

# BEYOND PAYMENT PLANS: BREAKING THE CYCLE OF COURT DEBT IN TENNESSEE



*Many face inequitable access to payment plans, struggle under the weight of court debt that keeps them trapped in a cycle of poverty*

## Executive Summary

Like most states, Tennessee punishes offenders with fines and helps fund its criminal justice system by charging certain fees of those who interact with it.

In 2019, Tennessee instituted a law that requires county courts to offer payment plans to low-income Tennesseans who owe court fines and fees. **But access to these plans, as well as procedures for implementing them and for suspending the driver's licenses of Tennesseans who have fallen behind on their payments, varies widely across counties.**

For Tennesseans who face an endless cycle of penalties due to an inability to pay court debt, the county where they live could determine whether they have access to a payment plan that could help them break free. Moreover, court fines and fees have a **disproportionate impact on people who are low-income, Black and/or rural**, and the financial hardship they experience may lead to increased recidivism with larger impacts for communities as a whole.

Changes to public policy could mitigate the economic damages of court fines and fees and lead to more equitable outcomes for all Tennesseans.

## ThinkTennessee's Three-Part Series on Court Debt and Payment Plans

This three-part series provides **details on Tennessee's system of fines and fees**, including findings from a phone survey of county court clerks, and outlines **additional steps** Tennessee policymakers and practitioners can take to close gaps in payment-plan access and further alleviate the adverse effects of court debt on individual defendants and the public as a whole.

**Part I: Court Fines and Fees** explains how Tennessee relies heavily on court fines and fees to fund its criminal justice system and describes how both individuals and the broader Tennessee public are harmed by inequitable, and often insurmountable, court debt. Specifically, we conclude that Tennesseans who are low-income, Black and/or rural are disproportionately impacted by fines and fees, and that fines and fees create serious barriers to housing and employment, potentially increasing rates of recidivism and thus negatively impacting Tennessee communities.

**Part II: Current Law in Tennessee** describes how Tennessee law has changed over time with respect to court debt and illustrates how those changes have disproportionately affected low-income, Black and/or rural Tennesseans. Overall, our research finds that policies meant to incentivize court debt repayment instead led to great economic hardship for indigent Tennesseans, and that the implementation of payment plans has failed to fully remedy the problem.

**Part III: Recommendations for Reform** highlights options for Tennessee policymakers to consider to further mitigate the economic damages of court fines and fees. Specifically, we recommend policymakers take one or more of the following actions: (1) Streamline the payment-plan process; (2) Create more avenues for waiving fines and fees for indigent Tennesseans; (3) Eliminate counterproductive economic punishments, like the suspension of driver's licenses, and (4) Reduce government reliance on revenues from fines and fees in state and county budgets.

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Part One of this three-part series provides context on Tennessee's system of court fines and fees, describes the populations most likely to be impacted by them and details how court debt creates serious barriers to housing and employment, potentially increasing rates of recidivism and negatively impacting Tennessee communities.

## Key Findings

- Tennessee's criminal justice system disproportionately impacts Tennesseans who are low-income, Black and/or rural.
- People who owe court costs are typically extremely low-income, with court bills that can add up to 50% of their annual income.
- Unpaid fines and fees create serious barriers to housing and employment, potentially increasing rates of recidivism and negatively impacting Tennessee communities.

## Tennessee's System of Fines and Fees

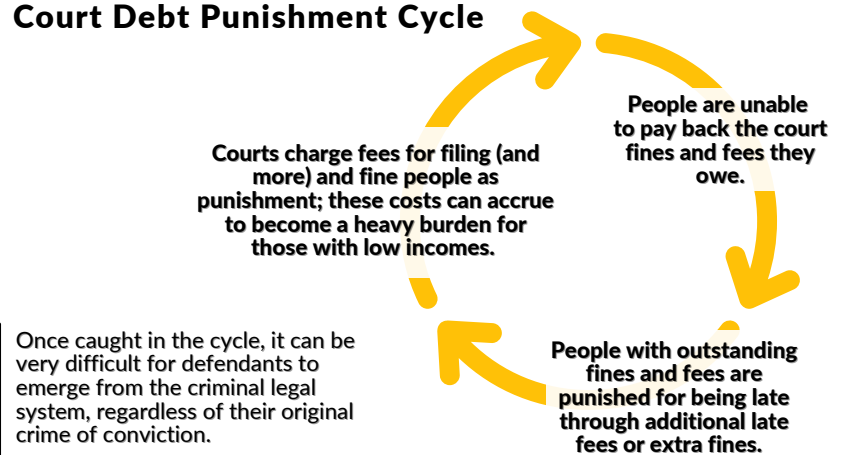
Tennessee's court system is funded in part by revenue brought in from fines and fees. Fines charged upon conviction are intended to deter and punish offenders, whereas fees function simply to raise revenues, shifting the costs of providing court services from taxpayers to defendants.(i)

With **over 360 separate charges** in Tennessee state law, court fines and fees can add up to a lot at the individual level, often leading to devastating bills and economic consequences.(ii) And for people with low incomes, the inability to pay fines and fees can lead to a never-ending cycle of punishment related to court debt.(iii)

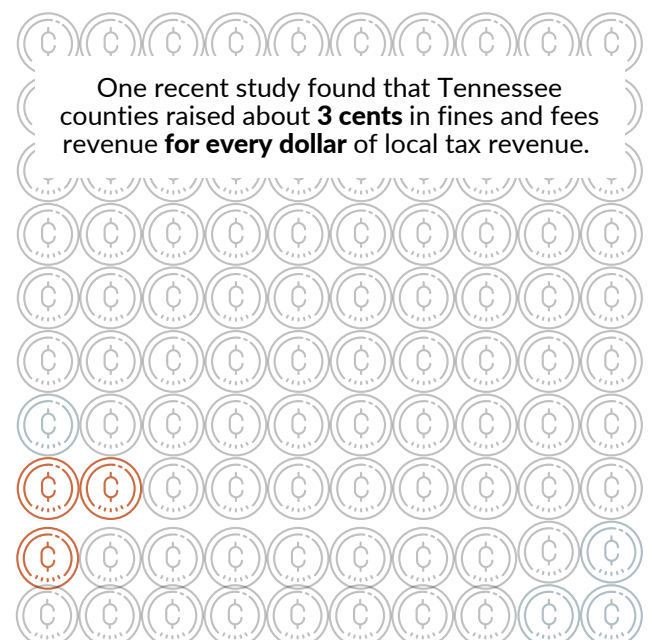
On the other hand, fines and fees **don't tend to add up to much** for state and local budgets, which receive only minimal benefit from them as a source of revenue.(iv)

A recent study by The Sycamore Institute found that for every dollar of local tax revenue Tennessee counties received, only three cents came from fines and fees.(v) In other words, the funds generated by fines and fees **make up a nominal portion** of most Tennessee government budgets and therefore provide a limited public good. But they are frequently levied against those who have the least ability to pay, creating **significant individual harm**.

## Court Debt Punishment Cycle



Source: Chicago Appleseed Center for Fair Courts



Source: The Sycamore Institute

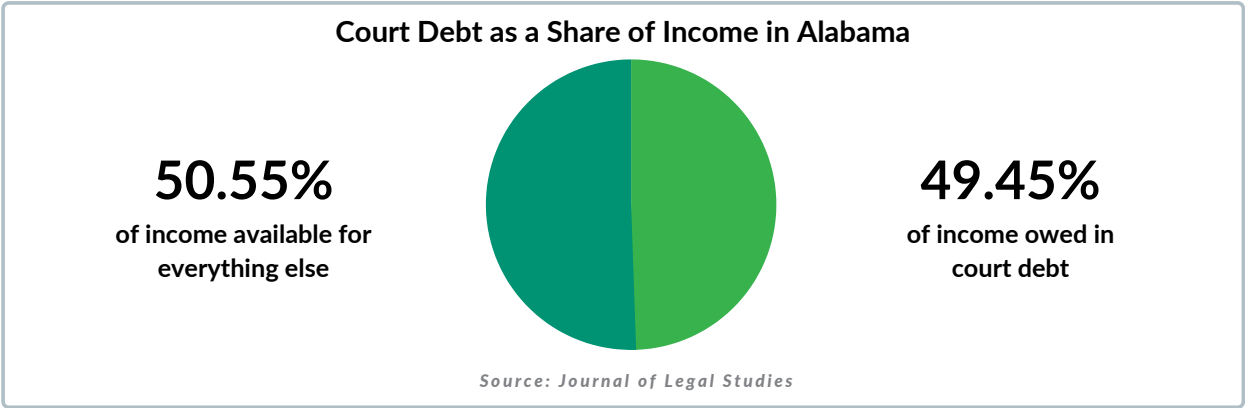
## Disproportionate Impacts of Court Fines and Fees

With hundreds of potential fines and fees, court costs can add up quickly and create insurmountable burdens for defendants, particularly those with **low incomes**. Additionally, Tennesseans who are **Black or living in rural areas** are also more likely to experience the harmful consequences of unpaid fines and fees, as those groups tend to interact with the criminal justice system more frequently than others.

### Income Levels

A lack of data prevents an examination of the impacts of court fines and fees on Tennesseans by income level. Data from other states, however, show clearly that **defendants' income levels tend to be extremely low**.

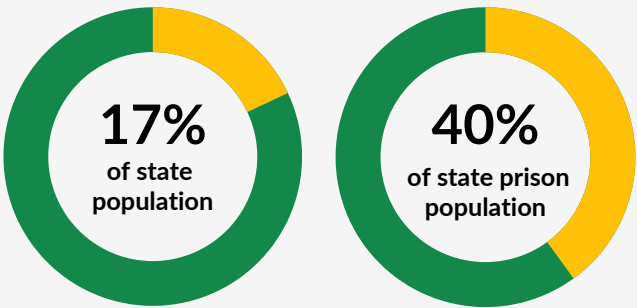
According to one study, defendants in Miami and Philadelphia had an average annual income of between 39% and 62% of the federal poverty level (\$4,524 to \$7,223).(vi) In another report from Alabama, individuals with a felony conviction were found to have a median income of \$8,000 (vii) and median accrued court costs of nearly 50% of their annual income, or \$3,956.(viii)



### Demographics

While demographic data specifically on who holds court debt in Tennessee is not available, we can approximate the groups most likely to be impacted by looking at population characteristics within the state's criminal justice system. For instance, although **Black Tennesseans** account for 17% of the state's population, they make up **40% of state prisoners**.(ix) Jail populations have increased in smaller counties even as they have declined in larger ones, and the **highest rates** of prison admissions are now in **rural counties**.(x)

#### Black Tennesseans Overrepresented in Criminal Justice System



### Connection Between Court Debt and Recidivism

Policies and practices that do not fully consider one's ability to pay and maintain government reliance on fines and fees as a source of revenue result in inequities that harm both individuals and communities.

Overwhelming court debt can result in poor credit, leading to serious barriers to housing and employment and potentially increasing rates of recidivism.(xi) In an Alabama survey of individuals with court debt, **38% admitted to committing at least one crime** to pay it off.(xii) Thus, decreasing outstanding court debt could **lower the rate of re-offense in our state**, which has some of the highest rates of recidivism (40th), as well as violent (48th) and property (40th) crimes, in the nation.(xiii)

Part Two of this three-part series focuses on how Tennessee law has changed over time with respect to court debt and describes the way those changes have affected low-income Tennesseans.

## Key Findings

- Driver's license revocations were introduced to incentivize the timely repayment of court fines and fees, but they led to great economic hardship for indigent Tennesseans who lacked the ability to pay. Without a driver's license, many individuals cannot get to work, and therefore cannot earn the income necessary to pay overdue court costs.
- While a step in the right direction, the provision of payment plans for low-income Tennesseans with court debt has failed to fully remedy the issue. Access to these plans, as well as procedures for implementing them and for suspending the driver's licenses of Tennesseans who have fallen behind on their payments, varies widely across counties.

## Driver's License Revocations for Unpaid Court Costs in Tennessee

The goal of suspending driver's licenses for unpaid fines and fees is to incentivize those with court debt to pay what they owe as quickly as possible. The policy, however, **incorrectly assumes** that most people fail to pay their court debt because they **choose not to**, rather than because they **lack the financial resources** to do so. As policymakers have learned that many individuals with court debt simply do not have the money to pay it off, numerous states -- including Tennessee -- have added protections for low-income individuals.

In 2011, the Tennessee General Assembly passed a law that allowed the Department of Safety to **revoke driver's licenses** from Tennesseans whose debt was more than a year overdue.(xiv) The purported goal of the policy was to help court clerks more effectively collect unpaid court costs, as they had few enforcement tools at their disposal.(xv) But as evidence from other states shows and as has become clear in our own state, the loss of a driver's license can **impede one's ability to earn the wages** necessary to repay court fines and fees. This penalty thus prevents low-income defendants from paying their court costs, rather than incentivizing them to do so.(xvi)

The **perverse effects** of suspending driver's licenses for people with low incomes became even clearer during a series of court cases questioning the constitutionality of punishing people who simply cannot afford to pay. Partially as the result of this ongoing litigation, in 2019 the Tennessee General Assembly **revised its policy** to more fully consider one's ability to pay prior to suspending their driver's licenses due to court debt.(xvii) The new law requires counties to offer **income-based repayment plans** for court debts overdue by at least a year and allows **suspension of court debt** for those able to prove indigence.

Similarly, payment plans are also required for **unpaid traffic debt**, though a provision for indigency is not included. Tennesseans who had their driver's licenses suspended under the previous policy must also be offered payment plans.



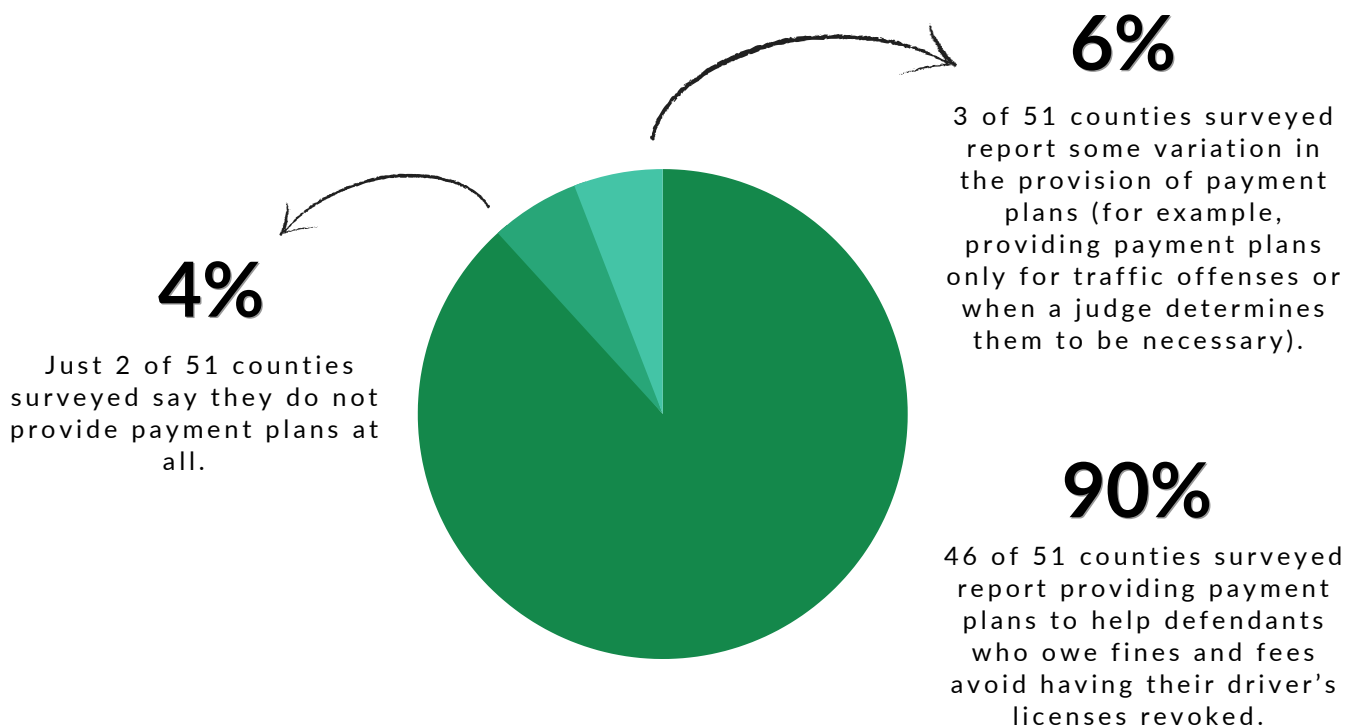
*Prior to the passage of the 2019 law establishing payment plans in cases of indigency, Tennessee faced multiple lawsuits challenging its policy of suspending the driver's licenses of those unable to pay fines and court costs .*

## Findings from a Phone Survey of Tennessee County Court Clerks

Research on the effectiveness of payment plans is challenging due to a **lack of publicly available criminal justice data** in our state.(xviii) In the absence of this data, ThinkTennessee created and administered a phone survey among Tennessee's county court clerks to determine the **extent to which payment plans have been implemented**. 51 of Tennessee's 95 county court clerks responded to the survey.

Overall, the survey results are positive. Most Tennessee counties report they make **payment plans available** to defendants with court debt. However, implementation of the law is **not complete**, and Tennesseans have **varying levels of access** to payment plans depending on where they live.

### Payment Plan Availability Varies by County in Tennessee



Source: ThinkTennessee Survey of Tennessee County Court Clerks

## Inequitable Access to Payment Plans

ThinkTennessee's survey showed that **most counties technically make payment plans available** to low-income Tennesseans with court debt, but that access to those plans -- as well as procedures for implementing them and for suspending the driver's licenses of Tennesseans who have fallen behind on their payments -- **varies widely across counties**. As a result, some county clerks report that nearly everyone eligible for a payment plan is enrolled, while others say their county has just middling or very low usage.

## Differences in payment plan policies across counties

- **Enrollment procedures:** Some counties automatically enroll defendants onto payment plans when the case is disposed, while others require defendants to complete a form. In some counties, defendants submit the form, while others require a judge's approval.
- **Fee-reduction opportunities:** Certain counties work with defendants to reduce the amount of fines and fees owed before establishing payment plans, while others charge additional filing fees or require down payments prior to establishing a payment plan, partially nullifying the very purpose of payment plans.
- **Consequences for missed payments:** County clerks typically decide when to revoke a defendant's license based on missed payments, after which they notify the Department of Safety. Some counties report sending the notice after one missed payment, while others report having a two- or three-strike policy, and a few defer the decision to revoke to a judge. Some clerks work with defendants to find solutions to missed payments that avoid a license revocation, such as giving defendants extra time to make any payment (sometimes as little as just \$5.00) or shifting some of their court costs to community service.

When asked about the hurdles individuals face when attempting to access payment plans or to stay current on their payments, county clerks reported a variety of barriers:

- Tennesseans convicted of a DUI by law cannot access payment plans for related fines;(xix)
- Debtors must prove they have a low enough income to merit a payment plan;
- Many Tennesseans on payment plans have lost income due to Covid-19.

Consistent with findings from other states that defendants are often extremely low-income, one Tennessee clerk responded to a question about how many individuals defaulted on payment plans by reporting that “most . . . default . . . at some point.”

“**Most debtors default on their payment plan at some point**”

- Tennessee County Court Clerk

Source: ThinkTennessee Survey of Tennessee County Court Clerks

## Methodology

A statewide phone survey of Tennessee county court clerks, 51 of whom responded (54%), was conducted by ThinkTennessee from December 22, 2020, to April 29, 2021. Responses were received from both urban and rural counties and from counties in all three Grand Divisions.

Questions centered on whether payment plans were available, how they worked in practice and how many defendants were utilizing them.

In the final part of our three-part series, we highlight options for Tennessee policymakers to consider to further mitigate the economic damages of court fines and fees.

The variation in accessibility and usage of payment plans across the state demonstrates that low-income Tennesseans continue to face challenges overcoming insurmountable court debt. Changes to policy and practice could **streamline the payment-plan process** and ensure **more equitable outcomes** for all Tennesseans.

## Key Policy Recommendations

- **Streamline the payment-plan process:** Increase access to payment plans by streamlining the process for obtaining and maintaining a payment plan.
- **Create more avenues for waiving fines and fees for indigent Tennesseans:** Incentivize judges to use their discretion to grant indigency waivers; encourage additional discretion in the waiving or suspension of fines and fees; allow an indigency waiver for traffic debts.
- **Eliminate counterproductive economic punishments:** End the revocation of a driver's license for unpaid court debt.
- **Reduce government reliance on revenues from fines and fees:** Lessen budgetary pressure by reducing government reliance on revenues from fines and fees.

## Streamline the Payment-Plan Process

Streamlining the processing of payment plans could simultaneously **alleviate the administrative burden** on court clerks and **simplify the application process** for defendants. A streamlined process that includes clear guidelines for clerks could ensure that defendants in every county (1) receive common notice of payment plan eligibility, (2) complete the same enrollment process and (3) have the opportunity to make payments online. If necessary, the **Tennessee Administrative Office of the Courts** could act as a potential backstop to ensure a simple process when the administrative burden on clerks may be higher (for example, with payment plans that span multiple counties).

Importantly, the development of a streamlined system should leave **some local flexibility**. As our survey shows, many court clerks in Tennessee are finding innovative ways to work with defendants to alleviate the burden of unpaid court costs. The work of these clerks should be strengthened, not undone, by a streamlined system.

## Create More Avenues for Waiving Fines and Fees for Indigent Tennesseans

Payment plans can help alleviate economic burdens for some low-income Tennesseans, but **they are not a panacea**. Data from other states make clear that some low-income defendants do not have the financial resources to keep up with the requirements of a payment plan. In these cases, more should be done to ensure that **court costs are waived** for Tennesseans who cannot afford them:

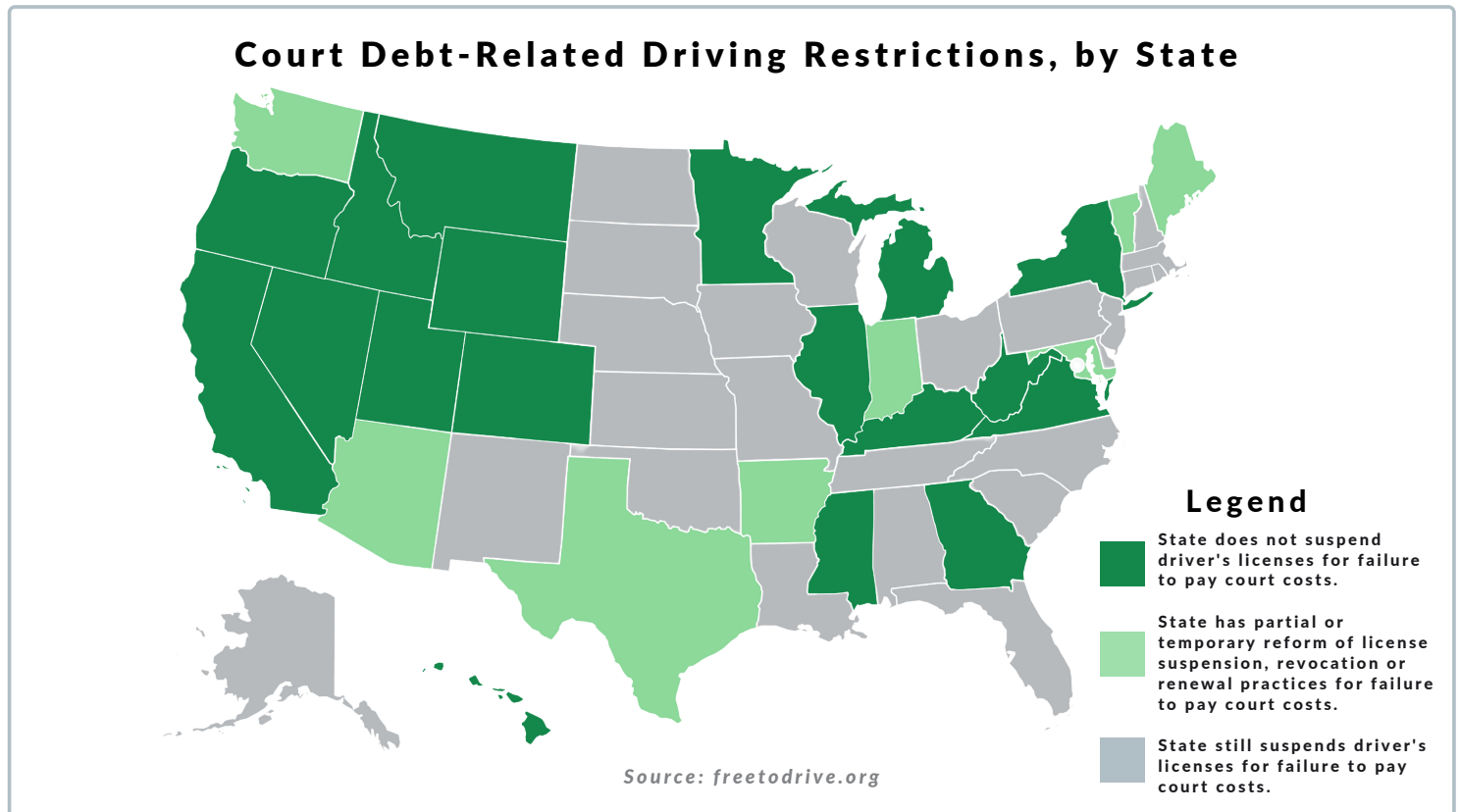
- Incentivize judges to use their discretion to waive more fines and fees for indigent defendants. For example, General Sessions and Criminal Court judges in Davidson County waived 56% of assessed fines and fees in 2018, up from 34% in 2015.(xx)
- Encourage court clerks and judges to work together to waive fines and fees after the completion of a set number of payments, rather than waiting for all court costs to be paid off, which may be unattainable.
- Allow a similar waiver or suspension of traffic fines and fees in the case of indigency.



## Eliminate Counterproductive Economic Punishments

Debt-based punishments like the revocation of a driver's license for unpaid court costs can **harm housing and employment prospects** and may lead to a **downward spiral of debt**, inhibiting some Tennesseans' successful reentry following their involvement in the criminal justice system.

Payment plans cannot fully protect low-income Tennesseans from these negative outcomes, particularly if they are not widely used. Ending the policy of driver's license suspension for unpaid court costs would help mitigate these adverse effects. In the past five years, **22 states have curbed debt-based driving restrictions**.<sup>(xxi)</sup> Our neighbors in **Georgia, Kentucky and Mississippi** do not suspend licenses for failure to pay court fines and fees.<sup>(xxii)</sup>



## Reduce State and Local Government Reliance on Court Fines and Fees

Finally, state and local governments in Tennessee could negate the need for these multiple policy reforms by reducing their overall reliance on court fines and fees to fund budgets. Data show that such a reduction **may come at a relatively low cost**.<sup>(xxiii)</sup>

The Sycamore Institute found that revenue from fines and fees make up a smaller-than-expected proportion of the typical Tennessee county's budget, raising on average about three cents in fines and fees revenue for every dollar of local tax revenue.<sup>(xxiv)</sup> This opens the door to reducing counties' reliance on revenue from fines and fees.

Local success stories provide a **model for wider state adoption**. Some counties, like Hamilton, Davidson and Shelby, have reduced their reliance on fines and fees revenues by increasing efficiencies, e.g., by quickly identifying defendants unable to pay and addressing related issues on the front end, thus reducing future administrative burdens.<sup>(xxv)</sup> The state could build on these successes by **incentivizing additional pilot programs** aimed at reducing the burdens of court fines and fees and taking effective innovations statewide.



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