

# New York State Fine and Fee Revenue Lacks Transparency, Obscures Economic Harms

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**NEW YORK STATE RELIES ON FINE, FEE, AND SURCHARGE REVENUE** to fund government operations - including the functions of the courts and state agencies providing criminal justice, public safety, and victim services. This funding is generated via a complex set of state statutes, including penal, vehicle and traffic, environmental conservation, judiciary, and finance laws and is spent through the General Fund and a bevy of State Special Revenue Funds. No one state government entity or agency is charged with comprehensively reporting on the imposition, collection, and distribution of fine, fee, and surcharge revenue. The lack of comprehensive reporting on fine, fee, and surcharge imposition, collection, and distribution undermine Governor Andrew Cuomo's stated vision for criminal justice reform: establishing a fairer, safer, and more just system.<sup>1</sup> Reliance on fine, fee, and surcharge revenue also creates economic harm that conflicts with the state's Regional Economic Development Council initiative, which seeks to empower communities to generate economic opportunity.

While the General Fund is the primary operating fund for New York, operating costs for state programs are routinely supported by Special Revenue Funds<sup>2</sup>, including expenses related to personal and non-personal service and employee fringe benefit costs.<sup>3</sup> Special Revenue Funds receive monies from specific sources, and disbursements are legally restricted to support programs that conform with the purpose of the fund. For FY 2021, New York State estimates spending from 48 such funds, 39 of which support personal and non-personal service and fringe benefit costs.<sup>4</sup> Of these, 19 have some combination of fines, fees, penalties, and surcharges listed as a revenue source. Of those 19 Funds, 3 - Environmental Conservation, Indigent Legal Services, and Dedicated Mass Transportation Trust Fund - explicitly list fines and fees generated from vehicle and traffic law violations as revenue sources.<sup>5</sup> Though subject to the state's 2 percent spending cap, reliance on State Special Revenue Funds to cover the costs of programs and state operations is a budget maneuver that creates structural dependence on this revenue. Program spending on grants and payments - the very purpose for the existence of these funds - often lags by several years, while spending for government operations routinely occurs within the same year.

Local governments play a large role in the imposition and collection of fines, fees, and surcharges, of which the state receives a significant share - 45 percent in 2018.<sup>6</sup> These expenses are collected by town and village courts, known as Justice Courts. Reporting made available by the Office of the New York State Comptroller (OSC), which oversees the Justice Court Fund (JCF), indicates the state's share of Justice Court collections has totaled

approximately \$110 - \$120 million annually for each of the last several years. In FY 2019, the largest share of this collected revenue went to the state's General Fund. The remaining monies were then distributed between eleven (11) funds and sub-funds, including the Criminal Justice Improvement Account, a sub-fund of the Miscellaneous State Special Revenue Fund<sup>7</sup>, and the Indigent Legal Services Fund.<sup>8</sup> The Criminal Justice Improvement Account provides compensation to crime victims and is "supported by mandatory surcharges and crime victim assistance fees assessed on certain offenders."<sup>9</sup> The Indigent Legal Services Fund is used to provide legal representation to low-income persons accused of crimes. Through these two funds, and using revenue generated from the fines, fees, and surcharges, New York State also supports personal service and fringe benefit costs of the courts, the state police, and various state agencies providing criminal justice, victim assistance, and legal services.<sup>10</sup>

Many of the fines imposed under the penal, vehicle and traffic, and environmental conservation laws carry a state surcharge known as the mandatory surcharge. Enacted in 1982 and made mandatory in 1995, this surcharge and associated fees (crime victim assistance, DNA databank, etc.) are often referred to as a form of taxation because they are levied to raise revenue and offset government operations costs, unrelated to criminal justice and public safety policy goals and objectives.<sup>11</sup> The fine is part of the punishment; fees are a form of taxation. For example, \$85 in surcharges and fees, 100 percent of which goes to New York State - attaches to most non-criminal traffic tickets in New York State<sup>12</sup> - an unavoidable and unshakable cost that can be greater than the fine itself.<sup>13</sup> In 2017, New York State saw 1.4 million traffic ticket convictions, the vast majority of which were non-criminal. Based on these conviction numbers, we surmise that the state is annually generating approximately \$100 million in surcharge revenue from traffic tickets alone, if not more.

### Justice Courts Sending the Greatest Amount of Revenue to New York State

Municipality	County	State Share	County Share	Local Share
Town of Harrison	Westchester	\$1,549,143	\$61,121	\$1,645,082
Town of Wallkill	Orange	\$1,508,181	\$104,183	\$1,518,062
Town of Amherst	Erie	\$1,238,642	\$78,527	\$1,951,809
Town of Colonie	Albany	\$1,176,067	\$104,882	\$853,524
Town of East Hampton	Suffolk	\$1,080,086	\$138,164	\$2,024,182
Town of Bedford	Westchester	\$1,032,163	\$21,782	\$817,742
Town of Cortlandville	Cortland	\$959,570	\$17,788	\$265,830
Town of Southampton	Suffolk	\$947,192	\$89,526	\$1,110,850
Town of Riverhead	Suffolk	\$878,246	\$84,261	\$421,202
Town of Ulster	Ulster	\$851,976	\$23,839	\$547,778

**FIG. 1** Source: Office of the New York State Comptroller, Justice Court Fund 2018 Revenue Report data

Every year, hundreds of millions of dollars in fines, fees, and surcharges are levied on individuals through convictions under the penal and vehicle and traffic laws. This revenue enters and flows through a system that is neither comprehensively analyzed nor assessed, meaning that the full impact on individuals and communities is not known. However, we do know from research that those most impacted are people and communities of color – particularly Black and brown people and communities - and people with low-incomes and low-income communities.<sup>14</sup> The lack of state data and reporting, combined with the revenue generated for the state, may make the levying of fines, fees, and surcharges more politically palatable and reform more difficult. Because we cannot explicitly see how and where and on whom these expenses are imposed, nor can we see how much revenue is collected and then how that collected revenue is distributed from year-to-year, policymakers have continued to extend and increase fines, fees, and surcharges over the years, but particularly the amount of the mandatory surcharge, which has risen 178 percent for violations, 92 percent for misdemeanors and 75 percent for felonies since its inception.<sup>15</sup>

The state's fines, penalties, and forfeitures revenue includes fines imposed by civil and criminal courts, fines collected by traffic law violations, mandatory surcharges from felony and misdemeanor convictions, and traffic violations, fines collected by state agencies, and civil and criminal forfeitures.<sup>16</sup> While the revenue collected by the Justice Courts and reported by OSC is the most transparent reporting by any state entity, city, county, and supreme court collections of fines, fees, and surcharges is opaquer. Regular, routine reporting on impositions and collections is not made available by the Office of Court Administration (OCA). The lack of detail in the state's revenue and spending data available through *Open Budget*, the virtually non-existent reporting on disaggregated fine, fee, and surcharge impositions and collections, combined with the state's annual budget maneuvers, obscures New York's need to increase the amount of recurring revenue available through the General Fund and raises concerns about the level of transparency involved in its reporting of state budget data. To achieve its economic and social policy goals, New York State's leaders should critically examine the state's harmful reliance on fines, fees, and surcharges and replace that revenue with more progressive sources.

### Recommendations

- The Division of Criminal Justice Services, the Office of Court Administration, and the Department of Motor Vehicles should create and issue a multi-year report on mandatory surcharge imposition and collections, as referenced in Section 420.35:3 of the Criminal Procedure Law.
- Conduct a study of New York State's Vehicle and Traffic Law convictions to determine the impact of traffic fines and surcharges on people and communities.
- Allow judges and justices to waive the mandatory surcharge for indigent defendants.

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## Endnotes

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<sup>1</sup> Andrew M. Cuomo. 2018 State of the State. *Restoring Fairness in New York's Criminal Justice System*. Retrieved from <https://www.ny.gov/programs/restoring-fairness-new-yorks-criminal-justice-system>

<sup>2</sup> FPI analysis of New York State Division of Budget FY2021 spending data.

<sup>3</sup> New York State Division of the Budget. *Guide to Budget Terms*. <https://openbudget.ny.gov/userGuide.html>

<sup>4</sup> FPI analysis of New York State Division of Budget FY2021 spending data.

<sup>5</sup> FPI analysis of the Office of the State Comptroller's Fund Classification Manual <https://www.osc.state.ny.us/sites/default/files/state-agencies/documents/pdf/2020-01/fund-classification-manual.pdf>

<sup>6</sup> FPI analysis of the New York State Office of the Comptroller's 2018 Justice Court Fund - Town and Village Court Revenue Report.

<sup>7</sup> The Miscellaneous State Special Revenue Fund includes numerous sub-funds, including the Criminal Justice Improvement Account and Patron Services Account. A Fund can contain sub-funds for each separate revenue source.

<sup>8</sup> Other funds and sub-funds include the Conservation Fund, Marine Resources Account, Boating Noise Level Enforcement Fund, I Love NY Waterways Boat Safety Fund, Snowmobile Trail Development and Maintenance Fund, Uninsured Employers' Fund, Highway Construction/Maintenance Safety Fund, Patron Services Account, Commercial Vehicle Safety Program Fund, and the Indigent Legal Services Fund.

<sup>9</sup> New York State Office of Victim Services. *Every Crime Victim Matters, 2016-17 Annual Report*, 2017. Retrieved from <https://ovs.ny.gov/sites/default/files/annual-report/2016-17-annual-report.pdf>

<sup>10</sup> Annual sweeps from the Criminal Justice Improvement Account are also authorized in the annual state budget, with \$22 million swept from the account to the General Fund in FY 2020.

<sup>11</sup> New York City Bar. *New York Should Re-Examine Mandatory Court Fees Imposed on Individuals Convicted of Criminal Offenses and Violations*, 2019. Retrieved from <https://s3.amazonaws.com/documents.nycbar.org/files/2018410-MandatorySurchargesCriminalCharges.pdf>

<sup>12</sup> Higher surcharges apply to criminal traffic violations; the crime victim assistance fee is a flat fee that attaches to all felony, misdemeanor, non-criminal convictions, and traffic violations. Mandatory surcharge revenue is deposited into the state's General Fund.

<sup>13</sup> \$55 mandatory surcharge, \$20 additional surcharge; \$5 crime victim assistance fee, \$5 town and village fee

New York State Office of the State Comptroller. "Handbook for Town and Village Justices and Court Clerks." <https://www.osc.state.ny.us/files/local-government/publications/pdf/jch.pdf>

<sup>14</sup> Mai C. & Rafael, M. *The High Price of Using Justice Fines and Fees to Fund Government in New York*. Vera Institute of Justice, December 2020.

<https://www.vera.org/downloads/publications/the-high-price-of-using-justice-fines-and-fees-new-york.pdf>

<sup>15</sup> LaScala-Gruenewald, Angela, et al. *New York's Ferguson Problem*. No Price on Justice, September 2020. [https://nopriceonjustice.org/wp-content/uploads/2020/09/New\\_York\\_Ferguson\\_Problem\\_NPJ\\_Report.pdf](https://nopriceonjustice.org/wp-content/uploads/2020/09/New_York_Ferguson_Problem_NPJ_Report.pdf)

<sup>16</sup> Office of the New York State Comptroller. "Guide to Financial Operations" *IV.3.B Miscellaneous Receipts*, <https://web.osc.state.ny.us/agencies/guide/MyWebHelp/Content/IV/3/B.htm>