspension or probation shall be based on failure to pay a fine or make restitution, unless the failure was willful.”	N.J. Stat. Ann. § 2C:45-3(a) (4).
NM	Yes	Failure to pay restitution “may constitute a violation of the conditions of probation.”	N.M. Stat. Ann. § 31-17-1(H).
NY	Not Specified in Code	N/A	N/A

APPENDIX E: REVOCATION FOR NONPAYMENT OF FINANCIAL SANCTIONS

NC	Yes	<p>“(a) Response to Default.--When a defendant who has been required to pay a fine or costs or both defaults in payment or in any installment, the court, upon the motion of the prosecutor or upon its own motion, may require the defendant to appear and show cause why he should not be imprisoned or may rely upon a conditional show cause order. . . .</p> <p>(b) Imprisonment; Criteria.--Following a requirement to show cause under subsection (a), unless the defendant shows inability to comply and that his nonpayment was not attributable to a failure on his part to make a good faith effort to obtain the necessary funds for payment, the court may order the suspended sentence, if any, activated, or, if the law provides no term of imprisonment for the offense for which the defendant was convicted or if no suspended sentence was imposed, the court may order the defendant imprisoned for a term not to exceed 30 days. The court, before activating a sentence of imprisonment, may reduce the sentence. The court may provide in its order that payment or satisfaction at any time of the fine and costs imposed by the court will entitle the defendant to his release from the imprisonment or, after entering the order, may at any time reduce the sentence for good cause shown, including payment or satisfaction of the fine.</p> <p>(c) Modification of Fine or Costs.--If it appears that the default in the payment of a fine or costs is not attributable to failure on the defendant’s part to make a good faith effort to obtain the necessary funds for payment, the court may enter an order:</p> <p>(1) Allowing the defendant additional time for payment; or</p> <p>(2) Reducing the amount of the fine or costs or of each installment; or</p> <p>(3) Revoking the fine or costs or the unpaid portion in whole or in part.”</p>	N.C. Gen. Stat. Ann. § 15A-1364(a)–(c).
ND	Not Specified in Code	N/A	N/A
OH	Yes	<p>“The failure of an offender to comply with a condition of community control that requires the offender to pay a monthly supervision fee . . . shall not constitute the basis for the modification of the offender’s community control sanctions . . . but may be considered with any other factors that form the basis of a modification of a sanction for violating a community control sanction under those sections. If the court determines that a misdemeanor offender on community control failed to pay a monthly supervision fee . . . and that no other factors warranting the modification of the offender’s community control sanction are present, the court shall remand the offender to the custody of the probation agency and may impose any additional conditions of community control upon the offender, including a requirement that the offender perform community service, as the ends of justice require.”</p>	Ohio Rev. Code Ann. § 2951.021(A) (4).

APPENDIX E: REVOCATION FOR NONPAYMENT OF FINANCIAL SANCTIONS

OK	Yes	<p>“Absent a finding of willful nonpayment by the offender, the failure of an offender to pay fines and costs may not serve as a basis for revocation, excluding restitution. . . . Where one of the grounds for revocation is the failure of the defendant to make restitution as ordered, the Department of Corrections shall forward to the district attorney all information pertaining to the failure of the defendant to make timely restitution as ordered by the court, and the district attorney shall file a petition setting forth the grounds for revocation. . . .The defendant ordered to make restitution can petition the court at any time for remission or a change in the terms of the order of restitution if the defendant undergoes a change of condition which materially affects the ability of the defendant to comply with the order of the court. . . . At the hearing, if one of the grounds for the petition for revocation is the failure of the defendant to make timely restitution as ordered by the court, the court will hear evidence and if it appears to the satisfaction of the court from such evidence that the terms of the order of restitution create a manifest hardship on the defendant or the immediate family of the defendant, the court may cancel all or any part of the amount still due, or modify the terms or method of payment. Provided, if the court determines that a reduction in the restitution still due is warranted, the court shall equally apply the same percentage reduction to any court-ordered monetary obligation owed by the defendant including, but not limited to, fines, court costs and costs of incarceration.”</p>	Okla. Stat. Ann. tit. 22, § 991b(D)(3), (E).
OR	Yes	<p>“A court may not order revocation of probation as a result of the probationer’s failure to pay restitution unless the court determines from the totality of the circumstances that the purposes of the probation are not being served.”</p>	Or. Rev. Stat. Ann. § 137.540(10).
PA	Not Specified in Code	N/A	N/A
RI	Not Specified in Code	N/A	N/A
SC	Not Specified in Code	N/A	N/A
SD	Yes	<p>“Failure of the defendant to comply . . . with the plan of restitution as approved or modified by the court constitutes a violation of the conditions of probation. Without limitation, the court may modify the plan of restitution or extend the period of time for restitution, regardless of whether the defendant is no longer on probation. If the defendant fails to make payment as ordered by the court, the defendant may be held in contempt of the court’s order.”</p>	S.D. Codified Laws § 23A-28-8.
TN	Yes	<p>“In the event of more than two (2) months’ arrearage or delinquency in [paying supervision fees], the arrearage or delinquency shall constitute sufficient ground for revocation of . . . probation . . . of the person in arrears.”</p>	Tenn. Code Ann. § 40-28-201(c).

APPENDIX E: REVOCATION FOR NONPAYMENT OF FINANCIAL SANCTIONS

TX	Yes	<p>“The court may revoke community supervision . . . if the defendant fails to comply with [an order to pay restitution]. In determining whether to revoke . . . the court . . . shall consider: (1) the defendant’s employment status; (2) the defendant’s current and future earning ability; (3) the defendant’s current and future financial resources; (4) the willfulness of the defendant’s failure to pay; (5) any other special circumstances that may affect the defendant’s ability to pay; and (6) the victim’s financial resources or ability to pay expenses incurred by the victim as a result of the offense.”</p> <p>“In a revocation hearing at which it is alleged only that the defendant violated the conditions of community supervision by failing to pay community supervision fees or court costs or by failing to pay the costs of legal . . . the state must prove by a preponderance of the evidence that the defendant was able to pay and did not pay as ordered by the judge.”</p>	<p>Tex. Code Crim. Proc. Ann. art. 42.037(h); Tex. Code Crim. Proc. Ann. art. 42A.751(i).</p>
UT	Yes	<p>“When a defendant defaults in the payment of a judgment for restitution or any installment ordered, the court, on motion of the prosecutor, . . . probation agent, victim, or on its own motion may . . . if the payment of restitution to a victim was a term of probation, begin probation violation proceedings . . .”</p>	<p>Utah Code Ann. § 77-38a-501(1)(b).</p>
VT	Yes	<p>“A person shall not be placed on probation solely for purposes of paying restitution. An offender may not be charged with a violation of probation . . . for nonpayment of a restitution obligation incurred after July 1, 2004.”</p>	<p>Vt. Stat. Ann. tit. 13, § 7043(f) (1).</p>
VA	Yes	<p>“While on probation the defendant may be required to pay in one or several sums a fine or costs, or both such fine and costs, imposed at the time of being placed on probation as a condition of such probation, and the failure of the defendant to pay such fine or costs, or both such fine and costs, at the prescribed time or times may be deemed a breach of such probation. . . . No defendant shall be kept under supervised probation solely because of his failure to make full payment of fines, fees, or costs, provided that, following notice by the probation . . . officer to each court and attorney for the Commonwealth in whose jurisdiction any fines, fees, or costs are owed by the defendant, no such court or attorney for the Commonwealth objects to his removal from supervised probation.”</p>	<p>Va. Code Ann. § 19.2-305(A), (C).</p>
WA	Yes	<p>“Nothing in this section may be construed to deprive the court of the authority to determine whether the offender’s failure to pay the legal financial obligation [of restitution] constitutes a violation of a condition of probation or to impose a sanction upon the offender if such a violation is found.”</p>	<p>Wash. Rev. Code Ann. § 3.66.120.</p>
WV	Yes	<p>“The court may revoke probation . . . if the defendant fails to comply with the order [to pay restitution]. In determining whether to revoke probation . . . the court . . . shall consider the defendant’s employment status, earning ability, financial resources, the willfulness of the defendant’s failure to pay, and any other special circumstances that may have a bearing on the defendant’s ability to pay.”</p>	<p>W. Va. Code Ann. § 61-11A-4(g).</p>

APPENDIX E: REVOCATION FOR NONPAYMENT OF FINANCIAL SANCTIONS

WI	Yes	<p>“The department shall notify the sentencing court, any person to whom unpaid restitution is owed and the district attorney of the status of the ordered restitution payments unpaid at least 90 days before the probation expiration date. If payment as ordered has not been made, the court shall hold a probation review hearing prior to the expiration date, unless the hearing is voluntarily waived by the probationer with the knowledge that waiver may result in an extension of the probation period or in a revocation of probation. If the court does not extend probation, it shall issue a judgment for the unpaid restitution and direct the clerk of circuit court to file and enter the judgment in the judgment and lien docket, without fee, unless it finds that the victim has already recovered a judgment against the probationer for the damages covered by the restitution order.” (Nearly identical provisions are in place for unpaid Crime Victim and Witness Assistance surcharges and supervision fees).</p>	<p>Wis. Stat. Ann. § 973.9(3)(b), (bg)(1), (bm)(1)</p>
WY	Yes	<p>“Failure of the defendant. . . to comply with the plan of restitution as approved or modified by the court is a violation of the conditions of probation. If the probation period has expired, the restitution order may be enforced by either civil or criminal contempt proceedings. Criminal contempt under this section is punishable by imprisonment for not more than one (1) year.”</p>	<p>Wyo. Stat. Ann. § 7-9-109.</p>

ENDNOTES

- 1 DANIELLE KAEBLE AND MARY COWHIG, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2016, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS 2-3 (Apr. 2018), <https://www.bjs.gov/content/pub/pdf/cpus16.pdf>. Probation is a punishment in which a person is sentenced to a period of incarceration, but that period is put on hold (or "suspended") so long as the person is compliant with various conditions and obligations. This is different than parole, where a person is sentenced to a period of incarceration and is granted early release from that period of confinement, provided they comply with conditions. In some states, the judge may impose a "split" sentence for probation, meaning the person is incarcerated for a period of time, to be followed by a set period of probation supervision. In different states, a term of supervised release following incarceration is called "post-release supervision," "extended supervision," or "post-prison supervision." These types of supervised release are most commonly referred to as parole, where a person is granted early release from incarceration so long as they abide by conditions. This differs from split sentences, which involve a specific term of incarceration followed by a specific term of probation supervision. See Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1021-22 (2013); OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, TERMS & DEFINITIONS: COMMUNITY CORRECTIONS (PROBATION AND PAROLE), <https://www.bjs.gov/index.cfm?ty=tdtp&tid=15> (last visited Apr. 20, 2020). In all states, probation is a potential sentence for both felonies and misdemeanors. Probation is a common disposition for people convicted for the first time, or convicted of low-level crimes, but it is also used in many jurisdictions even for people who have been convicted previously or who are convicted of felony offenses where the court believes that the sentence can be served in the community. See Joan Petersila, *Probation in the United States*, 22 CRIM. & JUST. 149, 162-63, 174-76 (1997).
- 2 Fines are monetary sanctions that are imposed as all or part of a sentence for either a civil or criminal offense. Fees, on the other hand, are additional charges a court or government entity imposes on a person as a result of the civil or criminal case, and are often used to raise revenue to fund government functions. Restitution is technically neither a fine nor a fee; it is intended to compensate victims of crime for their losses. SHARON BRETT AND MITALI NAGRECHA, CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCHOOL, PROPORTIONATE FINANCIAL SANCTIONS: POLICY PRESCRIPTIONS FOR JUDICIAL REFORM 3, 26-28 (2019), http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf.
- 3 Michael B. Jacobson et al., *Less is More: How Reducing Probation Populations Can Improve Outcomes*, PAPERS FROM THE EXECUTIVE SESSION ON COMM. CORR. 3 (Harv. Kennedy School, Aug. 2017), https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/less_is_more_final.pdf (probation rate is three times higher than incarceration rate, and has "increased substantially as our system of punishment has expanded geometrically over the past several decades"); Michelle S. Phelps, *Mass Probation from Micro to Macro: Tracing the Expansion and Consequences of Community Supervision*, 3 ANN. REV. CRIMINOLOGY 261, 263-64 (2020) (tracing history of expansion of probation); MATTHEW MENENDEZ ET AL., BRENNAN CENTER OF JUSTICE, THE STEEP COSTS OF CRIMINAL JUSTICE FEES AND FINES 6 (2019), https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf ("Since 2008, almost every state has increased criminal and civil court fees or added new ones, and the categories of offenses that trigger fines have been expanded.").
- 4 See generally Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015 (2013) (describing the range of punishments for violating probation and arguing that probation represents a delay of incarceration, rather than a true alternative); ALICIA BANNON ET AL., BRENNAN CTR. FOR JUSTICE, CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY 22 (2010), <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> (discussing potential for incarceration when financial sanctions go unpaid).
- 5 See section III.c; Appendix A.
- 6 See section IV.
- 7 Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1038-42 (2013); Fiona Doherty, *Obey All Laws and Be Good: Probation and the Meaning of Recidivism*, 104 Geo. L. J. 291, 295 n.11, 296, 322-27 (2016).
- 8 See generally Beth Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors' Prison*, 65 U.C.L.A. L. REV. 2 (2018); SHARON BRETT AND MITALI NAGRECHA, CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCHOOL, PROPORTIONATE FINANCIAL SANCTIONS: POLICY PRESCRIPTIONS FOR JUDICIAL REFORM (2019), http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf; ALICIA BANNON ET AL., BRENNAN CTR. FOR JUSTICE, CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY (2010), <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>; Am. Bar. Assoc., *Ten Guidelines on Court Fines and Fees* (Aug. 2018), https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/aba-ten-guidelines_.pdf?lo-gActivity=true; Arthur W. Pepin, *The End of Debtors' Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations*, Conf. of State Court Admin. (2015-2016), <https://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/End-of-Debtors-Prisons-2016.ashx>.
- 9 See generally SHARON BRETT AND MITALI NAGRECHA, CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCHOOL, PROPORTIONATE FINANCIAL SANCTIONS: POLICY PRESCRIPTIONS FOR JUDICIAL REFORM (2019), http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf.
- 10 Heather Long, *U.S. Now Has 22 Million Unemployed, Wiping Out A Decade of Job Gains*, WASH. POST (Apr. 16, 2020), <https://www.washingtonpost.com/business/2020/04/16/unemployment-claims-coronavirus/>.
- 11 See, e.g., Elizabeth Marcellino, *LA County Board Votes to Eliminate Many Criminal Justice Fees, Forgive Debt*, NBCLosANGELES.COM (Feb. 19, 2020), <https://www.nbcloseangeles.com/news/local/la-county-board-votes-to-eliminate-many-criminal-justice-fees-forgive-debt/2311885/>; Shannon Prather, *Ramsey County eliminates nearly \$700,000 in criminal fines and fees*, STAR TRIB. (Apr. 14, 2020), <https://www.startribune.com/ramsey-county-eliminates-nearly-700-000-in-criminal-fines-and-fees/569640712/?refresh=true>.
- 12 Free to Drive Coalition, *State Laws*, <https://www.freetodrive.org/maps/#page-content> (last visited Mar. 2, 2020).
- 13 See generally SHARON BRETT AND MITALI NAGRECHA, CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCHOOL, PROPORTIONATE FINANCIAL SANCTIONS: POLICY PRESCRIPTIONS FOR JUDICIAL REFORM (2019), http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf.

- 14 In our last report, we advocated for all fees to be abolished. SHARON BRETT AND MITALI NAGRECHA, CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCHOOL, *PROPORTIONATE FINANCIAL SANCTIONS: POLICY PRESCRIPTIONS FOR JUDICIAL REFORM 1–3* (2019), http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf. We reiterate that position here. Although we do not take a position regarding abolishing fines, we note that small fines that are appropriately scaled to a person's ability to pay can serve as an appropriate sentencing outcome, particularly for minor offenses that would—absent the availability of fines—result in periods of incarceration or protracted, counterproductive community service obligations.
- 15 For a list of all prior research on monetary sanctions and probation outcomes, see Amalia Iratzoqui, *Set up for Failure? Examining the Influence of Monetary Sanctions on Probation Success*, 28 CRIM. JUSTICE POL'Y REV. 370, 374–75 (2017) (listing eight studies, of varying populations, most of which were published in the 1980s and 1990s).
- 16 Alexes Harris, Heather Evans, and Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 AM. J. SOCIO. 1753, 1759 (2010); Beth Colgan, *The Excessive Fines Clause*, 65 U.C.L.A. L. REV. 2, 7 (2018); ALICIA BANNON ET AL., BRENNAN CTR. FOR JUSTICE, CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY 11, 13–14, 20, 21, 23, 25 (2010), <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>; see generally EBONY L. RUHLAND, ET AL., ROBINA INSTITUTE OF CRIMINAL LAW AND CRIMINAL JUSTICE (HEREINAFTER "ROBINA INSTITUTE"), *EXPLORING SUPERVISION FEES IN FOUR PROBATION JURISDICTIONS IN TEXAS* (2017), <https://robinainstitute.umn.edu/publications/new-report-exploring-supervision-fees-four-jurisdictions-texas>.
- 17 See generally Ebony Ruhland, *It's All About the Money: an Exploration of Probation Fees*, CORRECTIONS (Jan. 8, 2019) (on file with author); Ebony L. Ruhland, *Social Worker, Law Enforcer, and Now Bill Collector: Probation Officers' Collection of Supervision Fees*, J. OFF. REHAB. (Oct. 3, 2019) (on file with author).
- 18 See generally KOMALA RAMACHANDRA, HUMAN RIGHTS WATCH, *SET UP TO FAIL: THE IMPACT OF OFFENDER-FUNDED PRIVATE PROBATION ON THE POOR*, (2018), <https://www.hrw.org/report/2018/02/20/set-fail/impact-offender-funded-private-probation-poor>; CHRIS ALBIN-LACKEY, HUMAN RIGHTS WATCH, *PROFITING FROM PROBATION: AMERICA'S 'OFFENDER-FUNDED' PROBATION INDUSTRY*, (2014), <https://www.hrw.org/report/2014/02/05/profit-ing-probation/americas-offender-funded-probation-industry>.
- 19 One notable exception is a study of people on felony probation in Florida between 2002 and 2010. That study found that the majority of probation violations were for serious violations, including new charges, and that "monetary sanctions do not have a significant impact on the odds of a probation violation." Amalia Iratzoqui, *Set up for Failure? Examining the Influence of Monetary Sanctions on Probation Success*, 28 CRIM. JUSTICE POL'Y REV. 370, 378–82 (2017). However, that study examined only one small subset of the probation population in a single state, and did not control for supervision scrutiny. *Id.* at 384–85. It also does not account for the myriad ways in which conditions overlap with one another and serve as a trip wire, especially for people who are struggling financially, as explained in detail in this report. The findings of this study are therefore of limited applicability in considering the overall effect financial sanctions on the many types of probation supervision in use nationwide.
- 20 See generally KELLY LYN MITCHELL ET AL., ROBINA INSTITUTE, *PROFILES IN PROBATION REVOCATION: EXAMINING THE LEGAL FRAMEWORK IN 21 STATES* (2014), <https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/robina-report-2015-web.pdf>; EBONY RUHLAND AND JASON P. ROBEY, ROBINA INSTITUTE, *PROBATION REVOCATIONS: FINDINGS FROM INTERVIEWS WITH REVOKED PROBATIONERS FROM BELL COUNTY AND MATAGORDA COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENTS* (2018), https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/texas_prison_report.pdf; Michelle Phelps and Ebony Ruhland, *Governing Marginality: Coercion and Care in Probation Supervision*, Soc. PROBS. (forthcoming 2020–21); Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015 (2013); Michelle S. Phelps, *Mass Probation and Inequality: Race Class, and Gender Disparities in Supervision and Revocation*, in HANDBOOK ON PUNISHMENT DECISIONS: LOCATIONS OF DISPARITY (Jeffrey T. Ulmer and Mindy S. Bradley, eds. 2018); Fiona Doherty, *Obey All Laws and Be Good: Probation and the Meaning of Recidivism*, 104 GEO. L. J. 291 (2016); see also Michelle S. Phelps, *Mass Probation from Micro to Macro: Tracing the Expansion and Consequences of Community Supervision*, 3 ANN. REV. CRIMINOLOGY 261, 271 (2020) (concluding that we are "at the earliest stages of understanding the causal impacts of probation on individuals").
- 21 For a general exploration of this topic, see Nathan W. Link et al., *Monetary Sanctions, Legal and Collateral Consequences, and Probation and Parole: Where Do We Go from Here?*, 4 UCLA CRIM. J. L. REV. __ (forthcoming). Additionally, Professor Ebony Ruhland is currently leading a multi-state mixed-methods empirical study of this issue, which will shed additional light on this topic. See Community Corrections Fines and Fees Project, <http://ccffstudy.org/about/> (last visited Feb. 4, 2020).
- 22 Researchers examining these questions for future projects may wish to pursue these requests through more formal means, such as requests under state and local open records or freedom of access to information (FOIA) laws.
- 23 For this report, we have removed the names, counties, and other identifying information of all our interviewees to protect those who would otherwise not have been able to share their insights with us. Since probation practices vary widely from county to county in most states, the information provided by interviewees is specific to a particular county within a state, unless otherwise noted.
- 24 We selected these target states by comparing the states with the largest percentage increase of people on probation between 2007 and 2016 (the last year that data was available) to a list of states with an overall increase in the number of potential civil and/or criminal fees between 2010 and 2014. See DANIELLE KAEBLE AND MARY COWHIG, *CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2016*, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS (Apr. 2018), <https://www.bjs.gov/content/pub/pdf/cpus16.pdf>; EMMA ANDERSON ET AL., NAT'L PUB. RADIO, *STATE-BY-STATE COURT FEES* (May 2014), <https://www.npr.org/2014/05/19/312455680/state-by-state-court-fees>. In this way, we attempted to select states that have seen a rise in the number of people on probation and an increase in the number of available criminal fees, to examine states where the intersection between probation and financial sanctions may be the greatest, and to examine patterns across different jurisdictions.
- 25 In some jurisdictions, traffic and municipal ordinance violations are codified as "civil infractions" rather than criminal offenses. We use the term "criminal and civil court fees" to encompass fees imposed for these types of offenses as well as misdemeanor and felony criminal offenses.

- 26 MATTHEW MENENDEZ ET AL., BRENNAN CTR. FOR JUSTICE, THE STEEP COSTS OF CRIMINAL JUSTICE FEES AND FINES 6 (2019), https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf.
- 27 See generally SHARON BRETT AND MITALI NAGRECHA, CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCHOOL, PROPORTIONATE FINANCIAL SANCTIONS: POLICY PRESCRIPTIONS FOR JUDICIAL REFORM (2019), http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf; MATTHEW MENENDEZ ET AL., BRENNAN CTR. FOR JUSTICE, THE STEEP COSTS OF CRIMINAL JUSTICE FEES AND FINES (2019), https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf; Beth Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors' Prison*, 65 U.C.L.A. L. REV. 2 (2018); Alexes Harris, Heather Evans, and Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 AM. J. SOCIO. 1753 (2010).
- 28 Throughout this report, we discuss state statutes governing probation. Sometimes these statutes apply explicitly only to felony probation; other times, the statutes appear to apply to both, or at least do not distinguish between felony and misdemeanor probation. Where a statute explicitly applies only to one type of probation, we note that distinction. As referenced throughout this report, however, misdemeanor probation tends to be the less regulated and formalistic type of probation; some state codes leave it to individual counties, or even private companies, to develop regulations governing misdemeanor probation. For that reason, practices vary widely and it is impossible to generalize about misdemeanor probation in all states. We note this as an important caveat for our findings, and to underscore how difficult it is for researchers to learn exactly how probation works in each jurisdiction. See section III.d (discussing the black box of probation).
- 29 The National Center for State Courts analysis of survey data found that for adult *misdemeanor* probation, in 43% of the 46 responding states, probation is a function of the executive branch. In 39%, probation is a function of the judicial branch, and 17% indicated it is a mix of the two. For adult *felony* cases, 63% of the 46 respondents indicated that it is a function of the executive branch, 33% that it is a function of judicial branch, and 4% that it is a variation or shared oversight by both executive and judicial branches. NATIONAL CENTER FOR STATE COURTS, BRANCH RESPONSIBLE FOR PROBATION, CCJ AND COSCA SURVEY OF EVIDENCE-BASED PRACTICES IN SENTENCING AND PROBATION, <https://www.ncsc.org/~media/Microsites/Files/CSI/Branch-Responsible-for-Probation.ashx> (last visited Apr. 21, 2020).
- 30 Moreover, depending on where probation falls within the structure of a state or local government, there are different political forces that can influence how it operates. For example, if probation is run by an executive agency, the ultimate authority is the state's governor. If it is run through the judicial branch, the state supreme court may have more control over probation policies and practices.
- 31 For a list of probation supervision fees by state, see Appendix B. For examples of literature discussing probation fees, see WENDY SAWYER, PRISON POLICY INITIATIVE, PUNISHING POVERTY: THE HIGH COST OF PROBATION FEES IN MASSACHUSETTS (2016), https://www.prisonpolicy.org/probation/ma_report.html; EBONY RUHLAND, ROBINA INSTITUTE, THE IMPACT OF FEES AND FINES FOR INDIVIDUALS ON PROBATION AND PAROLE (2016), <https://robinainstitute.umn.edu/news-views/impact-fees-and-fines-individuals-probation-and-parole>; Ebony Ruhland, *It's All About the Money: an Exploration of Probation Fees*, CORRECTIONS (Jan. 8, 2019); SARAH MEHTA AND ROBIN GOMILA, ACLU OF MONTANA, SET UP TO FAIL: MONTANA'S PROBATION & PAROLE SYSTEM (2018), https://www.aclumontana.org/sites/default/files/field_documents/setuptofailmontanasprobationparolesystem.pdf.
- 32 A significant amount of literature—by both academics and advocates—has been written about probation conditions, but few research projects examined conditions across all fifty states, or the statutory and judicial reasoning for imposing each of these conditions. See Fiona Doherty, *Obey All Laws and Be Good: Probation and the Meaning of Recidivism*, 104 GEO. L. J. 291, 300–16 (discussing the wide range of probation conditions that are generally imposed on people); Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1032–42 (2013) (describing conditions and range of responses to violations); Michelle S. Phelps, *Mass Probation and Inequality: Race, Class, and Gender Disparities in Supervision and Revocation*, in HANDBOOK ON PUNISHMENT DECISIONS: LOCATIONS OF DISPARITY 43 (ed. Jeffrey T. Ulmer and Mindy S. Bradley, 2018).
- 33 Compare Cal. Penal Code § 1203.1(h) (probation officers can consider whether to order a person on probation to engage in house repairs or yard services for senior citizens or senior citizen centers as a condition of probation); Cal. Penal Code § 1210.12(a) (a county chief probation officer has “the sole discretion, consistent with the terms and conditions of probation, to decide which persons shall be supervised using continuous electronic monitoring”); Del. Code Ann. Tit. 11, § 4321(b)(4)(a) (special conditions of supervision can be set by the court or the probation officer acting under the authority of the court or the Board of Parole, so long as they are in accordance with Department of Corrections procedures); Del. Code Ann. Tit. 11, § 4332(a) (the Department of Corrections can set standard conditions of probation that will apply absent any other specific or inconsistent conditions imposed by the court); Conn. Gen. Stat. Ann. 53a-30(b) (probation officer can impose conditions that could have been imposed by the court which are not inconsistent with any condition actually imposed by the court); with Ed. Note, Ala. R. Crim. P. 27.1 (“Conditions of probation are not to be established by the probation officer. However, the probation officer is vested with the authority to provide instructions consistent with court-imposed conditions in an effort to clarify or to expand upon general conditions and to assist in the guidance of the probationer.”); Ala. Code § 15-22-52 (court sets all probation conditions); Ark. Code Ann. § 16-93-312(a) (same); Colo. Rev. Stat. Ann. § 18-1.3-204(1)(a) (same); Email from Tim Strickland, Ass’t Bureau Chief, Florida Dep’t of Corr., to Neda Khoshkhoo (Dec. 26, 2019) (on file with author) (probation officers do not have the authority to impose conditions—such authority is left to the sentencing court).
- 34 See, e.g., Ariz. Rev. Stat. Ann. § 13-804(E).
- 35 See, e.g., Ala. Code § 12-25-32(2)(c) (listing 29 different types of punishment options, including several different types of probation and community supervision); Colo. Rev. Stat. Ann. § 18-1.3-208(2) (describing intensive supervision probation program); Conn. Judicial Branch Statistics, Adult Probation, <https://www.jud.ct.gov/statistics/probation/> (last visited Feb. 6, 2020) (describing several different types of adult probation); Ohio Rev. Code Ann. § 2929.01(B), (Q) (delineating “basic probation supervision” and “intensive probation supervision”).
- 36 See, e.g., Ala. Code § 12-25-32(2)(c) (listing “unsupervised probation” among the available punishments, and noting that it “does not include supervision, active incarceration, or an intermediate punishment”); Colo. Judicial Branch, *Probation FAQs*, “Are all adults and juveniles who are on Probation required to be supervised by the Probation Department?,” <https://www.courts.state.co.us/Probation/FAQs.cfm> (last

- visited Feb. 9, 2020) (explaining that “some adults may be sentenced to unsupervised probation” and “[l]ower risk adult offenders on supervised probation may be supervised by a private company under contract with the Probation Department.”); Warren Cnty., Ohio, *Frequently Asked Questions*, “What are the different types of probation?”, <https://www.co.warren.oh.us/countycourt/probation/faq.aspx> (last visited Feb. 9, 2020) (listing intensive probation, reporting probation, and non-reporting probation among the different types of probation); Interview with Defense Counsel (AL2) (Jan. 15, 2020) (differentiating between supervised probation, unsupervised probation, and intensive probation); Interview with Defense Counsel (AL7) (Dec. 10, 2019) (same); Interview with Probation Officers (GA2 and GA3) (Jan. 7, 2020) (differentiating between supervised probation, unsupervised probation, administrative probation, and pay-only probation); Interview with Defense Counsel (MS3) (Nov. 21, 2019) (differentiating between misdemeanor probation, felony probation, supervised probation, and unsupervised probation). When administered by a government entity (as opposed to a private probation company) unsupervised probation usually comes with reduced or no supervision fees. *See, e.g.*, Interview with Defense Counsel (AL2) (Jan. 15, 2020); Interview with Defense Counsel (AL7) (Dec. 10, 2019); Interview with Probation Officers (GA2 and GA3) (Jan. 7, 2020); Interview with Defense Counsel (MS3) (Nov. 21, 2019).
- 37 *See, e.g.*, Ga. Code Ann. § 42-8-103 (setting forth Georgia’s system of “pay-only probation”); Delaware Bureau of Community Corrections, *Levels of Supervision*, https://doc.delaware.gov/views/comm_corrections.blade.shtml (last visited Feb. 9, 2020) (describing administrative supervision, and explaining that most people on this type of supervision “are required to either pay a fine, make restitution or attend a specific first offender program”).
- 38 *See, e.g.*, Fla. Stat. Ann. § 948.001(1) (providing that people may be transferred to “administrative probation” after “satisfactory completion of half the term of probation,” wherein the person will not be required to report to their probation officer); Ga. Code Ann. § 17-10-1(7)(B) (noting that “unsupervised probation” means a period of probation that follows active probation supervision, in which the conditions remain intact but the “probationer may have reduced reporting requirements” and will not be actively supervised).
- 39 *See* South Carolina Dep’t of Probation, Parole and Pardon Services, Pol’y and Procedure No. 146 at 1 (2018) (on file with author). This type of payment-based probation is the most obvious way in which probation and fines and fees are linked together through a sentencing order: the person is placed on probation solely to monitor payment. However, even if a person is not explicitly placed on this type of probation, financial sanctions are usually a significant part of a person’s experience on probation—whether directly or indirectly. *See* section IV; *see also* Interview with Defense Counsel (AL1) (Jan. 22, 2020); Interview with Defense Counsel (AL2) (Jan. 15, 2020); Interview with Defense Counsel (AL6) (Jan. 24, 2020); Interview with Defense Counsel (AL7) (Dec. 10, 2019); Interview with Defense Counsel (ID4) (Jan. 15, 2020); Interview with Judge (ID5) (Dec. 16, 2019); Interview with Defense Counsel (KY1) (Nov. 14, 2019); Interview with Defense Counsel (MS1) (Nov. 18, 2019); Interview with Defense Counsel (MS5) (Dec. 4, 2019); Interview with Probation Officers (RI2 and RI3) (Dec. 4, 2019).
- 40 Graduated sanctions are a set of responses to probation violations that may be imposed by the probation officer without notifying the court. Some states allow for graduated sanctions by statute; others have enacted graduated sanctions as part of the jurisdiction’s policies governing the probation agency. For more on graduated sanctions, see section VI. For a chart noting which states provide for graduated sanctions by statute, see Appendix C.
- 41 In general, probation officers do not have the authority to revoke a person’s probation without involving the sentencing court. Depending on the jurisdiction, probation officers or the prosecuting authority (or both) may file a petition to revoke probation or a notice of a probation violation with the sentencing court, which will then hold a hearing. But there is wide variation in how this is handled. In at least one jurisdiction, Wisconsin, administrative law judges—rather than the sentencing court—hear revocation petitions. *See* Wis. Stat. § 301.03(3). For more on probation violations and revocation, see section VIII and Appendix E.
- 42 Probation can often be extended for nonpayment of financial sanctions. For more discussion on this, see section IX and Appendix D.
- 43 *See* sections IV.B.ii, VII, VIII, and IX.
- 44 *See* sections IV.B.iii and VI.
- 45 By statute or court rule, every state specifies that payment of financial sanctions either can or must be a condition of probation. *See* Appendix A. In some states, payment of financial sanctions is a condition of probation by practice or internal policy, even if not mandatory by statute. For example, Colorado requires that payment of restitution be a condition of probation, but states that a court “may” also make payment of fees and fines a condition of probation. The state’s standard probation conditions form lists payment of 25 possible fees and fines that a judge may choose to include in the probation conditions. *See* Colorado State Adult Conditions of Probation form, CO State Court Administrator’s Office, Division of Probation Services (Nov. 2018) (on file with author). Interviewees in Colorado confirmed that in practice, payment of fees, fines, and restitution is always a condition of probation. *E.g.*, Interview with Defense Counsel (CO2) (Dec. 16, 2019); Interview with Defense Counsel (CO3) (Nov. 21, 2019); Interview with Judge (CO5) (Dec. 6, 2019); Interview with Judge (CO6) (Dec. 3, 2019).
- 46 Usually it is the probation officer who has to bring a person’s nonpayment to the court’s attention. In some jurisdictions, however, the clerk’s offices keep track of payments even if the person is on probation. Interview with Defense Counsel/Prosecutor (AL4) (Feb. 4, 2020); Interview with Defense Counsel (KY2 and KY3) (Jan. 6, 2020); Interview with Defense Counsel (MS6) (Nov. 25, 2019); email from Scott Richeson, Virginia Dep’t of Corr., Deputy Director of Programs, Education and Re-entry, to Neda Khoshkhoo (Jan. 15, 2020) (on file with author).
- 47 *See* section VI.
- 48 *See* section IX.
- 49 *See* section VIII.
- 50 *See* Appendix A.
- 51 CHRIS ALBIN-LACKEY, HUMAN RIGHTS WATCH, PROFITING FROM PROBATION: AMERICA’S ‘OFFENDER-FUNDED’ PROBATION INDUSTRY (2014), <https://www.hrw.org/report/2014/02/05/profitting-probation/americas-offender-funded-probation-industry>.
- 52 Georgia has statutory pay-only probation for unpaid fines and surcharges (though pay-only probation may not be imposed for outstanding restitution). Ga. Code Ann. § 42-8-103; Interview with Defense Counsel (GA1) (Jan. 3, 2020). Under Georgia’s newly revised pay-only

- probation system, only three months of supervision fees can be collected, even if pay-only probation continues past that date, and the probation officer is required to request termination when the debt is paid off. *Id.* Practitioners noted, however, that judges regularly ignore or are unaware of these limitations on pay-only probation, and in practice impose harsh and lengthy pay-only probation terms. Interview with Defense Counsel (GA1) (Jan. 3, 2020); Interview with Probation Officers (GA2 and GA3) (Jan. 7, 2020).
- 53 Interview with Defense Counsel (CO2) (Dec. 6, 2019); Interview with Defense Counsel (CO4) (Dec. 6, 2019); Interview with Former Defense Counsel (ID3) (Jan. 14, 2020); Interview with Defense Counsel (KY6) (Dec. 13, 2019); Interview with Defense Counsel (OH1) (Jan. 3, 2020). Utah permits courts, rather than probation departments, to retain jurisdiction over a person whose probation term has ended through what is called “bench probation,” where a person is kept on probation for “the limited purpose of enforcing the payment of the account receivable.” Utah Code Ann. § 77-18-1(10)(b)(i).
- 54 Even though people on unsupervised probation do not have to check in with their probation officer regularly, remaining under correctional control has consequences. For example, remaining on probation can affect a person’s job prospects, housing options, or ability to get a loan. See generally Christopher Uggen and Robert Steward, *Piling On: Collateral Consequences and Community Supervision*, 99 MINN. L. REV. 1871 (2015), https://www.minnesotalawreview.org/wp-content/uploads/2015/09/Uggen_4fmt_PDF.pdf.
- 55 Interview with Defense Counsel (CO2) (Dec. 6, 2019); Interview with Defense Counsel (CO4) (Dec. 6, 2019); Interview with Former Defense Counsel (ID3) (Jan. 14, 2020); Interview with Defense Counsel (KY6) (Dec. 13, 2019) Interview with Defense Counsel (OH1) (Jan. 3, 2020). In Mississippi, some counties contract with private probation companies to collect old and new fines. Those private companies charge monthly fees, do not offer real services, and keep people on probation until the debt is paid. Interview with Defense Counsel (MS7) (Dec. 6, 2019).
- 56 South Carolina Dep’t of Probation, Parole and Pardon Services, Pol’y and Procedure No. 146 at 1 (2018) (on file with author). The only exception is if people owe money towards DNA Fees. If the person still owes restitution (as opposed to fines, fees, surcharges, or public defender fees), the person “must have all administrative sanctions imposed while under supervision” prior to placement on administrative monitoring—in other words, the person must exhaust the term of probation before they can be moved to administrative monitoring only. *Id.* at 2.
- 57 South Carolina Dep’t of Probation, Parole and Pardon Services, Pol’y and Procedure No. 146 at 3 (2018) (on file with author).
- 58 South Carolina Dep’t of Probation, Parole and Pardon Services, Pol’y and Procedure No. 146 at 3 (2018) (on file with author).
- 59 South Carolina Dep’t of Probation, Parole and Pardon Services, Pol’y and Procedure No. 146 at 6 (2018) (on file with author).
- 60 South Carolina Dep’t of Probation, Parole and Pardon Services, Pol’y and Procedure No. 146 at 7 (2018) (on file with author).
- 61 See Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1036–39 (2013) (describing how “supervision styles are tremendously varied and are heavily influence by office culture,” but that “agent responses to low-level violations vary tremendously, even within the same office”).
- 62 See, e.g., Colorado 18th Judicial Dist., Probation Dep’t, Policy No. 3-010 (on file with author).
- 63 For both misdemeanor and felony probation, attorneys we spoke with were reluctant to make generalizations about probation practices in their states, or even in their counties, recognizing that they have seen a range of approaches and outcomes. And many reported that, despite having sound statutes or policies on the books, practices frequently deviated, often to the detriment of those on probation.
- 64 See Richard McCleary, *How Structural Variables Constrain the Parole Officer’s Use of Discretionary Powers*, 23 SOC. PROBS. 209, 209–11 (1975); Michelle S. Phelps, *Mass Probation from Micro to Macro: Tracing the Expansion and Consequences of Community Supervision*, 3 ANNU. REV. CRIMINOLOGY 261, 268 (2020) (noting that “at the department level, supervisors can set hiring and promotion guidelines and supervision and revocation standards to shape the department culture.”).
- 65 See Lloyd E. Ohlin et al., *Major Dilemmas of the Social Worker in Probation and Parole*, 2 CRIME & DELINQ. 211, 215 (1956).
- 66 See, e.g., SENTENCING PROJECT, *REDUCING RACIAL DISPARITY IN THE CRIMINAL JUSTICE SYSTEM: A MANUAL FOR PRACTITIONERS AND POLICYMAKERS* 16 (2008), <https://www.sentencingproject.org/wp-content/uploads/2016/01/Reducing-Racial-Disparity-in-the-Criminal-Justice-System-A-Manual-for-Practitioners-and-Policymakers.pdf> (probation officers are more likely to revoke probation of people of color than of white people for the same probation violations).
- 67 Indeed, probation furthers deep economic marginalization already attendant to criminal justice system involvement. Michelle Phelps and Ebony Ruhland, *Governing Marginality: Coercion and Care in Probation Supervision*, SOC. PROBS. (forthcoming 2020–21).
- 68 See, e.g., Cal. Penal Code § 12.03.1b(a) (probation officer must conduct ability to pay determination regarding costs associated with probation supervision); Email from Dana Wilks, Manager of Programs Unit of Div. of Probation Services, Colorado State Court Administrator’s Office, to Neda Khoshkhoo (Dec. 2, 2019) (on file with author); Del. Code Ann. Tit. 11, § 6504(14) (probation department determines if person is unable to pay supervision fee); Email from Susan Gagnon, Director of Adult Comm. Corr., Maine Dep’t of Corr., to Neda Khoshkhoo (Dec. 2, 2019) (on file with author); Interview with Defense Counsel (MS1) (Nov. 18, 2019); Email from Sharon Dunn, Special Projects Administrator, Missouri Board of Probation and Parole, to Neda Khoshkhoo (Feb. 6, 2020) (on file with author); N.C. Gen. Stat. Ann. § 15A-1343(g); Email from Chad Owens, Senior Policy Administrator, North Carolina Dep’t of Public Safety, to Neda Khoshkhoo (Jan. 31, 2020) (on file with author); South Carolina Dep’t of Probation, Parole and Pardon Services, Pol’y & Procedure No. 116, at 2 (Dec. 6, 2017) (on file with author); Interview with Probation Officer (WA1) (Jan. 6, 2020); Email from Shawna Glendy, Senior Policy Analyst/ACA Coordinator, Quality and Compliance, Wyoming Dep’t of Corr. (Jan. 18, 2020) (on file with author); Wyoming Dep’t of Corr., Operational Standards and Procedure #7.6, at 2 (June 5, 2019) (on file with author).
- 69 Colo. Rev. Stat. Ann. § 18-1.3-702(4).
- 70 Email from Dana Wilks, Manager, Programs Unit, Division of Probation Services, Colorado State Court Administrator’s Office, to Neda Khoshkhoo (Dec. 4, 2019) (on file with author); see also Colo. Rev. Stat. Ann. § 16-11-101.6(4)(a); Colo. Rev. Stat. Ann. § 16-18.5-104; Colo. Rev. Stat. Ann. § 16-18.5-105.

- 71 Interview with Defense Counsel (CO1) (Dec. 4, 2019). *See* Colo. Rev. Stat. Ann. § 18-1.3-702(a) (the court may order that the defendant pay as directed by the court or the “court’s designated official,” which includes collections investigators).
- 72 *See, e.g.*, Email from Tim Strickland, Ass’t Bureau Chief, Florida Dep’t of Corr., to Neda Khoshkhoo (Dec. 26, 2019) (on file with author); Ga. Code Ann. § 42-8-34(d)(1); Ind. Code Ann. § 35-38-2-1.7(b); 730 Ill. Comp. Stat. Ann. 5/5-6-3(g), (i); Miss. Code Ann. § 47-7-49(1); 18 Pa. Stat. Ann. § 11.1102(c); N.C. Gen. Stat. Ann. § 15A-1343(g); Wyoming Dep’t of Corr., Operational Standards and Procedure #7.6, at 2 (June 5, 2019) (on file with author).
- 73 EBONY RUHLAND ET AL., ROBINA INSTITUTE, EXPLORING SUPERVISION FEES IN FOUR JURISDICTIONS IN TEXAS (2017), <https://robinainstitute.umn.edu/publications/new-report-exploring-supervision-fees-four-jurisdictions-texas>.
- 74 *See, e.g.*, Nathan W. Link et al., *Monetary Sanctions, Legal and Collateral Consequences, and Probation and Parole: Where Do We Go From Here?*, 4 U.C.L.A. CRIM. JUSTICE L. REV. __ (forthcoming 2020). In practice, probation officers’ process for determining ability to pay may not be all that different from how such determinations are made by the courts, especially in jurisdictions where there have been no reforms to make such determinations objective and concrete. But having this inquiry conducted before a judge at sentencing—while the person is represented by counsel, the judge has the authority to waive or tailor financial sanctions, and a record can be created for appeal—is still preferable to having a probation officer decide on their own.
- 75 *See* Appendix B. Interviewees reported that some types of probation, including unsupervised probation (also known as non-reporting probation or administrative probation), come with fewer conditions and no supervision fee. *See, e.g.*, Interview with Defense Counsel (AL2) (Jan. 15, 2020); Interview with Defense Counsel (AL7) (Dec. 10, 2019); Interview with Probation Officers (GA2 and GA3) (Jan. 7, 2020); Interview with Defense Counsel (MS3) (Nov. 21, 2019).
- 76 *See* Appendix B.
- 77 *See* Appendix B.
- 78 States often impose a ceiling or a floor for supervision fees and leave the exact amounts up to probation departments or similar agencies. *See, e.g.*, Ariz. Rev. Stat. Ann. § 13-901(A); Fla. Stat. Ann. § 948.09(1) (b); Idaho Code Ann. § 20-225; Ind. Code Ann. § 35-38-2-1(d)–(e); Ky. Rev. Stat. Ann. § 439.315(2); 18 Pa. Stat. Ann. § 11.1102(c). Private probation companies that operate for profit may also charge higher supervision fees than probation agencies run by state or local governments. Interview with Defense Counsel (KY1) (Nov. 14, 2019).
- 79 *See, e.g.*, Ind. Code Ann. § 35-38-2-2.3(h) (“If a court imposes a condition of probation . . . the person on probation is responsible for any costs resulting from the participation in a program, class, or service.”). Some of these requirements (and the fees that come with them) are offense-specific. *See, e.g.*, Ala. Code § 12-23-7 (alcohol and drug related offenses require testing which must be done at person’s expense); Ariz. Rev. Stat. Ann. § 13-3416 (drug related offenses require testing which must be done at person’s expense); Ariz. Rev. Stat. Ann. § 13-902(G) (electronic monitoring required for crimes against children, and person on probation may be charged for it); Idaho Code Ann. § 19-3922 (“Whenever a court orders testing of breath or bodily fluids as a condition of probation, such costs for the tests shall be paid for by the probationer in addition to any supervision fee . . . to the agency providing the testing, provided the court may waive this requirement upon a showing of cause.”).
- 80 We refer to these as underlying fees because the condition itself is not explicitly monetary in nature; rather, the condition requires that the person do something (such as take a class, submit to a drug test, participate in counseling) that, practically speaking, cannot be done unless the person pays a fee or obtains a fee waiver.
- 81 *See, e.g.*, Ala. Code § 12-23-7; Fla. Stat. Ann. § 948.09(5).
- 82 *See, e.g.*, Ariz. Rev. Stat. Ann. § 13-902(G).
- 83 *See, e.g.*, Fla. Stat. Ann. § 948.039(1).
- 84 An interviewee told us that private probation companies are more likely to recommend drug testing and specialized classes because they rely on the associated fees for income. Follow-up Interview with Defense Counsel (CO9) (May 12, 2020).
- 85 Interview with Defense Counsel (GA1) (Jan. 3, 2020); Interview with Legal Advocate (RI4) (Nov. 27, 2019).
- 86 Interview with Defense Counsel (ID1 and ID2) (Dec. 18, 2019).
- 87 Interview with Defense Counsel (ID1 and ID2) (Dec. 18, 2019).
- 88 *See, e.g.*, Ala. Code § 12-23-7 (people on probation for alcohol and drug related offenses must undergo alcohol and drug testing at their own expense).
- 89 Interview with Defense Counsel (CO9) (Dec. 3, 2019); Interview with Defense Counsel (ID4) (Jan. 15, 2020).
- 90 Follow-up Interview with Defense Counsel (CO2) (May 12, 2020); Follow-up Interview with Defense Counsel (CO9) (May 12, 2020).
- 91 Interview with Defense Counsel (CO2) (Dec. 16, 2019); Follow-up Interview with Defense Counsel (CO2) (May 12, 2020); Follow-up Interview with Defense Counsel (CO9) (May 12, 2020). Although probation officers have the ability to provide vouchers or waivers for the costs of drug tests, this is rare in practice. Interview with Defense Counsel (CO2) (Dec. 16, 2019); *see also* section IV.b.iii.
- 92 Follow-up Interview with Defense Counsel (CO2) (May 12, 2020); Follow-up Interview with Defense Counsel (CO9) (May 12, 2020).
- 93 Follow-up Interview with Defense Counsel (CO2) (May 12, 2020); Follow-up Interview with Defense Counsel (CO9) (May 12, 2020).
- 94 Interview with Defense Counsel (GA4) (Nov. 22, 2019).
- 95 Interview with Defense Counsel (CO7) (Dec. 5, 2019).
- 96 Interview with Defense Counsel (ID4) (Jan. 15, 2020).
- 97 *See, e.g.*, Interview with Defense Counsel (AL1) (Jan. 22, 2020); Interview with Defense Counsel (CO1) (Dec. 4, 2019); Interview with Defense Counsel (CO9) (Dec. 3, 2019); Interview with Defense Counsel (KY6) (Dec. 13, 2019); Interview with Defense Counsel (KY7) (Dec. 2, 2019); Interview with Defense Counsel (MS3) (Nov. 21, 2019); Interview with Defense Counsel (PA9) (Nov. 8, 2019); Interview with Legal Advocate (RI4) (Nov. 27, 2019); *see also* section VIII.b.
- 98 Interview with Defense Counsel (ID1 and ID2) (Dec. 18, 2019); Interview with Defense Counsel (KY7) (Dec. 2, 2019).
- 99 *See, e.g.*, Ala. Code § 15-22-2(a)(1); Ariz. Rev. Stat. Ann. § 13-901(A); Ga. Code Ann. § 42-8-34(d)(1); Haw. Rev. Stat. Ann. § 706-648(1); 730 Ill. Comp. Stat. Ann. 5/5-6-3(i); Ky. Rev. Stat. Ann. § 439.315(4); 18 Pa. Stat. Ann. § 11.1102(c).

- 100 See, e.g., Ariz. Rev. Stat. Ann. § 13-901(A); Ga. Code Ann. § 42-8-34(d)(1); Haw. Rev. Stat. Ann. § 706-648(1); 730 Ill. Comp. Stat. Ann. 5/5-6-3(i); Ky. Rev. Stat. Ann. § 439.315(4); 18 Pa. Stat. Ann. § 11.1102(c).
- 101 Fla. Stat. Ann. § 948.06(5).
- 102 Interview with Defense Counsel (ID4) (Jan. 15, 2020).
- 103 To protect the identity of the interviewee and the client, we have used “Jordan” as a pseudonym.
- 104 Interview with Legal Advocate (VA1) (Nov. 14, 2019).
- 105 Interview with Legal Advocate (VA1) (Nov. 14, 2019).
- 106 Interview with Legal Advocate (VA1) (Nov. 14, 2019).
- 107 Interview with Legal Advocate (VA1) (Nov. 14, 2019).
- 108 Interview with Legal Advocate (VA1) (Nov. 14, 2019).
- 109 Interview with Legal Advocate (VA1) (Nov. 14, 2019).
- 110 Interview with Legal Advocate (VA1) (Nov. 14, 2019).
- 111 Interview with Legal Advocate (VA1) (Nov. 14, 2019).
- 112 Interview with Legal Advocate (VA1) (Nov. 14, 2019).
- 113 Interview with Defense Counsel (CO3) (Nov. 21, 2019); Interview with Defense Counsel (ID1 and ID2) (Dec. 18, 2019).
- 114 Interview with Judge (CO5) (Dec. 6, 2019); Interview with Defense Counsel (KY2 and KY3) (Jan. 6, 2020). Though some states have statutes outlining indigency determinations for fees and fines in general, see, e.g., Miss. Code Ann. § 99-19-20.1(1) (relying on the federal poverty guidelines for indigency determinations), there was no indication among those we interviewed that those statutes are applied to fees or fines connected to probation supervision.
- 115 Interview with Defense Counsel (KY7) (Dec. 2, 2019).
- 116 Interview with Defense Counsel (CO2) (Dec. 6, 2019).
- 117 Interview with Defense Counsel (KY2 and KY3) (Jan. 6, 2020).
- 118 Interview with Defense Counsel (KY2 and KY3) (Jan. 6, 2020).
- 119 Interview with Judge (CO6) (Dec. 3, 2019).
- 120 Interview with Defense Counsel (CO2) (Dec. 6, 2019); Interview with Former Judge (CO8) (Dec. 5, 2019); Interview with Defense Counsel (CO9) (Dec. 3, 2019).
- 121 Interview with Defense Counsel (CO2) (Feb. 25, 2020).
- 122 Interview with Defense Counsel (CO2) (Dec. 6, 2019). These vouchers are only offered by state probation departments. *Id.* One interviewee explained that private probation companies do not offer such vouchers, as they rely on drug tests and similar probation programs for revenue. Follow-up Interview with Defense Counsel (CO9) (May 12, 2020).
- 123 See, e.g., Interview with Defense Counsel (AR1) (Jan. 7, 2020); Email from Tim Strickland, Ass’t Bureau Chief, Florida Dep’t of Corr., to Neda Khoshkhoo (Dec. 26, 2019) (on file with author); Ga. Code Ann. § 42-8-34(d)(1); Idaho Code Ann. § 20-225; 730 Ill. Comp. Stat. Ann. 5/5-6-3(i); Ky. Rev. Stat. Ann. § 439.315(6); Email from Eleanor McMullen, Senior Policy Analyst, Maryland Department of Public Safety and Correctional Services, to Neda Khoshkhoo (Feb. 6, 2020) (on file with author); Miss. Code Ann. § 47-7-49(1); Email from Captain Tom Lawson, Parole & Probation Division, Nevada Department of Public Safety, to Neda Khoshkhoo (Jan. 2, 2020) (on file with author); Email from Jeremiah Stromberg, Assistant Director of Community Corrections, Oregon Dep’t of Corr., to Neda Khoshkhoo (Jan. 28, 2020) (on file with author); 18 Pa. Stat. Ann. § 11.1102(c); Interview with Probation Officers (RI2 and RI3) (Dec. 4, 2019).
- 124 Importantly, some fee waiver statutes also provide very narrow definitions of indigency. Kentucky, for example, specifies that the Department of Corrections may not petition the court for a waiver of a supervision fee unless the person is a student or has an employment disability that is documented to the satisfaction of the court. Ky. Rev. Stat. Ann. § 439.315(6). This limited definition fails to account for the living conditions of many people who are struggling financially, such as those who are full-time caregivers, and prevents probation officers from alleviating the financial burden of supervision fees where they might otherwise be willing to do so.
- 125 See, e.g., Ga. Code Ann. § 42-8-102(e)(2)–(3); Ind. Code Ann. § 33-37-2-3; Miss. Code Ann. § 99-19-20.1; Pa. R. Crim. P. 706; Email from Tim Strickland, Ass’t Bureau Chief, Florida Dep’t of Corr., to Neda Khoshkhoo (Dec. 26, 2019) (on file with author).
- 126 See, e.g., Interview with Defense Counsel (AL1) (Jan. 22, 2020); Interview with Defense Counsel (AL2) (Jan. 15, 2020); Interview with Defense Counsel/Former Judge (AL3) (Feb. 6, 2020); Interview with Defense Counsel (AL5) (Jan. 27, 2020).
- 127 See, e.g., Interview with Defense Counsel (AL1) (Jan. 22, 2020); Interview with Defense Counsel (AL2) (Jan. 15, 2020); Interview with Defense Counsel/Former Judge (AL3) (Feb. 6, 2020); Interview with Defense Counsel (AL5) (Jan. 27, 2020); see also Ebony Ruhland, *It’s All About the Money: an Exploration of Probation Fees*, CORRECTIONS 12 (Jan. 8, 2019) (on file with author).
- 128 Interview with Probation Officer (AR2) (Jan. 10, 2020); Interview with Defense Counsel (KY2 and KY3) (Jan. 6, 2020); Interview with Defense Counsel (KY6) (Dec. 13, 2019); Interview with Defense Counsel (MS7) (Dec. 6, 2019).
- 129 Eileen M. Ahlin et. al, *Kiosk Reporting Among Probationers in the United States*, THE PRISON JOURNAL 2–5 (Nov. 2016), https://www.researchgate.net/publication/305923558_Kiosk_Reporting_Among_Probationers_in_the_United_States (describing different kiosk reporting systems in United States).
- 130 Michelle Phelps and Ebony Ruhland, *Governing Marginality: Coercion and Care in Probation Supervision*, Soc. PROBS. (forthcoming 2020–21).
- 131 Interview with Defense Counsel (AR1) (Jan. 7, 2020); Interview with Defense Counsel (CO7) (Dec. 5, 2019).
- 132 Interview with Defense Counsel (OH6) (Jan. 13, 2020).
- 133 Interview with Defense Counsel/Former Judge (AL3) (Feb. 6, 2020); Interview with Defense Counsel (CO7) (Dec. 5, 2019); Interview with Defense Counsel (ID1 and ID2) (Dec. 18, 2019); Interview with Defense Counsel (KY6) (Dec. 13, 2019); Interview with Defense Counsel (OH6) (Jan. 13, 2020).
- 134 Interview with Defense Counsel (CO7) (Dec. 5, 2019).
- 135 Michelle Phelps and Ebony Ruhland, *Governing Marginality: Coercion and Care in Probation Supervision*, Soc. PROBS. (forthcoming 2020–21).

- 136 Michelle Phelps and Ebony Ruhland, *Governing Marginality: Coercion and Care in Probation Supervision*, Soc. PROBS. (forthcoming 2020–21).
- 137 See, e.g., Interview with Defense Counsel (AL2) (Jan. 15, 2020); Interview with Defense Counsel/Former Judge (AL3) (Feb. 6, 2020); Interview with Defense Counsel (AR1) (Jan. 7, 2020); Interview with Defense Counsel (CO2) (Dec. 6, 2019); Interview with Defense Counsel (CO7) (Dec. 5, 2019); Interview with Former Judge (CO8) (Dec. 5, 2019).
- 138 In some jurisdictions, people who owe financial sanctions must attend regular court hearings to explain why they are behind on their payments; such requirements to report to the court can be equally burdensome. SHARON BRETT AND MITALI NAGRECHA, CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCHOOL, PROPORTIONATE FINANCIAL SANCTIONS: POLICY PRESCRIPTIONS FOR JUDICIAL REFORM 30–32 (2019), http://cjpp.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf.
- 139 See generally Michelle Phelps and Ebony Ruhland, *Governing Marginality: Coercion and Care in Probation Supervision*, Soc. PROBS. (forthcoming 2020–21).
- 140 Michelle Phelps and Ebony Ruhland, *Governing Marginality: Coercion and Care in Probation Supervision*, Soc. PROBS. (forthcoming 2020–21); Miriam Northcutt Bohmert and Alfred DeMaris, *Cumulative Disadvantage and the Role of Transportation in Community Supervision*, 64 CRIME & DELINQ. 1033 (2018).
- 141 See section VI.
- 142 See section VIII. The Supreme Court of Colorado recently adopted the test from *Bearden v. Georgia* and held that a court cannot revoke a person's probation for failure to meet conditions of probation that are not related to payment of financial sanctions, if the person claims that they lacked the financial means to comply with the condition. See *Sharrow v. People*, ___P.3d___, 2019 WL 1510448 at *732–33 (Colo. 2019). However, as that opinion lays bare, determining what constitutes “bona fide efforts” to comply with the condition is highly subjective and left to the trial court to decide. See *id.* at *740–42. For many of the same reasons that ability-to-pay determination requirements that do not come with objective criteria provide insufficient protections, this opinion may not ultimately provide much relief from burdensome nonfinancial probation conditions for those experiencing poverty.
- 143 7 U.S.C. § 2020(e)(8)(E)(i)(I) (barring people from receiving Supplemental Nutrition Assistance Program benefits if they violate a condition of probation or parole under federal or state law); 42 U.S.C. § 1382(e)(4)(A)(ii) (same for Social Security Income disability); 42 U.S.C. § 1437d(1)(9)(2) (same for public housing benefits).
- 144 See, e.g., Ill. Dep't of Human Serv., PM 03-23-05, *Fugitive Felons and Probation/Parole Violators* (Cash/SNAP), <https://www.dhs.state.il.us/page.aspx?item=14736>; Wash. State Dep't of Soc. and Health Serv., Economic Serv. Admin., *Clarifying Information – WAC 388-442-0010* (Rev. June 16, 2016), <https://www.dshs.wa.gov/esa/eligibility-z-manual-ea-z/fleeing-felons>; 106 Mass. Reg. 367.800(D).
- 145 See, e.g., Ala. Code § 15-22-54(c), (e) (the court oversees probation violation hearings and decides whether to revoke probation); Colo. Rev. Stat. Ann. § 16-11-206(5) (same); Conn. Gen. Stat. Ann. § 53a-32(d) (same). However, in some states, including Wisconsin, revocation proceedings are not conducted by the sentencing court, but rather by an Administrative Law Judge in an independent state agency. See Cecelia Klingele, *Understanding Revocation from Community Supervision*, BADGER INST. 6 (July 2019), <https://www.badgerinstitute.org/BI-Files/Special-Reports/Reports-Documents/RevocationPDF.pdf?fbclid=IwAR10m3LtvLc6cQkyYYJ90aG6P1Gxp9g-H1NlVbGn9Zh11og9ZiFwsbi7B8>.
- 146 See Appendix C (graduated sanctions); see also, e.g., Ala. Code § 15-22-54(f) (if person on probation violates terms of probation, probation officer may “after administrative review and approval by the officer’s supervisor” require the person to “submit to behavioral treatment, substance abuse treatment, GPS monitoring, such other treatment as determined by the board or supervising officer, or a period of confinement in a consenting jail facility”); Alaska Stat. Ann. § 12.55.100(a)(2)(G) (while on probation, “the defendant . . . may be required . . . to comply with the sanctions imposed by the defendant’s probation officer under AS 33.05.020(g),” which outlines an administrative sanction and incentive program to be developed by the commissioner of probation); Ark. Code Ann. § 16-93-306(d)–(h) (the Department of Community Correction has the authority to sanction people on probation administratively for violations of probation conditions, without utilizing the statutorily-proscribed court-involved revocation process, including ordering people to report to day reporting centers, participate in community service, increase substance abuse screening, submit to electronic monitoring, or become incarcerated in the county jail for up to 7 days or a department of correction facility for up to 180 days).
- 147 These sanctions are sometimes called “intermediate,” “alternative,” or “administrative” sanctions. See Appendix C.
- 148 See, e.g., La. Stat. Ann. § 15:574.9(H), Nev. Rev. Stat. Ann. § 176A.510(b) (eff. July 1, 2020), added by 2019 Nevada Laws Ch. 633 (A.B. 236).
- 149 See, e.g., Ala. Code § 15-22-52(10); Fla. Stat. Ann. § 948.06(9).
- 150 See, e.g., Fla. Stat. Ann. § 948.06(9); Idaho Code Ann. § 20-219(7)(b).
- 151 See, e.g., Ark. Code Ann. § 16-93-306(d)(2)–(3); Idaho Code Ann. § 20-219(7)(b); Miss. Code Ann. § 47-7-38(1), (5).
- 152 See, e.g., Ala. Code § 15-22-52(10); Iowa Code Ann. § 901B.1; La. Code Crim. Proc. Ann. art. 899.2; Mass. Gen. Laws Ann. ch. 211E, § 3(a)(3) (B).
- 153 Technical violations are violations of probation conditions that are non-criminal rule-breaking. Nonpayment and failure to report are generally considered technical violations, as compared to other types of violations that are considered more serious, such as failing a drug screen or committing a new offense. Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1030–31 n.76 (2013).
- 154 See Appendix C.
- 155 “There is tremendous variation in the number of alternative sanctions and second (or subsequent) chances given to those on supervision. This variation is influenced by many things—from the seriousness of the alleged conduct to the availability of local treatment programs to the quality of the supervisor-supervisee relationship.” Cecelia Klingele, *Understanding Revocation from Community Supervision*, BADGER INST. 8 (July 2019), <https://www.badgerinstitute.org/BI-Files/Special-Reports/Reports-Documents/RevocationPDF.pdf?fbclid=IwAR10m3LtvLc6cQkyYYJ90aG6P1Gxp9g-H1NlVbGn9Zh11og9ZiFwsbi7B8>. Some states require that nonpayment of financial sanctions, including victim restitution, be reported to the court for action. See Ariz. Rev. Stat. Ann. § 13-804(E) (requiring probation officers to report to the

- supervising court if the probation officer believes that court-ordered restitution is not being paid); Ariz. Rev. Stat. Ann. § 13-804(N) (further requiring that the probation officer make a recommendation to the court that either “further action is not warranted at this time or that a review hearing should be held pursuant to this section”); Del. Code Ann. tit. 11, § 4334(c)–(d) (probation department is authorized to “administratively resolve technical and minor violations of probation or supervision” for all types of probation except the highest level, and may place the person at the highest level of probation supervision—which could include home confinement—for a short period of time as a way of administratively resolving the violation).
- 156 See generally *Gagnon v. Scarpelli*, 411 U.S. 778 (1973).
- 157 Interview with Defense Counsel (AL1) (Jan. 22, 2020).
- 158 This is further complicated by the fact that in most jurisdictions, graduated sanction grids are similar to sentencing guidelines—they are general recommendations for how to respond to probation violations, but they lack teeth. There is no recourse if a probation officer elects to punish more harshly. See Interview with Defense Counsel (ID1 and ID2) (Dec. 18, 2019) (describing how Idaho’s graduated sanctions regime is not enforceable and carries no legal weight).
- 159 As of 2014, over half the states had some sort of graduated sanction matrix or grid. AUDREY O. HICKERT ET. AL, UTAH CRIMINAL JUSTICE CENTER, DEVELOPMENT OF UTAH’S INCENTIVE AND RESPONSE MATRIX 5–6 (June 2014), https://socialwork.utah.edu/_resources/documents/ViolMatrix_Yr-1Report_Final1.pdf.
- 160 Of the states that do have formal policies or grids, many do not post them publicly. The grids are a matter of internal policy, “closely guarded by supervision agencies.” Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1050 n. 162 (2013). This means that even in states where there is supposedly a concrete policy regarding how payment violation would be handled, we actually know very little about what that means, and whether those policies are being followed. Complicating this is the fact that misdemeanor probation, which is often handled by counties or private entities, often does not follow statewide policies. Alarmingly, at least one county we studied told us that there are no formal policies guiding decisions at the local level. See Email from Brian Seidler, Johnson County, KS, Jan. 14, 2020 (no formal policies for how to handle failure to pay fines and fees).
- 161 See, e.g., Idaho Response Matrix, IDAHO DEP’T OF CORR., <http://forms.idoc.idaho.gov/WebLink/0/edoc/273232/Idaho%20Response%20Matrix.pdf> (last visited Feb. 7, 2020); 501 Ky. Admin. Regs. 6:250(3) (5); Kentucky Dep’t of Corr., Pol’y No. 27-15-03, Graduated Sanctions and Discretionary Detention (eff. Nov. 3, 2017), <https://corrections.ky.gov/About/cpp/Documents/27/ CPP%2027-15-03.pdf> (last visited Feb. 10, 2020).
- 162 Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1050 (2013).
- 163 Neb. Rev. Stat. § 29-2266(2)(h).
- 164 Nebraska’s graduated sanctions statute does not list incarceration as a possible graduated sanction. See generally Neb. Rev. Stat. § 29-2266. However, the Administrative Office of Probation’s Incentives and Sanctions Policy states that “custodial sanctions” are available for people following a conviction of a felony offense, so long as all “meaningful and relevant administrative sanctions” are first exhausted and the officer obtains approval from the Chief Probation Officer or their delegate. See Nebraska Incentives and Sanctions Policy (eff. June 28, 2016), https://policy-probation.wcc.ne.gov/read_policy.php?doc_id=300006.
- 165 It is worth noting that administrative sanctions regimes that allow for probation officer-imposed incarceration may not stand up to legal challenges. Some courts have rejected judicial attempts to delegate authority to probation officers to incarcerate people for violations absent judicial approval. But those cases have rested on the fact that there was no statutory delegation of authority; the court had, on its own accord, provided probation officers with that power. However, statutory schemes that allow probation officers to impose short periods of incarceration as a sanction for probation violations may be challenged based on separation of powers principles, depending on the state constitution. Some courts have struck down the delegation of authority to probation departments to revoke a person’s probation on statutory or constitutional grounds. See, e.g., *State v. Fearing*, 619 N.W.2d 115, 116–123 (Wis. 2000) (holding that court does not have statutory authority to delegate to probation officer discretion to impose three months of jail time that the court stayed and declining to reach constitutional challenges), *superseded on other grounds by statute as stated in* *State ex rel. Baade v. Hayes*, 870 N.W.2d 478 n.3; *State v. Hatfield*, 846 P.2d 1025, 1029 (Mont. 1993) (holding that district court lacked statutory authority to sentence appellant to up to 180 days in jail at discretion of probation officer); *People v. Thomas*, 577 N.E.2d 496, 497–98 (Ill. App. 4th Dist. 1991) (holding that sentence giving probation department discretion to determine whether person on probation would be required to serve 30 days in jail upon successful completion of a drug abuse program as one of the conditions of his probation, was void, because courts may not delegate power to determine conditions of probation unless authorized by law); *State v. Lee*, 467 N.W.2d 661, 662 (Neb. 1991) (holding that provision in sentence that “(e)ach of these jail terms may be waived on probation” was invalid under statute and state constitution, because the “trial court may not delegate the authority to impose a jail sentence, or to eliminate a jail sentence, to a nonjudge”); *but see* *State v. Paxton*, 742 N.E.2d 1171, 1172–73 (Ohio Ct. App. 2000) (declining to decide whether sentence to serve sixty days of jail time at discretion of probation officer violated due process and separation of powers because sentence failed to comply with state law guaranteeing people on probation the right to a hearing).
- 166 See Appendix C. Maryland specifically provides that “[g]raduated sanctions may not include incarceration or involuntary detention.” Md. Code Ann., Corr. Servs. § 6-121(b)(2).
- 167 Ark. Code Ann. § 16-93-306(d)(3)(E)(ii)(c)(1). *But see* Ky. Rev. Stat. Ann. § 439.3108(6), *amended by* 2020 Kentucky Laws Ch. 44 (H.B. 284) (graduated sanctions involving incarceration of more than 10 consecutive days or 60 days in one year must be approved by the court).
- 168 Mississippi Dep’t of Corr., SOP No. 37-20-2, available at https://www.interstatecompact.org/sites/interstatecompact.org/files/pdf/states/MS/MS_Sanctions_Matrix.pdf (last visited Feb. 7, 2020).
- 169 Mississippi Dep’t of Corr., SOP No. 37-20-2, available at https://www.interstatecompact.org/sites/interstatecompact.org/files/pdf/states/MS/MS_Sanctions_Matrix.pdf (last visited Feb. 7, 2020).
- 170 Mississippi Dep’t of Corr., SOP No. 37-20-2, available at https://www.interstatecompact.org/sites/interstatecompact.org/files/pdf/states/MS/MS_Sanctions_Matrix.pdf (last visited Feb. 7, 2020).
- 171 Mississippi Dep’t of Corr., SOP No. 37-20-2, available at <https://www.interstatecompact.org/sites/interstatecompact.org/files/pdf/states/>

- [MS/MS_Sanctions_Matrix.pdf](#) (last visited Feb. 7, 2020). For more on Mississippi's Technical Violation Centers and Restitution Centers, see section VI.B.
- 172 Kentucky Dep't of Corr., Policy No. 27-15-03, available at <https://corrections.ky.gov/About/cpp/Documents/27/PPP%2027-15-03.pdf> (last visited April 1, 2020).
- 173 Kentucky Dep't of Corr., Policy No. 27-15-03, available at <https://corrections.ky.gov/About/cpp/Documents/27/PPP%2027-15-03.pdf> (last visited April 1, 2020).
- 174 Kentucky Dep't of Corr., Policy No. 27-15-03, available at <https://corrections.ky.gov/About/cpp/Documents/27/PPP%2027-15-03.pdf> (last visited April 1, 2020).
- 175 Kentucky Dep't of Corr., Policy No. 27-15-03, available at <https://corrections.ky.gov/About/cpp/Documents/27/PPP%2027-15-03.pdf> (last visited April 1, 2020).
- 176 Kentucky Dep't of Corr., Policy No. 27-15-03, available at <https://corrections.ky.gov/About/cpp/Documents/27/PPP%2027-15-03.pdf> (last visited April 1, 2020).
- 177 Interview with Defense Counsel (AL6) (Jan. 24, 2020); Interview with Former Legal Advocate (AL8) (Nov. 20, 2019); Interview with Advocate (AL9) (May 5, 2020).
- 178 Interview with Advocate (AL9) (May 5, 2020).
- 179 Interview with Advocate (AL9) (May 5, 2020).
- 180 Ala. Code § 15-22-54(e)(1); Interview with Advocate (AL9) (May 5, 2020).
- 181 Ala. Code § 15-22-54(e)(1); Interview with Advocate (AL9) (May 5, 2020).
- 182 Ala. Code § 15-22-54(e)(1). Importantly, dunks are served in state facilities, and a person on probation does not get credit toward the dunk for time served while they are detained in a county jail awaiting a court hearing to adjudicate the alleged violation. *Id.* Prison over-crowding and other administrative delays mean that, following an arrest for a probation violation, people often have to sit anywhere from one to four weeks in a local jail *before* they are transferred to state prison and the dunk actually begins. Interview with Advocate (AL9) (May 5, 2020).
- 183 Interview with Advocate (AL9) (May 5, 2020).
- 184 461 U.S. 660 (1983) (holding that probation cannot be revoked for failure to pay fines or restitution unless the nonpayment was willful or there are no other reasonable alternatives available to meet the state's interest in punishment).
- 185 Miss. Code. Ann. § 47-7-38.1.
- 186 Miss. Code. Ann. § 99-37-19.
- 187 Interview with Defense Counsel (MS1) (Nov. 18, 2019); Interview with Legal Advocate (MS4) (Nov. 1, 2019).
- 188 Interview with Defense Counsel (MS2) (Nov. 20, 2019).
- 189 Interview with Defense Counsel (MS2) (Nov. 20, 2019).
- 190 Interview with Defense Counsel (MS2) (Nov. 20, 2019).
- 191 Interview with Defense Counsel (MS1) (Nov. 18, 2019).
- 192 ANNA WOLF AND MICHELLE LIU, THE MARSHALL PROJECT, THINK DEBTORS PRISONS ARE A THING OF THE PAST? NOT IN MISSISSIPPI (Jan. 9, 2020), <https://www.themarshallproject.org/2020/01/09/think-debtors-prisons-are-a-thing-of-the-past-not-in-mississippi>.
- 193 Interview with Defense Counsel (MS3) (Nov. 21, 2019).
- 194 ANNA WOLF AND MICHELLE LIU, THE MARSHALL PROJECT, THINK DEBTORS PRISONS ARE A THING OF THE PAST? NOT IN MISSISSIPPI (Jan. 9, 2020), <https://www.themarshallproject.org/2020/01/09/think-debtors-prisons-are-a-thing-of-the-past-not-in-mississippi>.
- 195 Interview with Defense Counsel (MS3) (Nov. 21, 2019).
- 196 Interview with Defense Counsel (MS3) (Nov. 21, 2019).
- 197 Interview with Defense Counsel (MS3) (Nov. 21, 2019); Interview with Legal Advocate (MS4) (Nov. 1, 2019); Interview with Defense Counsel (MS5) (Dec. 4, 2019).
- 198 Interview with Defense Counsel (MS5) (Dec. 4, 2019).
- 199 Interview with Defense Counsel (MS1) (Nov. 18, 2019).
- 200 Interview with Defense Counsel (MS6) (Nov. 25, 2019).
- 201 South Carolina's Department of Probation, Parole, and Pardon Services also has the authority to establish and maintain "restitution centers." S.C. Code Ann. § 24-21-485. According to South Carolina law, judges may place people on probation in restitution centers as a condition of their probation for at least three and not more than six months, unless the total probation term is less than one year, in which case they may be in the restitution center for at least 45 days and not more than 90 days. S.C. Code Ann. § 24-21-480. Those placed in restitution centers "must have paid employment and/or be required to perform public service employment up to a total of fifty hours per week." *Id.* Their salary is delivered directly to restitution center staff, who must distribute it in this order: (1) restitution to victims; (2) child support or alimony; (3) fines and court fees; (4) payment for room and board; (5) costs incurred while in the restitution center; and (6) "if available, fifteen dollars per week for personal items." *Id.* Whatever remains of the salary is given to the person on discharge. *Id.* Failure to comply with restitution center program requirements can result in revocation of probation. *Id.*
- 202 See, e.g., Fla. Stat. Ann. § 948.06(9)(b)(7) (noting that the graduated sanctions regime should punish failure to pay financial obligations, but failing to require consideration of a person's ability to pay); Ky. Rev. Stat. Ann. § 439.3107(1) (same); S.C. Code Ann. § 24-21-110(D) (same); Tenn. Code Ann. § 40-28-303(a) (same).
- 203 See JARRED WILLIAMS ET AL., COLUMBIA JUSTICE LAB, THE WISCONSIN COMMUNITY CORRECTIONS STORY 9 (Jan. 2019), <https://justicelab.columbia.edu/wisconsin-community-corrections-story> (electronic monitoring fees can add up to \$700 in additional supervision costs per month).
- 204 SHARON BRETT AND MITALI NAGRECHA, CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCHOOL, PROPORTIONATE FINANCIAL SANCTIONS: POLICY PRESCRIPTIONS FOR JUDICIAL REFORM 6-20 (2019), http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf.
- 205 SHARON BRETT AND MITALI NAGRECHA, CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCHOOL, PROPORTIONATE FINANCIAL SANCTIONS: POLICY PRESCRIPTIONS FOR JUDICIAL REFORM 30-31 (2019), http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf.

- 206 See Ala. Code § 15-22-54(d) (probation officer can arrest or order police officer to arrest person on probation without a warrant, using only a written statement by the probation officer that the person has, in the officer's judgment, violated the conditions of probation); Alaska Stat. Ann. § 12.55.085(b) (probation officer may, without warrant or other process, arrest a person in the officer's care); Ariz. Rev. Stat. Ann. § 13-901(D) (any probation officer, without warrant or other process, may rearrest any person on probation and bring the person before the court); Cal. Penal Code § 1203.2(a), *amended* by 2019 Cal. Legis. Serv. Ch. 111 (A.B. 1421) (any probation officer or peace officer with probable cause to believe that a supervised person is violating any term or condition of supervision can arrest that person without warrant); Colo. Rev. Stat. Ann. § 16-11-205(1)(e) (probation officer may arrest person under supervision if officer has "probable cause to believe that the conditions of probation have been violated and probable cause to believe that the probationer is leaving or about to leave the state, or that the probationer will fail or refuse to appear before the court to answer charges of violation, or that the arrest of the probationer is necessary to prevent physical harm"); Conn. Gen. Stat. Ann. § 53a-32(a) (probation officer may arrest defendant on probation without a warrant or deputize a police officer to do so "by giving a written statement that the defendant has, in the judgment of the probation officer, violated the conditions of the defendant's probation").
- 207 Interview with Legal Advocate (PA8) (Nov. 5, 2019).
- 208 Interview with Defense Counsel (CO7) (Dec. 5, 2019); Interview with Defense Counsel (ID1 and ID2) (Dec. 12, 2019).
- 209 Samantha Melamed et al., *Everyone is Detained: How Probation Detainers Can Keep People Locked Up Indefinitely—Even When They Haven't Committed a Crime*, THE PHILADELPHIA INQUIRER (Feb. 2020) <https://www.inquirer.com/news/inq/probation-parole-pennsylvania-philadelphia-detainer-criminal-justice-system-20191227.html>. See also Interview with Legal Advocate (PA2) (Nov. 22, 2019); Interview with Defense Counsel (PA3) (Nov. 15, 2019).
- 210 Samantha Melamed et al., *Everyone is Detained: How Probation Detainers Can Keep People Locked Up Indefinitely—Even When They Haven't Committed a Crime*, THE PHILADELPHIA INQUIRER (Feb. 2020) <https://www.inquirer.com/news/inq/probation-parole-pennsylvania-philadelphia-detainer-criminal-justice-system-20191227.html>.
- 211 Interview with Legal Advocate (PA8) (Nov. 5, 2019); Interview with Defense Counsel (PA9) (Nov. 8, 2019).
- 212 Follow-up Interview with Legal Advocate (PA1) (April 4, 2020); Follow-up Interview with Defense Counsel (PA9) (April 2, 2020).
- 213 Follow-up Interview with Legal Advocate (PA1) (April 4, 2020); Follow-up Interview with Defense Counsel (PA9) (April 2, 2020).
- 214 SHARON BRETT AND MITALI NAGRECHA, CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCHOOL, PROPORTIONATE FINANCIAL SANCTIONS: POLICY PRESCRIPTIONS FOR JUDICIAL REFORM 43–44 (2019), http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf.
- 215 See generally NAT'L INST. OF MEDICINE AND NAT'L RESEARCH COUNCIL, HEALTH AND INCARCERATION: A WORKSHOP SUMMARY (Nat'l Academies Press, 2019), available at <https://www.nap.edu/catalog/18372/health-and-incarceration-a-workshop-summary>; AM. ACAD. OF FAMILY PHYSICIANS, INCARCERATION AND HEALTH: A FAMILY MEDICINE PERSPECTIVE (POSITION PAPER) (Apr. 2017), <https://www.aafp.org/about/policies/all/incarcerationandhealth.html#low>.
- 216 See, e.g., *Chimel v. California*, 395 U.S. 752, 762–63 (1969) (search incident to arrest limited to person arrested and area within their immediate control); *United States v. Robinson*, 414 U.S. 218, 235 (1973) (search of person incident to arrest is exception to warrant requirement); *Arizona v. Gant*, 556 U.S. 332, 343 (2009) (search of automobile incident to arrest extends to automobile if person arrested could have accessed his car at the time of the search).
- 217 See, e.g., Alaska Stat. Ann. § 12.55.100(a) ("While on probation and among the conditions of probation, the defendant (1) shall be required to obey all state, federal, and local laws or ordinances, and any court orders applicable to the probationer."); Ark. Code Ann. § 5-4-303(b) ("The court shall provide as an express condition of every suspension or probation that the defendant not commit an offense punishable by imprisonment during the period of suspension or probation."); Colo. Rev. Stat. Ann. § 18-1.3-204(1)(a) ("The court shall provide as explicit conditions of every sentence to probation that the defendant not commit another offense during the period for which the sentence remains subject to revocation."); Ky. Rev. Stat. Ann. § 533.030(1) ("The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation."); Ohio Rev. Code Ann. § 2929.25(2) ("The sentencing court shall require as a condition of any community control sanction that the offender abide by the law."); 12 R.I. Gen. Laws Ann. § 12-19-8.1(a) ("The following shall constitute basic conditions of probation applicable to all defendants upon whom a period of probation has been imposed: (1) Obey all laws.").
- 218 Interview with Legal Advocate (RI1) (Nov. 8, 2019).
- 219 See, e.g., Ark. Code Ann. § 16-93-308(d); Conn. Gen. Stat. Ann. § 53a-32(d); Ga. Code Ann. § 42-8-34.1(b); Ind. Code Ann. § 35-38-2-3(f); 730 Ill. Comp. Stat. Ann. 5/5-6-4(c), *amended* by 2019 Ill. Legis. Serv. P.A. 101-406 (S.B. 1583); 12 R.I. Gen. Laws Ann. § 12-19-14(b).
- 220 See, e.g., Interview with Legal Advocate (RI1) (Nov. 8, 2019); Miss. Code Ann. § 47-7-37.1 ("Notwithstanding any other provision of law to the contrary, if a court finds by a preponderance of the evidence, that a probationer or a person under post-release supervision has committed a felony or absconded, the court may revoke his probation and impose any or all of the sentence.").
- 221 See generally KELLY LYN MITCHELL ET AL., ROBINA INSTITUTE, PROFILES IN PROBATION REVOCATION: EXAMINING THE LEGAL FRAMEWORK IN 21 STATES (2014), <https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/robina-report-2015-web.pdf>.
- 222 See Appendix E.
- 223 In some jurisdictions, the prosecutor is responsible for filing the revocation petition, but often this is at the recommendation of the probation officer. See, e.g., Interview with Legal Advocate (PA1) (Oct. 31, 2019). Other jurisdictions permit either the prosecutor or the probation officer to file a revocation petition. See, e.g., Ala. R. Crim. P. 27.4(a)(1); Interview with Former Defense Counsel (ID3) (Jan. 14, 2020). An interviewee in Idaho also reported that, occasionally, a probation officer will advise defense counsel to file a motion to revoke probation, because the probation officer would file the motion either way, and it would be "better" for the client if the motion came from defense counsel, who could then control the scope of the request. Interview with Former Defense Counsel (ID3) (Jan. 14, 2020).
- 224 Courts sometimes "revoke and reinstate" probation, which allows them to reinstate the person's probation with new or different terms

- or conditions or a longer sentence, or reinstate probation after a limited period of incarceration. *See, e.g.*, Interview with Defense Counsel (CO3) (Nov. 21, 2019); Interview with Judge (CO5) (Dec. 6, 2019); Interview with Defense Counsel (KY1) (Nov. 14, 2019).
- 225 *See* Appendix E. Eight other state statutes merely say that failure to pay can result in a “violation” or “breach” of probation, but do not explicitly say that this type of violation can result in revocation. *Id.*
- 226 *See* Appendix E.
- 227 *See* Appendix E.
- 228 Nev. Rev. Stat. Ann. § 176A.630(4)(e) (*eff.* July 1, 2020), *added by* 2019 Nevada Laws Ch. 633 (A.B. 236); *see generally* Hearing on A.B. 236 before Nevada Senate Committee on Judiciary, Eightieth Session (May 31, 2019).
- 229 *See, e.g.*, Kan. Stat. § 22-3716.
- 230 *See, e.g.*, Ala. Code § 15-22-54(e) (time spent on probation credited against sentence if probation revoked); Ga. Code Ann. § 42-8-38(c) (time that person has spent on probation shall be considered “time served” and deducted from original sentence); 42 Pa. Stat. and Cons. Stat. Ann. § 9771.1(i)(2) (sentencing upon revocation includes the same options as were available originally, with “due consideration” being given for time spent on probation).
- 231 *See, e.g.*, Alaska Stat. Ann. § 12.55.051(a) (a term of incarceration for failure to pay fines or restitution may be based on “credit” for each day in jail and “may not exceed one day for each \$50 of the unpaid portion of the fine or restitution or one year, whichever is shorter.”); Haw. Rev. Stat. Ann. § 706-644(3) (“The term of imprisonment for nonpayment of fee, fine, or restitution . . . shall not exceed one day for each \$25 of the fee or fine, thirty days if the fee or fine was imposed upon conviction of a violation or a petty misdemeanor, or one year in any other case, whichever is the shorter period.”); Ohio Rev. Code Ann. § 2929.15(B)(1)(c) (incarceration length following a probation violation not tied to original potential sentence, but instead based on several other statutory factors).
- 232 *See, e.g.*, Alaska Stat. Ann. § 12.55.085(c); Ark. Code Ann. § 16-93-308(g)(1)(A); Colo. Rev. Stat. Ann. § 16-11-206(5); Ga. Code Ann. § 42-8-38(c); Idaho Code Ann. § 20-222(2); Ind. Code Ann. § 35-38-2-3(h) (3); Iowa Code Ann. § 908.11(4); Miss. Code Ann. § 47-7-37.1; 12 R.I. Gen. Laws Ann. § 12-19-9(b).
- 233 *See, e.g.*, Interview with Defense Counsel (MS6) (Nov. 25, 2019).
- 234 *Bearden v. Georgia*, 461 U.S. 660, 662 (1983).
- 235 *Bearden v. Georgia*, 461 U.S. 660, 662 (1983).
- 236 *See, e.g.*, Alaska Stat. Ann. § 12.55.051(a) (“If the court finds that the defendant was unable to pay despite having made continuing good faith efforts, the defendant may not be imprisoned solely because of the inability to pay.”); Ariz. Rev. Stat. Ann. § 13-810(E)–(F) (requiring finding of willfulness in failure to pay prior to ordering incarceration); Ark. Code Ann. § 5-4-205(f)(2), (3)(D) (requiring that court find person did not make good faith effort to comply before revoking probation); Cal. Penal Code § 1203.2(a) (requiring finding of willfulness before revoking probation for failure to pay); Colo. Rev. Stat. Ann. § 18-1.3-401(1)(a)(III)(B) (allowing for revocation due to nonpayment of fine for certain felonies, “assuming the defendant’s ability to pay”); Ga. Code Ann. § 42-8-102(f)(2)(A) (requiring hearing and express findings on the record of lack of bona fide efforts to pay prior to revocation); Haw. Rev. Stat. Ann. § 706-644(1) (same); 730 Ill. Comp. Stat. Ann. 5/5-6-4(d), *amended by* 2019 Ill. Legis. Serv. P.A. 101-406 (S.B. 1583) (probation should not be revoked for nonpayment unless “such a failure is due to his willful refusal to pay”); Idaho Criminal Rule 33(g) (1) (probation may be revoked for failure to pay only if the court finds that the person willfully failed to pay or “has failed to make sufficient bona fide efforts to legally acquire the resources to make payment”); Ind. Code Ann. § 35-38-2-3(g) (“Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay.”); Ky. Rev. Stat. Ann. § 439.315(4) (failure to pay “without good cause” is grounds for revocation); Miss. Code Ann. § 99-19-20.1(1) (requiring hearing regarding ability to pay and findings that “defendant was not indigent or could have made payment but refused to do so”); Pa. R. Crim. P. 706(A) (probation will not be revoked unless, after a hearing, it appears that the person “is financially able to pay the fine or costs”). *But see, e.g.*, Ala. Code § 15-22-2(2) (if more than two months delinquent on payment, probation can be revoked, without any statutory requirement of a hearing on ability to pay).
- 237 Interview with Defense Counsel (AL1) (Jan. 22, 2020).
- 238 *See, e.g.*, MYESHA BRADEN, ET AL., LAWYERS’ COMM. FOR CIVIL RIGHTS UNDER LAW, TOO POOR TO PAY: HOW ARKANSAS’S OFFENDER-FUNDED JUSTICE SYSTEM DRIVES POVERTY & MASS INCARCERATION 16 (2019), <https://lawyerscommittee.org/too-poor-to-pay-how-arkansas-offender-funded-justice-system-drives-poverty-mass-incarceration/>.
- 239 Interview with Defense Counsel (KY1) (Nov. 14, 2019); Interview with Defense Counsel (KY2 and KY3) (Jan. 6, 2020); Interview with Defense Counsel (KY4 and KY5) (Dec. 11, 2019); Interview with Defense Counsel (KY8) (Nov. 19, 2019).
- 240 *See, e.g.*, Interview with Defense Counsel (CO2) (Dec. 6, 2019); Interview with Judge (CO6) (Dec. 3, 2019); Interview with Defense Counsel (GA4) (Nov. 22, 2019); Interview with Defense Counsel (OH1) (Jan. 3, 2020); Interview with Defense Counsel (OH2) (Jan. 14, 2020); Interview with Defense Counsel (PA4, PA5, and PA6) (Nov. 19, 2019).
- 241 Importantly, there is a general lack of knowledge about how and when probation departments will decide to notify a court of such violations. Very few jurisdictions make their probation policies publicly available, and some jurisdictions have few, if any, formal policies governing when probation officers or prosecutors must move for revocation. For example, during our research for this report, an attorney forwarded us a copy of the policy governing “when to file a complaint or petition to revoke” probation in a particular Judicial District Probation Department in Colorado. This policy governs only filing for revocation following the commission of a new criminal offense; it does not include anything governing when probation officers should file for revocation based on other probation violations. Interview with Defense Counsel (CO3) (Nov. 21, 2019). And as one interviewee in Georgia noted, if the probation department does not care about enforcement of probation conditions and does nothing to notify the court of perceived violations, “nothing happens.” Interview with Defense Counsel (GA4) (Nov. 22, 2019).
- 242 Interview with Defense Counsel (ID1 and ID2) (Dec. 18, 2019); Interview with Former Defense Counsel (ID3) (Jan. 14, 2020).
- 243 Interview with Defense Counsel (AL2) (Jan. 15, 2020); Interview with Defense Counsel (ID1 and ID2) (Dec. 18, 2019); Interview with Former Defense Counsel (ID3) (Jan. 14, 2020); Interview with Defense

- Counsel (MS2) (Nov. 20, 2019); Interview with Defense Counsel (MS3) (Nov. 21, 2019); Interview with Defense Counsel (MS5) (Dec. 4, 2019).
- 244 See, e.g., Interview with Defense Counsel (AL1) (Jan. 22, 2020); Interview with Defense Counsel (AL2) (Jan. 15, 2020); Interview with Defense Counsel/Former Judge (AL3) (Feb. 6, 2020); Interview with Defense Counsel (AL5) (Jan. 27, 2020); see also Ebony Ruhland, *It's All About the Money: an Exploration of Probation Fees*, CORRECTIONS 12 (Jan. 8, 2019) (on file with author).
- 245 Interview with Defense Counsel (CO2) (Dec. 20, 2019); Interview with Judge (CO6) (Dec. 3, 2019); Interview with Defense Counsel (ID4) (Jan. 15, 2020); Interview with Defense Counsel (PA4, PA5, and PA6) (Nov. 19, 2019). At least one probation office has policy of violating people on probation if they have not paid off their financial sanctions 120 days prior to the expiration of their probation term. Email from Sharon Dunn, Special Projects Administrator, Missouri Board of Probation and Parole, to Neda Khoshkhoo (Feb. 6, 2020) (on file with author).
- 246 Interview with Defense Counsel (ID4) (Jan. 15, 2020).
- 247 E.g., Interview with Defense Counsel (AL1) (Jan. 22, 2020); Interview with Defense Counsel (AL2) (Jan. 15, 2020); Interview with Defense Counsel/Former Judge (AL3) (Feb. 6, 2020); Interview with Defense Counsel (AL5) (Jan. 27, 2020); Interview with Defense Counsel (CO2) (Dec. 6, 2019); Interview with Defense Counsel (ID1 and ID2) (Dec. 6, 2019); Interview with Defense Counsel (OH4) (Dec. 5, 2019); Interview with Defense Counsel (PA7) (Nov. 14, 2019).
- 248 See, e.g., Interview with Defense Counsel (CO2) (Dec. 6, 2019); Interview with Defense Counsel (ID1 and ID2) (Dec. 6, 2019); Interview with Defense Counsel (OH4) (Dec. 5, 2019); Interview with Defense Counsel (PA7) (Nov. 14, 2019).
- 249 Interview with Defense Counsel (PA7) (Nov. 14, 2019).
- 250 Interview with Defense Counsel (PA7) (Nov. 14, 2019); Follow-up Interview with Defense Counsel (PA7) (April 2, 2020).
- 251 Interview with Defense Counsel (PA7) (Nov. 14, 2019); Follow-up Interview with Defense Counsel (PA7) (April 2, 2020).
- 252 Interview with Defense Counsel (PA7) (Nov. 14, 2019); Follow-up Interview with Defense Counsel (PA7) (April 2, 2020).
- 253 Interview with Defense Counsel (PA7) (Nov. 14, 2019); Follow-up Interview with Defense Counsel (PA7) (April 2, 2020).
- 254 Interview with Defense Counsel (AL1) (Jan. 22, 2020); Interview with Defense Counsel (AL2) (Jan. 15, 2020); Interview with Defense Counsel (KY7) (Dec. 2, 2019); Interview with Defense Counsel (MS6) (Nov. 25, 2019); Interview with Defense Counsel (OH3) (Dec. 17, 2019); Interview with Legal Advocate (OH5) (Nov. 25, 2019).
- 255 Interview with Defense Counsel (CO2) (Dec. 16, 2019); Interview with Judge (CO5) (Dec. 6, 2019); Interview with Judge (CO6) (Dec. 3, 2019); Interview with Defense Counsel (CO7) (Dec. 5, 2019); Interview with Defense Counsel (ID1 and ID2) (Dec. 18, 2019); Interview with Defense Counsel (KY6) (Dec. 13, 2019); Interview with Defense Counsel (PA7) (Nov. 14, 2019).
- 256 Interview with Defense Counsel (AL1) (Jan. 22, 2020); Interview with Defense Counsel (ID1 and ID2) (Dec. 6, 2019); Interview with Defense Counsel (KY6) (Dec. 13, 2019); Interview with Defense Counsel (KY7) (Dec. 2, 2019); Interview with Defense Counsel (MS6) (Nov. 25, 2019); Interview with Defense Counsel (OH3) (Dec. 17, 2019); Interview with Legal Advocate (OH5) (Nov. 25, 2019).
- 257 Interview with Defense Counsel (AL1) (Jan. 22, 2020); Interview with Defense Counsel (ID1 and ID2) (Dec. 6, 2019); Interview with Defense Counsel (KY6) (Dec. 13, 2019); Interview with Defense Counsel (KY7) (Dec. 2, 2019); Interview with Defense Counsel (MS6) (Nov. 25, 2019); Interview with Defense Counsel (OH3) (Dec. 17, 2019); Interview with Legal Advocate (OH5) (Nov. 25, 2019).
- 258 Interview with Defense Counsel (CO2) (Dec. 20, 2019); Interview with Defense Counsel (MS3) (Nov. 21, 2019).
- 259 Interview with Defense Counsel (CO2) (Dec. 20, 2019).
- 260 Interview with Judge (CO6) (Dec. 3, 2019); Interview with Defense Counsel (KY2 and KY3) (Jan. 6, 2020); Interview with Defense Counsel (OH4) (Dec. 5, 2019); Interview with Legal Advocate (OH5) (Nov. 25, 2019).
- 261 Interview with Defense Counsel (KY4 and KY5) (Dec. 11, 2019).
- 262 To protect the identity of the interviewee and the client, we have used "John" as a pseudonym.
- 263 Interview with Defense Counsel (AZ1) (Oct. 25, 2019).
- 264 Interview with Defense Counsel (AZ1) (Oct. 25, 2019).
- 265 Interview with Defense Counsel (AZ1) (Oct. 25, 2019).
- 266 Interview with Defense Counsel (AZ1) (Oct. 25, 2019).
- 267 Interview with Defense Counsel (AZ1) (Oct. 25, 2019).
- 268 Interview with Defense Counsel (AZ1) (Oct. 25, 2019).
- 269 Interview with Defense Counsel (AZ1) (Oct. 25, 2019).
- 270 See, e.g., Interview with Defense Counsel/Former Judge (AL3) (Feb. 6, 2020); Interview with Legal Advocate (GA7) (Nov. 22, 2019); Interview with Former Defense Counsel (ID3) (Jan. 14, 2020); Interview with Defense Counsel (ID4) (Jan. 15, 2020); Interview with Defense Counsel (ID6) (Dec. 13, 2019); Interview with Defense Counsel (MS1) (Nov. 18, 2019); Interview with Defense Counsel (MS2) (Nov. 20, 2019); Interview with Defense Counsel (OH6) (Jan. 13, 2020).
- 271 Follow-up Interview with Defense Counsel (MS2) (April 2, 2020). Research studies involving focus groups or interviews of people on probation confirm the practice that probation officers use threats of incarceration to coerce payment. ALEXES HARRIS ET AL., MONETARY SANCTIONS.ORG, UNITED STATES SYSTEMS OF JUSTICE, POVERTY AND THE CONSEQUENCES OF NON-PAYMENT OF MONETARY SANCTIONS: INTERVIEWS FROM CALIFORNIA, GEORGIA, ILLINOIS, MINNESOTA, MISSOURI, TEXAS, NEW YORK, AND WASHINGTON 25 (Nov. 8, 2017), <http://www.monetarysanctions.org/wp-content/uploads/2018/01/Monetary-Sanctions-2nd-Year-Report.pdf>; Michelle Phelps and Ebony Ruhland, *Governing Marginality: Coercion and Care in Probation Supervision*, Soc. PROBS. (forthcoming 2020–21).
- 272 Michelle Phelps and Ebony Ruhland, *Governing Marginality: Coercion and Care in Probation Supervision*, Soc. PROBS. (forthcoming 2020–21); Ebony Ruhland, *It's All About the Money: an Exploration of Probation Fees*, CORRECTIONS 3 (Jan. 8, 2019).
- 273 ALEXES HARRIS ET AL., MONETARYSANCTIONS.ORG, UNITED STATES SYSTEMS OF JUSTICE, POVERTY AND THE CONSEQUENCES OF NON-PAYMENT OF MONETARY SANCTIONS: INTERVIEWS FROM CALIFORNIA, GEORGIA, ILLINOIS, MINNESOTA, MISSOURI, TEXAS, NEW YORK, AND WASHINGTON 25 (Nov. 8, 2017), <http://>

www.monetarysanctions.org/wp-content/uploads/2018/01/Monetary-Sanctions-2nd-Year-Report.pdf. We also heard reports of private probation companies in Georgia that illegally threatened to incarcerate people whose probation terms had expired if they did not pay their outstanding debts. Interview with Legal Advocate (GA6) (Oct. 30, 2019).

274 See section VIII.d.

275 Interview with Defense Counsel (AR1) (Jan. 7, 2020); Interview with Probation Officers (GA2 and GA3) (Jan. 7, 2020); Interview with Legal Advocate (GA5) (Jan. 9, 2020); Interview with Defense Counsel (ID1 and ID2) (Dec. 12, 2019); Interview with Defense Counsel (KY9) (Nov. 26, 2019); Interview with Defense Counsel (MS6) (Nov. 25, 2019).

276 Interview with Defense Counsel (AR1) (Jan. 7, 2020).

277 Interview with Defense Counsel (AR1) (Jan. 7, 2020).

278 Interview with Probation Officer (AR2) (Jan. 1, 2020); Interview with Defense Counsel (GA4) (Nov. 22, 2019); Interview with Defense Counsel (ID1 and ID2) (Dec. 12, 2019); Interview with Former Defense Counsel (ID3) (Jan. 14, 2020); Interview with Defense Counsel (KY7) (Dec. 2, 2019); Interview with Defense Counsel (OH1) (Jan. 3, 2020); Interview with Defense Counsel (MS3) (Nov. 21, 2019).

279 Interview with Defense Counsel (AR1) (Jan. 7, 2020); Interview with Defense Counsel (CO9) (Dec. 3, 2019); Interview with Probation Officers (GA2 and GA3) (Jan. 7, 2020); Interview with Defense Counsel (ID1 and ID2) (Dec. 12, 2019); Interview with Defense Counsel (KY9) (Nov. 26, 2019); Interview with Defense Counsel (MS6) (Nov. 25, 2019).

280 E.g., Interview with Defense Counsel (AL1) (Jan. 22, 2020); Interview with Defense Counsel (AR1) (Jan. 7, 2020); Interview with Defense Counsel (CO7) (Dec. 5, 2019); Interview with Defense Counsel (ID6) (Dec. 13, 2019); Interview with Defense Counsel (KY6) (December 13, 2019); Interview with Defense Counsel (OH6) (Jan. 13, 2020); Interview with Defense Counsel (PA9) (Nov. 8, 2019).

281 Interview with Defense Counsel (AL7) (Dec. 10, 2019).

282 Interview with Defense Counsel (MS6) (Nov. 25, 2019).

283 See Appendix D.

284 See Appendix D.

285 See Appendix D.

286 See Appendix D.

287 See, e.g., Wyo. Stat. Ann. § 7-13-305(a).

288 Interview with Defense Counsel (PA3) (Nov. 15, 2019); Interview with Legal Advocate (PA8) (Nov. 5, 2019). Pennsylvania Senate Bill 14 (introduced in January 2019) could implement a maximum probation sentence for the first time in the state. As of this writing, however, it is still in committee.

289 Ky. Rev. Stat. Ann. § 533.020(4), amended by 2020 Kentucky Laws Ch. 44 (H.B. 284).

290 Interview with Defense Counsel (KY2 and KY3) (Jan. 6, 2019); Interview with Defense Counsel (KY4 and KY5) (Dec. 11, 2019); Interview with Defense Counsel (KY6) (Dec. 13, 2019).

291 Interview with Defense Counsel (AL1) (Jan. 22, 2020); Interview with Defense Counsel (AR1) (Jan. 7, 2020); Interview with Judge (CO5) (Dec. 6, 2019); Interview with Defense Counsel (ID6) (Dec. 13, 2019); Email from Michelle Dix, Assistant Deputy Director, Community-Based Corrections, Iowa Dep't of Corr., to Neda Khoshkhoo (Dec. 2, 2019) (on file with author); Interview with Defense Counsel (KY1) (Nov. 14, 2019); Interview with Defense Counsel (MS6) (Nov. 25, 2019); Interview with Legal Advocate (OH5) (Nov. 25, 2019); Interview with Defense Counsel (PA9) (Nov. 8, 2019).

292 Interview with Defense Counsel (KY6) (December 13, 2019); Interview with Defense Counsel (MS6) (Nov. 25, 2019).

293 Interview with Defense Counsel (CO1) (Dec. 4, 2019); Interview with Defense Counsel (CO2) (Dec. 6, 2019); Interview with Former Judge (CO8) (Dec. 5, 2019).

294 Interview with Defense Counsel/Formal Judge (AL3) (Feb. 6, 2020); Interview with Defense Counsel (AL7) (Dec. 10, 2019); Interview with Former Legal Advocate (AL8) (Nov. 20, 2019).

295 Karin D. Martin et al., *Monetary Sanctions: Legal Financial Obligations in US Systems of Justice*, 1 ANN. R. OF CRIM. 471, 473 (2018).

296 Interview with Defense Counsel (CO2) (Dec. 6, 2019); Interview with Defense Counsel (GA4) (Nov. 22, 2019).

297 Interview with Defense Counsel (CO1) (Jan. 2, 2020); Interview with Defense Counsel (GA1) (Jan. 3, 2020); Interview with Former Defense Counsel (ID3) (Jan. 14, 2020); Interview with Defense Counsel (OH2) (Jan. 14, 2020).

298 Interview with Defense Counsel (CO2) (Dec. 6, 2019); Interview with Defense Counsel (CO4) (Dec. 6, 2019); Interview with Former Defense Counsel (ID3) (Jan. 14, 2019); Interview with Defense Counsel (KY6) (Dec. 13, 2019); Email from Jason Smith, Assistant Director, Division of Field Services, New Hampshire Dep't of Corr., to Neda Khoshkhoo (Jan. 23, 2020) (on file with author).

299 Interview with Defense Counsel (AL7) (Dec. 10, 2019); Interview with Defense Counsel (CO3) (Nov. 21, 2019); Interview with Defense Counsel (KY4 and KY5) (Dec. 11, 2019); Interview with Defense Counsel (PA7) (Nov. 14, 2019); Email from Scott Richensen, Deputy Director of Programs, Education and Re-entry, Virginia Dep't of Corr., to Neda Khoshkhoo (Jan. 15, 2020) (on file with author).

300 See Appendix D.

301 See Appendix E.

302 Interview with Defense Counsel (ID1 and ID2) (Dec. 18, 2019); Interview with Defense Counsel (OH6) (Jan. 13, 2020).

303 Email from Robert Reyes, Assistant Chief Probation Officer, San Luis Obispo County Probation Department, California, to Neda Khoshkhoo (Jan. 30, 2019) (on file with author); Email from Eleanor McMullen, Senior Policy Analyst, Maryland Department of Public Safety and Correctional Services, to Neda Khoshkhoo (Feb. 6, 2020) (on file with author); Email from Jeremiah Stromberg, Assistant Director of Community Corrections, Oregon Dep't of Corr., to Neda Khoshkhoo (Jan. 28, 2020) (on file with author).

304 Interview with Defense Counsel (CO2) (Dec. 6, 2019); Interview with Judge (CO6) (Dec. 3, 2019); Interview with Defense Counsel (CO9) (Dec. 3, 2019); Email from Susan Gagnon, Director of Adult Community Corrections, Maine Dep't of Corr., to Neda Khoshkhoo (Dec. 5, 2019) (on file with author).

- 305 Interview with Defense Counsel (AR1) (Jan. 7, 2020); Interview with Probation Officer (AR2) (Jan. 10, 2020); Interview with Defense Counsel (KY9) (Nov. 26, 2019).
- 306 Interview with Defense Counsel (MS3) (Nov. 21, 2019).
- 307 Follow-up Interview with Defense Counsel (CO1) (Jan. 2, 2020); Interview with Defense Counsel (CO7) (Dec. 5, 2019); Interview with Judge (CO10) (Nov. 26, 2019); Interview with Defense Counsel (ID1 and ID2) (Dec. 18, 2019); Email from Jan Rodrigue, Probation and Parole Deputy Director, Louisiana Department of Public Safety and Corrections, to Neda Khoshkhoo (Feb. 18, 2020) (on file with author); Email from Allen Godfrey, Director for Field Services, Minnesota Dept't of Corr., to Neda Khoshkhoo (Jan. 23, 2020) (on file with author); Interview with Defense Counsel (OH2) (Jan. 14, 2020); Interview with Defense Counsel (PA4, PA5, and PA6) (Nov. 19, 2019).
- 308 SHARON BRETT AND MITALI NAGRECHA, CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCHOOL, PROPORTIONATE FINANCIAL SANCTIONS: POLICY PRESCRIPTIONS FOR JUDICIAL REFORM 49 (2019), http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf.
- 309 See, e.g., Interview with Defense Counsel (CO2) (Dec. 6, 2019); Interview with Defense Counsel (CO4) (Dec. 6, 2019); Interview with Former Defense Counsel (ID3) (Jan. 14, 2020); Interview with Defense Counsel (OH4) (December 5, 2019); Interview with Legal Advocate (OH7) (Dec. 2, 2019). In Alabama, we heard from several attorneys that if a person fails to pay their court debt, it goes to a collections office within the District Attorney's Office—the Restitution Recovery Unit—which adds a 30% surcharge to the amount owed. Interview with Defense Counsel/Prosecutor (AL4) (Feb. 4, 2020); Interview with Defense Counsel (AL6) (Jan. 24, 2020). Similarly, Colorado uses a “collections investigation unit” to track people down and enforce civil judgments at the end of probation—these units can add an additional fee, identify assets, and use other civil debt collection mechanisms. Interview with Defense Counsel (CO3) (Nov. 21, 2019).
- 310 Interview with Defense Counsel (KY2 and KY3) (Jan. 6, 2020).
- 311 Interview with Defense Counsel (KY2 and KY3) (Jan. 6, 2020); Interview with Defense Counsel (KY6) (Dec. 13, 2019); Interview with Defense Counsel (KY8) (Nov. 19, 2019).
- 312 Interview with Defense Counsel (MS2) (Nov. 20, 2019).
- 313 Interview with Defense Counsel (MS2) (Nov. 20, 2019).
- 314 Beth Colgan, *Wealth-Based Penal Disenfranchisement*, 72 VAND. L. REV. 55, 77 (2019).
- 315 See Lawrence Mower, *DeSantis Signs Bill Requiring Felons to Pay Fines, Fees, Restitution Before Voting*, MIAMI HERALD (June 28, 2019), <https://www.miamiherald.com/news/politics-government/state-politics/article232088952.html>. Advocates continue to challenge the statute requiring that people with prior convictions pay off all their financial sanctions before they can regain the right to vote. They recently secured a favorable ruling in federal district court that such a “pay-to-vote system” was unconstitutional. *Jones v. DeSantis*, No. 4:19CV300-RH/MJF, 2020 WL 2618062, at *1 (N.D. Fla. May 24, 2020) (“[T]he State can condition voting on payment of fines and restitution that a person is able to pay but cannot condition voting on payment of amounts a person is unable to pay or on payment of taxes, even those labeled fees or costs.”).
- 316 See generally Mitali Nagrecha, Sharon Brett, and Colin Doyle, *Court Culture and Criminal Law Reform*, 69 DUKE L. J. ONLINE (Apr. 2020), https://www.minnesotalawreview.org/wp-content/uploads/2015/09/Uggen_4fmt_PDF.pdf.
- 317 For a description of the reforms necessary to create such a system, see generally, SHARON BRETT AND MITALI NAGRECHA, CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCHOOL, PROPORTIONATE FINANCIAL SANCTIONS: POLICY PRESCRIPTIONS FOR JUDICIAL REFORM (2019), http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf.

**CRIMINAL JUSTICE
POLICY PROGRAM**

HARVARD LAW SCHOOL

Austin Hall, 1st Floor, 1515 Massachusetts Ave., Cambridge, MA 02138
Phone: 617-495-4848 | cjpp.law.harvard.edu