

# Increasing Justice By Reforming Justice Courts



## SUMMARY

Whether it's for a traffic ticket or for crimes up to a Class B misdemeanor, most Utahns only interact with the criminal justice system at the justice court level. These courts have little oversight from state court administration, and are instead tied into the budgets of their local governments, where those officials act in some capacity as their overseers.

This structure has fostered a public perception of skewed financial incentives among justice courts. These institutions must be held accountable with transparent budgetary practices that don't tolerate potentially perverse incentives. They also should ensure that the constitutional and financial needs of Utahns are put first.

Utah justice courts are not like traditional state district courts that process more serious crimes. Justice courts are smaller courts intended to serve local Utah communities on the county and municipal level.

Justice courts only have jurisdiction to handle Class B misdemeanor charges and below, including state or local ordinance violations or infractions.<sup>1</sup> To illustrate, a man charged with a traffic ticket, or even a Class C simple misdemeanor drug possession charge, will take his case up in a justice court. But a man charged with a Class A misdemeanor violent assault will proceed in district court.

Other key distinctions between the court systems are the legal framework and funding mechanisms. While there are many legal differences between the courts, this paper will highlight only a particular few.

The first distinction is that not all justice court judges, who have the power to sentence a person to jail time, are required to have a law degree or pass the bar exam.<sup>2</sup> In counties of the first and second class, (class system refers to size of county, first class being the highest population) judges must have a law degree, but only a high school diploma or equivalent is required for the third through sixth class counties. This potentially creates

a substantively different experience for Utahns depending on where they live.

Another key difference is that justice court judges have salary negotiating power with the local county or municipality that employs them, but the salary must be more than 50 percent and less than 90 percent of a district court judge salary.<sup>3</sup>

Most Utahns interact with the legal system through one of Utah's 122 justice courts where less serious offenses are handled. Because of this, Utah must ensure that justice courts are handling cases fairly, with proper accountability measures in place.

## Revenue

Utah's justice courts bring in 90 percent of the states overall court collections through fines and fees.<sup>4</sup> This high percentage, largely due to the amount of traffic tickets processed in justice courts, merits a review of the individual impact of these fines and fees, and a look into the possible perverse incentives of fee collections and case processing.

According to our analysis comparing five years of revenue data from 16 different Utah justice courts, it became clear that revenue impact on local budgets is relatively small. The data didn't show a statewide trend of budget subsidizing, but without proper measures taken, perverse monetary incentives can still thrive under the current regulatory framework of justice courts, especially with judges.

Thirteen respondents said a judge rarely or never considers the defendant's ability to pay, while four said most do consider, and one said they consider about half the time. Seven attorneys said it's not common for the justice court to consider community service options for a defendant, nine said it was common but only when requested by defense, and two said it was somewhat common.

**Justice court judges should always consider an individual's ability to pay.**

A University of Utah law review article found, "Justice courts continue to operate under pressure to generate money for their municipalities or counties."<sup>5</sup> A justice court's budget is directly tied to a county or municipality budget, which shows why some are skeptical of justice courts and see them as revenue collectors to subsidize local budgets on the backs of Utah residents. The law review points out that due to the connection between the local and court budgets, "[J]udges may be pressured to provide revenue for their cities."<sup>6</sup> This claim is difficult to prove with pure data, however.

A report by *Governing* magazine found some Utah municipalities, in rural areas, had fines and fees comprising at least 10 percent of local budgets—filtered through justice courts.<sup>7</sup> But the most likely reason for this high percentage is because in rural areas, local governments have smaller budgets without numerous revenue streams like larger cities and towns.

Justice court judges are able to negotiate their salaries with their presiding local government officials on a yearly basis. And, as the Utah Judicial Council's Task Force on Justice Court reform found, local officials "may be more concerned with expenses and revenue than with judicial independence" causing the basis of pay negotiation to be directly tied to revenue collected.<sup>8</sup> This puts judges and city officials in a particularly tough spot with room for possible corruption.

County and municipal budgetary and salary pressure could impact the amount of fees and fines justice courts assess on individual Utahns. We polled 18 defense attorneys from around the state to find out whether judges are considering an individual's ability to pay when assessing fines and fees, and whether justice courts are proactively offering an alternative to pay with community service credit options.

Utahns have a statutory option to complete community service in lieu of paying a fine, but this data shows it may not be fully utilized in justice courts.<sup>9</sup> More troubling is the fact many judges aren't considering a defendant's ability to pay, which is required by law.

## Policy Solutions

To address the perverse incentives that could exist between justice courts and local governments, salaries should be determined by the state at a set amount. This would help ensure that judges don't have to concern themselves with personal liability to subsidize local budgets. The Utah Courts justice court task force recommends setting full time judge salaries as 90 percent of a district court judge's salary with the same benefits.<sup>10</sup>

Judges have a statutory obligation to consider a defendant's ability to pay, but they don't always do so. They should also be proactively offering community service options, especially for indigent Utahns—which can only be determined if the judge considers the defendant's finances. The state should ensure this is properly happening with increased oversight from the Administrative Office of the Courts.

One reason community service may not be offered by every judge is a lack of experience or training in this alternative solution. A practical way to fix this is to offer judicial training on how to facilitate community service options and determine indigency. Justice court judges are already required to attend 30 hours of continuing education on an annual basis, and working this in could be feasible.<sup>11</sup>

This structural change would require shifts in funding, but the ultimate goal would be a more transparent and accountable system that all justice courts are a part of under one statewide umbrella. The AOC could take administrative action when rules are not being followed and provide support and oversight similar to how they function for district courts.

But there are a few necessary steps to take before this happens. A Performance Audit of Court Fines and Surcharges conducted by Utah's Legislative Auditor General found a need for standardizing how courts determine indigency.<sup>12</sup> The state should create a standard for judges to follow, which will make their jobs easier and create fairer outcomes for Utahns.

Restructuring the budget is another step toward a better-operating justice court system in terms of transparency, fairness, and accountability. Courts are a necessary government entity that society relies upon to hold individuals accountable for committing crimes and to allow every person a fair chance to represent themselves when accused of a crime. Yet, some believe it should be a user-based funding system, meaning that those who find themselves in court are also responsible for funding it. This



is not realistic, creates perverse incentives, and is antithetical to the principle that the courts operate for the benefit of every person at any given time—whether they find themselves in court or not.

Fines and fees are—and will likely continue to be—part of the penalty associated with criminal charges. But courts should never be relied upon to make money simply because they have a means to create revenue through court users. This is why there needs to be a decoupling from court revenue and funding. Justice courts should instead be funded by general government funds.

This idea of funding from general taxes rather than based on court specific revenue collection is also recommended by the justice court task force which recommends budgets be standardized by local governments based on weighted caseload. They argue that this

mechanism is “consistent with the benefit they provide to the entire community.”<sup>13</sup> Further, justice courts should no longer be viewed as “making” or “losing” money but rather as a necessary government funded operation just like a school, park, or fire department that are not expected to have users pay for services.

There is not one simple solution to solving the concerns of justice courts. But the solutions proposed above offer a good starting place in order to at least ensure that, from a budgetary perspective, Utahns can be confident that the justice court system is operating fairly and transparently. This method of budget and salary standardization with increased oversight will only help judges be more impartial and ensure penalties of fees and fines fit the specific facts of the case.

## ENDNOTES

- 1 Utah Code 78A-7-106.
- 2 Utah Code 78A-7-201.
- 3 Utah Code 78A-7-206.
- 4 “A Performance Audit of Court Fines and Surcharges,” Office of the Legislator Auditor General, October 2020, p. 3, <https://le.utah.gov/interim/2020/pdf/00004048.pdf>.
- 5 “No Justice in Utah’s Justice Courts: Constitutional Issues, Systemic Problems, and the Failure to Protect Defendants in Utah’s Infamous Local Courts,” *Utah OnLaw: The Utah Law Review Online Supplement*: Vol. 2012, Article 2, p. 50, <https://dc.law.utah.edu/onlaw/vol2012/iss1/2>.
- 6 *Ibid*, p. 51.
- 7 “Addicted to Fines,” *Governing*, August 21, 2019, <https://www.governing.com/topics/finance/fine-fee-revenues-special-report.html>.
- 8 Board of Justice Court Judges, “Recommendations to the Utah Judicial Council’s Task Force on Justice Court Reform,” Utah State Courts, June 30, 2020, p. 15, <https://www.utcourts.gov/utc/jc-reform/wp-content/uploads/sites/47/2020/08/Board-Recommendations-to-Task-Force-Final.pdf>.
- 9 “An Option for Struggling Utahns: Performing Community Service to Pay Off a Fine,” Libertas Institute, April 2, 2018, <https://libertasutah.org/2018-bills/an-option-for-all-utahns-avoid-fines-by-performing-community-service/>.
- 10 “Recommendations to the Utah Judicial Council’s Task Force on Justice Court Reform,” p. 14.
- 11 “Justice Court Standards for Certification of New Courts,” August 2010, p. 2, [https://www.utcourts.gov/courts/just/docs/New\\_Court\\_Cert\\_App.pdf](https://www.utcourts.gov/courts/just/docs/New_Court_Cert_App.pdf).
- 12 “A Performance Audit of Court Fines and Surcharges,” p. 22.
- 13 “Recommendations to the Utah Judicial Council’s Task Force on Justice Court Reform,” p. 22.