

Hello Committee members. I am writing today to express my earnest support for HB24-1445. My name is Sophia Mayott-Guerrero, and I am now 32 and work two jobs, as the interim director of advocacy at the ACLU-CO and as a city council person in Lakewood. I am submitting this testimony on my own behalf and neither of those institutions, but I mention them to show what would have been lost if I was a little less lucky when I was on probation ten years ago for a misdemeanor DWAI.

I plead guilty to a misdemeanor DWAI at age 23, my first year living in Lakewood. This meant losing my license, classes, community service, UAs, and regular meetings with my probation officer. Each of these things cost money and time, especially for the first year when I did not have my driver's license.

The closest probation office to my home at the time was 7.5 miles away on N. Sheridan. Each month I took a full day off of work, meaning lost wages, to walk, bus, and walk again. The bus is also notoriously unreliable, especially during snow. On two occasions I was late to my appointment, which resulted in additional fees and a threat to extend my probation.

During this time in my life, I got my first job in environmental organizing. I was asked to go to a training in another state and submitted my request to my probation officer. I was told that since that conference would interfere with my standing appointment, I was not allowed to go. Luckily, my supervisor accepted the circumstances and did not choose to fire me despite being unable to complete this part of my job.

That summer, my family went on a week long rafting trip, and had a large celebration for my father's August birthday. I was not able to attend either of these important family events.

In the two years I was on supervised probation, I missed opportunities at work, lost wages, was isolated from my family, and accrued debt trying to keep up with fees, and I was much luckier than most in this situation.

Most work places are not as understanding about regular missed days of work and an inability to participate in all aspects of the job. Many have a family who live further away who would not be able to see them at all. And I was always able to afford a bus pass, which is also not guaranteed for everyone. Additionally, my entire extended family kept me out of jail by giving me my full fees for my birthday that year. I would have been on probation for another year or possibly would have served time if I had not been able to pay it off at the time I did.

If a person who is lower-income, with a less supportive work-place or a less supportive family is charged with the misdemeanor DWAI I was charged with, the crime is the same, but the punishment is not.

Dated April 29<sup>th</sup> and 2024.

Justyna Madenska  
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## Support for Bill HB24-1445

I am writing to express my **strong support for Bill HB24-1445**, which introduces significant changes to the conditions of probation and parole in Colorado. This bill eliminates non-payment of probation or parole fees as grounds for the revocation of probation or parole. It also prohibits a court from requiring a defendant to pay probation supervision fees in more than one case when the defendant is granted probation in multiple cases.

Why to support:

- **Reduced burden on probationers and parolees:** The bill allows probation and parole meetings to be conducted by phone or video call, which can save time and money for those on probation or parole. This can be especially helpful for people who live far away from their probation or parole officer, or who have difficulty traveling due to work or childcare obligations.
- **Improved access to services:** By allowing meetings to be conducted remotely, the bill could make it easier for probationers and parolees to access services they need, such as mental health counseling or substance abuse treatment.
- **Reduced risk of recidivism:** Supporters might argue that increased access to services and reduced burden on probationers/parolees can lead to better adherence to probation/parole conditions and lower recidivism rates.
- **Fairness:** Some might argue it's unfair to revoke probation or parole solely for non-payment of fees, especially if those fees create a financial hardship.
- **Cost savings:** Supporters might believe that reducing in-person meetings could save the state money on transportation and other logistical costs.

Further,

1. According to the ACLU-PA Guide to Probation/Parole Revocation Hearings for Nonpayment of Fines, Costs, or Restitution, a violation of probation or parole cannot be filed against defendants simply for non-payment of fines, costs, and restitution. The Commonwealth must demonstrate that the defendant "willfully" failed to pay. In other words, the defendant must have had the ability to pay but chose not to. If the court does not find that the defendant willfully failed to pay, then the defendant has not

violated the terms of supervision. This is an important distinction that helps protect individuals who are unable to pay due to financial hardship.

2. The **Eighth Amendment** to the United States Constitution is the primary constitutional right that applies in this context. The Eighth Amendment protects against the imposition of excessive bail, excessive fines, or cruel and unusual punishments..

In a unanimous ruling, the United States Supreme Court extended this federal constitutional protection to states, ruling that it was unconstitutional for states to impose excessive fines. This decision makes clear that the Eighth Amendment's prohibition against "excessive fines" applies to states and localities as well as the federal government. This means that if a person is unable to pay a fine or fee associated with a criminal case, they cannot be incarcerated simply because of their inability to pay. The principle of proportionality is key here: the amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.

In *Timbs v. Indiana*, Tyson Timbs pleaded guilty to selling heroin and as part of his sentence was ordered to forfeit his vehicle that he purchased for US\$42,000. Timbs challenged the ruling because his vehicle was worth more than four times the maximum fine for his crime. An Indiana court ruled the Eighth Amendment ban on excessive fines did not apply to states, but the Supreme Court disagreed.

Justice Ruth Bader Ginsberg wrote that "[e]xorbitant tolls undermine other constitutional liberties," allowing authorities to "retaliate against or chill" political speech, or impose them as "a source of revenue." As evidence this is "scarcely hypothetical," she cited an amicus ("friend of the court") brief that describes a growing reliance of state and local governments on fines and fees as a source of revenue.

The Supreme Court ruling limits excessive forfeiture by states and has the potential to change the way states use excessive criminal fines and fees to raise revenue. Human Rights Watch has documented the devastating effects of excessive fines and fees, which have a disproportionate impact on the poor and communities of color. When a person cannot afford court-mandated fines and fees, they can face arrest warrants, extended sentences, and incarceration, often putting them further in debt.

3. The report "**The Impact of Fees and Fines for Individuals on Probation and Parole**" highlights that failure to pay such fees can indeed be viewed as a violation of probation or parole terms. This can lead to serious consequences, including potential jail time or even revocation of probation or parole. This underscores the significant burden that these financial obligations can place on individuals under supervision,

particularly for those who may be facing financial hardship. It's a complex issue with legal, ethical, and social implications, and it's important for individuals in such situations to seek appropriate legal counsel. This information is intended to be used as a general guide and may not apply to every situation. *Bearden v. Georgia*, 461 U.S. 660 at 660-1 (1983) ("If the probationer has willfully refused to pay the fine or restitution when he has the resources to pay or has failed to make sufficient bona fide efforts to seek employment or borrow money to pay, the State is justified in using imprisonment as a sanction to enforce collection. But if the probationer has made all reasonable bona fide efforts to pay the fine and yet cannot do so through no fault of his own, it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishing the probationer are available to meet the state's interest in punishment and deterrence."). There are many state cases that extend the holding in *Bearden* to supervision and/or programming fees. See, e.g., *State v. Davis*, 769 P.2d 1008 (Ariz. 1989) (en banc); *People v. Souffrance*, 94 A.D.3d 1024 (N.Y. Sup. Court 2012); *Ohio v. Dockery*, 933 N.E. 2d 1155 (Ohio Ct. App. 2010); *Snipes v. State*, 521 So.2d 89 (Ala. Crim. App. 1986).

I believe that these changes are crucial in reducing the financial burden on individuals under supervision and preventing penalization for non-payment of fees. This bill represents a significant step towards a more equitable justice system.

I urge you to support this bill and work towards its successful passage. Thank you for your attention to this important matter.



INSTITUTE FOR JUSTICE

April 29, 2024

Colorado Senate Judiciary Committee  
Colorado General Assembly  
200 East Colfax Avenue  
Denver, Colorado 80203

Re: Letter in support of HB24-1445

Dear Chair Gonzales, Vice Chair Roberts, and Members of the Committee:

Thank you for the opportunity to submit this letter in support of HB24-1445. My name is Alasdair Whitney, and I am a legislative counsel at the Institute for Justice. The Institute for Justice is a non-profit public interest law firm that works to protect civil liberties. As part of our work, we fight against the use of unreasonable fines and fees and the severe consequences that can follow.

The Institute for Justice encourages the committee to support HB24-1445, which would eliminate non-payment of fees as a ground for revocation of parole and make it easier for individuals on parole or probation to comply with the terms of supervision. Supporting this bill is critical for three reasons.

First, this bill would help ensure supervision compliance. Research has consistently shown that onerous fees imposed on individuals involved in the criminal justice system can have detrimental effects on their ability to successfully reintegrate into their communities.<sup>1</sup> Parole supervision fees can lead to increased financial instability, exacerbate stress and anxiety, and undermine efforts to rehabilitate and support individuals as they work to rebuild their lives. These difficulties, in turn, make it more difficult for people to comply with the terms of their supervision, and often result in recidivism.<sup>2</sup> By eliminating the non-payment of such fees as a ground for revocation of parole, this bill would make it easier for individuals to comply with the terms of supervision and successfully reenter the community.

The bill would also make it easier for people to check in with parole or probation officers by allowing virtual or telephonic meetings. Colorado is a big state with many rural frontier and mountain communities. Accessing in-person supervision services in Moffat or Las Animas Counties can be difficult for individuals who lack safe, reliable, or affordable transportation, and Colorado's notoriously unpredictable weather only makes it more difficult. These remote alternatives to in-person meetings—easily facilitated by recent advancements and widespread

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<sup>1</sup> Ruhland, E., *The Impact of Fees and Fines for Individuals on Probation and Parole*, Robina Institute of Criminal Law and Criminal Justice, Univ. of Minnesota (May 2023), available at <https://robinainstitute.umn.edu/articles/impact-fees-and-fines-individuals-probation-and-parole>.

<sup>2</sup> Harding, D., et al., *From Supervision to Opportunity: Reimagining Probation and Parole*, The ANNALS of the American Academy of Political and Social Science (Sept. 2022), available at <https://journals.sagepub.com/doi/full/10.1177/00027162221115486>.

adoption of audio-visual technology—would help ensure the continuity of supervision and prioritize the health and safety of supervisees.

Second, and relatedly, many individuals transitioning back into society post-incarceration lack stable employment, secure housing, and durable social networks.<sup>3</sup> Supervision-related financial burdens only serve to exacerbate these challenges, particularly for those who may already be struggling to make ends meet. Eliminating the harsh consequences of a missed payment will allow individuals to continue to work and provide for themselves and their families.

Third, this bill would help create a more equitable and just criminal justice system. As it stands today, revoking parole for non-payment of supervision fees creates a system where individuals with financial means are better positioned to comply with the terms of supervision while those without are disproportionately penalized. This exacerbates socioeconomic disparities and perpetuates cycles of poverty and inequality within the state.<sup>4</sup> People should not be punished for an inability to afford a parole supervision payment, and this bill will help ensure that parole remains focused on its intended goals of rehabilitation and reintegration, rather than retribution and punishment.

This bill is one step the general assembly can take to help individuals comply with the terms of supervision and make it easier for them to reenter society and stay out of trouble. We urge your support for this bill.

Thank you for your time and thoughtful consideration of this issue.

Sincerely,

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<sup>3</sup> *Id.*

<sup>4</sup> Harris, A., *et al.*, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, *American Journal of Sociology* (May 2010), available at <https://www.journals.uchicago.edu/doi/abs/10.1086/651940>.

In order to ensure probation and parole is able to do what it is meant to do, rather than needlessly ensnare those working to redeem themselves, please vote yes on HB24-1445.



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April 29, 2024

Senate Judiciary Committee  
Colorado General Assembly  
200 E. Colfax Avenue  
Denver, CO 80203

**Testimony in Support of HB 24-1445**

Jenny Catchings, Justice Action Network

Dear Chair Gonzales, Vice Chair Roberts, and Members of the Committee,

On behalf of the Justice Action Network, a national bipartisan criminal justice organization, I am grateful for the opportunity to support HB 1445.

Recent reporting estimates that Colorado has annually spent \$45 million incarcerating people for technical violations. Since we know that alternatives to jail or prison for technical violations show much better long-term results for key public safety goals—such as reducing rearrests, reducing drug use, and improving employment prospects and retention—we must find ways to curtail this kind of costly work against our own interests. HB 1445 offers a couple of thoughtful approaches in this direction by (1) keeping people more integrated in the lives they’re building during supervision, and (2) not criminalizing something as minor as non-restitution based system debt.

For a national perspective, I want to briefly highlight states that have already successfully implemented provisions of this bill:

- In 2018, **Mississippi** passed a bill explicitly aimed at improving economic prospects for those leaving the state's prison system; this includes allowing the statewide use of video check-ins to limit disruptions to employment.
- In 2022, **Florida** passed a bill that establishes a permanent infrastructure for remote probation reporting statewide with the aim of better supporting rehabilitative goals for the individual, as well as workforce goals for the state.
- And finally, **eight states** already do not allow revocation for nonpayment of probation and/or parole fees, including Alaska, Indiana, Maine, and Oregon.

Thank you so much for your time and attention. I urge you to support HB 1445 as a step toward modernizing Colorado's approach to community supervision.

Sincerely,

Jenny Catchings

State Policy Manager, Justice Action Network