



Covenant House
New Jersey

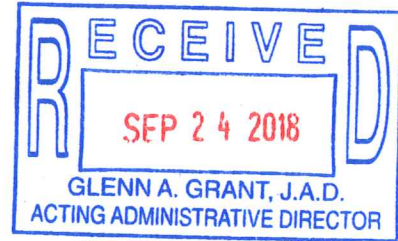
#011

Covenant House New Jersey
Community Service Centers

330 Washington Street 929 Atlantic Avenue
Newark, NJ 07102 Atlantic City, NJ 08401
T: 973-621-8705 T: 609-348-4070
F: 973-286-0190 F: 609-348-1122
www.covenanthousenj.org

September 24, 2018

Honorable Glenn A. Grant, J.A.D.
Acting Director, Administrative Office of the Courts
Comments on Municipal Court Operations,
Fines, and Fees Report
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037



By E-mail: Comments.Mailbox@njcourts.gov

Re: June 2018 Report of the Municipal Court Committee on Municipal Court Operations,
Fines, and Fees

Dear Judge Grant,

In accordance with the Notices to the Bar dated July 17, 2018 and August 20, 2018, we submit the following written comments on the Supreme Court Committee on Municipal Court Operations, Fines, and Fees (the "Committee") June 2018 Report (the "Report").

On behalf of our clients – homeless youth ages 18-21 throughout the state of New Jersey – we thank you for shining a light on the "profoundly concern[ing]" experiences of vulnerable and impoverished individuals in New Jersey's municipal courts and recommending aggressive reforms. Report, 2. We note that the enforcement of municipal fines and fees causes manifest hardship to defendants experiencing homelessness and late adolescence, and we respectfully request that the Committee include recommendations for reform that directly address homeless youth.

The additions we propose are based on principles that have been adopted by other local court systems and are aligned with the New Jersey Judiciary's core values of equal access and fair justice to all:

1. Establish a presumption of inability to pay for homeless and youth defendants, and exempt accused defendants in these circumstances from the issuance of bench warrants.
2. Recommend that homeless and youth defendants be credited for hours spent participating in free wraparound services at local service providers.

Covenant House counsel and homeless youth clients have regular interaction with New Jersey's municipal courts

To our knowledge, Covenant House New Jersey's Youth Advocacy Center is the sole provider of no-cost legal services to individuals in New Jersey charged with non-criminal offenses adjudicated in municipal courts. Covenant House New Jersey, is a subsidiary of Covenant House International, the nation's largest nonprofit organization that provides residential and comprehensive support services to

homeless and trafficked youth in 31 cities throughout the United States, Canada and Central America. Covenant House International has offered sanctuary and support to over 1 million youth in crisis since it was founded in 1972. Opening its doors in New Jersey since 1989, Covenant House New Jersey has locations in seven cities (Newark, Montclair, Jersey City, Elizabeth, Asbury Park, Camden, and Atlantic City) and is New Jersey's largest statewide provider of services to homeless and trafficked youth between the ages of 18 and 21.

In fiscal year 2018 (July 1, 2017 – June 30, 2018), Covenant House New Jersey's Youth Advocacy Center, staffed with only two full-time attorneys, appeared as counsel for homeless youth in 54 municipal courts, totaling 169 scheduled court appearances, and requesting the recall of at least one bench warrant per week. Only one time in the last fiscal year were we unsuccessful in preventing our client from being held in jail overnight.

The non-criminal offenses we see as counsel for homeless youth are predictable and repetitive: the poverty crimes typically associated with periods of homelessness and adolescent behavior, including theft for fare evasion and shoplifting, civil trespassing for sleeping in abandoned buildings, and disorderly conduct for public intoxication and urination. See Implementing Change: Addressing the Intersections of Juvenile Justice and Youth Homelessness for Young Adults, Coalition for Juvenile Justice, 4 (June 2018)¹ (using the term "quality of life" offenses to describe survival acts directly related to homelessness and poverty).

As the Committee highlighted in the Report, the penalties for these survival-related disturbances vary widely, but the minimum fine we encounter is typically in the multiple hundreds of dollars. We have even seen judges *raise* the fee for these offenses in exchange for reductions in charge *or* offer conditional discharge only to defendants who could pay a fee, creating a Hobson's choice for the homeless 18-year-old client with no prior record and her counsel who both know she cannot pay even with a time-payment plan. Upon default, we can request any of the expansive statutory sentencing options available (see Report, 20), but our experience has taught us these options exist only on paper and are not accessible in reality. More often than not, we are prevented from ever making the request for alternative sentencing options, because our request is dependent on our homeless clients having received notice of the subsequent court dates and showing up. Notice is, at best, a roll of the dice for our transient clients who may have stayed at Covenant House for only one week between a series of other short-term living environments but provided our mailing address to the court for lack of any other option. If our client does not show up, we no longer have the luxury to argue about the client's debt, we must instead attempt to persuade the judge not to issue a bench warrant. It will be unsurprising to the Committee after researching and writing its report to learn that we lose more than we win.

The collateral impact of debt, records, warrants, and ongoing court involvement are exponential for youth who are just getting started – finding their first jobs and apartments. A brief period of homelessness can easily turn into a cycle of poverty and homelessness increasingly punctuated by adult justice system involvement.

New Jersey should follow the guidelines issued by the federal government and join the trend that has already taken root in other states to establish homelessness-based exemptions from fines and fees

The federal government – along with many states and non-profit organizations – has recommended that homelessness be considered when determining an individual's ability to pay and

¹ <https://youthtoday.org/2018/06/implementing-change-addressing-intersections-juvenile-justice-youth-homelessness/> (last visited Sept. 24, 2018).

evaluating other sentencing alternatives. See, e.g., Targeted Fines and Fees Against Communities of Color: Civil Rights and Constitutional Implications, United States Commission on Civil Rights, 75 (September 2017)² (“Courts and municipalities should establish a standard for evaluating an individual’s ability to pay *including a presumption of inability to pay for people who are homeless*, incarcerated, confined in a mental health facility, juveniles, or whose income is below the poverty level.”) (emphasis added); Lawful Collection of Legal Financial Obligations: A Bench Card for Judges, National Task Force on Fines, Fees and Bail Practices, 2 (February 2017)³ (recommending that judges consider whether an individual is “homeless . . . [and] [t]he person’s efforts to secure additional resources, including any permanent or temporary limitations to secure paid work due to . . . homelessness” when determining whether an individual willfully failed to pay a court ordered fines, costs, fees, assessments, or restitution); No Exit, Texas: Modern-Day Debtors’ Prisons and the Poverty Trap, American Civil Liberties Union of Texas, 14 (November 2016)⁴ (recommending that the Legislature “establish a rebuttable presumption of inability to pay for people in appropriate circumstances, such as . . . people who are homeless”); Court Fines and Fees: Criminalizing Poverty in North Carolina, North Carolina Poverty Research Fund, 22-23 (Winter 2017)⁵ (recommending that homeless individuals be exempt from fines and fees or at least enjoy a rebuttable presumption of exemption).

In Colorado, judges are prohibited from imprisoning or finding an individual in contempt of court for failing to pay any type of monetary amount if paying would have caused “undue hardship to himself or herself or his or her dependents” Colo. Rev. Stat. Ann. § 18-1.3-702(3) (2016). In determining whether an individual or his dependents would suffer “undue hardship,” the court must consider: whether the individual is experiencing homelessness; the individual’s present employment, income, and expenses; the individual’s outstanding debts and liabilities; whether the individual has qualified for and is receiving any form of public assistance; the availability and convertibility of any real or personal property owned by the individual; whether the individual resides in public housing; whether the individual’s family income is less than 200% of the federal poverty line, adjusted for family size; and any other circumstances that would impair the individual’s ability to pay. Colo. Rev. Stat. Ann. § 18-1.3-702(4) (2016).

The City of Biloxi, Mississippi adopted similar policies as part of a settlement agreement in Kennedy v. The City of Biloxi, Mississippi, No. 15-cv-00348-HSO-JCG. Going forward, individuals in Biloxi who are homeless enjoy a rebuttable presumption that they are unable to pay court ordered fines, state assessments, fees, court costs, or restitution. See Stipulated Settlement Agreement, Exhibit A at 4-5, Kennedy v. The City of Biloxi, Mississippi, No. 15-cv-00348-HSO-JCG (S.D. Miss. Mar. 15, 2016). In inquiring into, and making a determination on, an individual’s efforts to acquire resources to pay their fines, fees, and assessments, Biloxi municipal courts must consider the individual’s efforts to earn money, secure employment, and borrow money, as well as any limitations to engage in such efforts due to *homelessness*, health and mental health issues, temporary and permanent disabilities, limited access to public transportation, limitations on driving privileges, and other relevant factors. *Id.* at 5.

² https://www.usccr.gov/pubs/docs/Statutory_Enforcement_Report2017.pdf (last visited Sept. 24, 2018).

³ https://www.ncsc.org/~media/Images/Topics/Fines%20Fees/BenchCard_FINAL_Feb2_2017.aspx (last visited Sept. 24, 2018).

⁴ https://www.aclutx.org/sites/default/files/no_exit_texas_-_modern-day_debtors_prisons_and_the_poverty_trap_11-2016.pdf (last visited Sept. 24, 2018).

⁵ <http://www.ncpolicywatch.com/wp-content/uploads/2018/01/Court-Fines-and-Fees-Criminalizing-Poverty-in-NC.pdf> (last visited Sept. 24, 2018).

New Jersey should join other states by recommending credits for wraparound supports that address the developmental limitations and recognize the future potential of youth

While youth, age 18-24, comprised 10% of the American population in 2015, they accounted for nearly 30% of those arrested -- “[l]ongstanding research on the age-crime curve demonstrates that criminal behavior peaks during young adulthood.” Reducing Recidivism and Improving other Outcomes for Young Adults in the Juvenile and Adult Criminal Justice Systems, The Council of State Governments Justice Center, 2 (2015).⁶ The dichotomy becomes even more pronounced when taking into account youth homelessness: 62% of the 400,000 youth (age 16-24) who annually experience homelessness have at least one interaction with the justice system. Introduction to City Strategies to Reduce the Use of Jails for Young Adults, National League of Cities, 2 (December 2016).⁷ Consensus has been reached in scientific research, and is now widely recognized in law and judicial policy, that normal brain development continues into the mid-20s. Implementing Change: Addressing the Intersections of Juvenile Justice and Youth Homelessness for Young Adults at 1-4. Behaviors typical of late adolescents are distinct from those of young adolescents and adults, and this age group ranging from 18 to 24 has more recently been termed “emerging adults.” Emerging Adults: The In-Between Age, Monitor on Psychology, American Psychological Association (June 2006).⁸ Among the brain capacities that do not fully mature until emerging adulthood is the ability to control impulsive, reward-seeking behaviors. Casey, B.J. et al., The Teenage Brain: Self Control. Sackler Institute for Developmental Psychobiology and Department of Psychiatry, Weill Cornell Medical College, (Oct. 2014).⁹ Brain science would suggest, and justice system data reflects, “the majority of youth offenders will stop re-offending on their own as they mature into adulthood.” Dos and Don'ts for Reducing Recidivism Among Young Adults in the Justice System, The Council of State Governments Justice Center, 1 (September 2017).¹⁰

Diversion programs and alternative sentencing are particularly beneficial to emerging adults whose risks of reoffending and becoming trapped in cycles of poverty and homelessness increase with prosecution. Introduction to City Strategies to Reduce the Use of Jails for Young Adults at 2.¹¹ Many states and localities have created young adult specific procedures and policies to redress low law level, non-violent law breaking behaviors. See, Environmental Scan of Developmentally Appropriate Criminal Justice Responses to Justice-Involved Young Adults, National Institute of Justice (June 2016)¹² (identifying community-based partnerships focused on young adults in California, Minnesota, Oregon, New York, Pennsylvania, Massachusetts, Tennessee, Washington D.C.; Young Adult Courts in Idaho, California, Nebraska, Michigan, Massachusetts, and New York; parole/probation programs in Iowa, Washington D.C., South Carolina, California, Oregon; and, District Attorney led programs in New York, Rhode Island, Texas, California).

Current evidence-based best practice for emerging adults supports referrals to co-located wraparound services – instead of singular employment, education, or independent living programs – that provide cognitive behavior curricula, career pathways integrated programming, mental health and substance use treatment, and positive, sustained connections with supportive adults. Dos and Don'ts for Reducing Recidivism Among Young Adults in the Justice System at 1. Court-approved consent decrees and many non-profit organizations have recommended that judges credit hours spent in wraparound

⁶ <https://csgjusticecenter.org/youth/publications/juvenile-justice-white-paper/> (last visited Sept. 24, 2018).

⁷ <https://www.nlc.org/reducing-the-presence-of-young-adults-in-jail> (last visited Sept. 24, 2018).

⁸ <http://www.apa.org/monitor/jun06/emerging.aspx> (last visited Sept. 24, 2018).

⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4182916/> (last visited Sept. 24, 2018).

¹⁰ <https://csgjusticecenter.org/wp-content/uploads/2017/09/Dos-and-Donts-for-Reducing-Recidivism-among-Young-Adults-in-the-Justice-System.pdf> (last visited Sept. 24, 2018).

¹¹ <https://www.nlc.org/reducing-the-presence-of-young-adults-in-jail> (last visited Sept. 24, 2018).

¹² <https://www.ncjrs.gov/pdffiles1/nij/249902.pdf> (last visited Sept. 24, 2018).

services as alternatives to fees and fines. See, e.g., *Paying More for Being Poor: Bias and Disparity in California's Traffic Court System*, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, 24 (May 2017)¹³ (recommending that individuals be credited for "hours spent in job training, drug or mental health treatment, education, securing or providing child care, or participating in other approved public interest or personal improvement activities" if they are otherwise unable to pay a fine); *Lawful Collection of Legal Financial Obligations: A Bench Card for Judges* at 2 (recommending that judges consider offering credit for "completion of a relevant, court-approved program (e.g. education, job skills, mental health or drug treatment)" as an alternative to imprisonment when an individual is unable to pay); *Court Fines and Fees: Criminalizing Poverty in North Carolina* at 23 (recommending that court should consider "alternatives to fines and fees such as free community service or drug/alcohol treatment programs . . . [and other] creative measures to broaden the scope of eligible programs, including for example quality job skills training, additional education, or other types of treatment and counseling"); Stipulated Settlement Agreement, Exhibit A at 5, *Kennedy v. The City of Biloxi, Mississippi*, No. 15-cv-00348-HSO-JCG (requiring Biloxi municipal courts to consider "completion of approved job skills training and educational, drug treatment, counseling and mental health programs as an alternative or in addition to community service towards the discharge of fines, fees, state assessments, court costs, and restitution").

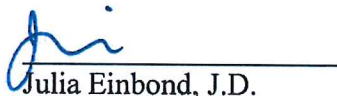
The procedural safeguards we propose for homeless youth with matters adjudicated in New Jersey's municipal courts are no different from the emerging common practice in local justice systems nationwide and are central to the spirit and purpose of the Committee's recommendations for reform.

Thank you for your consideration.

Respectfully submitted,



James White
Executive Director, Covenant House New Jersey



Julia Einbond, J.D.
Supervising Attorney, Youth Advocacy Center

¹³ <https://www.lccr.com/programs/paying-poor-bias-disparity-californias-traffic-court-system/> (last visited Sept. 24, 2018).