Statutory Inequality: The Logics of Monetary Sanctions in State Law

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Monetary sanctions mandated in state statutes include fines, fees, restitution, and other legal costs imposed on persons convicted of crimes and other legal violations. Drawing on content analysis of current legislative statutes in Illinois pertaining to monetary sanctions, we ask three questions: What are defendants expected to pay for and why? What accommodations exist for defendants' poverty? What are the consequences for nonpayment? We find that neoliberal logics of personal responsibility and carceral expansion suffuse these laws, establishing a basis for transferring public costs onto criminal defendants, offering little relief for poverty, and supporting severe additional penalties for unpaid debt. Statutory inequality legally authorizes further impoverishment of the poor, thereby increasing inequality. Major related organizing and advocacy work, however, has created an opening for significant changes toward greater fairness.

Keywords: monetary sanctions, legal financial obligations, poverty, criminal statutes

Section 3–7-6 of the Illinois Unified Code of Corrections reads, in part, "Committed persons shall be responsible to reimburse the Department for the expenses incurred by their incarceration at a rate to be determined by the Department in accordance with this Section" (730 ILCS 5/3–7-6).[1] Backing up this obligation is the state's ability to sue current and former inmates to recover the costs of their incarceration. Between 2000 and 2016, the Illinois attorney general brought 157 lawsuits against inmates under this statute (Madigan 2017). Between 2010 and 2015, these lawsuits recovered roughly $500,000, most of which came from just two prisoners (Mills and Lighty 2016).

In February 2016, Illinois Democratic state senator Daniel Biss introduced Senate Bill (SB) 2465 to repeal this section of the law, eliminating the ability of the attorney general to sue inmates on behalf of the Illinois Department

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1. All statute citations are from Illinois Compiled Statutes (http://www.ilga.gov/legislation/ilcs/ilcs.asp).

of Corrections to recoup their costs. The bill passed the Senate (32 to 19), and more narrowly the House (60 to 54). Illinois Republican Governor Bruce Rauner vetoed it. His proposed amendments echoed the concerns raised in the Senate debates, namely, that eliminating the authority to sue meant that the state would forgo any possibility of recovering costs from wealthy defendants.

The debate over SB 2465 and its ultimate demise raises the central questions of this article about who pays for the institutions of the criminal justice system—police, jails, courts, prisons, and all of the actors in their employ—and how far the law reaches to make people "pay" for their crimes. These questions have taken on greater importance with the growth of all components of the criminal justice apparatus, from the hiring of more police officers (Beckett 1999), to more intensive prosecution of crimes (Pfaff 2017), to the roughly sevenfold increase in the prison population since 1970 (Western 2006). To pay for this growing system—and for other state costs—legislators have turned to additional sources of revenue: higher fines, fees, and other costs charged to the "users" of the criminal justice system. Convicted persons—whether sentenced to prison time or not—are often sentenced to these *monetary sanctions* that go to pay for the police cars that transport them, the computer systems that process them, the attorneys who prosecute them, the parole and probation officers who supervise them, and the collection and storage of their DNA, among dozens of other uses, many of which are far removed from the crime they committed, or any state dollars spent directly on their case.[2] Beyond the official sentenced fines and fees are other financial obligations such as paying for required drug treatment or domestic violence counseling or reimbursing the relevant jurisdiction for the costs of incarceration.

Monetary sanctions, also referred to as legal financial obligations (LFOs), include fines, fees, restitution, surcharges, interest, assessments, and other court costs imposed on people convicted of crimes ranging from traffic violations to violent felonies. These sanctions are mandated in state statutes that define the amounts and ranges to be charged as well as the funds into which the collected monies are to be deposited. We argue that these laws not only set out the specifics of the monetary sanctions system but also convey ideologies about crime, punishment, and offenders that build on two central scripts: the neoliberal trope of personal responsibility and the carceral logic of extended (in terms of reach) and prolonged (in terms of time) surveillance and monitoring. That these policies are disproportionately exacted on poor and working-class people who make up the majority of defendants in the courts, jails, and prisons constitutes what we call statutory inequality. The inability to pay monetary sanctions triggers increased financial and legal penalties such that poverty becomes a guilty sentence of its own, legitimizing people's continued subjection to criminal justice supervision and causing harm to their socioeconomic and general well-being.

Illinois Governor Rauner posited a millionaire inmate who would reimburse the state for its costs. The reality of those involved in the criminal justice system, however, is quite the opposite. More than 80 percent of criminal defendants in the United States are found to be indigent and thus qualified to use the services of a public defender (Harlow 2000). In Cook County, which includes the city of Chicago, that figure is 89 percent (Bellware 2017). Roughly 40 percent of prison inmates nationally do not have a high school diploma (Ewert and Wildhagen 2011). In Illinois, 30 percent of people on probation were unemployed, and just under half earned less than $20,000 annually (Adams, Bostwick, and Campbell 2011). It is difficult to discern what information lawmakers have at their disposal, but these facts should be no secret. Beyond the abundance of research that documents the lower socioeconomic status of

2. We use a range of words to refer to those sentenced to monetary sanctions, depending on the context. We prefer *people with court debt* and *defendants*; the former highlights the status that is most relevant for our research and the latter maintains possible innocence. The term *convicted persons* emphasizes that LFOs are mostly levied upon conviction, although there are also pretrial costs that can be passed on to defendants (Logan and Wright 2014).

those processed through the criminal justice system, the journalistic and popular portrayal of the accused and the convicted reinforces, if not overemphasizes, this reality. Thus, it is reasonable to assume that lawmakers recognize to whom they are shifting the burden when they look to defendants as sources of revenue.

In this article, we conduct a content analysis of legislative statutes regarding monetary sanctions in the State of Illinois and ask three questions: What are defendants expected to pay for and why? What accommodations are made (or not) for their ability to pay? What are the consequences for not paying? This analysis uncovers neoliberal ideas of personal responsibility and carceral logics that effectively create indebtedness to the state, especially for poor defendants, which furthers state supervision and punishment, and perpetuates and deepens the socioeconomic insecurity of already fragile populations, thereby exacerbating overall inequalities. We are careful to note, however, that this is a study of law on the books. This project is part of a larger study that includes courtroom observations and interviews with court actors and people with court debt (discussed in the methods section); this article, however, focuses on how what the law *allows* offers a window into the social, cultural, and political moods about criminals and punishment, which necessarily precedes the unequal outcomes.[3] In important new developments, major organizing and advocacy work around this issue has set the foundation for significant changes toward greater fairness.

THE NEOLIBERAL LOGICS OF PERSONAL RESPONSIBILITY AND CARCERAL EXPANSION

We embed our research within theories about the growing effects of neoliberal economic ideologies on a range of societal institutions. Germinating as early as the late 1940s, but flowering by the 1970s, the core of neoliberal ideology is about reducing governmental regulation of the economy and reducing the welfare state to increase the efficiency of markets, even though markets and economies are never unfettered from rule-making and thus are always the productions of societies and their governments (Ong 2006; Prasad 2006). As neoliberal policies began to take firm hold in the 1980s, holes left by the retreat of government- and employer-supported social safety nets were filled with language about personal responsibility and choice. As the theorist David Harvey describes it, "each individual is held responsible and accountable for his or her own actions and well-being. This principle extends into the realms of welfare, education, health care, and even pensions" (2007, 65–66). Of course, the concept of personal responsibility is not new in the criminal justice realm, where the law has always assumed an individual actor who is individually culpable. Hence, in criminal justice, the idea of personal responsibility is simply more heightened—rather than wholly created—by the proliferation of neoliberal ideas. In the criminal justice context, the intensified personal responsibility rhetoric allows for greater certainty of culpability and punitive severity.

As an institution that primarily and increasingly processes and manages poor and working-class people, criminal justice is a domain in which personal responsibility is particularly potent. Loïc Wacquant captures this confluence:

> Comparative analysis of the evolution of penality in the advanced countries over the past decade reveals a close link between the ascendancy of neoliberalism, as ideological project and governmental practice mandating submission to the "free market" and the celebration of "individual responsibility" in all realms, on the one hand, and the deployment of punitive and proactive law-enforcement policies targeting street delinquency and the categories trapped in the margins and cracks

3. Alexes Harris, Heather Evans, and Katherine Beckett (2010) focus on how the application of monetary sanctions in practice exacerbates inequality through a threefold mechanism of reducing disposable household income (because monies are going to pay off monetary sanctions); reducing access to housing, employment, and education, which could improve socioeconomic well-being; and increasing the likelihood of rearrest and incarceration.

> of the new economic and moral order coming into being under the conjoint empire of financialized capital and flexible wage labor, on the other. (2009, 1)

Like the emphasis on personal responsibility, carceral logics also grow out of neoliberal policymaking and practices. The criminal justice system is part of the answer to the question of how to manage the increased economic and social insecurity that neoliberalism generates for people at the lower end of the socioeconomic spectrum. Wage stagnation, welfare reform, lowered protections for labor unions, and the rise of part-time and contract work dislocate and detach low-skilled workers from the labor market. As work disappears (Wilson 1996), the prison and myriad other forms of social control have grown in importance. Carceral logics "naturalize carceral expansion as part of the 'common sense' of deindustrialized communities reeling from the departures of capital and industry" (Schept 2015, 8). That expansion reaches into neighborhoods (Rios 2011), families (Roberts 2002), schools (Monahan and Torres 2009; Shedd 2015), welfare offices (Soss, Fording, and Schram 2011) and hospitals (Lara-Millán 2014), among many other places.

In this article, we focus on the extension of carceral logics to people's financial lives, which has reverberations far beyond their finances. Individuals sentenced to legal financial obligations are not released from criminal supervision until their debts are paid in full. Monetary sanctions encumber the future income and benefits not only of those sentenced to them, but also of their family members whose contributions to household expenses make up for the money that people with court debt are paying on their fines and fees, not to mention when family members pay directly through bail forfeiture or seizure of monies deposited into inmates' accounts (Katzenstein and Waller 2015). Financial debt in general is a mechanism of social control, but in the case of monetary sanctions the institution that holds the debt is the same one that holds the ultimate authority to deprive people of their liberties through imprisonment.

RESEARCH ON MONETARY SANCTIONS

Given the facts reviewed in the introduction to this issue, criminal justice scholars have rightly paid considerable attention to incarceration. Yet a significant component of sentencing law is financial. That is, rather than incapacitation through jail or prison, people are sentenced to pay for their crimes. Monetary sanctions make literal the figurative description of the criminal justice system as the way to make offenders "pay their debt to society."

Like all states, Illinois imposes offense-specific fines, fees, assessments, interest, surcharges, and restitution on people convicted at the felony, misdemeanor, and traffic levels. Fines are the punitive component of monetary sanctions. Although this makes them directly relevant to the criminal act in question, determining the dollar amount or ranges of a fine is completely a matter of policy and politics; there is no objective financial penalty for aggravated assault, or drug possession, or driving while intoxicated. Fees compensate the state for its labor and services, as well as fund special interests that have varying levels of direct connection to the crime for which a person is sentenced. In Illinois, assessments are mainly tied to drug-related offenses and encourage participation in drug treatment or community service programs. Interest and penalties are levied against those who do not pay their fines or fees within the specified period. Restitution compensates the victim for their loss.[4] The nomenclature of monetary sanctions varies from state to state, and may also include words such as *costs* or *surcharges* (see Harris et al. 2017).

4. Although this description suggests a vocabulary with clear definitions, this is far from the case. In several cases in Illinois, defendants have challenged the fines and fees they were ordered to pay and the appellate court found that what was labeled a "fee" in both the statute and the court clerk's accounting was actually a "fine." For example, in *People of the State of Illinois v. Graves*, the court found "that a charge labeled a fee by the legislature may be a fine, notwithstanding the words actually used by the legislature" and concluded in that case that "the charges imposed herein do not seek to compensate the state for any costs incurred as the result of prosecuting the defendant" as a "fee" is supposed to do. *People v. Graves*, 919 N.E.2d 906 (Ill. 2009), 910.

Legal, policy, and scholarly interest in monetary sanctions is increasing across the country. The Justice Department issued a report following its investigation of the Ferguson Police Department, which came under scrutiny for the killing of an unarmed African American man. Among other things, the report found that "Ferguson law enforcement efforts are focused on generating revenue" and "high fines, coupled with legally inadequate ability-to-pay determinations and insufficient alternatives to immediate payment, impose a significant burden on people living in or near poverty" (2015, 9, 52). Several public interest law and advocacy organizations have also issued reports studying monetary sanctions (see, for example, Bannon, Nagrecha, and Diller 2010; Chicago Appleseed Fund for Justice 2016; deVuono-powell et al. 2015; Tran-Leung 2009, 2010). Finally, scholars across the social science fields of sociology, political science, criminology, and law have also begun to empirically document this previously understudied part of the criminal justice system (see, for example, Beckett and Harris 2011; Greenberg, Meredith, and Morse 2016; Harris, Evans, and Beckett 2011; Katzenstein and Waller 2015; Logan and Wright 2014; Piquero and Jennings 2017; Sances and You 2017).

This body of research illustrates that Illinois is by no means unique or an outlier in its legislation of monetary sanctions, nor in the fact that in Illinois "court fines and fees are constantly increasing and outpacing inflation" (Statutory Court Fee Task Force 2016, 20). Alexes Harris documents that statutes authorizing monetary sanctions exist in all fifty states and the District of Columbia (2016, table 2.4). The U.S. Commission on Civil Rights reports that "since 2010, forty-seven states have increased civil and criminal fees" (2017, 7). National Public Radio finds that the vast majority of states authorize charges to defendants for use of a public defender, for their probation and supervision costs, and for their room and board while incarcerated (2014). In their detailed study of fifteen states that cover 60 percent of all state criminal filings in the United States, Alicia Bannon, Mitali Nagrecha, and Rebekah Diller find that all of the states were "introducing new user fees, raising the dollar amounts of existing fees, and intensifying the collection of fees and other forms of criminal justice debt such as fines and restitution" (2010, 1). Fourteen of the studied states charged additional penalties for nonpayment, and Illinois was included among nine states that charged "exorbitant" fees for delinquent accounts (17). None of the states had "adequate mechanisms to reduce criminal justice debt based on a defendant's ability to pay" (13) and all of the states had "jurisdictions that arrest[ed] people for failing to pay debt or appear at debt-related hearings" (2). Alexes Harris, Heather Evans, and Katherine Beckett show that inmates in nearly all states, in the District of Columbia, and at the federal level had been assessed monetary sanctions in 2004 (2010). Prevalence rates were even higher for those sentenced to probation, rather than incarceration; nationally, more than 80 percent of felons and misdemeanants on probation had fines and fees to pay.

Neither is Illinois an outlier in terms of the dollar amounts of monetary sanctions. Harris reports that the maximum defined fines for a felony offense range from a low of $400 in Massachusetts to a high of $500,000 in Alaska and Kansas (2016). The maximum in Illinois is $25,000. In their study of fines and fees in nine states, Harris and her colleagues compare the possible range of court-ordered costs for driving with a suspended license (2017). Illinois has the highest possible total charge of $3,832.50, but its lowest possible charge of $395 (based on Cook County charges) is less than the lowest possible charge in four other states. In general, Illinois fell toward the upper-middle end of the distribution for this offense. Yet, one of the primary findings of the study was the incredible variability of legislated fines and fees across and even within states. The extreme localism of monetary sanctions at the state and municipal levels makes nationwide comparisons difficult, and several state-level comparisons suggest that there is no such thing as a representative state or jurisdiction in the case of monetary sanctions.[5]

5. Although states provide overall authorization for monetary sanctions, many states have a decentralized court system with municipal courts handling the majority of traffic and misdemeanor violations. This further

Finally, Illinois is not unique in that the increasing number and amounts of criminal justice monetary sanctions are connected to poor state fiscal health. The anti-tax political climate ascendant since the 1970s has required legislators to look elsewhere for additional revenues. The U.S. Commission on Civil Rights gives the example of Missouri:

> State laws or state constitutions may also preclude (or make it difficult for) cities, towns, and counties to increase taxes. For example, the Missouri state legislature passed an amendment (known as the "Hancock Amendment") in 1980 that required municipalities to conduct a citywide referendum before raising taxes. Fines and "user" fees, on the other hand, can be raised without these formalities by a city in Missouri. As a consequence of these limitations on raising taxes, fines and fees have become one of the easier and faster ways through which local governments can increase revenue. (2017, 9)

In other words, rather than funding the court system—which is a general government purpose and has broad benefits for the general population—with increasingly unpopular tax increases, the system of monetary sanctions directly charges those who are being criminally prosecuted, and who are thus in the weakest social and often financial position to protest.

SETTING, DATA, AND METHODS

In part because of concerted research, advocacy, and litigation, the legislative landscape regarding monetary sanctions is at a moment of significant transformation in Illinois and across the country. Many states are in the process of reforming the imposition of fines, fees, and other costs associated with criminal justice contact (U.S. Commission on Civil Rights 2017, chapter 4 and tables 1–4). In Illinois, the Criminal and Traffic Assessment Act passed both houses of the Illinois legislature in May and was signed into law by the governor in August of 2018 (see State of Illinois 2018). It will take effect in July of 2019 and includes an automatic repeal provision at the end of 2020, if key state agencies determine that it has been detrimental to their finances.

The new law includes two major revisions. First, it establishes a uniform schedule of assessments by offense type (and establishes *assessments* as the general language to refer to fees and costs), eliminating uncertainty and variation at the county level. Second, it allows defendants to apply for fee waivers on a sliding scale: full waivers for persons found to be indigent, and partial waivers for persons earning up to 400 percent of the poverty level. We discuss our theoretical framework in light of the new law, as well as what the new law includes and does not include, in the conclusion. It is a critical time to study the legislative infrastructure of monetary sanctions because lawmakers are poised to review it, not just in Illinois but also across the country.

We conducted the analysis for this article prior to the legislative changes. First, using the publicly accessible, fully searchable online record of the Illinois Compiled Statutes, we created a comprehensive dataset of all state statutes in Illinois that pertained to costs to defendants in criminal cases.[6] We searched the entire legal code for any mention of fines, fees, restitution, reimbursement, assessments, costs, surcharges, forfeitures, interest, payments, penalties, and other words likely to signal a monetary sanction. We identified the following chapters of Illinois law as including information about monetary sanctions for petty, business, traffic, misdemeanor, and felony crimes: chapter 625, vehicles; chapter 705,

complicates comparisons across states. Comparing revenues from fines, fees, and forfeitures as a proportion of municipal revenues, Daniel Kopf reports that "Of the top 100 municipalities in terms of revenues from fines, more than two thirds are in just six states: Texas (19), Georgia (17), Missouri (12), Illinois (9), Maryland (6) and New York (6)." For other comparisons of municipalities, see Henricks and Harvey (2017); Sances and You (2017).

6. See "Illinois Compiled Statutes," http://www.ilga.gov/legislation/ilcs/ilcs.asp. We also compiled a dataset for court costs in civil cases, but those data are not relevant for the current analysis.

courts; chapter 720, criminal offenses; chapter 725, criminal procedure; and chapter 730, corrections. State law also authorizes and delimits the collection of fines and fees for counties (chapter 55) and municipalities (chapter 65), which were also included in the database.[7] All statutes that levied any kind of cost on a defendant or convicted person were included in our dataset. Dataset particulars include the statute number, type of offense (if directly related to an offense), last year amended, summary and full text of the statute, whether the monetary sanction is mandatory or discretionary, whether the sanction can be reduced for time served in jail, the sanction amount, whether the court is required to consider ability to pay, punishment for default, whether payment plans are allowed, and the state fund receiving the LFO. We use the full sample to answer the first research question "What are defendants expected to pay for and why?"

To answer the second two questions, we searched the full database for roughly forty keywords and phrases relevant to how the law regards people's socioeconomic status (indigent, ability to pay, unpaid, poor-poverty, nonpayment, default, delinquent, debt, collections, and so on). We used the qualitative data analysis software Atlas.ti to code relevant text with those keywords. Notably, the words *poor* and *poverty* are not used in any statutes regarding monetary sanctions; indigent appears only rarely. More common are discussions of *ability to pay* and the consequences for *default*. The coding for these words yielded ninety-six unique statutory entries pertaining to monetary sanctions and the socioeconomic circumstances of the defendant.[8] We then read the content of each analytic code and wrote memos on preliminary findings. It was often necessary to go back to the full statute to understand the context of the provision.

We also traced some statutes backward and forward. That is, we researched the legislative history of several statutes and reviewed the transcripts of the House or Senate debates when they were considered; we also searched Illinois case law for instances when specific statutes were questioned or appealed, such as lawsuits that challenged the precise amounts defendants were charged, or challenges to demands to reimburse the state for incarceration, or appeals regarding probation revocation decisions based on unpaid LFOs. Overall, this is a qualitative study in which the primary data are the text of specific laws, the words of legislators who debated them, and the decisions of judges who adjudicated them.

This study is part of a larger five-year, eight-state study of monetary sanctions. The full project includes comparable data collection in each state, including: legislative scans (see Harris et al. 2017); surveys and qualitative interviews with judges, prosecutors, defense attorneys, clerks, probation officers, and people with court debt; courtroom ethnographies; and comprehensive quantitative sentencing data by defendant characteristics, crime type, and other relevant variables. The larger project aims to move progressively from law on the books to law in practice to an understanding of the cumulative impact of monetary sanctions

7. Matters of criminal justice in Illinois are handled at the Circuit Court level, which is "the court of original jurisdiction" (Illinois Courts 2017). Illinois has twenty-four judicial circuits, no municipal judicial courts, and a system of administrative adjudications. Administrative hearings officers in home rule units have the authority to levy fines of up to $50,000. Municipalities or counties that are not home rule units have the authority to levy fines of up to $750. These administrative hearings at the county and municipal levels are an added layer of financial sentencing outside the scope of this article.

8. A statutory entry is some piece of text (such as a sentence, a paragraph) that does not constitute a full statute but has information relevant to the current study. It may be a full section of the law, but often it is a subnumber or subletter of a section. For example, the paragraph "State's attorneys shall have a lien for their fees on all judgments for fines or forfeitures procured by them and on moneys except revenue received by them until such fees and earnings are fully paid" is coded in our dataset under "lien," and it is just one paragraph among twenty-three in letter (a) of Section 4-2002 of the Illinois Counties Code, which lays out all of the fees to which state's attorneys are entitled in counties with populations of less than three million in Illinois (55 ILCS 5/4-2002(a)).

across the full load of cases in the states in our study.[9]

WHAT ARE DEFENDANTS EXPECTED TO PAY FOR AND WHY?

Table 1 presents a non-exhaustive list of agencies, entities, and special funds that appear as receivers in the statutes authorizing monetary sanctions in criminal cases in Illinois. It covers a broad array of interests. At the highest level are the general revenue funds for the municipalities, counties, and state, and the large state agencies, such as the Secretary of State, which handles most traffic violations. Law enforcement agencies at the municipal, county, and state levels receive payments, which go to both their general operating funds as well as to specialized funds, such as the State Police Merit Board Public Safety Fund. County jails, the Department of Corrections, county sheriffs, and the Circuit Court clerk all receive funding from monetary sanctions. The fees charged to defendants also go to fund both the prosecution and the defense of their cases. Low-income defendants are guaranteed the right to legal representation in a criminal proceeding, but this does not mean states cannot attempt to recoup the costs of court-appointed counsel (Wright and Logan 2006). Illinois county courts may charge up to $500 for defense counsel for misdemeanors, up to $5,000 for felonies, and up to $2,500 for appealing a conviction (725 ILCS 5/113–3.1). Defendants can be charged even if they are ultimately judged not guilty.[10] Monetary sanctions may also be earmarked for a range of specific activities carried out by the institutions within the criminal justice system, such as electronic filing, automation, cameras, document storage, and laboratories. Individual counties may charge additional fees and set up county-level funds not listed in table 1 to support drug courts, teen courts, child advocacy centers, and other such special purposes (55 ILCS 5/5–1101).

Additionally, a number of specialty funds move further away from the actual operations of the criminal justice system. For example, the Prescription Pill and Drug Disposal Fund and the Criminal Justice Information Projects Fund are authorized such that a "$40 assessment shall be assessed by the court, the proceeds of which shall be collected by the Circuit Clerk. Of the collected proceeds, (i) 90% shall be remitted to the State Treasurer for deposit into the Prescription Pill and Drug Disposal Fund; (ii) 5% shall be remitted for deposit into the Criminal Justice Information Projects Fund, for use by the Illinois Criminal Justice Information Authority for the costs associated with making grants from the Prescription Pill and Drug Disposal Fund" (730 ILCS 5/5–9-1.1(f)). The 2012 bill that created this law was "a result of the environmental classes of Antioch Community High School and Pontiac Township High School working together across the state to make a difference in our lives" (State of Illinois 2011, 132). Its intent was to "prevent future contamination of our drinking water, protect our wildlife, [*sic*] keep drugs out of the hands of teens" (133). The assessment may be charged

9. Legislation regarding criminal penalties has both a symbolic and a punitive function. If the Illinois laws are mostly symbolic and not widely implemented, then the present analysis would be important in the abstract for the kinds of ideologies it conveys, but have few consequences for inequality. This is decidedly not the case in Illinois, nor in the other states in the larger study. In our courtroom observations, we have routinely seen people's court debts sent to collection agencies, and we have interviewed people who report frequent contact by those agencies. We have observed people being re-sentenced to prison because of unpaid court fines and fees during their probationary periods. And the appellate cases discussed in this article show that people have been incarcerated for willful nonpayment. Evidence from journalists and advocacy organizations about the certain and severe implementation and enforcement of monetary sanctions is also considerable (Chicago Jobs Council 2018; Sanchez and Kambhampati 2018; Tran-Leung 2009, 36).

10. In *People v. Kelleher*, the court found that "A nonindigent, although acquitted, is ordinarily required, without reimbursement by the State, to pay for counsel. To require an indigent, although acquitted, to reimburse the county, to the extent he is able, for the expense of furnished counsel, tends to put indigents and nonindigents who are acquitted, on the same basis and is consistent with due process" (*People v. Kelleher* 116 Ill. App.3d 186 [1983], 189).

Table 1. Receiving Agencies and Funds of Monetary Sanctions in Illinois

Circuit Court Clerk Operation and Administrative Fund	Law Enforcement Alarm Systems Fund
Conservation Police Operations Assistance Fund	Law Enforcement Camera Grant Fund
Cook County Health Fund	Local Government Treasurer
County Clerk	Methamphetamine Law Enforcement Fund
County Jail Medical Costs Fund	Performance-enhancing Substance Testing Fund
County Sheriff	Prescription Pill and Drug Disposal Fund
County Treasurer	Prisoner Review Board Vehicle and Equipment Fund
County Working Cash Fund	Probation and Court Services Fund
Court Automation Fund	Public Defender Records Automation Fund
Crime Laboratory Fund, state	Road Fund
Crime laboratory, local	Roadside Memorial Fund
Criminal Conviction Surcharge Fund	Secretary of State
Criminal Justice Information Projects Fund	Secretary of State DUI Administration Fund
Department of Corrections	Sex Offender Investigation Fund
Department of Corrections Parole Division Offender Supervision Fund	Sexual Assault Services Fund
Department of Corrections Reimbursement and Education Fund	Specialized Services for Survivors of Human Trafficking Fund
Department of Natural Resources Fund	Spinal Cord Injury Paralysis Cure Research Trust Fund
Document Storage Fund	State Offender DNA Identification System Fund
Domestic Violence Abuser Services Fund	State Police DUI Fund
Domestic Violence Shelter and Service Fund	State Police Merit Board Public Safety Fund
Drivers Education Fund	State Police Operations Assistance Fund
Drug Treatment Fund	State Police Services Fund
Electronic Citation Fund	State Police Streetgang-Related Crime Fund
Fire Prevention Fund	State Toll Highway Authority Fund
Fire Truck Revolving Loan Fund	State Treasurer
General Revenue Funds (municipalities, counties, and state)	State's Attorney Records Automation Fund
George Bailey Memorial Fund	State's Attorney's Office
Law enforcement agencies (local, county, state, federal)	Supreme Court Special Purposes Fund
Law Enforcement Agency Data System (LEADS) Maintenance Fund	Traffic and Criminal Surcharge Fund
	Transportation Safety Highway Hire-back Fund
	Trauma Center Fund
	Violent Crimes Victims Assistance Fund

Source: Authors' analysis of Illinois statutes.
Note: Alphabetical order.

to people who have been "adjudged guilty of a drug related offense involving possession or delivery of cannabis or possession or delivery of a controlled substance, other than methamphetamine" (730 ILCS 5/5–9-1.1).[11] This fund represents an initiative that is—however worthy—only tangentially, if at all, connected to the crime committed by those sentenced to pay.

Other examples of funds that move further away from core criminal justice processes include the George Bailey Memorial Fund, which compensates disabled burn victims using fees charged to arsonists, even if the arson was to property only (705 ILCS 105/27.6(p)), as well as to those convicted of serious traffic violations (625 ILCS 5/16–104d); and the State Police Merit

11. Although this charge is authorized in the law, we have not seen it show up on any listing of sentenced fines and fees, nor have we heard it mentioned in the courtroom.

Figure 1. Listing of Fees Owed by Defendant in an Illinois County

Case# [redacted] Criminal Felony
Def: [redacted]

Owed..... $3,525.00
Paid..... $450.00
Balance Due... $3,075.00

Agency: [redacted]
Class: 4 Fine: 1 Fine & Cost

Fine Amount... $.00

No.	Description	Owed	Paid	Balance Due
1	CLERK FEE	$80.00	$80.00	$.00
2	STATES ATTORNEY FEE	$30.00	$30.00	$.00
3	STATES ATTRNY RECORDS AUTO FEE	$2.00	$.00	$2.00
4	CR. SURCHARGE STATE	$750.00	$210.00	$540.00
5	CRIME LAB	$100.00	$.00	$100.00
6	COURT AUTOMATION FEE	$25.00	$25.00	$.00
7	COURT SECURITY FEE	$25.00	$25.00	$.00
8	VICTIM FUND	$200.00	$.00	$200.00
9	COURT SYSTEM FEE	$50.00	$50.00	$.00
10	DOCUMENT STORAGE FEE	$15.00	$15.00	$.00
11	*DRUG FUND-AGENCY*	$525.00	$.00	$525.00
12	DRUG FUND-JUVENILE	$131.25	$.00	$131.25
13	DRUG FUND-COUNTY	$393.75	$.00	$393.75
14	PROBATION FEES	$288.00	$.00	$288.00
15	ISP OPERATIONS ASSIST FUND	$15.00	$15.00	$.00
16	STATE POLICE SERVICES FUND	$25.00	$.00	$25.00
17	SPINAL CORD INJURY PARALYSIS F	$5.00	$.00	$5.00
18	DRUG FUND-ASSESSMENT	$500.00	$.00	$500.00
19	TRAUMA FUND	$100.00	$.00	$100.00
20	DNA ST OFFEND. ID SYSTEM	$250.00	$.00	$250.00
21	STATE POLICE MERIT BOARD	$15.00	$.00	$15.00

** END OF REPORT **

Source: Public online court records from Illinois county (unnamed for privacy reasons).

Board Public Safety Fund, which receives the $15 charged to anyone convicted of violating the Criminal Code or the Vehicle Code (705 ILCS 105/27.6(n)). These monies go to support a cadet program and the general operations of the State Police Merit Board, whose mission is "to remove political influence and provide a fair and equitable merit process for the selection of Illinois State Trooper candidates and the promotion and discipline of Illinois State Police officers" (Illinois State Police Merit Board 2017).

Figure 1 presents an example of how these fees appear for someone sentenced to pay court debt.[12] In this case, the person was convicted of a class 4 drug felony, which is the lowest category of drug felony in Illinois. The person was sentenced to a month in county jail, one hundred hours of community service, twenty-four months of probation, and monetary sanctions totaling $3,525. The $450 payment reflected in the ledger was not in fact a payment, but rather the statutorily allowed application of the defendant's bail funds to the monetary sanctions. There is no mandatory fine for a class 4 felony, but the $500 listed as the drug fund assessment is mandatory. Similar to the full list of possible receivers, the fees this defendant must pay go to fund state agencies (such as the state's attorney's office, court clerk), specific activities (court security and automation), and more distant purposes (such as the Spinal Cord Injury Paralysis Cure Research Trust Fund, which is charged to those convicted of DUI (730 ILCS 5/5–9-1(c-7) or drug-related offenses (730 ILCS 5/5–9-1.1(c)).

The answer to what defendants are expected to pay for is thus a broad sweep of state functions that center on the arrest, prosecution, and punishment of those adjudged guilty, but that also stray far from those core uses. The answer to why defendants are held responsible

12. Some counties in Illinois offer online systems that allow defendants to check the status of their case and see their monetary sanctions balance. These systems are public. For this example, we typed in a random name into one county's system, which yielded this illustrative record.

for these functions is that state budget shortfalls combine with criminal stigmatization and an emphasis on personal responsibility to create the political support for increased monetary sanctions. The 2002 debate in the Illinois House of Representatives regarding Senate Bill 2074 illustrates a common pattern in the discussions of bills to increase fines and fees or levy new monetary sanctions. The bill, which was eventually passed (725 ILCS 5/124A-10), allows the Circuit Court clerk to add fees of up to 15 percent for delinquent accounts, as well as to report nonpayers to credit reporting agencies. The monies collected by these penalties "shall be used to defray additional administrative costs incurred by the clerk of the court in collecting unpaid fines, costs, fees, and penalties" (725 ILCS 5/124A-10).

The lengthy discussion on the House floor—edited for repetition and procedural dialogue—proceeded as follows (State of Illinois 2002, 12–18):

Clerk Rossi: Senate Bill 2074, a Bill for an Act in relation to criminal law. Third Reading of this Senate Bill.

Speaker Hartke: Representative Currie.

Currie: Thank you, Speaker and Members of the House. This is an initiative of the Illinois Association of Clerks of the Circuit Court. It merely provides that if there are unpaid balances, there's a schedule of interest applied and as with your Visa Bill, after 90 days the Clerk will notify the credit rating agencies that you're a deadbeat. I know of no opposition. This is a Bill that came out of the Senate unanimously, and I'd appreciate your support.

Speaker Hartke: Is there any discussion? The Chair recognizes the Gentleman from . . . McHenry [County], Mr. Franks. . .

Franks: I understand the speakers. . . . I'm sorry, the Sponsor's intent with this Bill. But what this Bill does is increases the cost of fines by 5% for costs that remain unpaid after 30 days. And then it increases to 10% and then it increases to 15%. So, what this Bill does is it really penalizes poor people. For those people that can't pay their fines right away, they're getting an extra penalty for not being able to afford it. It's a penalty for being poor. And what this also does, frankly, is it changes the priority in which debtors may pay their Bills. So, if you're a secured creditor and you have a judgement against someone you get statutory interest at 9%. However, what this Bill plans to do is to force people to have to pay fines criminally, before they would pay a secured creditor. So, if you have a judgement, or if you have a mortgage, or anything else, those are going to be put behind anyone who's trying to pay a criminal fine. I believe this is a really bad bill. It really hurts poor people, and it takes away the priorities of what we have set up. And I'd urge you to vote 'no.'

Speaker Hartke: Further discussion? The Chair recognizes the Gentleman from Vermilion [County], Representative Black.

Black: Thank you very much, Mr. Speaker and Ladies and Gentlemen of the House. I rise in strong support of the Majority Leader's Bill. If you go into any court facility in the State of Illinois, and by the way we . . . we do not fully fund the court system and we're suppose to [*sic*] do that, but we don't, we're not able to. Some day [*sic*] perhaps we can reexamine that. But I . . . I just find it disingenuous that somebody could say if you're found guilty of a criminal offense, and you blow off that fine, as many of them do, talk to many of your court clerks, there are, in some cases, hundreds of thousands of dollars of unpaid fines on the books. Now, if you're just going thumb [*sic*] your nose at a court ruling, and not pay the fine, then by golly, it only stands to reason, fine, we'll charge you with a little interest. And if that doesn't work, I'll join with the Majority Leader next Session and if they continue to thumb their nose at the court and show total disregard for what they have been convicted of, and refuse to pay their fine then fine, let's just lock 'em up. And they can work it off at so many cents a day. It only makes good sense. This state can't afford deadbeats. We've got a billion dollars in unpaid child support and probably millions of dollars in unpaid fines. And I daresay, I'm generalizing because I don't know, but I daresay many of those unpaid fines are the result of somebody just saying, I'm not go-

ing to pay it, come and get me. We'll come and get you, that's fine. . . .

CURRIE: Just to clarify, poor people are not at stake in this measure. Because the court already has and would continue to have the ability to waive fines if people in fact are unable to meet this requirement.

MULLIGAN: So, it's currently the law in Cook County that if they are poor that the fine would be waived?

CURRIE: The court has that opportunity today and nothing would change in that opportunity under this measure. . . .

MULLIGAN: Can they get an automatic judgement against people who are delinquent if they have assets? I mean rather than just heap on the fines, can't they try to collect them by putting a lien on their property or doing something like that?

CURRIE: Sure they can, sure they can. The court can bring them back into court, hold them in contempt. This, we believe, will give people an incentive to pay up before using additional court resources, in order to make sure that they are current with their obligations, just as with your Visa Bill.

MULLIGAN: All right.

CURRIE: You know, ultimately they can send the sheriff after you if you don't pay that either.

MULLIGAN: Right.

CURRIE: But in the meantime, they charge you interest, and they hope that will encourage you to pay up, pay promptly. That's all this measure is about . . . After 30 days unpaid balance, then 5%, and after three months if you continue to thumb your nose at the court then they would be . . . be allowed to notify the credit agencies that you are a deadbeat. . . .

I'd appreciate your 'aye' votes. We've got enough deadbeats. This is a way to encourage people to meet their responsibilities imposed by the courts, just as Visa has a chance to make sure they meet their responsibilities through their decisions to buy. Please vote 'yes.'

SPEAKER HARTKE: The question is, 'Shall the House pass Senate Bill 2074?' All those in favor will signify by voting 'yes'; those opposed vote 'no.' The voting is open. . . . Mr. Clerk, take the record. On this question, there are 97 Members voting 'yes,' 12 Members voting 'no,' 6 Members voting 'present.' And this Bill, have [sic] received a Constitutional Majority, is hereby declared passed. Mr. Clerk for an announcement.

Representative Currie introduces and closes the debate with the term *deadbeats*, illustrating the personalization and stigmatization of the fact of nonpayment. Representative Black chastises people who "thumb [their] nose at a court ruling" and "show total disregard for what they have been convicted of." He ratchets up the punitive tone by suggesting jail time and what amounts to debt bondage when he says that they can "work it off at so many cents a day." Representative Mulligan suggests property liens, for which authorization already existed in the law. Finally, Currie makes explicit the role of personal responsibility: "This is a way to encourage people to meet their responsibilities imposed by the courts." It is notable that the responsibilities here are *imposed* rather than taken on, and they are imposed without consideration of the defendant's ability to take them on or to comply with them.

Representative Franks makes it clear who would bear the brunt of these penalties. "It really penalizes poor people," he says flatly. This argument is dismissed with a reference to judges' discretion in levying fines and fees. Yet contrary to Currie's statements—and betrayed by her imprecise language (such as "the court *has that opportunity*" [emphasis added])—the statute in question does not allow judges to waive fees, only to set up payment plans. Statutory guidance to judges about fine and fee waivers is minimal.[13] We cannot deduce from

13. A similar statute about penalties for nonpayment begins "Unless a court ordered payment schedule is implemented or fee requirements are waived pursuant to a court order" (705 ILCS 105/27.5), but there is no guidance about the acceptable (or desirable) reasons for such waivers. In our analysis of the code for "waive[rs]" only one usage explicitly directed the waiver to be about the defendant's socioeconomic situation: "The Court may only waive probation fees based on an offender's ability to pay" (730 ILCS 5/5-6-3(i)).

this debate that the intent of the law was specifically to punish poor defendants, but it is clear that the information about the characteristics of those who would pay the penalties did not sway the legislative body.

The issue of state budget pressures is also apparent in this exchange. Representative Black recognizes that "we do not fully fund the court system and we're suppose to [*sic*] do that, but we don't, we're not able to." The accounts receivables for criminal justice fines and fees have frequently been used for the state's general purpose budget. Every year and often multiple times a year, the legislature passes laws "concerning finance" that transfer monies from these funds to the general revenue fund. For example, Public Act 100–0023 of 2017, was passed "to maintain the integrity of special funds and improve stability in the General Revenue Fund, the Budget Stabilization Fund, the Healthcare Provider Relief Fund, and the Health Insurance Reserve Fund" (State of Illinois 2017). The law authorized the transfer to those purposes of up to $1.5 million from the Law Enforcement Camera Grant Fund, up to $3.5 million from the State Police Services Fund, up to $3 million from the Trauma Center Fund, and several other authorized transfers from many of the funds listed in table 1. The value of monetary sanctions to states lies not just in funding the criminal justice system, which legislators recognize is underfunded, but also to run the state's general operations.

Understanding the relevance of the reasoning behind what to *charge* defendants *for* (not *with*) requires going back to the statistics recited at the beginning of this article. The overwhelming majority of defendants in Illinois and in the country are poor and near poor. Those who have the means to pay fines and fees outright are unlikely to incur delinquency charges, if they are sentenced to monetary sanctions at all given their better outcomes through the court system (Reiman and Leighton 2015). The remittances of those who are financially able also go to fund the institutions and services listed in table 1, and their payments for speeding tickets and drug possession and domestic violence violations likely comprise a large proportion of the funds collected. But they are not representative of the criminal justice population, and the other payers are poor people for whom these fines and fees represent a much larger proportion of their incomes. Those convicted of crimes are easy targets for funding state functions just because they have wronged society, are the least able to avoid and defend themselves against the purview of criminal justice actors, and are the least powerful to lobby against the ever growing regime of monetary sanctions. Then, when they cannot pay, they are further stigmatized and criminalized for having skirted their responsibility.

WHAT ACCOMMODATIONS ARE MADE FOR DEFENDANTS' ABILITY TO PAY?

Nationally, guidance to criminal courts about how to assess defendants' financial means is scant (U.S. Commission on Civil Rights 2017, 72). In the laws prior to the one passed in 2018, neither the word *poor* nor *poverty* appeared in the Illinois statutes on criminal monetary sanctions; the word *indigent* appeared rarely and only once was it defined, in that case for incarcerated persons having "$20 or less in his or her Inmate Trust Fund" in order to evaluate their ability to pay a medical co-payment (see table 2). The word *low-income* appeared in the municipal codes and is defined as someone who is eligible for the federal earned income tax credit (65 ILCS 5/1–2-1).[14]

The law regarding court-appointed counsel (public defender) requires defendants to file an affidavit with the court to determine eligibility. "Such affidavit shall be in the form established by the Supreme Court containing sufficient information to ascertain the assets and liabilities of that defendant" (725 ILCS 5/113–3). The term *sufficient information*, however, is not further explained. The Illinois Supreme Court rules do not include a standard form, so each county has created its own affidavit, which includes varying questions about assets (such as homes,

14. The new law defines indigence as someone who is receiving one or more of several forms of public assistance; whose income is less than 200 percent of the poverty level; or someone who would face "substantial hardship," in the eyes of the court, in paying the assessments (State of Illinois 2018, 166).

cars, bank accounts), and liabilities (number of dependents, monthly expenses, and so on), as well as marital status, employment, and household income from various sources. Yet no formula or standard is in place for evaluating the information on the form. It is entirely up to the judge's discretion to deem someone indigent and thus eligible for court-appointed counsel, or not. Given the absence of any guidance, that same discretion extends to all of the allowances in the law for taking into consideration a defendant's financial wherewithal to pay sentenced fines and fees.

Table 2 lists all of the statutes pertaining to monetary sanctions that consider a person's financial status or ability to pay. More state receivers of monetary sanctions are mentioned in the Illinois law (table 1) than dispensations for poor defendants regarding payment. The language is vague, referring generally to a defendant's *ability to pay* or *financial resources*, but not defining either term. The lengthiest elaboration is for the form that determines prisoners' ability to reimburse the Department of Corrections. Such forms

> shall provide for obtaining the age and marital status of a committed person, the number and ages of children of the person, the number and ages of other dependents, the type and value of real estate, the type and value of personal property, cash and bank accounts, the location of any lock boxes, the type and value of investments, pensions and annuities and any other personalty of significant cash value, including but not limited to jewelry, art work and collectables, and all medical or dental insurance policies covering the committed person. The form may also provide for other information deemed pertinent by the Department in the investigation of a committed person's assets. (730 ILCS 5/3–7-6(a))

Notably, this form collects information only on assets, not on debts or liabilities. Although this statute is for collecting monies from the defendant rather than providing them with relief, we include it because a finding of no or few assets would likely exempt the defendant from prosecution for reimbursement.[15]

The lack of clear guidance on how to evaluate indigence and of explicit admonitions to consider a person's finances creates a silence that can be readily filled with stereotypes, stigma, and the kinds of logics about personal responsibility that suffused the lawmaking process discussed earlier (Van Cleve 2016). The flow of cases through the courtroom is swift, leaving no time for much deliberation and little direct interaction between the judge and defendant. Nonetheless, decisions about sentencing have long-term impacts. In addition to the research on the collateral consequences of incarceration for health, political participation, employment, and other outcomes (Pattillo et al. 2004), monetary sanctions have direct repercussions for people's finances, and more. In the following section, we explore the consequences for nonpayment authorized in Illinois state law to illustrate how the disregard for ability to pay at sentencing sets the stage for the expansion of carceral logics to deal with court debt.

WHAT ARE THE CONSEQUENCES FOR NOT PAYING?

The statutes about consequences for nonpayment are more wordy, detailed, and explicit than the directions regarding indigence. Consider the following excerpts from four laws allowing actions to be taken against people with outstanding court debt:[16]

15. Other statutes similarly provide possible relief for poor defendants but do not evaluate financial status. Presentencing monetary credit is granted for bailable offenses when the defendant cannot supply bail. A defendant receives a $5 credit for each day he or she was jailed prior to sentencing (725 ILCS 5/110-14). Because low-income defendants are more likely to lack the funds necessary to make bail and consequently remain incarcerated throughout their trial, this de facto serves as an accommodation for poverty.

16. We present this abundance of text because it illustrates the wordiness regarding collecting fines and fees in comparison to the minimalist or nonexistent language regarding indigence and relief for poor defendants. Consider this text as one might consider the abundance of quantitative information in a regression table that is not discussed but is available for readers to review and interpret for themselves.

> The property, real and personal, of a person who is convicted of an offense shall be bound, and a lien is created on the property, both real and personal, of every offender, not exempt from the enforcement of a judgment or attachment, from the time of finding the indictment at least so far as will be sufficient to pay the fine and costs of prosecution. The clerk of the court in which the conviction is had shall upon the expiration of 30 days after judgment is entered issue a certified copy of the judgment for any fine that remains unpaid, and all costs of conviction remaining unpaid. Unless a court ordered payment schedule is implemented, the clerk of the court may add to any judgment a delinquency amount equal to 5% of the unpaid fines, costs, fees, and penalties that remain unpaid after 30 days, 10% of the unpaid fines, costs, fees, and penalties that remain unpaid after 60 days, and 15% of the unpaid fines, costs, fees, and penalties that remain unpaid after 90 days. Notice to those parties affected may be made by signage posting or publication. The clerk of the court may also after a period of 90 days release to credit reporting agencies, information regarding unpaid amounts (725 ILCS 5/124A-10).

> As a condition of the assessment, the court may require that payment be made in specified installments or within a specified period of time. If the assessment is not paid within the period of probation, conditional discharge or supervision to which the defendant was originally sentenced, the court may extend the period of probation, conditional discharge or supervision (720 ILCS 550/10.3(c).

> The Clerk of the Circuit Court may enter into an agreement with the Illinois Department of Revenue to establish a pilot program for the purpose of collecting certain fees. The purpose shall be to intercept, in whole or in part, State income tax refunds due the persons who owe past due fees to the Clerk of the Circuit Court in order to satisfy unpaid fees pursuant to the fee requirements of Sections 27.1a, 27.2, and 27.2a of this Act. The agreement shall include, but may not be limited to, a certification by the Clerk of the Circuit Court that the debt claims forwarded to the Department of Revenue are valid and that reasonable efforts have been made to notify persons of the delinquency of the debt. The agreement shall include provisions for payment of the intercept by the Department of Revenue to the Clerk of the Circuit Court and procedures for an appeal/protest when an intercept occurs. The agreement may also include provisions to allow the Department of Revenue to recover its cost for administering the program (705 ILCS 105/27.2b).

> (a) An offender who defaults in the payment of a fine or any installment of that fine may be held in contempt and imprisoned for nonpayment. The court may issue a summons for his appearance or a warrant of arrest. (b) Unless the offender shows that his default was not due to his intentional refusal to pay, or not due to a failure on his part to make a good faith effort to pay, the court may order the offender imprisoned for a term not to exceed 6 months if the fine was for a felony, or 30 days if the fine was for a misdemeanor, a petty offense or a business offense. Payment of the fine at any time will entitle the offender to be released, but imprisonment under this Section shall not satisfy the payment of the fine (730 ILCS 5/5–9-3).

These four statutes alone represent consequences ranging from property liens to credit agency reporting to graduated financial penalties to extended probation or supervision to intercepted income tax refunds to incarceration. Other possible outcomes include wage garnishment, referral to private debt collectors, driver's license suspension or revocation, deductions from inmate's accounts, lawsuits, and generally "any and all means authorized for the collection of money judgments" (730 ILCS 5/5–9-3) (also see Tran-Leung 2009).

These methods encumber the financial lives of those sentenced to monetary sanctions, but the final example—730 ILCS 5/5–9-3—is the most extreme: incarceration. The law was passed in 1972, the tail end of decades of civil rights protests and general social unrest, and the moment of a punitive turn in criminal justice policy (Calavita and Jenness 2015; Fortner

Table 2. Considerations of Financial Resources or Ability to Pay in Illinois Law

Statute	Basis for Accommodation	Accommodation
55 ILCS 5/3-15016	"Ability to pay," no definition	May determine amount to be reimbursed to county jails for the cost of incarceration
65 ILCS 5/1-2-1	"Low-income individual" defined as eligible to receive federal EITC	Waiver of fee to pay for required education programs in municipal ordinance violations
105 ILCS 105/27.1(w-3)	"Indigent," no definition	May excuse the payment of the jury services fee in fine-only ordinance violations
720 ILCS 5/26-1(e)	"Indigent," no definition	Possible exemption from reimbursing a public agency for emergency response costs in response to disorderly conduct violation
725 ILCS 5/113-3.1	Affidavit of Assets and Liabilities; "any other information pertaining to the defendant's financial circumstances"; and "as the interest of fairness may require"	May determine amount, payment duration, or suspension of reimbursement to state for court-appointed counsel
730 ILCS 5/3-6-2(f)	"Indigent," defined as a committed person who has $20 or less in his or her Inmate Trust Fund	Exemption from $5 medical services copayment while imprisoned
730 ILCS 5/3-7-6(a)	A detailed form "regarding assets"	May determine reimbursement to state for incarceration costs
730 ILCS 5/5-4-3(j)	"Inability to pay," no definition	May mitigate potential incarceration for nonpayment of mandatory DNA analysis fee
730 ILCS 5/5-5-10	"Ability to pay," no definition	May determine amount of monthly community service fee when supervised by probation or court services department
730 ILCS 5/5-5-3(j-5)	"Inability of the defendant after making a good faith effort to obtain financial aid or pay"	Mitigates failure to pay costs of required coursework toward a high school degree while under mandatory supervised release from prison
730 ILCS 5/5-5-6(f)	"Ability of the defendant to pay, including any real or personal property or any other assets of the defendant"	May determine payment terms in order of restitution

730 ILCS 5/5-6-3	"Inability of the offender to pay the fee," no definition	May determine amount or waiver of monthly probation fees; may determine amount or waiver of additional fees and costs for sex-offenders sentenced to probation; may determine payment of costs or waiver for mandatory drug or alcohol testing and electronic home monitoring while sentenced to probation
730 ILCS 5/5-6-3.1	"Inability of the person . . . to pay the fee," no definition	Same as above, while sentenced to supervision
730 ILCS 5/5-7-1(g)	"Ability to pay," no definition	May determine costs for mandatory drug or alcohol testing and electronic home monitoring while sentenced to periodic imprisonment
730 ILCS 5/5-9-1(d)	"The financial resources and future ability of the offender to pay the fine"	May determine the amount and method of payment of additional fines authorized in this section
730 ILCS 5/5-9-1.4(b)	"Ability to pay" based on a "verified petition," no definition	May suspend all or part of the crime lab fee in drug-related cases.
730 ILCS 5/5-9-1.9(b)	"Ability to pay" based on a "verified petition," no definition	May suspend all or part of the DUI analysis fee
730 ILCS 5/5-9-2	"Upon good cause shown," no definition	Court may revoke or modify method of payment of authorized fines
730 ILCS 125/17	"Reasonably able to pay...including reimbursement from any insurance program or from other medical benefit programs"	May determine amount to be reimbursed to jail wardens for bedding, clothing, fuel, and medical aid
730 ILCS 125/20(a)	"Ability to pay"	May determine amount to be reimbursed to county jails for the cost of incarceration
730 ILCS 148/10(c-5)	"Indigent," no definition	May grant fee waiver for arsonists to register with local and county police

Source: Authors' analysis of Illinois statutes.

2015; Weaver 2007; Western 2006). It began as House Bill 811, which aimed to restructure the corrections system in Illinois, reviewing, consolidating, revising, and writing nearly five hundred bills into what became the Unified Code of Corrections, much of which remains law today. The specific issue of jailing people for failing to pay their fines was not debated on the Senate floor (State of Illinois 1972a). It was a short paragraph in an eighty-page piece of legislation. The text of parts (a) and (b) of Section 5–9-3 has hardly changed since 1972. All of the new language is in part (e). In 1972, it began with the simple sentence "A default in the payment of a fine or any installment may be collected by any means authorized for the collection of money judgments rendered in favor of the State" (State of Illinois 1972b, 834). Now, however, it elaborates on the means of collection; adds fees, costs, and other judgments to what can be collected; adds 9 percent annual interest; and adds a 30 percent fee onto the original amount due and onto any other costs incurred by the state's attorney's office in the process of collections.[17] Hence, 730 ILCS 5/5–9-3 has progressively extended the hand of the correctional state into the pocketbooks of those sentenced to monetary sanctions, and allows for the further deprivation of liberty through incarceration.

This law also stipulates the basis upon which courts are instructed to decide on incarceration as a penalty for nonpayment, namely if that nonpayment was intentional, or what in other statutes is called a "willful refusal to pay" (730 ILCS 5/5–6-4(d)). Illinois is one of forty-four states that allow the incarceration of people with outstanding court debt due to willful nonpayment (Harris 2016, 50), which is in line with the terminology set forth in the U.S. Supreme Court decision in *Bearden v. Georgia* (1983) (Pepin 2016).[18] Willfulness is also the standard for courts when deciding on the revocation of probation. Several defendants have appealed their probation revocation on these grounds, but the bar for disproving willful nonpayment seems high. In *People v. Wright*, a fifty-eight-year-old woman who worked part time at Kentucky Fried Chicken and other temporary jobs was found to have willfully not paid her $2,323 balance in court costs, fees, and restitution. The Illinois Appellate Court held that "Although defendant was employed on multiple occasions and had discretionary cash to purchase cigarettes, she demonstrated she did not consider the financial obligations of her probation conditions to be a priority." She was re-sentenced to a three-year prison term on the original offenses of theft and robbery. In *People v. Colton*, a defendant was re-sentenced to four years in prison when his probation was revoked for, in part, not paying his $685 in fines and fees. Despite also finding that $605 of the $685 in monetary sanctions were improperly charged, the court concluded, "Here, there is no indication that defendant paid any of the fines, fees or costs assessed as part of his probation or attempted to explain his failure to do so. Although defendant argues on appeal that he was a minor without financial resources, he cites no authority for the proposition that underage students are excused from such financial responsibilities."[19] Echoing the language in the legislative discussions of deadbeats thumbing their noses at the system, the transcripts of the probation revocation appeals include words about defendants' responsibility to pay their court costs and their failure to prioritize this debt.

In both the legislation and the case law, we see the application of neoliberal logics about personal responsibility and the appropriate-

17. These consequences, from interest to collections referrals, are not just hypothetical, but are enforced throughout the state (see, for example, Martin 2014; Parker 2015).

18. *Bearden v. Georgia*, 461 U.S. 660 (1983).

19. *People v. Wright*, IL App (4th) 110533-U (2012), 5. *People v. Colton*, IL App (1st) 112218-U (2013). Several other examples follow these cases, but we found two cases where the appeals court reversed the Circuit Court decision to revoke probation based on willful nonpayment. In one case, the defendant was legally blind, was unemployed, and had stated assets of $22 (*People v. Bouyer*, IL App (2nd) No. 2-00-1158 (2002)). In the other, the defendant was a single mother of three children who had recently been evicted from her apartment (*People v. Davis*, 576 N.E.2d 510 (Ill. App. Ct. 1991)).

ness of criminal justice punishments for a situation caused by a criminal justice penalty that is disproportionately burdensome for poor defendants. In other words, the crime of not paying a monetary sanction is in many cases the mere state of being poor, yet nonpayment occasions a series of consequences that further ensnare defendants in criminal justice proceedings. One final example illustrates this point. In *People v. Butler-Hobbs*, a fifty-three-year-old woman appealed the revocation of her probation, which stemmed from a 2001 forgery conviction.[20] After several years of criminal justice supervision, including jail time, mandated drug treatment, and frequent court status hearings, she still owed roughly $1,700 in probation fees and court fines and costs. At one status hearing, the judge asked the woman's probation officer, "It's only financial at this point?" The probation officer affirmed. In a later status hearing that the woman failed to attend, the probation officer reported things were "pretty stressful for her right now," regarding her financial status. He added, "She's been off for some time. The treatment and everything is done. It's just an issue of the financial piece right now." Still, the case wore on for another three years with frequent status hearings and requirements for payment, which the woman often did not attend and did not meet. Ultimately, the trial court revoked her probation and the appeals court affirmed that decision. In this instance, the role of monetary sanctions in furthering criminal justice contact is clear. Except for the literal payments, the defendant had paid every other part of her debt to society. Yet not paying the monetary sanctions meant that she did not responsibly complete her sentence, and the corresponding remedy was thirty months of prison time, one year of mandatory supervised released, and additional court costs and fees.

CONCLUSION

Punishment for lawbreaking is a core function of government. We have focused on the legislative domain in one state as a space that authorizes such punishment. The text of statutes, the debates that crafted them, and the case law that adjudicates them together make up a record and reflection of the kinds of ideologies that guide society's position on crime and those who commit them. Monetary sanctions are a particularly underexplored area of law, and the analysis of such laws uncovers the force of ideologies that emphasize personal responsibility and a carceral approach to managing poverty.

In answering the questions of what defendants are expected to pay for, what accommodations are allowed, and what the consequences of nonpayment are, we find the repeated rhetoric that the debts defendants owe are of their own making due to their failing to prioritize and their shirking of responsibilities. We find a willingness to attach additional penalties, reinitiate prosecution, extend supervision, and appease new stakeholders, but very little statutory guidance on a primary fact of the criminal justice system: the majority of people involved are poor or near poor. Poor state finances make poor defendants a clear and easy population upon which to foist the burden of monetary sanctions.

The core term *willful* (as well as *intentional*) is especially instructive because it both assumes an autonomous individual who is in full control of their circumstances and fixes the blame on the individual who acts with clear purpose. The literature on monetary sanctions to date paints quite another picture, however: namely, that of defendants who are barely making ends meet and who often prioritize rent, food, childcare, and health over paying the court that prosecuted them or the jail that imprisoned them (Harris et al. 2010; Harris 2016). Yet the law is clear that these debts are now their responsibility.

We argue that these contradictions constitute statutory inequality. Lawmakers rhetorically conjure a financially capable defendant in order to enact legislation that aims to recoup costs from them. A public defender in one Illinois county opined, "I do, generally, believe that very few of our judges have ever experienced the kind of poverty a majority of my clients live with, so they are often unrealistic about what is possible" (Bannon et al. 2010, 22). That sentiment seems equally applicable to leg-

20. *People v. Butler-Hobbs*, IL App (2nd) 100260-U (2011).

islators. Laws that exact financial penalties without attention to the financial circumstances of the majority of defendants—and without primary attention to the ability to pay of individual defendants—in essence legislate inequality of impact. For someone earning $1,000 a month, $1,000 in court costs is an impossible debt to pay; whereas for someone earning $6,000 a month, the same costs are challenging but not impossible. Even more important, cascading penalties—from delinquent charges to extended or revoked probation to incarceration—further separate the person who can pay from the person who cannot, making the latter even less able to go to work or school or pay for daily necessities. Scholars have characterized such laws and practices as constituting "predation" (Page and Soss 2018), "stategraft" (Atuahene and Hodge 2018), and outright "seizure" (Katzenstein and Waller 2015) of the assets of poor people. All of these terms highlight the additional impoverishment of already poor people, in this case through the workings of the law, the effect being larger gaps between poor and nonpoor defendants, which reverberate to poor and nonpoor families and communities.

The new Illinois law will correct some of the issues highlighted in this article. The provision for waivers of monetary sanctions for poor people is extraordinarily significant, and the definition of indigence offers clear guidance for judges and attorneys about who should be eligible for such waivers. However, the law goes only so far. The waivers are applicable only to assessments, not to fines or restitution. The mandatory fine for a first-time driving under the influence of alcohol or drugs offense, for example, is $500, a payable sum for the affluent but not for the poor. Restitution in theft or damage to property cases can run in the thousands. Moreover, the defendant must apply for the waiver within thirty days of conviction; successful implementation of the law will rely heavily on public awareness, compliance with posting requirements, and the proactive counsel of public defenders. Also, the new law is not retroactive and thus offers no relief for people already sentenced to pay monetary sanctions. Neither does it offer relief for services that defendants must pay for as part of their sentence, such as probation fees or the costs of anger management classes or substance abuse treatment. Finally, the consequences for nonpayment are unchanged. Hence, if a person does not apply for the waiver in a timely fashion, the cascade of penalties from interest to collections to imprisonment is still available to the state.

Nonetheless, the new law raises the question of whether the neoliberal logics of responsibility and carceral expansion are crumbling. We argue that some evidence suggests that they are. Successful efforts in Washington, D.C., New Jersey, California, and large jurisdictions, including Cook County, to eliminate bail for many offenders, as well as general movements toward *decarceration*, reflect public opinion moving away from the harshly punitive policies of the 1980s and 1990s, even if only for fiscal reasons (on bail, Wiltz 2017; on decarceration, Pettus-Davis and Epperson 2015). Indeed and curiously, the waivers for LFOs in Illinois got very little attention in the House and Senate floor discussions. Much of the logic for the reformation was on efficiency grounds. As a task force report that preceded the statutory change noted, "A relatively small percentage of assessments imposed in criminal cases is ever collected. Compared to any revenue that they generate, the administrative burden that such assessments impose on court clerks is substantial because criminal cases are not closed if assessments have not been paid" (Statutory Court Fee Task Force 2016, 31). This may be a case of the technocratic logics of neoliberalism triumphing over the personal responsibility logics (see, for example, Fourcade-Gourinchas and Babb 2002).

Yet, in addition to the limitations of the new law discussed, there are also reasons not to be too sanguine. Carceral logics effectively extend into community contexts outside prisons and courthouses (Kohler-Hausmann 2013; Shedd 2015; Soss, Fording, and Schram 2011). This extension suggests that a less concrete infrastructure of surveillance and control is already ensconced to take the place of prisons and jails; that various decriminalization efforts (marijuana being the biggest example) rest on making such offenses "fine-only," which leads back to the statutory inequality described (Natapoff 2015); and that the rhetoric of personal respon-

sibility, especially when applied to the poor, and related policy efforts to increase work and other requirements to access social safety net programs show no signs of abating (Davis 2017). These realities play out just as strongly in Illinois, where the new law to revamp the system of monetary sanctions moves in the direction of reducing statutory inequality, but has much more room to go.

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