

States unfairly burdening incarcerated people with 'pay-to-stay' fees

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Pay-to-stay, the practice of charging people to pay for their own jail or prison confinement, is being enforced unfairly by using criminal, civil and administrative law, according to a new Rutgers University-New Brunswick led study.

The study, published in the *Journal of Contemporary Criminal Justice*, finds that charging pay-to-stay fees is triggered by criminal justice contact but possible due to the co-opting of civil and administrative institutions, like social service agencies and state treasuries that oversee benefits, which are outside the realm of criminal justice.

"A person can be charged 20 dollars to 80 dollars a day for their incarceration," said author Brittany Friedman, an assistant professor of sociology and a faculty affiliate of Rutgers' criminal justice program. "That per diem rate can lead to hundreds of thousands of dollars in fees when a person gets out of prison. To recoup fees, states use civil means such as lawsuits and wage garnishment against currently and formerly incarcerated people, and regularly use administrative means such as seizing employment pensions, tax refunds and public benefits to satisfy the debt."

Friedman says states require incarcerated people to declare their assets upon arrival to the prison and actively examine their inmate accounts to uncover any assets. People with pensions, savings accounts or regular deposits to their inmate accounts by friends and family members are at risk of suit.

The study traced pay-to-stay statutes within criminal legal codes to showcase how a conviction and incarceration can trigger a host of civil penalties as a mechanism for states to recoup the cost of incarcerating people.

"Every state in the U.S., except Hawaii, charges pay-to-stay fees," said Friedman. "These fees and civil recoupment strategies force us to question the purpose and morality of criminal justice."

Friedman says rationales justifying these fees routinely do not recognize them as a form of punishment and instead policymakers see pay-to-stay as financial reimbursement to the state by portraying incarcerated people as using up system resources. The justification allows pay-to-stay statutes to survive legal arguments alleging double punishment.

Civil penalties are enacted on [family members](#) if the defendant cannot pay and in states such as Florida, Nevada and Idaho can occur even after the original defendant is deceased.

Friedman says states will often enlist their [attorney general](#)'s office to sue people with the hopes of uncovering more assets during civil motions. Typically the formerly incarcerated person is representing themselves because they are not guaranteed an attorney in a civil case. Yet, they are unable to afford a private attorney.

Suing often results in civil judgments in the several thousands of dollars, with many cases reaching more than \$100,000.

"When we think about the impact of incarceration on the ability to re-enter society, imagine the damage done when we allow an Attorney General to sue the incarcerated for six-figure sums they will never recoup," said Friedman. "We must ask ourselves—are these fees and civil lawsuits simply to make a point? Should we make people pay back

the state both through incarceration and financial indebtedness, often in perpetuity?"

The study suggests that states focus on reducing prison and jail populations and shrinking their criminal justice system through legal reform, such as doing away with mandatory minimums and "three-strike" laws.

"People will have a better chance at re-entering society if we shrink the size of our correctional system and abolish pay-to-stay fees as a revenue scheme simultaneously," Friedman said.

According to Friedman, more research is needed to expose the underlying consequences for inequality. As such, she is a part of a collaborative team with researchers from North Carolina State and Northwestern University comparatively investigating pay-to-stay and civil lawsuits against incarcerated people across a number of states.

More information: Brittany Friedman, Unveiling the Necrocapitalist Dimensions of the Shadow Carceral State: On Pay-to-Stay to Recoup the Cost of Incarceration, *Journal of Contemporary Criminal Justice* (2020). DOI: [10.1177/1043986220965040](https://doi.org/10.1177/1043986220965040)

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