

# ArchCity Defenders: Municipal Courts White Paper

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## Introduction<sup>1</sup>

ArchCity Defenders represents the indigent on a pro bono basis in criminal and civil legal matters while working closely with social service providers to connect clients with services. Our primary goal is to remove the legal barriers preventing our clients from accessing the housing, job training, and treatment they need to get on with their lives.

In the five years we have been doing this work, we have primarily focused on representation in the municipal courts that have jurisdiction over infractions for mostly traffic-related offenses. Our direct representation of clients in these courts and the stories they shared of their experiences led us to conduct a court watching program to more closely observe the impact the municipal court system had on our clients' lives.

Clients reported being jailed for the inability to pay fines, losing jobs and housing as result of the incarceration, being refused access to the Courts if they were with their children or other family members,

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<sup>1</sup> This paper was written by Thomas Harvey, John McAnnar, Michael-John Voss, Megan Conn, Sean Janda, and Sophia Keskey. Thomas, John and MJ are the co-founders of ArchCity Defenders. Megan, Sean, and Sophia were interns from Washington University. We have worked over the last year to compile the data and quotes but finalized it this summer. Big thanks to Megan, Sean, and Sophia for helping us finish this important work.

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and being mistreated by the bailiffs, prosecutors, clerks and judges in the courts. Such practices are a serious cause for concern: not only do they violate the clear mandates of the United States Constitution, but they also destroy the public's confidence in the justice system and its component parts, impose heavy burdens financially and otherwise on the most burdened subset of the population, and cost the municipalities exorbitant amounts of money and human capital to deal with the inefficiencies of these courts.

We observed over 60 different courts during our court watching program and obtained sworn statements from clients and individuals we encountered. We are encouraged that about half of the courts we observed did not engage in the illegal and harmful practices described above while we were present. But, approximately thirty of those courts did engage in at least one of these practices. Three courts, Bel-Ridge, Florissant, and Ferguson, were chronic offenders and serve as prime examples of how these practices violate fundamental rights of the poor, undermine public confidence in the judicial system, and create inefficiencies. We have chosen to focus this paper on these three courts.

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Overall, we found that by disproportionately stopping, charging and fining the poor and minorities, by closing the Courts to the public, and by incarcerating people for the failure to pay fines, these policies unintentionally push the poor further into poverty, prevent the homeless from accessing the housing, treatment, and jobs they so desperately need to regain stability in their lives, and violate the Constitution. These ongoing violations of the most fundamental guarantees of the Constitution are the product of a disordered, fragmented, and inefficient approach to criminal justice in St. Louis County. It represents a failure of the Municipalities to comply with the guarantees of counsel, reasonable bond assessments, and other constitutional and legal rights of those accused. And, perhaps most importantly, these practices create animosity in the community, contribute to the fractured nature of the St. Louis region, and cost the individual municipalities and the region financially.

Section I provides an overview of the Missouri municipal court system, outlining how and why these courts operate, and the revenue they earn. Section II discusses the negative impact this system has on the public's confidence in their local government and its courts. Section

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III describes how these courts and the policies they employ lead to job loss and homelessness amongst the indigent population. Section IV details the huge cost to operate the municipal courts, including the salaries of part time judges and prosecutors, and includes an analysis of the costs to incarcerate the indigent who cannot afford to pay the fines levied against them.

We intend to follow this paper with another which proposes solutions to these issues and sets forth a strategy for implementing them. This plan includes installing public defenders in each municipal court, setting fines based upon the defendant's income, consolidating municipal courts, and developing alternatives to fines and incarceration.

### **I. Overview of Municipal Courts in St. Louis County**

#### **A. Composition and Jurisdiction**

St. Louis County is comprised of 90 municipalities ranging in population from 12 to over 50,000.<sup>2</sup> The density of the municipalities is such that it is possible to drive through 8 individual municipalities in under 4 miles on a stretch of Natural Bridge road going from Bel-Ridge

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<sup>2</sup> <http://www.stlmuni.org/> (Last viewed 8/12/14)

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to Pine Lawn.<sup>3</sup> Each has its own municipal code, its own police force, and its own court. 81 municipalities have their own court and police force to enforce the municipal code across the region.<sup>4</sup>

The courts have jurisdiction over its municipal ordinances. Violations of these ordinances may be punished by fines and such imprisonment not exceeding three months, or both such fine and imprisonment, as may be just for any offense, recoverable with costs of suit, together with judgment of imprisonment, until the fine and costs are paid or satisfied.<sup>5</sup>

### B. Process

The resolution of these municipal ordinance violations depends on your ability to hire an attorney and pay fines. If you have the means to hire an attorney, that attorney enters his or her appearance on your behalf and requests what is called a “recommendation for disposition” from the prosecutor in a letter.<sup>6</sup> Depending on the charge, the

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<sup>3</sup> <http://bit.ly/1rtW1Yl> (last viewed 8/13/14)

<sup>4</sup> [http://www.stltoday.com/news/local/crime-and-courts/municipal-court-judges-in-st-louis-county-are-told-to/article\\_e965d081-758d-500a-abb7-a054916edad2.html](http://www.stltoday.com/news/local/crime-and-courts/municipal-court-judges-in-st-louis-county-are-told-to/article_e965d081-758d-500a-abb7-a054916edad2.html) (last viewed 8/13/14)

<sup>5</sup> <http://www.moga.mo.gov/statutes/chapters/chap479.htm> RSMo 479 relates to Municipal Court Divisions

Mo Sup Ct. Rule 37 relates to Muni Procedure <http://www.courts.mo.gov/page.jsp?id=831>

<sup>6</sup> <http://www.cityofdellwoodmo.com/566/Attorney-Information>

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prosecuting attorney will recommend that a moving violation (such as a speeding ticket) be amended to a non-moving violation (excessive vehicle noise) upon the payment of a fine and court costs.<sup>7</sup>

Because Missouri works on a point system and a certain number of points suspends or revokes your driver's license, it is crucial to amend a moving violation to a non-moving violation.<sup>8</sup> If you have the money this works. For a simple speeding ticket, an attorney is paid \$50-\$100, the municipality is paid \$150-\$200 in fines and court costs, and the defendant avoids points on his or her license as well as a possible increase in insurance costs.<sup>9</sup> For simple cases, neither the attorney nor the defendant must appear in court.

However, if you do not have the ability to hire an attorney or pay fines, you do not get the benefit of the amendment, you are assessed points, your license risks suspension and you still owe the municipality money you cannot afford. While many courts expect payment in full<sup>10</sup>, courts frequently allow payment plans sometimes as low as \$50 per month. If you cannot pay the amount in full, you must appear in court

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<sup>7</sup> <http://www.stpetersmo.net/attorney-guidelines.aspx>

<sup>8</sup> <http://dor.mo.gov/faq/drivers/points.php#pointssystem>

<sup>9</sup> <http://www.trafficstl.com/>

<sup>10</sup> <http://www.stannmo.org/496/Court-Procedure-Your-Rights>

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on that night to explain why. If you miss court, a warrant will likely be issued for your arrest.<sup>11</sup>

People who are arrested on a warrant for failure to appear in court to pay the fines frequently sit in jail for an extended period. None of the municipalities has court on a daily basis and some courts meet only once per month.<sup>12</sup> If you are arrested on a warrant in one of these jurisdictions and are unable to pay the bond, you may spend as much as three weeks in jail waiting to see a judge.

Yet, in all but a very few, these municipalities fail to provide lawyers for those who cannot afford counsel. As a result, unrepresented defendants often enter pleas of guilty without knowing that they have right to consult with a lawyer, although this information is on many court websites. Defendants are also sentenced to probation and to the payment of unreasonable fines without a knowing, voluntary, and intelligent waiver of defendant's right to counsel. Despite their poverty, defendants are frequently ordered to pay fines that are frequently triple their monthly income. <sup>13</sup>

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<sup>11</sup> <http://ecode360.com/27772794>

<sup>12</sup> <http://www.cityofdellwoodmo.com/570/Municipal-Court-Dates>

<sup>13</sup> <http://vimeo.com/102078043>

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Defendants are entitled to a hearing to determine their ability to pay, under Missouri Law.<sup>14</sup> Upon revocation of probation because of their inability to pay, defendants are again entitled to an inquiry into their ability to pay.<sup>15</sup> Based on our observations, this rarely occurs. As a result, defendants are incarcerated for their poverty.<sup>16</sup>

### C. Judges and Prosecutors in Municipal Court Are Private Attorneys

Municipal court judges, pursuant to RSMo 479.02 are part-time positions.<sup>17</sup> In St. Louis County, municipal court judges are often private criminal defense attorneys and sometimes county prosecutors.<sup>18</sup> They may serve in multiple jurisdictions and the judge need not be resident of the municipality.<sup>19</sup> Individuals who are judges in one municipality may be the prosecutor or judge in another neighboring

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<sup>14</sup> <http://www.moga.mo.gov/statutes/chapters/chap479.htm>

Upon a Defendant raising poverty to explain non-payment, Defendant is entitled to a hearing on the issue of Indigency. Further, the court is required to hold these hearings. This determination is a necessary to afford Defendant equal protection under the law and is a prerequisite for any decision concerning assessment of costs, assessment of fines and enforcement. *Davis v. City of Charleston, Mo.*, 635 F.Supp. 197, 198-199 (1986). (emphasis added).

<sup>15</sup> <http://vimeo.com/102078043>

<sup>16</sup> <http://vimeo.com/102078043>

<sup>17</sup> <http://www.moga.mo.gov/statutes/c400-499/4790000020.htm>

<sup>18</sup> <http://www.criminallawstcharlesmo.com/http://www.courts.mo.gov/page.jsp?id=8862>

<sup>19</sup> <http://www.moga.mo.gov/statutes/c400-499/4790000020.htm>

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municipality.<sup>20</sup> Similarly, municipal court judges and prosecutors may be employees of the State working as a prosecutor in St. Louis County.<sup>21</sup> It is possible for a defense attorney to appear before a judge on Tuesday who is the prosecuting attorney in another municipality on Wednesday and then see that same person in his or her role as a state prosecutor later that week.

### D. Revenue for Municipality: Collection and Enforcement

Court costs and fines represent a significant source of income for these towns. According to the St. Louis County two municipalities alone, Ferguson and Florissant, earned a combined net profit of \$3.5 million off of their municipal courts in 2013.<sup>22</sup>

As Ray Downs from the RiverFront Times reported, the amount collected through the municipal courts seems to be inversely proportional to the wealth of the municipality. For example, the City of Pine Lawn is 96 percent black, and “its per capita income a measly \$13,000. In 2013 the city collected more than \$1.7 million in fines and

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<sup>20</sup> <http://www.cityofdellwoodmo.com/566/Attorney-Information>

<sup>21</sup> <http://www.courts.mo.gov/page.jsp?id=7481>

<sup>22</sup> <http://www.courts.mo.gov/file.jsp?id=68844>

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court fees.”<sup>23</sup> Conversely, “the affluent west-county suburb of Chesterfield, with a population of 47,000 (about fifteen times bigger than Pine Lawn) and a per capita income of \$50,000, collected just \$1.2 million from municipal fines, according to statistics compiled by the state.”<sup>24</sup>

As an important income stream, the courts use the threat of jail to collect the outstanding fines.<sup>25</sup> According to Ray Downs, “Pine Lawn has a population of only 3,275, yet last year it issued 5,333 new warrants, bringing its total outstanding warrants to 23,457.”<sup>26</sup>

### E. Experience

For the vast majority of St. Louisans, a run-in with the municipal court is the only personal interaction they will have with the justice system. This interaction, thus, shapes public perception of justice and

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<sup>23</sup> <http://www.riverfronttimes.com/2014-04-24/news/arch-city-defenders-st-louis-public-advocacy/full/>

<sup>24</sup> <http://www.riverfronttimes.com/2014-04-24/news/arch-city-defenders-st-louis-public-advocacy/full/>

<sup>25</sup> <http://vimeo.com/102078043>

<sup>26</sup> <http://www.riverfronttimes.com/2014-04-24/news/arch-city-defenders-st-louis-public-advocacy/full/> As Downs goes on to say, “Several other north-county municipalities with high populations of African Americans also have similarly high warrant-to-population ratios as Pine Lawn. [Country Club Hills](#), with a population of only 1,274, issued 2,000 municipal warrants last year and has more than 33,000 outstanding. Over 90 percent of Country Club Hills' residents are black and they have a per capita income of under \$14,000. The same is true in nearby Wellston, a city that's 97 percent black and has a per capita income of less than \$12,000. Last year its municipal court issued more warrants than the city has residents — 3,883 new warrants compared with a population of 2,300.”

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the American legal system. Unfortunately, for many of the poorest citizens of the region, the municipal courts and police departments inflict a kind of low level harassment involving traffic stops, court appearances, high fines, and the threat of jail for failure to pay without a meaningful inquiry into whether an individual has the means to pay.

For example, until recently, many local courts denied access to the general public.<sup>27</sup> When summoned to one of these courts, defendants may face jail time if they fail to appear. If they lack access to childcare, they bring their children with them. According to local judge Frank Vaterott, 37% of the courts responding to his survey unconstitutionally closed the courts to non-defendants.<sup>28</sup> Defendants are then faced with the choice of leaving their kids on the parking lot or going into court. As Antonio Morgan described after being denied entry to the court with his children, the decision to leave his kids with a friend resulted in a charge of child endangerment.<sup>29</sup>

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<sup>27</sup> [http://www.stltoday.com/news/local/crime-and-courts/municipal-court-judges-in-st-louis-county-are-told-to/article\\_e965d081-758d-500a-abb7-a054916edad2.html](http://www.stltoday.com/news/local/crime-and-courts/municipal-court-judges-in-st-louis-county-are-told-to/article_e965d081-758d-500a-abb7-a054916edad2.html)

<sup>28</sup> [http://www.stltoday.com/news/local/crime-and-courts/municipal-court-judges-in-st-louis-county-are-told-to/article\\_e965d081-758d-500a-abb7-a054916edad2.html](http://www.stltoday.com/news/local/crime-and-courts/municipal-court-judges-in-st-louis-county-are-told-to/article_e965d081-758d-500a-abb7-a054916edad2.html)

<sup>29</sup> [http://www.stltoday.com/news/local/crime-and-courts/municipal-court-judges-in-st-louis-county-are-told-to/article\\_e965d081-758d-500a-abb7-a054916edad2.html](http://www.stltoday.com/news/local/crime-and-courts/municipal-court-judges-in-st-louis-county-are-told-to/article_e965d081-758d-500a-abb7-a054916edad2.html)

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For communities of color, this harassment is palpable and statistically supported by annual reports on racial disparity in police stops prepared by the Missouri Attorney General's office.<sup>30</sup> In the state of Missouri in general, African Americans are pulled over "at a rate 63 percent greater than expected based solely on their proportion of the population 16 and older."<sup>31</sup> The data is similarly problematic in Bel-Ridge, Ferguson, and Florissant as will be shown later in the paper.

### **II. The Municipal Court System Harms Public Confidence in the Judiciary, the Police, and the Municipalities**

The abovementioned policies and procedures negatively impact the public's confidence in the integrity and impartiality of both the municipalities and the courts. For most individuals, the only substantive interaction they have with the Missouri justice system or with their municipal government is through the municipal courts, and the impressions instilled by those courts reflects on the entire municipality and court system.

As the Missouri Municipal Bench Book – a publication drafted largely by municipal court judges for municipal court judges – notes,

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<sup>30</sup> [http://ago.mo.gov/newsreleases/2014/AG\\_issues\\_2013\\_Vehicle\\_Stops\\_Report/](http://ago.mo.gov/newsreleases/2014/AG_issues_2013_Vehicle_Stops_Report/)

<sup>31</sup> [http://ago.mo.gov/newsreleases/2014/AG\\_issues\\_2013\\_Vehicle\\_Stops\\_Report/](http://ago.mo.gov/newsreleases/2014/AG_issues_2013_Vehicle_Stops_Report/)

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“Public impression of justice and its administration is formed more in municipal courts than in any other court of the state. The judge as judicial officer will instill in that individual his or her lasting image of our judicial system and this should never be forgotten.”<sup>32</sup> Unfortunately, the current policies adopted by the municipal court system lead to the impression of the courts and municipalities as racist institutions that care much more about collecting money—generally from poor, black residents—than about dispensing justice.

### **A. Municipal Court Procedures Lead to Impressions of Racial Profiling**

Many residents feel that the police and the courts target black residents and try to find something to fine them for. As one defendant said, “They’re searching to find something wrong. If you dig deep enough, you’ll always find dirt.” Another group of defendants waiting outside of a municipal court noted that there were no white individuals waiting with them. In fact, one said, ““You go to all of these damn courts, and there’s no white people,” while another defendant even ticked off specific municipalities that he thinks engage in racial

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<sup>32</sup> Missouri 2010 Bench Book, Section 1.8, page 7.

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profiling. He said, “In Dellwood, Ferguson, basically in North County, if you’re black, they’re going to stop you.”

The widespread feeling among defendants that the police and courts target black residents has a substantial statistical basis. In Bel-Ridge, in 2013, 75.7% of all traffic stops involved a black motorist.<sup>33</sup> This number is staggering in itself, but what may be more shocking is that 100% of all searches and arrests originating from traffic stops in Bel-Ridge in 2013 were of black individuals.<sup>34</sup> To put it another way, of the 775 black drivers pulled over, 11 were searched and 32 were arrested. Of the 249 non-black drivers pulled over, none were searched and none were arrested.

In Ferguson, the statistics indicate a similar degree of racial profiling. Overall, 86% of vehicle stops involved a black motorist, although blacks make up just 67% of the population; by comparison,

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<sup>33</sup> According to the Attorney General’s “disparity index,” which compares the percent of traffic stops that involve a given race to the percent of driving-age residents in the municipality of that race (so a 1.0 indicates perfectly proportionate stops while below a 1.0 indicates “under-representation” of a given race in traffic stops and above a 1.0 indicates “over-representation” of a given race in traffic stops), this number actually represents an “under-representation” of black motorists in stop data. These numbers, however, may be skewed given the very high percentage of black residents in the municipality, a proportion that is almost certainly larger than the proportion of black drivers in the municipality, given the number of highly-trafficked inter-municipal roads running through Bel-Ridge.

<http://ago.mo.gov/VehicleStops/2011/>

<sup>34</sup> Id.

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whites comprise 29% of the population of Ferguson but just 12.7% of vehicle stops.<sup>35</sup> After being stopped in Ferguson, blacks are almost twice as likely as whites to be searched (12.1% vs. 6.9%) and twice as likely to be arrested (10.4% vs. 5.2%).<sup>36</sup> However, this data seems at odds with the fact that searches of black individuals result in discovery of contraband only 21.7% of the time, while similar searches of whites produce contraband 34.0% of the time.

Finally, the Florissant police department also disproportionately stops black motorists, who are stopped over four times more than expected.<sup>37</sup> In fact, African Americans represent only a quarter of the municipality's populace but comprise 57% of Florissant Police Department stops.<sup>38</sup> Out of these stops, Whites were arrested 7.2% of the time, whereas black residents were arrested 14.9%. The search rate was equally disproportionate, with whites searched 8% of the time, and

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<sup>35</sup> Even given Ferguson's large black population, the disparity index shows that black motorists are over-represented in traffic stops. African-Americans have a disparity index of 1.37, while all other races have disparity indexes between 0.35 and 0.41. These numbers are, again, likely to be even worse than suggested here given the likely difference in demographic makeup between the residential population of Ferguson and the population of people who drive through the area.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Id.

blacks 15.8%. Ironically, contraband was found in 12% of stops with white residents, and only 7.4% of stops involving black residents.<sup>39</sup>

### **B. Municipal Court Procedures Lead to Impressions of Lack of Municipal Care about Residents**

Many residents think that the goal of the municipal courts is to collect fine revenue, not to dispense justice. “Absolutely they don’t want nothing but your money,” one defendant said, but “you get people out here who don’t make a lot of money.” He then described the startlingly common experience of being instructed to call everybody he could think of who might have money to pay his fine—with the promise of three or four days in jail if he could not find somebody with enough money. Another defendant expressed similar sentiments. He said, “It’s ridiculous how these small municipalities make their lifeline off the blood of the people who drive through the area.”

At one Bel-Ridge Municipal Court session, a large group of defendants was waiting to resolve tickets for failing to subscribe to the municipality’s trash collection service, an infraction that many

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<sup>39</sup> Id.

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defendants felt was just another way for the municipality to make money. One man who had appeared in court multiple times stated emphatically, “There shouldn’t be a penalty for not having money to do something. It’s an ordinance made up for them. It’s not a law, it’s an ordinance.” He insisted that he did in fact get rid of his trash, but due to hospital bills and necessities such as his electricity and utilities, he couldn’t afford a subscription to the only city-approved waste collection service.

Another woman who was there on the same charge was adamant that there were no visible signs that her home didn’t have trash service and that she helped maintain the neighborhood by picking up trash from passing cars and cutting the grass of the vacant houses on either side of her property. She, like many of the other defendants we talked to, attributed her legal date on the municipality’s determination to find something wrong and collect revenue. Chagrined, she exclaimed, “They had to come and dig, they had to come and look in my files. There’s no way you could tell I don’t have trash service, that can is out there...what I’m mad at is, how did you get this information?”

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Along with the impression of the municipal court as little more than a money-collection service, many defendants complained about the cold lack of consideration given to their circumstances and needs. Outside, the bailiff announced repeatedly to the line of people, “No children, only the people on the docket come in unless you’re a witness.”<sup>40</sup> One man in line expressed concern over the general procedure of the court: “After you come in like two or three times, if you haven’t paid [the fine] by then, then they gonna sock it to you, they about to put you in jail. People are in hardship, they can’t pay the fine, and if you got children, they won’t let you take them in there with you.” Another agreed and summed up his experience ruefully, “They treating us bad.”

### **C. Municipal Court Procedures Harm the Resident/Municipality Relationship**

As a result of these impressions, many residents of these municipalities have a broken and antagonistic relationship with their

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<sup>40</sup> This particular court session was on June 25<sup>th</sup>, the day after Presiding Judge Maura McShane specifically released an order reminding municipal courts that such practices are an unconstitutional restriction of the court system. Of course, on that day, the order was not followed, and two weeks after the order, the Bel-Ridge Municipal Court website still told defendants, “No children are allowed in court.”

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municipal governments. One defendant, who had been in jail fifteen or sixteen times over ten years (by his estimation), all on the same driving with a suspended license charge, said that he now knows that if he is unable to pay his fine, the municipal court will detain him. As a result, if he does not have enough money, he avoids the court and the authorities. Another defendant said that he will always plead not guilty, in an attempt to “try to cost them as much money as possible.” Another defendant threatened to sue the municipality for mistreatment by police.

In addition, a shockingly common sentiment among defendants was a desire to leave their municipality. For example, one long-time resident bemoaned that he had to stay in Bel-Ridge until his lease was finished, although he said that he looked forward to moving out as soon as he could. Another defendant stated, “I’m gonna leave St. Louis. That’s what I’m ready to do. I’m about to go. There’s too much going on in St. Louis, you can’t find a job, and when you can’t find a job you hold on to the itty bitty jobs you got and they wanna [mess] with the little people that are actually working...That’s what St. Louis is all about, trying to get the people that’s working.” Finally, one mother of a high

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school student said that she planned to stay in Bel-Ridge long enough for her daughter to graduate, but she praised the experience of her nine siblings in St. Louis City in contrast to all of “the little petty stuff” that Bel-Ridge made her deal with.

This negative communal sentiment directly hurts the municipality and, obviously, its sense of community. As citizens are marginalized, they constantly seek to leave, and if they are able to move, ultimately advertise their adverse experiences to elsewhere in the region, spreading the negative impression of the municipality.

### **III. The Negative Effects of the Municipal Court System on Defendants**

#### **A. The Costs Related To Harassment**

One defendant in line to enter the Bel-Ridge court expressed that he wanted to sue the municipality and was seeking legal aid to do so. He had been harassed by the police. He said that the officers who arrested him lacked warrants and ignored his ensuing anxiety attacks, using mace and force when he told them he was having difficulty breathing. Harassment, both physical and psychological, result in a variety of negative consequences for the victim. According to the University of York, harassment can lead to lack of confidence, fatigue,

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depression, isolation, frustration, stress, trauma, and a loss of motivation. These ramifications can lead to a direct decrease in productivity, making it difficult for the individual to succeed at work or to engage in their community. On a personal level, this can lead to job loss, family estrangement, and much more. On a communal level, harassment can also have a huge impact on the performance and morale of the entire community.<sup>41</sup>

### **B. The Costs Related To Incarceration**

In many municipalities, individuals who are unable to pay whatever fines they are assessed are incarcerated—sometimes repeatedly over many years. One defendant described being incarcerated fifteen or sixteen times over a decade on the same municipal charge. While this policy of incarceration imposes relatively steep financial costs on the municipalities involved (many of which have to rent out jail space elsewhere because they do not have facilities capable of holding detainees overnight), the negative effects that it has for the individuals involved are much greater.

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<sup>41</sup> <http://www.york.ac.uk/admin/eo/Harassment/HarassmentEffects.htm>

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Most concretely, the process of being incarcerated significantly harms whatever progress a defendant may have made in his life. For many municipal court defendants working jobs at an hourly wage, missing three or four days of work while in jail will very often result in being fired. The irony, of course, is that this means that prison stints levied for an inability to pay fines actually make it much harder for some defendants to make enough money to pay those fines. At the least, if a defendant has the good fortune to still have his job upon being released, he or she will have missed valuable days of work, squeezing an already-tight budget even further. In addition, research suggests that incarceration has lifelong negative effects on earnings and economic mobility because it reduces individuals' access to steady jobs that promise earnings increases.<sup>42</sup>

In addition to these concrete negative effects of incarceration, there are also a variety of more subtle problems that detention leads to. First, research has shown that detention—even short-term detention in jails rather than prisons<sup>43</sup>—has large negative psychological

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<sup>42</sup> <http://cooley.libarts.wsu.edu/schwartzj/pdf/Western,%202002.pdf>

<sup>43</sup> <http://books.google.com/books?id=->

[mtDIA\\_WwfkC&printsec=frontcover&dq=HANS+TOCH,+MEN+IN+CRISIS:+HUM](http://books.google.com/books?id=-mtDIA_WwfkC&printsec=frontcover&dq=HANS+TOCH,+MEN+IN+CRISIS:+HUM)

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consequences on defendants. The lack of privacy and constant scrutiny by guards are “psychologically debilitating,”<sup>44</sup> but perhaps the largest psychological strain happens as defendants—even those who are only detained for a few days—have to mentally adjust from life outside to life inside the jail.<sup>45</sup> Along with these psychological consequences, research has shown that children of incarcerated individuals experience “social, emotional, and developmental problems.”<sup>46</sup> While these negative effects of detainment are less easily quantifiable than the lost income described above, in many ways, they are the longest-lasting legacy of short-term detention programs.

### C. The Costs Related to Loss of Housing

Targeting poor individuals and families with fines for traffic and ordinance violations can have real and devastating consequences on their ability to hold on to stable housing. For those living on the

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<sup>44</sup> [http://harvardcrcl.org/wp-content/uploads/2013/04/DeVeaux\\_257-277.pdf](http://harvardcrcl.org/wp-content/uploads/2013/04/DeVeaux_257-277.pdf)

<sup>45</sup> [http://books.google.com/books?id=-mtDIA\\_WwfkC&printsec=frontcover&dq=HANS+TOCH,+MEN+IN+CRISIS:+HUM](http://books.google.com/books?id=-mtDIA_WwfkC&printsec=frontcover&dq=HANS+TOCH,+MEN+IN+CRISIS:+HUM)

AN+BREAKDOWNS+IN+PRISON&hl=en&sa=X&ei=bxHAU-CyB9eryATds4DoCQ&ved=0CCkQ6AEwAA#v=onepage&q&f=false

<sup>46</sup> [http://www.frontlinesol.com/MMFG/pdf\\_articles/Silent\\_Victims-Impact\\_of\\_Parental\\_Incarceration.pdf](http://www.frontlinesol.com/MMFG/pdf_articles/Silent_Victims-Impact_of_Parental_Incarceration.pdf)

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financial edge, each day presents difficult choices between competing needs – groceries or gas bill, clothes or car payment, rent or repairs. Court-imposed fines of just a few hundred dollars can be enough to push a struggling family over the edge, out of their home and into homelessness. Some manage to find refuge with relatives or live “doubled up” with another family, but for many people there is no safety net.

Furthermore, the financial distress that originally caused a family to lose their home continues to follow them as they attempt to get back on their feet, sharply limiting their ability to find a new residence. Most landlords require a credit check and background report up front, and a prior eviction or bad credit history raises a red flag that often leads to immediate rejection. In the Asheville Citizen-Times special report *No Place to Call Home*, Brian Alexander of the non-profit Homeward Bound explains, "Once someone has had an eviction, a lot of landlords and management companies won't even touch them. An eviction, that can take seven years to get that off your credit report. That's a long time." Unfortunately, a prior eviction is virtually a prerequisite for homelessness. In the same article, Heather Dillashaw,

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director of the Asheville-Buncombe Homeless Initiative, explains the path to homelessness: "People who become homeless almost always have poor credit – you don't fall into homelessness overnight, after paying bills on time and keeping up with rent. [Homeless] families have almost always made some tough choices."<sup>47</sup> Cruelly, current housing practices continue to punish those tough choices for years to come, enforcing a vicious cycle of instability.

Even public housing programs place strict limitations on who can receive assistance. The St. Louis Housing Authority cites any criminal arrest, including for failing to pay fines or appear in court, as grounds for denial of assistance.<sup>48</sup> Housing is typically denied if any member of the family has been evicted from federally assisted housing in the past three years.<sup>49</sup> Additionally, individuals struggling with drug addiction or alcohol abuse – common reasons that people become homeless in the first place – are often barred from public housing.<sup>50</sup> Without stable

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<sup>47</sup> <http://www.citizen-times.com/longform/local/2014/06/21/homeless-students-education/11209293/>

<sup>48</sup> <http://www.slha.org/wp-content/uploads/2014/05/ACOP-Final-Resolution-2740.pdf> p. 9-6

<sup>49</sup> <http://www.slha.org/wp-content/uploads/2014/05/ACOP-Final-Resolution-2740.pdf> p.10-1

<sup>50</sup> <http://www.slha.org/wp-content/uploads/2014/05/ACOP-Final-Resolution-2740.pdf> p. p. 10-1

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housing, however, an individual's ability to overcome addiction is severely compromised. Finally, if an applicant misses an appointment or deadline with the Housing Authority – potentially due to a court appearance or jail time for not paying court fines – their petition can be denied.<sup>51</sup>

### D. The Costs Related to Families

As previously noted, fines given by many of the municipal courts can amount to huge portions of an individual's monthly income, resulting in increased poverty, occasionally incarceration (due to inability to pay fines), and sometimes homelessness. A study done by Zahid Ahmed draws attention to the experience of poverty as an important component of family dysfunction, strain on spousal relationships, and childhood development issues. Those in poverty recount difficulties in paying for very basic needs, and it is the fines that puts them over the edge.<sup>52</sup> The fiscal uncertainty and family strain, can lead to family estrangement and/or divorce - in fact 60% of people

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<sup>51</sup> <http://www.slha.org/wp-content/uploads/2014/05/ACOP-Final-Resolution-2740.pdf> p. 10-5

<sup>52</sup> <http://www.humiliationstudies.org/documents/AhmedPovertyFamilyStressParenting.pdf>

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under the poverty line are divorced women and their children.<sup>53</sup> For many people in poverty, family (immediate and extended) is their only direct support system and without it the individual loses their social connections, safety net, and occasionally financial aid.

If the individual also has children, intense familial conflict and estrangement can cause children to have serious childhood development problems, including but not limited to: depression, trust and abandonment issues, and failure in school. These problems in childhood, frequently carry over into adulthood, continuing a cycle of poverty.

### **IV. The Financial Costs of the Municipal Court System**

#### **A. Bel-Ridge**

The Village of Bel-Ridge is a relatively small municipality located in northern St. Louis County. Bel-Ridge has just over 1000 households and about 2800 residents,<sup>54</sup> the vast majority of whom (83.1%) are African-American.<sup>55</sup> In addition, almost half (42.3%) of the residents are below the poverty level; median annual household income

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<sup>53</sup> <http://www.mediate.com/articles/psych.cfm>

<sup>54</sup> [http://factfinder2.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml)

<sup>55</sup> [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC\\_10\\_SF1\\_QTP3](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_SF1_QTP3)

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is only \$21,910 and 37% of households receive SNAP benefits/food stamps.<sup>56</sup>

In spite of the relatively small and poor nature of the municipality, Bel-Ridge manages to collect hundreds of thousands of dollars every year in municipal court fines. In fact, in Bel-Ridge's 2014 budget, it estimates that it will collect \$450,000 in fine revenue<sup>57</sup>—or, an average of about \$450 per Bel-Ridge household—making municipal court fines the largest single source of revenue in the budget. Moreover, in FY2013, Bel-Ridge's municipal court disposed of 4900 cases<sup>58</sup> and issued 1723 warrants.<sup>59</sup> This means that in the last year alone, Bel-Ridge's court system handled almost five cases and issued almost two warrants per Bel-Ridge household.

Of course, such a municipal court operation does not come without costs to the municipality. In its 2014 budget, Bel-Ridge estimates that it will spend \$101,200 on operating the municipal court, including nearly \$100,000 in salaries and benefits for a part-time judge (\$18,600), prosecuting attorney (\$25,000), and court clerks (\$38,350). By way of

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<sup>56</sup> [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_12\\_5YR\\_S1701](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_S1701)

<sup>57</sup> [http://bel-ridge.us/wp-content/uploads/2014/01/2014-Budget\\_website.pdf](http://bel-ridge.us/wp-content/uploads/2014/01/2014-Budget_website.pdf)

<sup>58</sup> <http://www.courts.mo.gov/file.jsp?id=68842>

<sup>59</sup> <http://www.courts.mo.gov/file.jsp?id=68845>

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comparison, assistant public defenders in Missouri start out making \$38,544 annually,<sup>60</sup> the average circuit attorney in St. Louis City makes \$52,347 annually,<sup>61</sup> and the average city court judge in St. Louis City makes \$78,591.50 annually.<sup>62</sup> The judge and attorney in Bel-Ridge, however, work only three evenings—or about twelve hours—per month, and both also operate independent private legal practices. To put it another way, then, the Bel-Ridge prosecuting attorney position is a part-time side-job that requires about 7.5%<sup>63</sup> of the work of a full-time job, but that makes about 65% as much as an assistant public defender, about 48% as much as an average circuit attorney, and about 32% as much as an average city court judge.

In Bel-Ridge, as in many other municipalities, the prosecuting attorney and judge are chosen not by constituents or through a merit system but instead are hand-picked by the Village Trustees. This system, of course, provides terribly misaligned incentives for both

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<sup>60</sup>[http://www.publicdefender.mo.gov/employment/job\\_descriptions/apd\\_jeffcity.html](http://www.publicdefender.mo.gov/employment/job_descriptions/apd_jeffcity.html)

<sup>61</sup> <https://stlouis-mo.gov/government/departments/budget/documents/loader.cfm?csModule=security/getfile&pageid=341524>

<sup>62</sup> <https://stlouis-mo.gov/government/departments/budget/documents/loader.cfm?csModule=security/getfile&pageid=341524>

<sup>63</sup> Assuming 12 hours of work per month for the Bel-Ridge attorney as compared to 160 hours per month for a full-time job

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positions. These two positions are extraordinarily valuable to the men who hold them—providing enough additional annual income to send children to private school or to public college or to pad retirement accounts, fund vacations, or pay the mortgage, all for twelve hours of work each month—and there is undoubtedly the subtle suggestion that their job—as employees of the Village of Bel-Ridge—is to ensure that Bel-Ridge receives enough fine revenue to cover their budget. Unfortunately, this job is, of course, at extreme odds with ideals such as fairness and justice that ought to characterize the criminal courts.

In addition, the municipality does engage in a policy of detaining individuals who are unable to pay imposed fines. This choice adds a whole new layer of costs for the municipality, including \$45,000 (according to the 2014 budget) just to jail these individuals. Moreover, because Bel-Ridge does not have its own detention facility, it must take one of its three on-duty police officers (who make \$16.47 per hour) away from patrolling to transport these people.<sup>64</sup>

### **B. Ferguson**

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<sup>64</sup> [http://bel-ridge.us/?page\\_id=242](http://bel-ridge.us/?page_id=242)

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Ferguson is a city located in northern St. Louis County with 21,203 residents living in 8,192 households.<sup>65</sup> The majority (67%) of residents are African-American, while the remainder (29%) are largely white.<sup>66</sup> Ferguson's unemployment rate is 14.3%,<sup>67</sup> more than double that of both St. Louis County (6.1%)<sup>68</sup> and Missouri (6.6%),<sup>69</sup> and a full 10% of the city's 9,105 housing units are vacant.<sup>70</sup> 22% of residents live below the poverty level, including 35.3% of children under 18, and 21.7% received food stamps in the last year.<sup>71</sup>

Despite Ferguson's relative poverty, fines and court fees comprise the second largest source of revenue for the city, a total of \$2,635,400.<sup>72</sup> In 2013, the Ferguson Municipal Court disposed of 24,532 warrants<sup>73</sup> and 12,018 cases,<sup>74</sup> or about 3 warrants and 1.5 cases per household. According to a court employee, the docket for an average court session

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<sup>65</sup> <http://www.census.gov/2010census/popmap/ipmtext.php?fl=29:2923986>

<sup>66</sup> <http://www.census.gov/2010census/popmap/ipmtext.php?fl=29:2923986>

<sup>67</sup> [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_12\\_5YR\\_DP03&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_DP03&prodType=table)

<sup>68</sup> <http://data.bls.gov/map/MapToolServlet?state=29&datatype=unemployment&year=2014&period=M04&survey=la&map=county&seasonal=u>

<sup>69</sup> <http://www.bls.gov/eag/eag.mo.htm>

<sup>70</sup> <http://www.census.gov/2010census/popmap/ipmtext.php?fl=29:2923986>

<sup>71</sup> [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_12\\_5YR\\_DP03&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_DP03&prodType=table)

<sup>72</sup> <http://www.fergusoncity.com/documentcenter/view/1604> p. 49

<sup>73</sup> <https://www.courts.mo.gov/file.jsp?id=68845>

<sup>74</sup> <https://www.courts.mo.gov/file.jsp?id=68842>

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may include as many as 1,500 cases. Assuming an 80% conviction rate,<sup>75</sup> the average fine in a case resulting in a guilty verdict would be \$275.

In addition to such heavy legal prosecution, Ferguson and other municipal courts engage in a number of operational procedures that make it even more difficult for defendants to navigate the courts. For example, a Ferguson court employee reported that the bench routinely starts hearing cases 30 minutes before the appointed time and then locks the doors to the building as early as five minutes after the official hour, a practice that could easily lead a defendant arriving even slightly late to receive an additional charge for failure to appear.

To carry out its work, the Municipal Court employs three full-time employees – the Judge, Prosecuting Attorney, and Assistant Prosecuting Attorney – as well as three part-time Court Clerks.<sup>76</sup> Residents of Ferguson have no direct voice in determining who holds these powerful positions; the Municipal Judge is appointed by the City Council on the nomination of the City Manager, and the Prosecuting Attorney is appointed by the City Attorney with the approval of the City

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<sup>75</sup> <http://www.courts.mo.gov/file.jsp?id=36113>

<sup>76</sup> <http://www.fergusoncity.com/documentcenter/view/1604> p. 67

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Manager.<sup>77</sup> Unlike Bel-Ridge and Florissant, Ferguson does not make the salaries paid to its prosecutor and judge publicly available.

However, in 2013, the total forecasted expenditure for Personnel of the Municipal Court was \$221,700, with an additional \$59,500 categorized under Professional Services. Apart from Professional Services, \$37,100 was spent on Supplies and Services.<sup>78</sup> The Ferguson Municipal Court holds three sessions per month, meaning that a total of \$318,300 was spent to fund just 36 court sessions, or \$8,841.67 per session. Moreover, with the average court session lasting no longer than 3 hours, each hour of court costs the City of Ferguson approximately \$2,950 dollars.

As Ferguson relies on the St. Louis County jail to hold its inmates, city police officers are required to take time out of their patrol schedules to make the forty-minute round trip to transport prisoners to the facility. At any given time Ferguson has 8 patrol officers on duty for its 21,203 citizens, or .38 officers per 1000 citizens – about a tenth of the officers per capita in St. Louis City (3.8).<sup>79</sup> Thus, any time an officer

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<sup>77</sup> <http://www.fergusoncity.com/documentcenter/view/1604> p. 67

<sup>78</sup> <http://www.fergusoncity.com/documentcenter/view/1604> p. 67

<sup>79</sup> <http://www.governing.com/gov-data/safety-justice/law-enforcement-police-department-employee-totals-for-cities.html>

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makes the trip to Clayton, the burden of protecting an additional 2,650 citizens must be assumed by the remainder of the police force.

### C. Florissant

Located in St. Louis County, Florissant is the largest municipality in St. Louis County with a population of 52,363. About a quarter of the population is African-American (26.8%), while the majority, 69.3%, is white. 7.9% of the population is unemployed, slightly over both St. Louis County's (6.8%) and the state's (6.6%) unemployment rates. About 8.6% of the population is below the poverty line<sup>80</sup>.

Out of the total number of cases disposed of in 2013 by the Florissant Municipal Court, 32.9% resulted in a warrant<sup>81</sup>. This means that Florissant issued roughly one warrant for every six residents in the past year<sup>82</sup>. \$695,201.32 was collected from warrants, representing about a quarter of the court's total revenue of \$3,000,000 (a number that makes fines the third largest source of revenue in the municipality's budget, behind only sales and utilities taxes).

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<sup>80</sup> <http://quickfacts.census.gov/qfd/states/29/2924778.html>

<sup>81</sup> <https://www.courts.mo.gov/file.jsp?id=68842>

<sup>82</sup> <https://www.courts.mo.gov/file.jsp?id=68845>

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In order to run this massive court system, Florissant must spent large amounts of time and money on minor cases and transportation, the cost of incarcerating those with outstanding warrants and fines, and the payment of salaries to run the Municipal Court. In 2013, prisoner supplies for incarcerated individuals cost the municipality roughly \$3,861<sup>83</sup>. The municipality also directly spends \$1,750,877 to run the Municipal Court, in which 90.6% of filed cases are “other traffic” violations.

Out of the 2013 annual budget, \$473,668 went to pay Municipal Court salaries, with an additional \$408,900 to professional services and \$9,300 to office supplies<sup>84</sup>. Although only a part time position, with about 2 regular court appearances a month—or 26 in a year—the appointed judge makes \$50,000 annually, only slightly less than the full time position of St. Louis city court judge. The prosecuting attorney, also a part-time employee, makes \$56,060 for only 12 regular court appearances (with additional office hours), and, for another 12 regular court sessions, the municipality pays an assistant prosecuting attorney \$33,158. By comparison assistant public defenders in Missouri start at

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<sup>83</sup> [http://www.florissantmo.com/egov/documents/1386188394\\_72772.pdf](http://www.florissantmo.com/egov/documents/1386188394_72772.pdf) pg. 44

<sup>84</sup> [http://www.florissantmo.com/egov/documents/1386188394\\_72772.pdf](http://www.florissantmo.com/egov/documents/1386188394_72772.pdf) pg. 18

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\$38,544 annually, and, on average, circuit attorney make \$52,347 per year. In other words, the part time side-position of Florissant prosecuting attorney requires roughly 4% of the work of a full-time job, but that makes 45% as much as an assistant public defender and 2% more than the average circuit attorney. The only full time position is that of court clerk, whose annual salary is \$46,530. The five assistant clerks cost Florissant another \$191,360 in salaries, and a reserve police officers costs \$37,700<sup>85</sup>.

### V. Next Steps

ArchCity Defenders is working to develop proposed solutions to the problems outlined above. As a point of departure, we recommend that courts make a constitutionally required inquiry into a person's ability to pay assessed fines prior to incarcerating them for non-payment. This step is necessary to avoid accusations of deprivation of equal protection and due process rights leading to the creation of a debtor's prison in St. Louis county. Further, in collaboration with St. Louis University School of Law, ArchCity Defenders is working on a proposed rule requiring that fines be assessed in proportion to income.

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<sup>85</sup> [http://www.florissantmo.com/egov/documents/1386188394\\_72772.pdf](http://www.florissantmo.com/egov/documents/1386188394_72772.pdf) pg. 19

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We believe this solution would virtually eliminate the need for additional court dates for pay dockets that clog the system, avoid warrants being issued for non-payment, and avoid incarceration for non-payment. Additionally, many courts currently do not offer community service as an alternative to fines. ArchCity Defenders proposes the development of a comprehensive community service plan to allow the indigent an alternative to fines. Finally, these violations could be handled in the associate state court of St. Louis County.