



Paying the Price

NEW MEXICO'S PRACTICE OF ARRESTING
AND INCARCERATING PEOPLE FOR
NONPAYMENT OF COURT DEBT

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Introduction

The United States' criminal legal system is often described as a two-tiered system that treats people differently based on their social status, wealth, and power.¹ In a two-tiered criminal legal system, those with money, social connections, or political influence may receive preferential treatment in the form of lighter sentences, leniency with respect to court-ordered obligations, or even freedom.² Meanwhile, people without those advantages are likely to face harsher punishments, limited access to legal resources or representation, and even mistreatment from system actors.³

In the context of fines and fees, having the resources to settle court-imposed charges can make the difference between a quick resolution of a case or an extended entanglement with the criminal legal system. Those who struggle to pay their debt extend the length of time of their involvement with and obligations to the courts, which can require regular payments, court appearances, community service, and even incarceration. All of this creates chances for people to fail at meeting these obligations, which can trigger a host of legal and collateral consequences that extend the period of surveillance further still. In short, those without money have far more punitive experiences than those who have the resources to quickly pay off their debts.

FINES AND FEES IN THE CRIMINAL LEGAL SYSTEM

Fines are monetary sanctions generally imposed at conviction for infractions, misdemeanors, or felonies. Fees are costs charged for accessing a service provided by the criminal legal system (such as supervision, drug testing, etc.). Within New Mexico's magistrate and municipal courts, fees may be imposed at any time between arraignment and conviction.

Although fines and fees, also called legal financial obligations or court costs, are meant to serve different

purposes, they are all ultimately debt obligations levied on people navigating the criminal legal system.

This concept of a two-tiered system provides a helpful framework in which to consider the Vera Institute of Justice's (Vera's) research into New Mexico's practice of arresting and incarcerating people for nonpayment of court debt. New Mexico is one of several states where nonpayment of fines and fees is punishable by arrest through bench warrants. When a person fails to make a payment ordered by the court, the court must issue a summons within five days of the missed deadline, after which the person has 15 days to either satisfy payment or appear at a hearing to explain why they are unable to do so.⁴ If they fail to either appear at the hearing or satisfy their obligations within that time period, the court can issue a bench warrant for their arrest.⁵ Prior research has estimated that 60 to 70 percent of New Mexicans miss payments, are issued a summons, and are subsequently issued bench warrants, even though the average payment is only \$50 a month.⁶

In this brief, Vera illustrates the model of the two-tiered system as it applies to fines and fees sentencing by synthesizing findings from interviews with people who were arrested for failure to pay court debt in New Mexico with analyses of administrative court data in the state.

BUILDING ON THE MOMENTUM OF NEW MEXICO HB 139 AND OTHER RECENT REFORMS

New Mexico has made notable progress related to transforming fines and fees sentencing and other related practices within the past several years. Recent reforms include the abolition of all juvenile fines and fees and an end to debt-based driver's license suspensions.⁷

Effective July 2024, New Mexico is also set to eliminate the vast majority of criminal legal system fees, the result of HB 139, which was signed into law just last year.

Additionally, for people who resolve their criminal court debt through payment alternatives (such as jail time and community service), the new law increases the rate of conversion and expands the list of acceptable options for community service in lieu of payment.⁸ The new law also provides a pathway to eliminate existing debt. Building on past progress, the successful implementation of HB 139—which was made possible by a broad coalition of advocacy groups, bipartisan support, and endorsement by important bureaucratic stakeholders like the courts—is expected to greatly reduce the burden on people experiencing poverty and increase equity.

However, the findings of this report still hold importance for several reasons:

- Vera’s analysis provides a valuable baseline for future evaluations, enabling comparisons of practices before and after the effective date of fee elimination under HB 139 (July 1, 2024).
- Although the legislation will eliminate nearly all state court post-adjudication/conviction fees and all bench warrant fees, it does not eliminate the majority of municipal ordinance post-adjudication fees, nor any fees associated with pretrial services and probation.⁹ It also does not eliminate fines, which courts can continue to assess. These remaining financial obligations keep people tied to the system, making this area still worthy of investigation.
- The legislation does not eliminate the practice of courts issuing bench warrants for nonpayment, making Vera’s research about this practice valuable and relevant. This is especially true because fee elimination under this law is prospective only and does not automatically extinguish existing debt, underscoring the potential consequences for people who owe debt that was imposed prior to July 2024.

Methodology

Vera’s findings are based on interviews with 16 people who were issued bench warrants for failure to pay fines and fees in New Mexico within the last 10 years, as well as analysis of a sample of more than 100,000 case-level records for all 46 New Mexico magistrate courts (spanning a two-week period in 2019), Bernalillo Metropolitan Court (2017 to 2022), and four municipal courts (2019 to 2022).

Vera’s interviews focused on people’s personal backgrounds and financial circumstances, their interactions with the criminal legal system generally, their experiences with and reflections about owing fines and fees, and how they navigated court processes related to nonpayment of those fines and fees. Vera recruited the interview participants using a combination of physical and digital flyers posted by public defender offices, reentry organizations, halfway houses, and other organizations working in the area. Vera paid participants for their time, and all but two were from Albuquerque. The court data Vera collected broadly captures information regarding the administration and resolution of warrants, including warrants for failure to pay court costs. (See the technical appendix to this brief for more detailed information about sources, methods, and limitations.)

A GLOSSARY OF ABBREVIATIONS

FTP: Failure to pay court costs

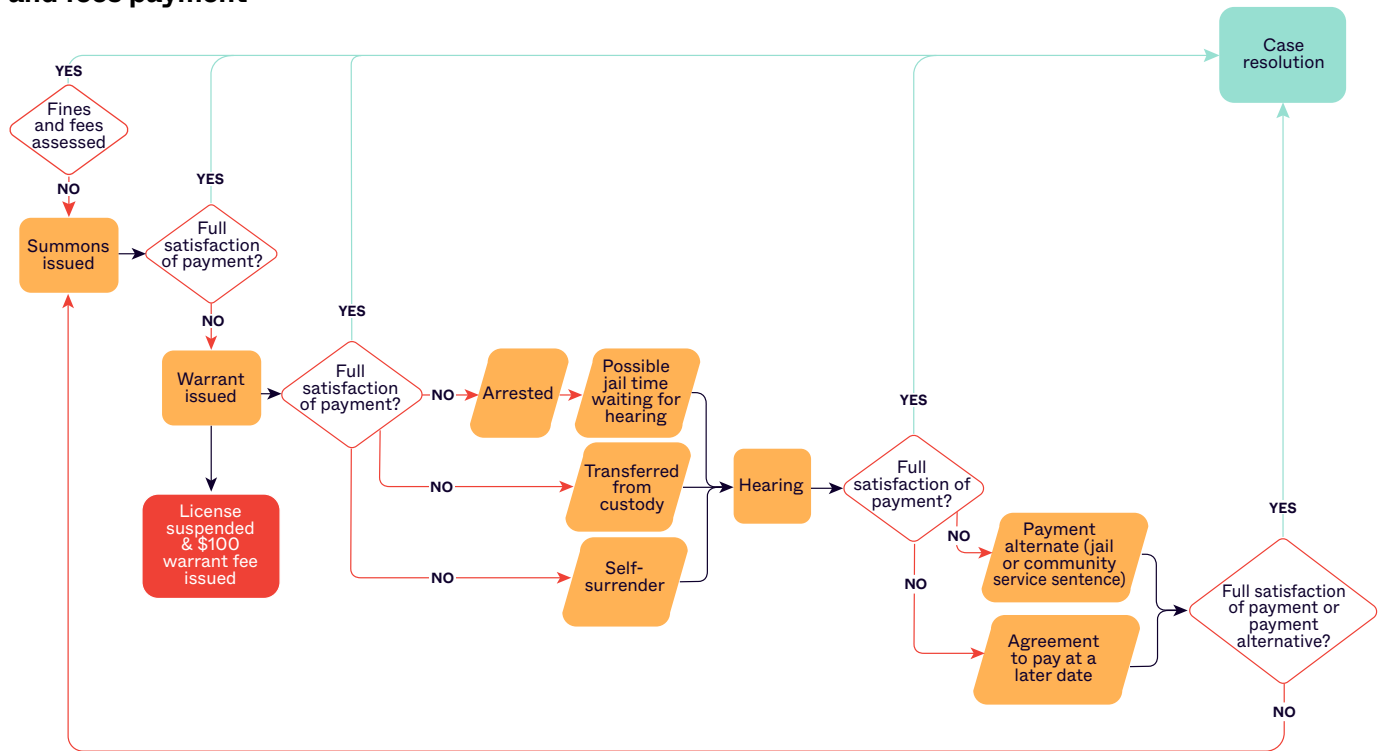
FTA: Failure to appear in court

FTC: Failure to comply with court orders or probationary requirements

Findings

There are multiple points in typical case processing between fines and fees sentencing and case resolution at which financial and other circumstances dictate the set of possible outcomes. (See Figure 1.)

FIGURE 1
Flow chart of timeline for case process regarding satisfaction of fines and fees payment



Notes: Until earlier this year, the New Mexico Motor Vehicle Division was empowered to suspend people's driver's licenses in order to enforce payment of fines and fees. NMSA § 66-5-27.1; amended in 2023 via New Mexico SB 47, effective June 16, 2023. Although not a focus of this report, driver's license suspensions are discussed in the context of interviewees' stories about resolving their failure to pay warrants and their punishments for nonpayment of legal debt. Also, until July 2024, courts can charge a \$100 bench warrant fee to cover the costs of enforcing payment of court debt. NMSA § 35-6-5; amended in 2023 via New Mexico HB 139, effective July 1, 2024.

A person's ability to make full payment of court debt at any step of this timeline provides a simple pathway to exit the system, while the inability to do so extends the period of system involvement and creates additional mechanisms by which the court can surveil and punish debt holders.¹⁰

The following sections of this report detail how people’s economic, personal, and social circumstances can impact their case processes based on key findings from Vera’s qualitative and quantitative research. The first section focuses on the early-stage steps within this timeline, including a discussion of why people have fines and fees imposed on them and struggle to make payment. The second section expands on the middle-stage part of the timeline: how people experience owing fines and fees and how they navigate the legal consequences of nonpayment. The final section concludes with information about the late-stage elements of this timeline, capturing how courts typically resolve these cases and the numerous impacts or outcomes.

EARLY STAGE: FROM PRE-ADJUDICATION TO FINES AND FEES SENTENCING

Why people come into the system: Low-level traffic offenses and demographic trends

Vera’s interviews revealed that traffic cases are a common entry point for system involvement, and they often result in the assessment of fines and fees that many people are unable to address. Vera’s analysis of warrants data confirms that most underlying cases associated with failure to pay (FTP) warrants are for low-level offenses: 85 percent of the FTP warrants in the magistrate court data sample, for example, are for low-level offenses, many of which are traffic-related offenses. The top two charges associated with magistrate-level FTP warrants in New Mexico are “driving while license suspended” and “no driver’s license.”¹¹ At the municipal court level, the top charges are “shoplifting” and “unlawful use of a [driver’s] license.”¹²

Although many interviewees did have long histories of legal system involvement (typically for crimes of poverty or substance use), with several indicating that their first contact with police and the system occurred as teenagers or because of system-involved family members, others experienced their first and only interaction as the result of a traffic offense.

That's what got me in the system. . . . It escalated from no driver's license [and] fines and fees. . . . Now that I'm looking back at it, I'm like, what the [expletive].

Many people attributed their involvement with the legal system to racism and other discrimination by the police and other law enforcement. Several people Vera interviewed discussed their observations of economic disparities in policing and warrant enforcement.

The Albuquerque police does not target rich people, but only poor people and people that are homeless.

They sure do use their authority to get what they want. Like a bully system. They bully the poor.

Why people struggle to afford fines and fees: Living paycheck to paycheck

Once convicted and charged fines and fees, many people have little to no ability to pay the debt they owe to the court. Nearly every person Vera interviewed self-identified as low income, describing themselves as living paycheck to paycheck and having trouble keeping up with everyday expenses.¹³ Most interview participants additionally identified as single or primary caregivers, receiving little to no outside financial support from friends, family, or community members. Several interviewees shared that they had other types of debt obligations in addition to owing court fines and fees, including medical and student loan debt. Many also experienced housing instability and frequent gaps in employment.

Although at least some courts in New Mexico offer people the opportunity to make incremental payments toward their debt by entering into a payment plan, many people Vera spoke with said they were not aware of such an option.¹⁴ Several people actually admitted to telling a judge that they could make payments, even though they knew they could not afford to, because they were afraid of getting rearrested on the spot.

You just say you'll pay it right away. Everybody does. I don't think anybody has [sat] there and said, "I can't pay that." I

really don't. I really can say that with certainty, that nobody has sat in the courtroom and said, "I don't think I could pay that," because they don't know. The judge would be like, "Okay, well, then how about you go to jail then?" Nobody wants to go to jail, so nobody's going to say that.

I had to go pay the fine downstairs or they're going to arrest me. I said, 'Okay.' I went downstairs like that, and I went to the clerk, and I just asked her a question. I said the question, I just took off because I didn't have no money. What'd they want me to do? If I have an option to go back up there and go to jail or run, I'm going to run.

On the other hand, most people Vera interviewed seemed to be earnestly attempting to pay down their debt obligations. Many described the challenge of having to make trade-offs in order to make their payments to the court.

Do I want to eat, or do I want to go buy groceries or do I want to pay this fine? Do I want to [have] gas all week or do I want to pay this fine?

It's picking and choosing what's more important—paying your fines and fees or paying for rent or food.

Some went as far as selling their most valuable possessions in order to both address their court debt and make ends meet.

I did two title loans. It was my Mustang, and they came and got it from my house. . . . All to pay the court costs. . . . Towards my court costs and my warrant fee. . . . I was always trying to pay. I would try to pay them. I didn't run from them.

I pawned a lot. I pawned a lot of my equipment. . . . I was their number one customer, man. I was keeping that business going.

Frequent and widespread: At least one-third of all warrants are for failure to pay

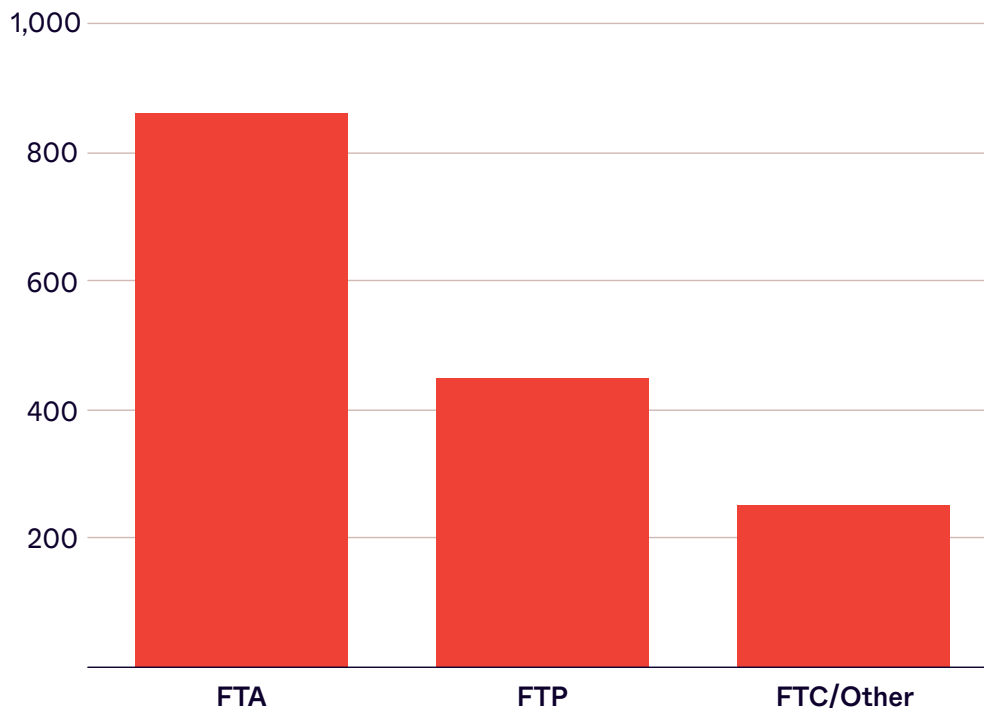
Naturally, for people in such dire financial straits, it can be impossible to fully repay court debt—whether all at once or by staying on top of consistent monthly payments—leading to the issuance of criminal summonses and ultimately FTP warrants. This practice is frequent and widespread throughout New Mexico: Vera estimates that within a given week, courts issued at least 393 warrants across the state for failure to pay court debt. (See Figure 2.) Yet this number likely represents a substantial undercount of the total number of FTP warrants, as Vera’s municipal court data only captures information for four out of New Mexico’s 81 municipal courts. To offer a sense of scope and scale, the population of the four cities represented in the sample combined makes up just 12 percent of the state’s total population.

FIGURE 2
Number of FTP warrants issued per week by court type

Court type	Number of FTP warrants issued (in one week)
Magistrate courts (46 out of 46)	226
Bernalillo Metropolitan Court	24
Municipal courts (4 out of 81)	6 (Española); 7 (Gallup); 118 (Las Cruces); 12 (Rio Rancho)

As demonstrated in Figure 3, in the magistrate courts, FTP warrants are the second most common type of warrant issued (being 32 percent of all warrants issued), following warrants for failure to appear (FTA) in court (at 61 percent of all warrants).¹⁵

FIGURE 3
Distribution of warrant type (magistrate courts)



FTP warrants are also the second most common type of warrant issued in the municipal courts, except for Las Cruces Municipal Court, where the majority (77 percent) of warrants issued are FTP warrants. In Bernalillo Metropolitan Court, however, FTP warrants are considerably less common than FTA warrants, making up only 8 percent of all warrants issued in Vera’s sample.

On average, people who are issued FTP warrants owe approximately \$350 in outstanding fines and fees. This amount excludes the additional \$100 fee that, until recently, people were made to pay for the cost of each warrant they were issued for nonpayment or failure to appear in court for a hearing.¹⁶ When considering those additional warrant fees, the average outstanding debt increases to about \$450. One person in Vera’s dataset owed as much as \$900 to the court, excluding any bench warrant fees.

WARRANTS FOR FAILURE TO APPEAR

Although Vera's study focuses primarily on warrants issued for failure to pay fines and fees (FTP warrants), warrants for failure to appear in court (FTA warrants) are equally problematic and are even more prevalent.

First, the line between an FTP and an FTA warrant can be blurred: Vera heard from more than one interviewee that they intentionally missed a mandatory court appearance because they could not afford their outstanding legal financial obligations and feared being sent to jail. Additionally, often when a court issues a criminal summons for failure to pay (a summons is statutorily required before an FTP warrant can be issued) and the person fails to appear in court in response to the summons, the court frequently issues an FTA warrant rather than an FTP warrant, even though it is for nonpayment.

Moreover, as with FTP warrants, FTA warrants are a punitive, sometimes carceral response to noncompliance behaviors that are not serious issues of public safety. And, until recently, FTA warrants—like their FTP counterparts—came with a \$100 fee to offset the cost of enforcement and could also trigger the suspension of a person's driver's license (note that driving with a suspended license is one of the most common underlying charges associated with unresolved fines and fees that lead to FTP warrants).¹⁷

Vera chose to focus its research on FTP warrants to better isolate the experiences of people punished solely on the basis of their inability to repay their court debts. But FTA warrants and the experience of people punished for failure to comply with court orders that are unrelated to payment certainly merit further investigation.

Concerningly, in some courts that more frequently administered FTP warrants, the amount in debt being pursued was sometimes as low as just \$25. Given the serious implications of these

warrants, which will be described at length in later sections of this report, it is worrying that courts are willing to follow through with enforcement for such low amounts in outstanding debt.

The sample of FTP warrants that Vera reviewed reflected payments that were delinquent for an average of three months following sentencing and, in some instances, as far out as 11 years from sentencing.¹⁸ Many of the people Vera spoke with expressed the sentiment that nonpayment and continual court involvement from FTP warrant arrests could drag on for months and years on end, and timely resolution seemed hopeless.

Do I think [my court debt] would get resolved? I have no idea. I wish it would. I wish I had the money to pay, just pay it all off and get it over with, but I don't.

MIDDLE STAGE: FROM NONPAYMENT TO FAILURE-TO-PAY HEARING

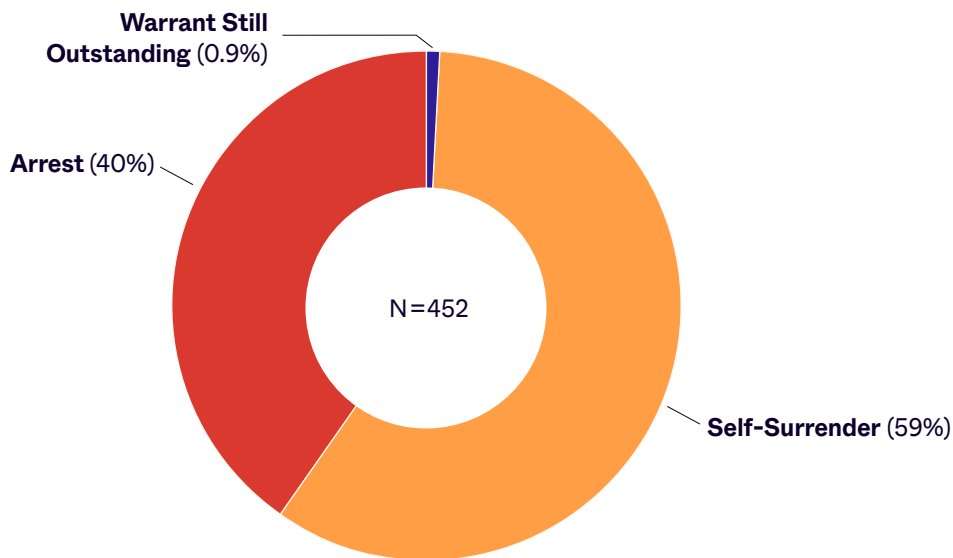
What happens after an FTP warrant is issued: Arrest or self-surrender

Once an FTP warrant has been issued, people have the opportunity to surrender to the court, assuming they received notice of the warrant and were not incarcerated at the time the warrant was issued. Vera's analysis of magistrate court warrants data shows that the majority of people with FTP warrants self-surrender. Many people Vera interviewed, however, shared that they never received notice of their FTP warrants or that they were otherwise unaware that they had missed an expected payment to the court. Notably, one of the people Vera interviewed was homeless and, therefore, never received proper notice and did not have the opportunity to self-surrender. This is problematic because the alternative to self-surrender is arrest.

Figure 4 shows the distribution of people with FTP warrants in the magistrate courts who self-surrendered; those who were arrested by law enforcement and later brought before a judge for their FTP

hearing; and those who, after three to four years, still have not had their FTP warrants resolved.¹⁹

FIGURE 4
Breakdown of warrant service outcomes within three to four years of warrant issuance in the magistrate courts



When people are arrested for an FTP warrant, some are able to see a judge on the same day, but most are detained overnight before they can get a hearing. Indeed, based on Vera’s analysis of magistrate court warrants data, nearly four in five people who were arrested by law enforcement spent at least one night in jail before their FTP hearing. On average, people spent three nights in jail, and one person spent as long as two weeks incarcerated before they could see a judge.²⁰

One of the people Vera interviewed shared that during the time they spent in jail waiting for a hearing, they lost their job.

When I got out I was pretty mad. Tried calling my job, they were like, “Look, we had to let you go. You were a no-call, no-show for almost two weeks.” I was like, “Look, I was in jail. They wouldn’t let me out.” They were like, “Still, you have to call in and make sure that we know where you’re at all the time. If you’re not coming in, you have to call.” I was

like, “How do I call when my phones are locked up and they don’t let you get a cell phone number for the company?”

This same person shared that they had been consistently making regular payments and missed just a single payment, resulting in the FTP warrant that ultimately led to their arrest. For this interviewee, losing their job had a ripple effect on their financial situation, which also made it more likely that they would be unable to make the next payment they owed to the court. They mentioned having to seek employment outside of New Mexico and cash in on retirement funds in order to pay off their debt obligations to the court and keep up with their other responsibilities.

I still have to pay \$200 in the next nine months. I’m like, well, I can get another job. . . . If I really want a good-paying job, like I had where I’m making \$20 an hour or more, it’s either Arizona, Nevada, or Texas. That’s 20 hours down into Texas, or eight hours into Arizona or 24 hours away in Elko, Nevada.

I had to pull 401(k)s, just to pay the mortgage on the house and the property and all that.

Interviewees frequently described a lack of leniency from system actors in terms of satisfying their legal financial obligations. In Bernalillo Metropolitan Court, for example, court rules clearly emphasize that payment extensions will not be granted.²¹ This kind of inflexibility was a recurring theme across Vera interviews.

[The judge] told me, “I need that last payment.” She’s like, “No, that’s a violation. You’ll go back to jail.” I was like, “You’re serious?” [The due date] was . . . in between paychecks.

That’s everything, communication. . . . If they would just work with us, but it seems like they’re not interested, like I said. That’s the reason my feeling towards law enforcement or anyone with the badge is resentment, is because they’re not interested in working with us or seeing why things are the way they are so they can be improved. They just want what’s due.

One person described their experience getting arrested while they were in court to separately file a restraining order against their former partner. Their mother had also recently passed away, so they were balancing a number of personal hardships.

They still came into the courts and arrested me. I had all my mom's death certificate, everything. . . . Even the judge was like, "Her mom just died." It was really bad. Then my car got towed. It was horrible. I had to pay all those fees and everything else, and then deal with my mom's funeral. They're real bad. I don't trust the law system at all.

The lack of leniency was particularly frustrating because people perceived their experiences having to navigate payment and the surrounding system as disproportionate to the kinds of crimes they were convicted of—oftentimes nonviolent, traffic-related offenses. Many of the people Vera interviewed viewed their incarceration, financial penalties, and license suspensions as an excessive form of punishment.

I used to get mad when I would go to jail for tickets, but a lot of people do. Half of the people in there are probably in there for tickets. You go to the court, and there was always so many guys. . . . There would be just two rows of women and five rows of guys. All of them—about half of them were just there for tickets and failure to pay fines. Yes. It's crazy to go to jail for that. . . . What do they get out of that? Do you think they're really just trying to make it hard on us? We got rights and there should be rights, and there should be another way around that instead of putting people in jail for tickets. The jail was so overcrowded when I was in there, when it was BCDC [Bernalillo County Detention Center aka Bernalillo Metropolitan Detention Center] and it was downtown. Man, that place would be 10,000 people. That jail shouldn't even hold more than 8,000. They would have beds on the floor, people sleeping on the floor.

I've never been jailed, so at that point, I was already crying. I had my fit, why this is happening to me, and I need to get out and this is not right. I was seeing other people come in and

out and they have like very vicious crimes, and they were getting released.

I can't drive [with my license suspended] and any job that involves driving with a license, I can't do. That's a lot of jobs now, man. I think even some jobs that don't drive want you to have a valid driver's license. . . . The punishment that they handed down is overkill, because when your license isn't valid, that limits you so much now. It was definitely overkill. They're not giving you options. It's either they want your money or they want your license or your blood. . . . It seems that's the way it is.

Many people explained that they were making every effort to meet their legal financial obligations, but were also struggling with other obligations, which made it challenging to pay their fines and fees in a timely fashion. The lack of leniency and support to help people make their payments only reinforces people's sense that the system is out to get them.

It's irritating because you're trying but then they don't see that, and they just want to arrest you on a bench warrant.

I have to deal with that. You miss one payment and then you go to jail, or you get a warrant. Just everything adds up. You miss one critical payment and that backs up and backs up, and next thing you know you give up hope a little.

Same, it never worked. If I had the money then, I had it, but they got deadlines. You got this deadline you got to make. If you don't make it on that exact deadline, they're going to put a warrant for you. It's just another trap I guess. Another trap. Another setup just to get back in the system again.

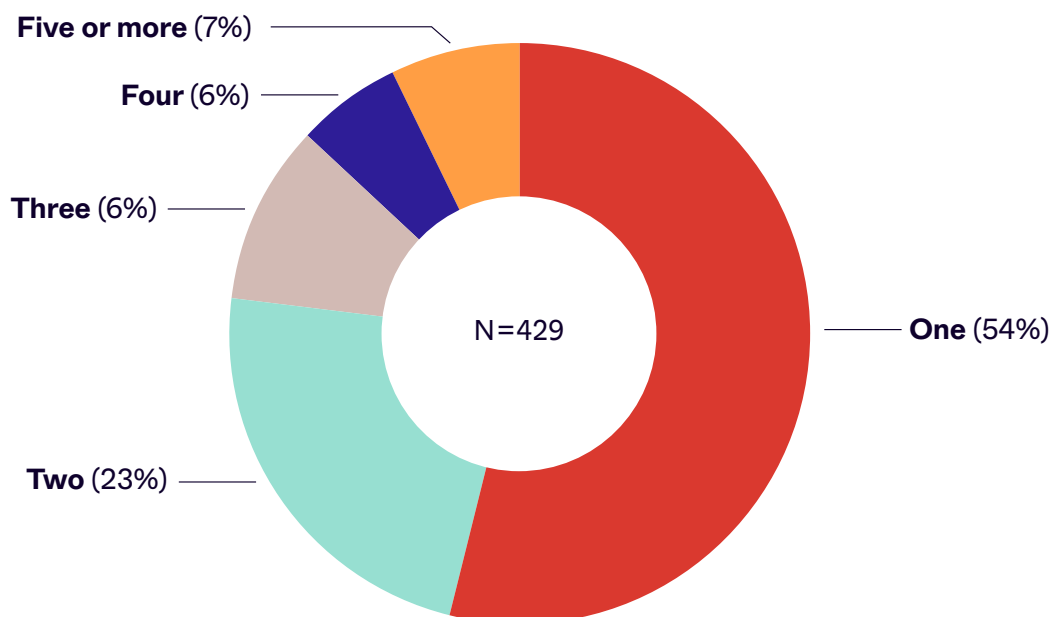
Falling through the cracks: Almost half of all cases are unresolved after the first FTP warrant is issued

For many people struggling to make payments, FTP warrants do not seem to be effective at compelling timely payment of outstanding debt. After a court issues an FTP warrant, many people ask for additional time to make payments. This practice

proved to be most prevalent in Las Cruces Magistrate Court, where one person requested an extension 12 times before eventually repaying their court debt.

Vera’s research determined that people who are unable to afford their legal financial obligations often have multiple FTP warrants to address, with escalating \$100 fees each time. Numerous interviewees gave accounts of how being late on a single payment could quickly result in another FTP warrant. Vera’s analysis of magistrate court data confirmed that a large share of people in Vera’s magistrate court data sample were issued more than one FTP warrant. As shown in Figure 5, nearly half (46 percent) of cases in the magistrate courts received multiple warrants for failure to pay.²² One case actually received nine warrants for nonpayment of fines and fees, highlighting the hardships some people face in meeting their financial obligations and indicating that these warrants may not be effective at deterring payment noncompliance.

FIGURE 5
Distribution of total FTP warrants issued per case in the magistrate courts (of cases where debt is resolved)



Interviewees discussed the challenges they faced and stress they experienced as their obligations stacked up because of their inability to afford their fines and fees and resolve their FTP warrants in a timely manner.

Because I'm going to tell the judge, "I can't afford to pay that," and he's going, "I'll give you community services X amount of hours or weeks, whatever it is." I'll do it for a little while, and then after a while, you're just where you're really working for nothing. . . . It's just I couldn't make ends meet . . . and match the court's demands It was just too much stress.

The majority of people Vera interviewed expressed feeling exhaustion and anger from having so many drawn-out interactions with the court system as a result of their inability to address their debt and other court obligations, as well as having to navigate the consequences for failing to do those things.

[I]t was stressful because you have to worry every time you go out, every time you're on the street, you're going to get pulled over and your warrant's going to come up. . . . It just puts a wrench in your whole life, it seems like. It's just everything in there, you're worried about how to get this money for that. Or, I got to go do community service. I got to get over there. I got to do community service for this week. I only have so much time to do this. If I don't do it, they're going to put a warrant in. They always did end up putting a warrant because I never really finished or completed it because sometimes, I didn't have time for that. Sometimes definitely didn't have the money. It was just money was tight then too. I didn't ever have no real fancy job or anything like that. I was just trying to live.

When you have a court hanging over you . . . you're full of anxiety just wanting to get rid of [the debt].

Yes, it's been hectic . . . and stressful. Sometimes depressing. Takes a mental toll on you. I'm constantly thinking about missing that one step failure and it's all for

nothing. That's a lot of stress you don't need from the court system.

Set up to fail: How people feel as they navigate the system

In the context of navigating repeated interactions with the system, many people Vera spoke with mentioned feeling distrust, discomfort, and even fear around criminal legal system actors, such as law enforcement officers, judges, prosecutors, probation officers, and defense attorneys. Interviewees described how degrading and frustrating it can be to have to coordinate with people who do not seem to have one's best interests in mind. Many discussed how interacting with criminal legal system actors often gave them a sense of failure because they felt as though they would never move past the cyclical nature of owing fines and fees. This sense of failure mainly arose because interacting with system actors was not always a positive experience—in many cases, people felt they were being set up to fail.

Judges and cops used to care about the well-being of everybody, and now it seems like they're all out to just get you.

My attorney, he wasn't really helpful. I felt like he wasn't really in my defense.

We're paying for it and then almost a setup for failure sometimes if they set that too high, and then sometimes the judge just is not compassionate and they're just there. . . . Why do we need these fines?

We're money for that town, we're money for this town. If we weren't in that town, that town wouldn't be a town. It's just like, it's crazy.

It just seems like they're cracking down and for all the wrong reasons. I don't know, I think if they knew the truth, maybe they would help us. . . . It seems like they just either want your money or just want—really, they don't want you in jail. They just want your money or want you to suffer.

Many interviewees also confided that they felt apprehensive and fearful at the thought of even going near courthouses or law enforcement officers, and these emotions sometimes led to more noncompliance. People would sometimes avoid taking care of their legal financial obligations because they were upset with how the criminal legal system treated them, and they felt that even attempting to pay was futile.

It's stressful because you want to pay it, you want to get out of this, you don't want that on your back, you don't want a warrant where you have to drive looking at the rearview mirror and stuff like that . . . you already know you're going to go back and they're going to tell you, "You have to do this." They're going to add more community service to you just for not complying the first time. When they start doing that, I get even more rebellious. I just won't even show up for a day. Just go ahead and put your warrant. Do whatever you got to do.

LATE STAGE: FROM DEBT RESOLUTION TO LIFE AFTER CASE COMPLETION

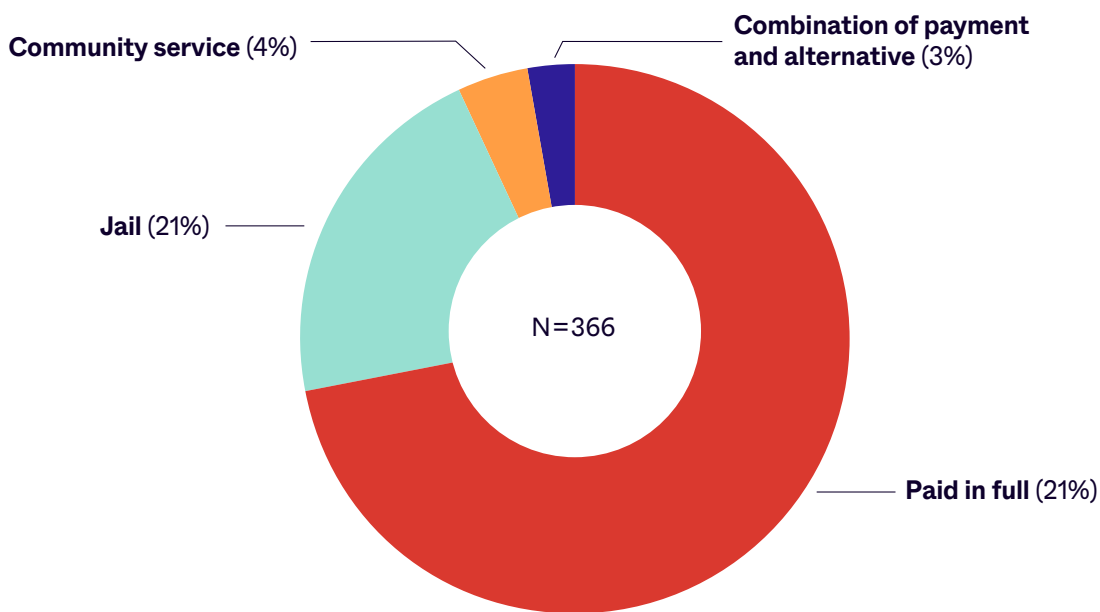
How people ultimately resolve their warrants and outstanding debt: Payment plans, community service, and jail

Because people struggle to repay their debts, the cycle of FTP warrants and nonpayment of fines and fees can drag on for years.²³ In magistrate court cases with debts that were ultimately settled and where the type of resolution is known in Vera's data sample, some people took more than a decade to resolve their fines and fees. Vera's analysis of magistrate court warrants data additionally revealed that several people died before they were ever able to pay off their debt.

Figure 6 shows the relative distribution of case resolutions for the magistrate court cases Vera studied for people who resolve their court debt and for whom the method of resolution is known.²⁴

FIGURE 6

Distribution of court debt resolution types in the magistrate courts (of cases where debt is resolved and the method of resolution is known)



Based on Vera’s analysis of magistrate court and Bernalillo Metropolitan Court warrants, most people who resolve their debts do so by making payment. Vera also learned from interviewees that many people sell their belongings or borrow money from friends or family to pay their debts. The magistrate court data additionally revealed that courts sometimes intercept state tax refunds to resolve people’s debt obligations, further highlighting that paying out of pocket is difficult for many people. Approximately one in 10 magistrate court FTP warrants resolved through payment are achieved at least in part by garnishing tax refunds.

Approximately one in four people, however, resolve their fines and fees through payment alternatives like community service and even jail time. This is true in both the magistrate courts and Bernalillo Metropolitan Court. Of people for whom the method of resolution is known, 7 percent complete at least some community service hours in order to fulfill their outstanding debt obligations—with the average person performing 56 hours of service and some having to complete as many as 236 hours.²⁵

One in five people pay off their fines and fees by serving at least some time in jail.²⁶ In Santa Fe County, which has among the highest warrant activity, 26 percent of all people with FTP warrants fulfill their debt obligations through jail sentences. In Española Municipal Court, jail conversion is actually the method that most people (58 percent) use to resolve their FTP warrants. Across the state, the average person spends six days incarcerated to resolve their outstanding court debt. One person spent two weeks in jail to pay off their fines and fees.

Vera's analysis of magistrate court and Bernalillo Metropolitan Court data revealed that greater dependence on payment alternatives emerges particularly when the amount in outstanding debt is substantial. This underscores the notion that for people grappling with larger debt burdens, jail time or community service might present more viable avenues to address legal financial obligations than payment.

Although community service and jail sentences are intended to be workarounds to solve for the issue that not everyone can afford to pay their fines and fees, these alternatives can be burdensome, harmful, and often traumatic in ways that people who can simply pay their debt obligations never have to experience. For people who work full-time jobs, it can be difficult or even impossible to take the time off from work needed in order to participate in community service. (Again, the average amount of community service a person needs to resolve their debt is about 56 hours—or approximately seven days of a nine-to-five job). For people who use the jail alternative—giving up their liberty in exchange for erasing their debt—that experience can have far-reaching implications on other aspects of their lives, including familial relationships. Numerous interviewees shared that their children suffered trauma and confusion as a result of their incarceration.

[My children] were under a lot of stress, and I think it's because I was stressed out in jail, not knowing why I'm sitting there.

It put a dent in our relationship because their behavior with me was different. They just didn't understand. They weren't

old enough to be explained to why I was gone, but they just felt like one day I just decided I didn't want them or something. That's how I felt, because they were acting not the same with me when they came back, just standoffish, just scared to get close to me again. That's what the law doesn't realize. When they do that to us abruptly like that, they don't realize that it's not just our lives they're affecting, we have children, we have kids, families. They're not even used to that kind of lifestyle and they get involved in that, so it's hard for them to recover too, you know?

I have to answer for what I did. I got no problem answering for it, but what [the court] did was above and beyond. They're destroying lives and our kids' lives.

It should be noted, however, that some people Vera spoke with preferred the option to resolve their fines and fees through jail time, despite the interference with their other obligations or priorities and more serious collateral consequences.

With the tickets, I would rather sit it out in jail because I've got more time than money.

You know what? Sometimes I thought, "Okay, well, if I go to jail, I could plan it all out, and it'd be easier for me to sit in jail than to pay all this money."

What this highlights is that people without the financial means to resolve their court debt are forced into a "choice" between continued punishment or a finite sentence to conclude their system involvement. Indeed, findings from Vera's analysis suggest that people will use whichever option resolves their debt most quickly. Numerous people explained that if they could have afforded to pay their debt they would have. Additionally, many interviewees reported that the time and effort needed to participate in community service was excessively burdensome. For many, a jail sentence turns out to be the quickest and, therefore, most convenient way to resolve their debt and, ultimately, their cases, but has high social and system costs. In the end, the decision gives people with limited options a false sense of agency, presenting

them with a choice between the lesser of two evils: crushing debt or the sacrifice of their liberty.

In addition to significant human costs associated with even a few days in jail, this reliance on incarceration to resolve court debt is not an effective way to recover funds owed. In practice, the rate of conversion for debt to jail time is roughly just \$60 per day, whereas the average daily cost of jail incarceration in New Mexico is \$186 per bed—three times more than the debt being collected.²⁷ This reveals a broken system that prioritizes punishment over debt collection—or even public safety, given that low-level offenses underlie most FTP warrants.

Moving on: What life looks like for people after they finally resolve their debt

After finally resolving their outstanding court debt, people are supposed to be able to move on with their lives and leave their involvement with the legal system behind. This was true for just one of Vera’s interviewees, who had accidentally forgotten to pay an outstanding ticket for a moving violation. Despite still getting arrested and spending a few hours in jail as a consequence of their failure to pay, this interviewee was able to ultimately resolve their debt within the same day and move on from the experience unscathed, reflecting on the situation with a lighthearted outlook.

For most people, however, their lives are worse off for their interactions with the legal system and especially having to navigate the fines and fees they owe as well as the consequences of nonpayment. The struggles that many people had before encountering fines and fees—like financial instability and issues with obtaining or maintaining housing and employment—persist after their involvement with this part of the system and are even exacerbated.

Some interviewees expressed that they were right back where they started before owing the fines and fees because they had borrowed money from friends or family to make their payments.

I have to beg, borrow, and steal to get this paid off. I'm now back in the same boat. Owing the courts, now I owe my family money back or whatever. It's like borrowing from Paul to pay Nick or whatever. The same situation. The end result was me having to get this paid by somebody else because I couldn't afford it. It was really hard because my parents were really hard on me with things like that. . . . [N]ow they're having to pay financially to get me out of the trouble that I had put myself in. The bickering and the arguing and the always bringing it up that, "You owe, you owe, you owe." Then I have that anxiety now, now I have the cops off my back, and I have the courts off my back, but I have Mom and Dad and family throwing it in my face that I owe money. It definitely impacted our relationship. It really did put a strain on our relationship to where it was uncomfortable, because now I owed them money

Others elaborated on the impact of their system involvement on their family situation.

It impacted my whole family, but even more than debt, it impacted my boys too. To have their mom arrested, that was traumatic for them. It was traumatic for me, too. I'm not a criminal. Nobody should go through that. There's bigger fish to fry, so to speak. It was a money-making system. That's the way I feel. It impacted us greatly because it was like—and you know what, to be honest with you, I hate even saying this because it was real bad and it was my child with me. I had to use his brand-new Apple computer that his grandma had given him to get money to pay the courts. He got it back, but still, to be a mom and to have to ask your—that's something that I never thought I would have to do.

Still others shared that their involvement with the system and navigating payment had spiraling consequences. One person highlighted their experience returning home after spending several days in jail to address their court debt.

[B]ecause I was in my training, I was in within my 90 days, so they had the right to fire me, [I] got fired and then I wasn't able to pay my rent. . . . I got evicted from that. Me and my son and my granddaughter had to move into a hotel room for a month until I could get myself situated again and get into another place. . . . [A]bout this year is when things started just coming back to normalcy, I guess you would say, even with my kids and the things that we had to go through the struggles living in a hotel and my PTSD, it takes a strain on you even just being in jail for five days. . . . We're in a better situation now and thank God and but just to think that none of—I don't know if I would go through it, have gone through any of this stuff and if I hadn't gone to jail, 'cause it was a domino effect, you know?

Several interviewees explicitly acknowledged that they might have fared better if they were differently positioned. When asked what might have made the process of addressing court debt and navigating the consequences of nonpayment easier, interviewees had a range of responses with many centering around the notion that simply having more money and resources would have significantly altered their experience with the system.

If I was rich.

If I had the money to pay, just pay it all off and get it over with.

If I had a job, if I wasn't homeless. If I wasn't going through all that I was going through.

One interviewee perfectly captured in their answer the concept of the two-tiered system as it applies to fines and fees.

Just know that most of New Mexico's low income and that nobody can really afford to pay \$285, you know what I mean? That's not—if you're in the justice system and you're in and out of jail like that, you probably are low income. I don't really see a lot of rich people going to jail a lot, you know what I mean?

Each of these sentiments highlights the need for a more equitable way forward with respect to fines and fees sentencing. Under this scheme, the financial burden of fines and fees largely falls on those who are least able to pay, and there is a misalignment between the circumstances that lead to nonpayment (which do not impact public safety) and the disproportionate outcomes that people often face.

Conclusion

Vera's analysis of data about warrants for nonpayment of fines and fees and interviews with directly impacted people in New Mexico exposes the profound impact of people's financial and other circumstances on their outcomes and experiences owing court debt. All told, people with financial means can navigate the process more easily, while those without the ability to pay find themselves caught in a cycle of punishment.

Vera's findings demonstrate that people prioritize a swift resolution to their cases and outstanding debts, with the primary objective being an end to their involvement with the legal system by whatever means they can. For people with money and resources, payment is the easiest method to achieve those outcomes. For those without money or resources, alternatives to payment—like having their tax refunds garnished and even serving time in jail—are the only viable options to resolve outstanding debts and ultimately move past their convictions.

When people struggle to afford their fines and fees, the extended time and obligations associated with nonpayment exacerbate the effects of the debt. This burden then becomes a considerable obstacle to moving beyond their legal entanglements. Certain people are disproportionately punished, while others are immune to the system's harsh consequences.

This is especially noteworthy given the context of deep poverty in the state of New Mexico. New Mexico has the third-highest poverty rate and one of the lowest labor participation rates in the entire country.²⁸ Fifty-one percent of families with children in New Mexico struggle to pay for usual household expenses, including rent, food, and medical expenses.²⁹ Additionally, 35 percent of families report not eating enough because food is unaffordable.³⁰ Many of the people Vera interviewed found it challenging to disentangle their stories and experiences surrounding owing fines and fees with those related to owing other kinds of debt and navigating other hardships resulting from their poverty.

Recent legislation in New Mexico is expected to significantly change the landscape of fines and fees sentencing and, with it, the experiences of people who will owe court debt moving forward. For example, total debt loads are expected to be reduced, with the elimination of nearly all state court post-adjudication/conviction fees and all bench warrant fees. Additionally, people should be spending significantly less time in custody for failure to pay court costs, due to the increased conversion rates for jail and community service alternatives.

Vera's findings, however, are still relevant at least to the extent that debts imposed prior to July 2024 have not been summarily extinguished. Vera's investigation into the disproportionate impacts of these debts on people with limited or no ability to address them should underscore the importance of courts providing relief for people who will still be burdened with this debt after the effective date of the new legislation. The new law creates a pathway for relief by allowing courts to waive existing debt by its own motion or by granting individual petitions.³¹ Vera's findings point to the need for courts to prioritize these waivers, implementing them in the most convenient and effective manner to provide relief for people experiencing hardships.

Vera's findings also highlight the necessity of HB 139 as a pivotal reform and emphasize the urgency of monitoring and evaluating its real-world impacts. Such an assessment is vital to ensure that the changes in the experiences of people with court debt align with the expectations of advocates and lead to substantive improvements in their lives.

Altogether, the findings of this report strongly suggest the need for further reforms that will continue to close the gap between the two tiers of justice that are apparent within New Mexico's criminal legal system as it relates to imposition of fines and fees. Potential reforms include eliminating the practice of issuing warrants for failure to pay entirely as well as retroactively eliminating court debt.

All told, Vera's analysis draws necessary attention to the pressing issue of fines and fees in the criminal legal system writ large.

Although Vera's findings are specific to New Mexico, similar practices targeting people with criminal justice debt through arrest and incarceration exist in other states and jurisdictions. The broader implications of the two-tiered system in the context of owing legal debt are also significant, and other places can learn valuable lessons from New Mexico's system of punishment.

Vera's findings underscore the urgent need for equitable reforms that continue to prioritize fair treatment and relief for people facing financial challenges. By addressing these disparities, states can take significant steps toward creating a more just and compassionate system for all.

ENDNOTES

- 1 Glenn Greenwald, *With Liberty and Justice for Some: How the Law Is Used to Destroy Equality and Protect the Powerful* (London: Picador, 2012); Cassie Miller, “The Two-Tiered Justice System: Money Bail in Historical Perspective,” Southern Poverty Law Center, June 6, 2017, <https://perma.cc/5WKV-934F>; Donna Lieberman, “Op-Ed: End State’s Two-Tiered Justice System,” New York Civil Liberties Union, September 18, 2014, <https://perma.cc/64AA-4B63>; and Vera Bergengruen, “Pentagon Leaker and Trump Are a Test of ‘Two-Tiered’ Justice System,” *Time*, June 21, 2023, <https://perma.cc/2YC3-6UGJ>.
- 2 Jeffrey Reiman, *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice*, 8th ed. (Boston: Allyn & Bacon, 2006), 127.
- 3 Ibid.
- 4 N.M. R. Crim. P. Magist. Ct. 6-207, *Bench warrants*; and N.M. R. Crim. P. Magist. Ct. 6-207.1, *Payment of Fines, Fees, and Costs* (2020), <https://perma.cc/63EZ-TDEJ>.
- 5 N.M. R. Crim. P. Magist. Ct. 6-207.1(C)(1) (2020). In Bernalillo County, the period in which to appear is shortened to 13 days. N.M. R. Crim. P. Metro. Ct. 7-207.1 (2020), <https://perma.cc/V4UJ-HVW4>.
- 6 Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, and Noah Atchison, *The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties* (New York: Brennan Center for Justice, 2019), 38, <https://perma.cc/RME8-MZ22>.
- 7 New Mexico HB 183 (2020–2021), <https://perma.cc/9KUQ-6VYN>; New Mexico SB 47 (2022–2023), <https://perma.cc/Z7DH-AY4A>.
- 8 New Mexico HB 139 (2022–2023), <https://perma.cc/J59S-RABK>.
- 9 Although most of the warrants data that Vera collected corresponds with fines and fees that New Mexico’s magistrate courts assessed, Vera also collected warrant information from a sample of four municipal courts. Findings from Vera’s quantitative analysis that are elaborated on in later sections of this report are based on information corresponding to magistrate court warrants (rather than municipal court warrants) and their underlying cases unless stated otherwise. Both the magistrate and municipal court data that Vera collected and analyzed may include fees associated with pretrial services and supervision. Because the datasets Vera received do not disaggregate those fees from fees that are charged at conviction, it is not possible to discern whether those fees are included or the precise dollar amounts corresponding with those fees. See technical appendix on page 6 for more information.
- 10 To be clear, there may be other sanctions or factors that would prevent the successful resolution of a person’s case even if fines and fees are paid or otherwise settled, such as pending charges or the completion of a carceral or probationary sentence. Vera notes that the resolution of court debt provides a pathway to exit the system because it is typically the last hurdle for people seeking closure from their cases and convictions. This is supported by Vera’s review of magistrate court warrants information, which does find that cases are generally closed once all debt obligations are settled.
- 11 There are 46 magistrate courts in New Mexico. These courts typically handle DWI cases, misdemeanors, traffic violations, civil actions up to \$10,000, and felony hearings. Magistrate courts hear approximately 140,000 cases annually. See New

Mexico Judiciary, *New Mexico Judiciary Annual Report 2021* (Santa Fe, NM: New Mexico Judiciary, 2022), <https://perma.cc/CA93-ZTSB>; and New Mexico Judiciary, *Statistical Addendum to the 2022 Annual Report* (Santa Fe, NM: New Mexico Judiciary, 2022), <https://perma.cc/G2JD-R5GR>.

- 12 There are 81 municipal courts in New Mexico. These courts typically handle DWI cases, petty misdemeanors, traffic violations, and municipal ordinance violations. Municipal court caseloads are not reported to the judiciary's central state data repository. Alexandra Natapoff, "Criminal Municipal Courts," *Harvard Law Review* 134, no. 3 (2021), 964–1064, <https://perma.cc/Q3RR-WSRQ>.
- 13 This is not unexpected, given that selection criteria for interviewees was partly based on their having received a warrant for failure to pay court costs, indicating an inability to pay.
- 14 Note that the new legislation, which goes into effect in July 2024, now requires courts to offer payment plans for people who owe fines and fees.
- 15 Warrants marked as "FTC/Other" correspond with warrants issued for failure to comply with probationary or other court orders, as well as warrants initiating a case and that are not linked to FTA, FTP, or FTC. There are additional observations for warrants with no case information available for review and warrants with an unknown reason. Vera excludes these warrants for ease of interpretation, but a full table outlining the distribution of different warrant types is available in the technical appendix to this report on page 13.
- 16 NMSA § 35-6-5, <https://codes.findlaw.com/nm/chapter-35-magistrate-and-municipal-courts/nm-st-sect-35-6-5.html>; amended in 2023 via New Mexico HB 139, effective July 1, 2024.
- 17 Regarding the \$100 bench warrant fee, see NMSA § 35-6-5; amended in 2023 via New Mexico HB 139, effective July 1, 2024. Regarding the suspension of driver's licenses, see NMSA § 66-5-27.1; amended in 2023 via New Mexico SB 47, effective June 16, 2023.
- 18 Vera calculated delinquent payment in the magistrate courts by taking the difference between the date on which a court issued an FTP warrant and the date on which a court adjudicated fines and fees. Note that this is a conservative calculation because in instances in which courts adjusted fines and fees amounts at any point following adjudication, Vera takes the difference from the latest adjustment.
- 19 Vera identified self-surrender when the FTP warrant was never served, but some activity related to the outstanding fines and fees occurred (for example, either a resolution or a new payment expectation was set) following the issuance of the FTP warrant. Vera identified an arrest if the FTP warrant was served. It is possible that people for whom the warrant was never served were already in custody, making their appearance coerced rather than a true self-surrender. It is not possible to make that distinction based on the way that the data is reported.
- 20 Vera derived the average of three nights spent in jail using magistrate courts data, while the two-week jail stint described comes from Vera's interviews with impacted people. Note that the new legislation, which goes into effect in July 2024, is expected to reduce the amount of time in custody for people with FTP warrants due to the increased conversion rate for jail alternatives.
- 21 See New Mexico Courts Website, "Court Costs, Fines & Fees," accessed August 23, 2023, <https://perma.cc/24VK-LV7F>. Please note that this policy contradicts current state law; see Rules of Criminal Procedure for the Metropolitan Courts, Rule 7-207.1(D) NMRA.

- 22 Based on the format of the magistrate court dataset, it is difficult, if not impossible, to quantify the number of FTPs at the individual-person level; this is because, although each case is typically associated with just one person, one person may be associated with multiple cases. Additionally, it is important to note that the time period for FTP enforcement is not uniform across all the cases Vera analyzed due to the way data is collected. By the same token, Vera excluded cases with no resolutions to create Figure 5 because additional FTP warrants may still be issued in the future. For more information on these points, see the technical appendix on page 26.
- 23 For magistrate court cases with FTP warrants involving settled debts, the average time to debt resolution is approximately one year. This may be misleading, however, because this calculation is based on a conservative estimate of the date when fines and fees were assessed. Vera determined this date using the most recent fines and fees adjustment preceding the issuance of the warrant, which may have occurred well after the true date of fines and fees assessment. For more information on this point, see the technical appendix on page 27.
- 24 There are multiple observations within the category for “combination of payment and alternative,” but Vera used shorthand in Figure 6 for ease of interpretation. There are also additional observations for warrants for which the resolution is unknown or unclear based on the way that data is reported and observations corresponding with debts that were not ultimately settled, which Vera excluded for ease of interpretation as well. A full table outlining the detailed distribution of different warrant resolutions is available for review in the technical appendix on page 28.
- 25 Community service in lieu of payment was previously credited at the prevailing federal hourly minimum wage and was recently raised to twice the rate of the prevailing state hourly minimum wage. NMSA § 31-12-3, <https://codes.findlaw.com/nm/chapter-31-criminal-procedure/nm-st-sect-31-12-3.html>; amended in 2023 via New Mexico HB 139, effective June 16, 2023, <https://perma.cc/D94K-8RG4>.
- 26 Jail in lieu of payment was previously credited at eight times the federal hourly minimum wage per day and was recently raised to 24 times the state hourly minimum wage. NMSA § 33-3-11; amended in 2023 via New Mexico HB 139, effective June 16, 2023.
- 27 Regarding the cost of jail incarceration, see Phaedra Haywood, “New Mexico Task Force: Do Not Combine Prison and Jail Administration,” *Santa Fe New Mexican*, November 29, 2022, <https://perma.cc/7RJD-F65Y>. Note that the conversion rate for a jail sentence increased under the new law. As of the time of Vera’s data collection, magistrate court data revealed a conversion rate of approximately \$60 per day in jail.
- 28 New Mexico has the third-highest poverty rate in the nation. Mike Easterling, “New Mexico Again Had Third-Highest Poverty Rate in United States in 2021,” *Farmington Daily Times*, May 3, 2023, <https://perma.cc/5TYN-NRQ2>. New Mexico ranks 49th in labor participation rates in the nation. U.S. Congress, Joint Economic Committee, “New Mexico Employment Report,” September 16, 2022, <https://perma.cc/NM2S-YFZM>.
- 29 New Mexico Voices for Children, *New Mexico Kids Count Data Book: Promoting Generational Prosperity 2022* (Albuquerque, NM: New Mexico Voices for Children, 2022), <https://perma.cc/9V8H-TMXL>.
- 30 Ibid.
- 31 See New Mexico HB 139, §4, regarding “relief of court debt for fees or costs,” which states that the court “by its own motion or by defendant petition, may waive fees or costs assessed prior to July 1, 2024,” <https://perma.cc/JE3J-6NQM>.

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