

From: Office of the Assistant Attorney General (CRT) [<mailto:CRT.OAAG@usdoj.gov>]
Sent: Wednesday, January 18, 2017 12:09 PM
To: Office of the Assistant Attorney General (CRT) <CRT.OAAG@usdoj.gov>
Subject: Preventing the Criminalization of Poverty

Dear Colleagues and Partners:

I write to you today to highlight some of this Administration's critical work to end the criminalization of poverty in this country. The outstanding employees in the Division that I have had the privilege to lead are dedicated to enforcing our nation's civil rights laws to help remedy inequities throughout our justice system.

We have fought the criminalization of poverty through our investigations. For instance, in March 2015, the [findings from the Division's investigation into the City of Ferguson, Missouri](#), helped launch a national conversation about the connections among policing, poverty, race and injustice. In addition to discriminatory policing against African Americans, the Division found that the city was using policing as a means to generate revenue, imposing excessive fines and fees against people and incarcerating them for nonpayment even when they could not afford to pay—practices that resulted, in effect, in the criminalization of poverty. One year later, in March 2016, the Division and the City of Ferguson [announced an agreement](#) resolving the Division's pending lawsuit. The court-enforceable consent decree contains comprehensive requirements for reform to remedy the unconstitutional law enforcement conduct that punished poverty and destroyed the community's trust in law enforcement and city government.

We have also worked to incorporate protections against the criminalization of poverty in other settlement agreements. In Hinds County, Mississippi, our June 2016 [settlement agreement](#) resolved the Division's findings that Hinds County failed to protect prisoners from violence and excessive force and held them past their court-ordered release dates. The agreement is the first of its kind to incorporate broader criminal justice system reforms through diversion at the front end and reentry to the community after incarceration. Among other things, it prohibits incarcerating individuals for failure to pay fines or fees in contravention of federal law. The agreement also creates a criminal justice coordinating committee that will help ensure the county's systems operate effectively and efficiently; that will develop interventions to divert individuals, in appropriate cases, from arrest, detention and incarceration; and that will engage in community outreach.

Working with our partners in the Office for Access to Justice (ATJ), the Division has additionally filed briefs in lawsuits brought by third parties, aimed at stopping the criminalization of poverty. One of our key concerns has been bail practices that result in punishing individuals for their economic status rather than for crimes they may have committed. Over the past two years, the Division filed statements of interest in two cases—[Varden v. City of Clanton](#) and [Walker v. City of Calhoun](#)—arguing that if bail practices result in jailing people because of their poverty, without consideration of their ability to pay or alternatives to incarceration, such practices violate the Constitution, constitute bad public policy and may negatively impact public safety.

We also filed a brief in a suit challenging another unlawful justice system practice: the automatic suspension of driver's licenses of those who fail to pay court fines or fees. That brief, filed in the [Stinnie et al. v. Holcomb](#) case, advanced the Department's position that suspending a driver's license is unconstitutional if it is done without providing due process—notice and a pre-deprivation hearing—

and without assessing whether the individual's failure to pay was willful or the result of an inability to pay. And because punishing people for the fact of their homelessness amounts to punishing them for their poverty, we filed a brief in [Bell v. Boise](#), a case challenging anti-sleeping and anti-camping laws under the Eighth Amendment. In that brief, we argued that, because every human being must sleep at some time and in some place, arresting and punishing a person for sleeping in public—when there aren't enough shelter beds in the city and she has nowhere else to go—criminalizes the status of being homeless and the poverty that is so often the cause of homelessness.

In addition to addressing these issues through investigations and litigation, we have also used other tools in our toolbox to prevent the criminalization of poverty. In March 2016, the Department released a package of resources to assist state and local efforts to reform unjust and prohibited practices related to the assessment and enforcement of justice system fines and fees. The package, which was sent to state chief justices and state court administrators throughout the country, included four different components. It contained a [Dear Colleague Letter](#) that addressed some of the most common practices that run afoul of the Constitution or other federal laws, such as incarcerating individuals for nonpayment without determining their ability to pay. The letter also addressed other key issues in the enforcement of justice system financial obligations, including the importance of due process protections such as notice and, in appropriate cases, the right to counsel; the need to avoid unconstitutional bail practices; and due process concerns raised by certain private probation arrangements. The package also included \$2.5 million in competitive grants through the Bureau of Justice Assistance to state, local and tribal jurisdictions that want to test strategies to restructure the assessment and enforcement of court fines and fees; support for the National Task Force on Fines, Fees and Bail Practices, which is led by the Conference of Chief Justices and the Conference of State Court Administrators; and a [Resource Guide](#) that assembles issue studies and other publications related to the assessment and enforcement of fines and fees to help leaders make informed policy decisions and pursue sound strategies.

And just this month, our colleagues at ATJ and the Office of Justice Programs (OJP) issued an [Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles](#) that reminds Department recipients of their constitutional and statutory responsibilities related to collecting fines and fees from youth involved with the juvenile justice system and offers recommendations to improve the administration of juvenile fines and fees.

We have also worked to gather critical stakeholders from both inside and outside government to come together and develop new, innovative ways to attack this problem together. In December 2015, the Department hosted a convening bringing together judges, court administrators, legislators, academics and litigators to develop a research and policy agenda to address the effects and fairness of fines and fees and to inform jurisdictions in their efforts to reform these court practices. The following day, the White House and the Department co-sponsored an event, "A Cycle of Incarceration: Prison, Debt and Bail Practices," to bring public attention to the connection between poverty and justice system involvement, and to highlight state reform efforts. As part of these events, the Department issued this [Fact Sheet](#) and the White House Council of Economic Advisers released an [Issue Brief](#) exploring the economic inefficiency of court fines and fees and their disproportionate impact on the poor. In September 2016, the Department hosted a second convening that brought together judges, court administrators, advocates, academics, and other stakeholders to share progress and lessons learned from efforts to reform debt and bail practices. At the convening, OJP Assistant Attorney General Karol V. Mason [announced](#) that OJP would make

awards of nearly \$3 million to reform the assessment and enforcement of justice debts in California, Louisiana, Missouri, Texas and Washington.

Finally, I have tried to use every opportunity presented to me to educate a broader audience about these issues, as they are near to my heart, and the pernicious effects of criminalizing poverty are often hidden from the public eye. Thanks to kind invitations, including from many of you, I have had the chance to speak with diverse audiences about these profound social questions and the obligation of government to do what we can to correct these injustices, including during my recent [remarks at the Southern Center for Human Rights' Symposium on the Criminalization of Race and Poverty](#) and at the [Symposium on the Criminalization of Poverty at University of Michigan Law School](#). And I was lucky enough to have been joined in this effort by the Attorney General herself, who spoke powerfully on many occasions about how high we have made the price of justice in this country; I commend you to all of her speeches, but in particular to [her remarks at our December 2015 convening on incarceration and poverty](#).

We appreciate you having joined us over the past few years in giving voice to the subtle, dangerous ways that the justice system can erode society's belief that its government operates fairly and with equal protection for all. Shoring up the belief that public institutions treat people with dignity and decency is essential to effective self-governance, public safety and the rule of law.

We encourage you to share this letter with your colleagues and communities, and we look forward to a continuing dialogue with all of you as we work toward our common goals.

Thank you,
Vanita

Vanita Gupta
Head of the Civil Rights Division
U.S. Department of Justice