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THE HIDDEN COST OF THE DISEASE:
Fines, Fees, and Costs Assessed on Persons With Alleged Substance Use Disorder

Meghan M. O'Neil and Daniel Strellman

Acknowledgments

This essay stems from two years of field work in problemsolving treatment courts; circuit, district, and federal courts; addiction treatment centers; and probation offices throughout the State of Michigan. Fines, fees, and costs that are referenced and not otherwise cited come directly from our review of Michigan probation records, particularly cases that entered probation in 2014, for the *Community Corrections Fines and Fees Study* (CCFF). Funding for this research comes from Arnold Ventures through the University of Cincinnati's grant, Mcubed, and Poverty Solutions at the University of Michigan Gerald R. Ford School of Public Policy. The CCFF study is led by Primary Investigator Ebony Ruhland. The authors are grateful to the many judges, members of law enforcement, practitioners, treatment center staff, and court teams who graciously supported our research. Thank you to Austin McNeill Brown, J.J. Prescott, and Ebony Ruhland for thoughtful feedback on earlier drafts of this essay. We also would like to thank our research assistants for their dedication to our work.

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Introduction

The age-old adage "crime doesn't pay" is true in more ways than one. Persons experiencing substance use disorder (SUD) can rapidly amass criminal charges on any given day, given that the private use of controlled substances is illegal, as is driving while intoxicated. These repeated behaviors can, and frequently do, culminate in incarceration, supervision (e.g., probation or parole), and hefty fines and fees. Moreover, persons experiencing SUD are far from uncommon: in 2017, overdose became the leading cause of death for Americans under fifty,[1] and in 2018, focus groups with state district court judges in Michigan[2] estimated that four out of every five criminal defendants were experiencing problematic substance use—illuminating the overwhelming degree to which SUD permeates our criminal justice system.[3] Practitioners, academics, and policymakers involved with the justice system ought to be concerned with the costs assessed in SUD cases because the costs can be potentially expensive to collect, excruciatingly burdensome on vulnerable people involved with the justice system trying to maintain sobriety and reenter society, and present a generally inefficient method of punishment when the cost of collection outweighs the total amount ultimately collected by the state.[4]

1. Josh Katz, *Drug Deaths in America Are Rising Faster than Ever*, N.Y. Times (June 5, 2017), https://www.nytimes.com/interactive/2017/06/05/upshot/opioid-epidemic-drug-overdose-deaths-are-rising-faster-than-ever.html [https://perma.cc/D934-7WCP].
2. This essay is informed by mixed-methods field work conducted in Michigan, but ongoing work in other states hints that these patterns might be found throughout the United States.
3. Interviews with Judges, Washtenaw Cty., Mich. Dist. Courts, in Ann Arbor, Mich. (Aug 28, 2018). Other mixed-methods studies similarly suggest that many criminal defendants struggle with substance use. David J. Harding et al., On the Outside: Prisoner Reentry and Reintegration (2019); Bruce Western, Homeward: Life in the Year After Prison (2018); Meghan M. O'Neil, *Way Forward: Removing Barriers to Recovery from the Grip of Drug Addiction*, Legal News (Feb. 18, 2019), http://legalnews.com/detroit/1470670 [https://perma.cc/T7E7-GFKK].
4. *See* Alexes Harris, A Pound of Flesh: Monetary Sanctions as Punishment for the Poor (2016); Meghan M. O'Neil & J.J. Prescott, *Targeting Poverty in the Courts: Improving the Measurement of Ability to Pay*, 82 Law & Contemp. Probs. 199 (2019).

The total costs assessed against offenders suffering from SUD are poorly understood due to the difficulty of gathering data in an antiquated justice system splintered across multiple court levels and numerous localities.[5] Furthermore, courts often rely upon paper case files, which stifle attempts at cross-court communication.[6] In Michigan, offenders can be on probation from multiple levels of the state's judicial system simultaneously, including from district courts and circuit courts, as well as under supervision by community corrections. Moreover, if the individual has criminal charges from outside their home district, they can be on probation in more than one county at the same time.[7] If they also have federal charges, they will be under federal supervision as well. Put simply, costs are assessed in every court level of each jurisdiction that the offender is under supervision. Federal probation officers in the Southeast District of Michigan roughly estimate that anywhere from five to twenty percent of their federal caseload is under state supervision in district and/or circuit court at any given time.[8] According to preliminary interviews with probation offices in Michigan and review of probation files, only federal probation considers how much offenders owe to other probation districts when assessing an offender's ability to pay and assigning or waiving costs against them.[9]

Offenders with SUD-related charges—even those lacking SUD—often experience costly and intensive oversight. Given the stigma surrounding SUD and difficulties in appreciating complex human behavior from a single, discrete incident—e.g., a first-time offense of driving while intoxicated—the state typically has limited ability to distinguish a

5. *See* Harris, *supra* note 4; Katherine Beckett & Alexes Harris, *On Cash and Conviction: Monetary Sanctions as Misguided Policy*, 10 Criminology & Pub. Pol'y 509 (2011); Alexes Harris et al., *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 Am. J. Soc. 1753 (2010).

6. Of the dozen or more sites approached for participation in our Community Corrections Fines and Fees Study, one hundred percent use paper files. A subset of the sites also use electronic case management systems but does so as a supplement to paper files within which most of the information is stored.

7. Interview with Jennifer Babycz, Prob. Officer, 15th Judicial Dist. Court Prob. Dep't, in Ann Arbor, Mich. (Dec. 9, 2019) [hereinafter Interview with Babycz (Dec. 9, 2019)]; Interview with Jennifer Babycz, Prob. Officer, 15th Judicial Dist. Court Prob. Dep't, in Ann Arbor, Mich. (June 27, 2018) [hereinafter Interview with Babcyz (June 27, 2018)]; Interview with Renee A. Wilson, Dir., Cmty. Corr., in Ann Arbor, Mich. (Dec. 10, 2018) [hereinafter Interview with Wilson (Dec. 10, 2018)].

8. Interviews with U.S. Prob. Officers, U.S. Dist. Court for the E. Dist. of Mich., in Detroit, Mich. (Sept. 30, 2019). While federal probation officers do not generally calculate the proportion of their caseload who are on state probation, they uncover this in other ways, such as reviewing criminal background checks and federal financial forms. Forms such as the Monthly Cash Flow Statement, Net Worth Short Form, and Net Worth Statement (on file with authors) processed by pretrial services capture other revolving costs probationers incur, such as state supervision fees and liabilities like restitution or state court arrears.

9. *Id.*; Interview with Babycz (Dec. 9, 2019), *supra* note 7; Interview with Babycz (June 27, 2018), *supra* note 7.

casual substance user from someone who is experiencing addiction, resulting in an imperfect system that punishes all offenders as if they have substance use disorder. Supervision might include intense oversight—drug and alcohol testing, sober transitional housing, and electronic monitoring, among other discretionary oversight measures—at the offender's expense.[10] Outstanding financial obligations incur both interest and compounding penalties, which can spiral into warrants and driver's or professional license suspensions that interfere with one's ability to work in the formal economy and spur subsequent criminal activity.[11] Considerable supervisory discretion affords state actors the power to enforce costs unevenly across caseloads. This can result in arbitrary variations in cost assessment according to offenders' race or gender, which may stem, at least in part, from the ideologies of the supervising agent or the department's culture. Within and between districts, variation exists regarding whether an offender can complete probation or parole if they have unpaid costs remaining. Oversight, collection, and revocation practices also vary widely regarding fine and fee payments for supervision costs. This confluence of factors often results in intensive, costly oversight for offenders with SUD-related charges.

It is troubling that offenders with SUD, who are generally the *least* likely to be successful in complying with the rigid terms of probation and parole, are positioned in our justice system in a manner in which their disease all but ensures their failure.[12] The justice system commonly takes our most vulnerable offenders and, for better or worse, places them under the supervision that is costliest—both in real dollars as well as the labor costs of compliance.[13] While the intent to punish the offender into

10. Interview with Jake Emberling, Jail Outreach Treatment Program Dir., Cmty. Corr. Reentry Ctr., in Ann Arbor, Mich. (Aug. 23, 2018); Interview with Staff, Dawn Farm Outpatient Services, in Ann Arbor, Mich. (Aug. 24, 2018); Michigan probation records (on file with authors); site visits to Veterans Treatment Court and Sobriety Court in Ann Arbor, Mich. (2018–2019).

11. *See* Beth A. Colgan, The Hamilton Project, Addressing Modern Debtors' Prisons with Graduated Economic Sanctions that Depend on Ability to Pay (2019), https://www.hamiltonproject.org/assets/files/Colgan_PP_201903014.pdf [https://perma.cc/S28X-GXTK]; Rebekah Diller, Brennan Ctr. for Justice, The Hidden Costs of Florida's Criminal Justice Fees (2010), https://www.brennancenter.org/sites/default/files/2019-08/Report_The%20Hidden-Costs-Florida%27s-Criminal-Justice-Fees.pdf [https://perma.cc/NEU5-YMJG]; Harris *supra* note 4; Sudhir Venkatesh, Gang Leader For a Day: A Rogue Sociologist Takes to the Streets (2008).

12. Heather Hunt & Gene Nicol, N.C. Poverty Research Fund, Court Fines and Fees: Criminalizing Poverty in North Carolina (2017), https://www.ncpolicywatch.com/wp-content/uploads/2018/01/Court-Fines-and-Fees-Criminalizing-Poverty-in-NC.pdf [https://perma.cc/Q7L2-VGAC]; Western, *supra* note 3, at 8 ("Reincarceration was most common among those who struggled with drug addiction . . . . Community supervision alone appears to make reincarceration more likely.").

13. Supervision for SUD charges may include regular drug or alcohol testing (at a cost), which requires the offender to report somewhere daily, or even multiple

sobriety may be well intentioned, the costs may simply be unrealistic for many persons with SUD. Without resolution of the underlying SUD, offenders find themselves up against a revolving prison door.[14]

I. Statutory & General Fines and Costs

Statutory fines associated with a given crime are just the tip of the iceberg. According to a fine schedule provided to our research team by Michigan district probation, drug and alcohol offenses can include statutory fines ranging from $100–$500 for one's first driving while intoxicated offense and up to $25,000 for felony possession of cocaine or heroin.[15] Additional costs abound; they include costs directly assessed by courts and community corrections in addition to broader costs indirectly stemming from the offense, such as steep insurance hikes for those who are assessed points on their licenses.[16] Frequently, multiple charges are assessed together. For example, for a single incident of drinking and driving, an offender could be assessed the following: driving while intoxicated ($100–500), open container ($100), and reckless driving ($100). Thus, one incident can easily carry $300–800 in direct statutory fees, though this is by no means the ceiling.[17]

In addition to base statutory fines, multiple costs are added to offenders' tabs to the state.[18] Offenders rarely understand what they are ordered to pay, or why.[19] They simply understand that they now owe a seemingly arbitrary sum to the state and must comply or risk revocation for noncompliance. Probation files are replete with probationer signatures on various forms consenting to oversight measures that are typically described in legalese and likely perplexing to most probationers, who lack formal legal training.[20] When faced with the alternative—custody—probationers comply and sign, though they may not understand what they are signing and how much they will ultimately be indebted to

times per day, for testing. *See* Western, *supra* note 3, at 121–38.

14. *Id.*
15. Mich. Dist. Court Prob. Dep't, Corrections Fines Table, received 6/27/2018 from Prob. Off. Babycz (on file with authors).
16. Harris, *supra* note 4.
17. Mich. Dist. Court Prob. Dep't, Corrections Fines Table, received 6/27/2018 from Prob. Off. Babycz (on file with authors).
18. The documented fines, fees, and costs in this and subsequent paragraphs are estimates from a preliminary sampling of Michigan misdemeanor probation sites in 2014 dollars (not adjusted for inflation). While they are not representative of Michigan probation caseloads, they offer a glimpse into the sheer number and breadth of state monetary sanctions enforced upon vulnerable offenders under supervision. Data collected as part of the Community Corrections Fines and Fees study, http://ccffstudy.org.
19. We expect descriptions of fees to vary by district and by probation officer, however. At least one probation officer described being explicit with her offenders as to what they must pay and why. Interview with Babycz (Dec. 9, 2019), *supra* note 7; Interview with Babycz (June 27, 2018), *supra* note 7; Interview with Staff, *supra* note 10.
20. *Id.*

the state.[21] Jurisdictions vary in their enforcement of fines and costs, as do individual probation officers in their adherence to penalties for nonpayment or tardy payment.[22]

In Michigan, crime victim rights fees are $25 for juvenile offenses, $75 for adult misdemeanors, and $130 for adult felonies.[23] Official language from the Supreme Court of Michigan suggests that these funds pay for victim costs not compensated by insurance or restitution.[24] It is unclear to offenders how these fees benefit victims by reallocating monies from offenders to the state.[25] Incidentally, a statewide trauma system, if operating as a pool of funds for trauma sufferers, could be extremely useful to many of the offenders interacting with Michigan's justice system. While people with substance use disorders are often thought of as offenders, as 81 percent report having committed a violent crime at some point in their life, the rate of violent crime victimization is remarkably high among people who use drugs: 95 percent.[26] Of people who are substance dependent, 41 percent reported having committed a violent crime in the prior year, yet even more (46 percent) had been victims of violent crime in that time span.[27]

According to our initial review of hundreds of misdemeanor probation cases in Michigan, probationers may also be assessed something called "state costs," typically a $50 fee. For some, it was assessed in "lieu of jail time." For those who were assessed state costs, some were required to pay in full, while others had their costs waived by completing community service. Payment plans may be offered but vary according to the given jurisdiction and assigned probation officer.

Initial records review reveals ordinance fines assessed up to $1100 for Michigan probationers. Some offenders obtain payment plans, while other offenders are sentenced to jail time "in lieu of payment." Supplemental fees occur, like the driver's license reinstatement fee of $20–$25 for offenders who failed to appear for court, or disobeyed a court order, and had their driver's license revoked until they later complied. A public defender fee of $50 is assessed on some probationers who cannot afford private counsel. Bail and bond costs vary, potentially up to $7500, as in a case of an individual charged with driving while intoxicated with a

21. *Id.*
22. Interview with Babycz (Dec. 9, 2019), *supra* note 7; Interview with Babycz (June 27, 2018), *supra* note 7; Interview with Emberling, *supra* note 10; Interviews with Judges, *supra* note 3; Interviews with Prob. Officers, *supra* note 8; Interview with Wilson (Dec. 10, 2018), *supra* note 7.
23. *Fines, Fees, Costs, and Rates*, Mich. Cts., https://courts.michigan.gov/Administration/admin/Pages/Fines,-Fees,-Costs,-and-Rates.aspx [https://perma.cc/83RT-8V44] (last visited Mar. 26, 2020).
24. *Id.*
25. Interview with Staff, *supra* note 10.
26. Shane Darke et al., *Comparative Rates of Violent Crime Among Regular Methamphetamine and Opioid Users: Offending and Victimization*, 105 Addiction 916 (2010).
27. *Id.*

passenger under the age of 16. We observed warrant fees ranging from $75–300. Probation oversight fees could be upwards of $720. Restitution could easily be assessed at $2000 or more. We also uncovered late fees assessed at up to $522.

II. Drug & Alcohol Related Fees and Costs

In addition to general fees, drug- and alcohol-specific fees can add up for offenders under supervision. Alcohol tethers can cost $1138 annually. Tethers, commonly called "SCRAM," are ankle bracelets used to monitor alcohol consumption through the skin 24 hours a day.[28] Over 6000 Michigan residents under supervision are on SCRAM, at costs of up to $500 per month for tether and GPS curfew monitoring.[29] Probationers must sign contracts with the state agreeing to abide by the SCRAM policies and procedures, which, in our sample, included the following costs: electrical and phone service in probationer's home, a $25 enrollment fee, $11 daily usage fees, a $3000 equipment fee if equipment is damaged, a $25 reenrollment fee for switching to a different program, and an agreement that unpaid fees in excess of $330 will result in a probation violation, court date, and removal from the tether program.[30] Alcohol tethers can also have unintended adverse stigmatizing effects that vary by gender. For example, an ankle tether is not discrete in a skirt or dress but can be hidden in pants.[31] In site visits and focus groups on a prior research project, offenders and treatment staff have described employers responding with various levels of sympathy, including some employers who terminated the offender's employment upon discovery of the tether—an economically costly outcome.[32]

Even some seemingly positive punishments ordered by judges—ones that protect public safety, help keep the offender in the community and out of custody while supporting the offender's ability to earn a

28. *Tether Programs*, Washtenaw County, Mich., https://www.washtenaw.org/1384/Tether-Programs [https://perma.cc/9CGR-WEUG] (last visited Mar. 26, 2020).
29. Cole Waterman, *$500-a-Month Cost for Tethers a Hardship for Parolees, Probationers*, MLive.com (Apr. 23, 2019), https://www.mlive.com/news/saginaw-bay-city/2019/04/500-a-month-cost-for-tethers-a-hardship-for-parolees-probationers.html?fbclid=IwAR3qf5he-Up1WaP_X82FqWr3D8MbPDYyHA4bmHBJ_-PTMBzB__fU1O-X1mk [https://perma.cc/9DKL-6635].
30. Washtenaw Cty. Sheriff's Office of Cmty. Corr., S.C.R.A.M. Alcohol Monitoring System Agreement (2014) (on file with authors) (given to probationers who were required to wear remote alcohol monitors in 2014).
31. Site visit to 14A-1 criminal district court in Ann Arbor, Mich. (April 6, 2018). Two female defendants and one male defendant were arraigned on cases stemming from drug and alcohol use. A criminal defense attorney described the stigmatizing impact of ankle tethers on female clients in the context of punishments ordered on his clients.
32. Interview with Staff, *supra* note 10. Site visits to criminal proceedings in the 22nd Circuit Court, Ann Arbor, Mich.; 14A-1 Dist. Court, Pittsfield Charter Township, Mich.; 15th Dist. Court, Ann Arbor, Mich.; U.S. Dist. Court, Detroit, Mich. (2017–2019).

living by not taking away their means of transportation—can still be financially costly for offenders. For example, many offenders under supervision in Michigan for drug or alcohol offenses are mandated to purchase an interlock device for their vehicle. Interlock devices test the driver for alcohol and only allow the engine to start if the driver has not drunk alcohol. Interlock devices cost offenders $85–150 per month plus installation costs, according to the one of Michigan's busiest criminal defense attorneys.[33]

Drug and alcohol testing are both labor intensive and financially costly for offenders. Offenders convicted of a substance-related offense will typically be ordered to undergo regular substance-use monitoring regardless of whether they qualify as chemically addicted from a clinical standpoint.[34] The fees and frequency of tests vary widely. In one city where we are conducting field work, drug tests at one probation site are free on certain days within specific hours, while alcohol tests are offered at another probation site for a mandatory fee, by appointment only. Sometimes tests err, giving a false positive, so offenders must reschedule and purchase another test or face a probation violation.[35]

III. Supervision Fines and Costs

In Michigan, a tertiary arm of supervision services called "community corrections" manages much of this substance-related oversight, in addition to the district and/or circuit court probation department(s) to which the offender is assigned.[36] Community corrections is considered an alternative-to-incarceration program that administers pretrial services as well as SUD treatment programming for offenders.[37] While some SUD programing is provided for free, offenders must pay for direct services such as drug testing.[38] District, circuit, and federal probation divisions also charge oversight fees and require check in meetings with probation officers or caseworkers, which can result in onerous time commitments and financial burdens for offenders.[39] Case management systems vary by site, and probation officers report operating in jurisdictional silos, often not communicating with officers at other sites who oversee the same probationer.[40] When offenders do not show up for drug testing, officers

33. Estimate provided by David Shand, criminal defense attorney to author via social media correspondence. (Nov. 26, 2019) (on file with authors).
34. Michigan probation records (on file with authors); site visits to Sobriety Court in Ann Arbor, Mich. (2018–2019).
35. Interview with Staff, *supra* note 10.
36. Interview with Wilson (Dec. 10, 2018), *supra* note 7.
37. *Id.*; Interview with Renee A. Wilson, Dir., Cmty. Corr., in Ann Arbor, Mich. (Dec. 12, 2019) [hereinafter Interview with Wilson (Dec. 12, 2019)].
38. Interview with Babycz (Dec. 9, 2019), *supra* note 7; Interview with Babycz (June 27, 2018), *supra* note 7; Interview with Wilson (Dec. 12, 2019), *supra* note 37; Interview with Wilson (Dec. 10, 2018), *supra* note 7.
39. Interview with Babycz (Dec. 9, 2019), *supra* note 7; Interview with Babycz (June 27, 2018), *supra* note 7; Interview with Wilson (Dec. 10, 2018), *supra* note 7.
40. Interview with Wilson (Dec. 10, 2018), *supra* note 7.

report wondering if another supervision officer revoked their client to jail and whether they should document the missed test as noncompliance with terms of probation.[41] Sometimes the officer will receive notice of a revocation issued by another unit days or weeks later; other times, the client may not return for testing without any explanation. In the latter instance, an arrest warrant may be issued.[42] Such warrants add additional fees to the offender's bill. Supervision fees continue accruing with interest on unpaid fines and fees.[43]

Various unanticipated SUD-related fees arise throughout supervision, such as SUD "referral fees" of $60, defective equipment fees of $375, and general "copy and paperwork fees" for documents shared between treatment providers and courts.[44] Some probationers are ordered to complete substance use disorder evaluations, at their own cost, while others receive these services without having to pay for them.[45] Such services may help the offender develop a plan of recovery. However, even when offenders are found not to meet diagnostic criteria for a substance use disorder, the rigid substance-related terms of their supervision are not revoked.[46] Costs and obligations to maintain drug or alcohol testing, plus related oversight fees, generally continue for the duration of probation.[47]

IV. Civil Fines and Costs

Other costs facing probationers with substance use related charges are more subtle to the outside observer but perhaps more emotionally costly to the offender. Perhaps the most intrusive consequences of substance-related criminal charges are the civil proceedings that stem from them; offenders lament the reach of the state into their family life once they have been convicted of a SUD-related offense.

Offenders with SUD who have children experience various levels of state involvement in their home; some may incur severe penalties like the emergency removal of their children or termination of their parental rights.[48] While SUD charges are adjudicated in criminal court,

41. *Id.*
42. Interview with Babycz (Dec. 9, 2019), *supra* note 7; Interview with Babycz (June 27, 2018), *supra* note 7; Interview with Wilson (Dec. 12, 2019), *supra* note 37; Interview with Wilson (Dec. 10, 2018), *supra* note 7.
43. Michigan probation records (on file with authors).
44. Michigan probation records (on file with authors); Interview with Babycz (Dec. 9, 2019), *supra* note 7; Interview with Babycz (June 27, 2018), *supra* note 7.
45. Michigan probation records (on file with authors); Interview with Wilson (Dec. 12, 2019), *supra* note 37; Interview with Wilson (Dec. 10, 2018), *supra* note 7.
46. Interview with Staff, *supra* note 10.
47. The above introduction to SUD-related costs for offenders under community supervision is not a comprehensive list, but it provides a glimpse into the many hidden costs of encountering the justice system with a substance-related charge.
48. Dustin Dwyer, *When the Government Steps in to Separate Parents from Children—Permanently*, Michigan Radio (Jan. 27, 2016), https://stateofopportunity.michiganradio.org/post/when-government-steps-separate-parents-children-permanently

proceedings regarding children often stem from the same incident and are contemporaneously adjudicated in civil court. Unlike criminal court, needy defendants do not have a right to counsel in civil proceedings. Thus, civil attorneys' fees can add to the financial burden of criminal court fines and fees. An example of an incident generating separate criminal and civil cases is a domestic dispute in which a partner is charged with domestic violence and possession of narcotics: A restraining order is issued, a child protective services investigation ensues, and the spouse files for emergency custody.

Another common example of a SUD charge implicating defendant's parental rights is the operation of a vehicle under the influence with a minor present. Similarly, a marital dissolution alleging substance use disorder can also result in punishment. In such cases, the state or other parent can petition for emergency custody. Upon issuance of emergency custody orders, judges can order various civil penalties at the defendant's expense without the plaintiff overcoming the more demanding evidentiary burdens required for criminal proceedings. The state may order defendants to attend classes focused on parenting or domestic violence. In Michigan, Alternatives to Domestic Aggression is a two-hour class for alleged batterers that costs $85 for each weekly session.[49] Participants may file income documentation to request reduced tuition costs. Not all tuition reductions are approved, and not all agencies reduce fees. Classes are often ordered for fifty-two weeks, at the total expense of $4445.[50]

In addition, Michigan civil judges may order supervised parenting for defendants with alleged SUD. Supervised parenting may be ordered when parties, law enforcement, judges, or child protective services allege that the parent *might* cause harm to the child due to untreated mental illness, substance use disorder, or violent behavior.[51] In some states, supervised parenting may be implemented according to judges' unfettered

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[https://perma.cc/H7Z8-9D7F].

49. *See* Catholic Soc. Servs. of Washtenaw Cty., ADA Program Manual 8, 10 (2016), https://csswashtenaw.org/wp-content/uploads/2016/01/ADA-Program-Manual.pdf [hereinafter ADA Program Manual] [https://perma.cc/6L5E-NYHL]; *DVIS Schedule*, Catholic Soc. Servs. of Washtenaw Cty., https://csswashtenaw.org/bhs/ada/dvisschedule (last visited Apr. 10, 2020).

50. *See* ADA Program Manual, *supra* note 49, at 8, 10. The $4445 total includes weekly program fees and a mandatory workbook.

51. *See* State Court Admin. Office, Michigan Parenting Time Guideline 13, https://courts.michigan.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/focb/pt_gdlns.pdf [https://perma.cc/QJ62-5GRJ] (last visited Mar. 26, 2020); Margaret Tortorella, *When Supervised Visitation Is in the Best Interest of the Child*, 30 Fam. L.Q. 199, 201, 210–211, 213 (1996). *Cf.* Daniel G. Saunders, *When Battered Women Lose Custody: Dangerous Parents or Systems Failure?*, Supervised Visitation Network: Sitting In (2018), https://deepblue.lib.umich.edu/bitstream/handle/2027.42/61479/SVN%20Newletter%2012-1-08%20When%20battered%20women%20lose%20custody%20Secure.pdf.

discretion.[52] As such, one parent can simply accuse the other parent of having a SUD, and the defendant may have her child removed from the home and begin incurring costs to reunite with the child.[53]

The costs of supervised parenting can be prohibitive. Intake fees to initiate supervised visitation can cost $70 per parent or $140 per family.[54] Supervised visit fees range from $20–100 per hour, generating tangible barriers to maintaining a relationship with one's children for many defendants with SUD.[55] Periodically, agencies may waive some visit fees if grant funding, such as federal funding from the Department of Justice under the 1984 Victims of Crime Act (VOCA), is available to subsidize defendant visit charges.[56] A typical visit schedule could include two supervised hours per week, totaling $10,470 in intake and visit fees for one year. If the defendant has children with more than one partner, costs are multiplied per family unit. A defendant visiting children from two different mothers might be charged $20,940 to see his two children over a one-year period in Michigan.

Conclusion

In sum, the criminal and civil justice systems' reliance on fees as sanctions, as well as on costly, privatized mechanisms of social control like interlock systems and supervised parenting, punish our most vulnerable Americans in ways only wealthier defendants can successfully manage. Charging defendants fees, which can equate to most or all of their take-home salary, to see their own children causes a hurdle to familial reunification that is too high to overcome for many persons who use drugs. When offenders lack the ability to pay fines and fees, fines as alternative sanctions become less attractive.[57] Courts have historically done a poor job of overseeing defendants with substance use disorders, as they lack the infrastructure and resources to resolve underlying chemical addiction and far too often implement paternalistic, harsh punishments on

52. *See* Tortorella, *supra* note 51, at 201 ("Existing statutory visitation models range from the broad, traditional rule, which vests in a judge complete discretion to determine what visitation arrangement is in the child's best interests, to narrow standards requiring a judge to make specific factual findings and conclusions that unrestricted visitation would harm the child before limiting visitation rights.").
53. Interview with Staff, *supra* note 10.
54. Telephone Interview with Lindsey H., Admin. Assistant, Growth Works (Oct. 1, 2019) (a social service provider supporting youth and families throughout Southeast Michigan).
55. *Id. See* Leslie Kaufman, *In Custody Fights, a Hurdle for the Poor*, N.Y. Times (Apr. 8, 2007), https://www.nytimes.com/2007/04/08/nyregion/08visit.html [https://perma.cc/YY8T-98H2]; Telephone Interview with Lindsey H., *supra* note 54.
56. Telephone Interview with Lindsey H., *supra* note 54; *see* Tortorella, *supra* note 51, at 215; *Grants & Funding*, Off. for Victims Crime, https://www.ovc.gov/grants/index.html [https://perma.cc/SC5U-N9ML] (last visited Mar. 19, 2020).
57. *See* O'Neil & Prescott, *supra* note 4.

defendants battling addiction.[58] While crime doesn't pay generally, it is particularly costly for vulnerable defendants with substance use disorder. Identifying best practices for supervision might present avenues to improve the cost effectiveness and efficiency of fines in ways that actually reduce subsequent offending—as fines were meant to do.

58. Western, *supra* note 3. *See also* Bruce Western et al., *Stress and Hardship After Prison*, 120 Am. J. Soc. 1512 (2015).