

has been described to us as “drawers and drawers of warrants.” In some cases, people have attempted to pay a bond to secure the release of a family member in FPD custody, but were not even seen by FPD staff. On one occasion, an FPD staff member reported to an FPD captain that a person “came to the station last night and waited to post bond for [a detainee], from 1:00 until 3:30. No one ever came up to get her money and no one informed her that she was going to have to wait that long.”

a. Needlessly Requiring In-Court Appearances for Most Code Violations Imposes Unnecessary Obstacles to Resolving Cases

— Ferguson requires far more defendants to appear in court than is required under state law. Under Missouri Supreme Court rules, there is a short list of violations that require the violator’s appearance in court: any violation resulting in personal injury or property damage; driving while intoxicated; driving without a proper license; and attempting to elude a police officer. See Mo. Sup. Ct. R. 37.49. The municipal judge of each court has the discretion to expand this list of “must appears,” and Ferguson’s municipal court has expanded it exponentially: of 376 actively charged municipal offenses, court staff informed us that approximately 229 typically require an appearance in court before the fine can be paid, including Dog Creating Nuisance, Equipment Violations, No Passing Zone, Housing—Overgrown Vegetation, and Failure to Remove Leaf Debris. Ferguson requires these court appearances regardless of whether the individual is contesting the charges.

— Requiring an individual to appear at a specific place and time to pay a citation makes it far more likely that the individual will fail to appear or pay the citation on time, quickly resulting, in Ferguson, in an arrest warrant and a suspended license. Even setting aside the fact that people often receive inaccurate information about when they must appear in court, the in-person appearance requirement imposes particular difficulties on low-wage workers, single parents, and those with limited access to reliable transportation. Requiring an individual to appear in court also imposes particular burdens on those with jobs that have set hours that may conflict with an assigned court session. Court sessions are sometimes set during the workday and sometimes in the early evening. Additionally, while court dates can be set for several months after the citation was issued, in some cases they can also be issued as early as a week after a citation is received. For example, court staff have instructed FPD officers that derelict auto violations must be set for the “very next court date even if it is just a week . . . or so away.” This can add an additional obstacle for those with firmly established employment schedules.

— There are also historical reasons, of which the City is well aware, that many Ferguson residents may not appear in court. Some individuals fear that if they cannot immediately pay the fines they owe, they will be arrested and sent to jail. Ferguson court staff members told us that they believe the high number of missed court appearances in their court is attributable, in part, to this popular belief. These fears are well founded. While Judge Broekmeyer has told us that he has never sentenced someone to jail time for being unable to pay a fine, we have found evidence that the Judge has held people appearing in court for contempt on account of their unwillingness to answer questions and sentenced those individuals to jail time. In December 2013, the FPD officer assigned to provide security at a court session directly emailed the City Manager to provide notice that “Judge Broekmeyer ordered [a defendant] arrested tonight after [he] refused to answer any questions and told the Judge that he had no jurisdiction. This happened on two separate occasions and with the second occasion when [the defendant] continued with his refusal to answer the Judge, he was order[ed] to be arrested and held for 10 days.” We also spoke with a woman who told us that, after asking questions in court, FPD officers arrested her for Contempt of Court at the instructions of the Court Clerk. Moreover, we have also received a report of an FPD officer arresting an individual at

court for an outstanding warrant. In that instance, which occurred in April 2014, the individual—who was in court to make a fine payment—was approached by an FPD officer, asked to step outside of the court session, and was immediately arrested. In addition, as Ferguson’s Municipal Judge confirmed, it is not uncommon for him to add charges and assess additional fines when a defendant challenges the citation that brought the defendant into court. Appearing in court in Ferguson also requires waits that can stretch into hours, sometimes outdoors in inclement weather. Many individuals report being treated dismissively, or worse, by court staff and the Municipal Judge. — Further, as Ferguson officials have told us, many people have experience with the numerous other municipal courts in St. Louis County that informs individuals’ expectations about the Ferguson municipal court. Our investigation shows that other municipalities in the area have engaged in a number of practices that have the effect of discouraging people from attending court sessions. For instance, court clerks from other municipalities have told us that they have seen judges order people arrested if they appear in court with an outstanding warrant but are unable to pay the fine owed or post the bond amount listed on the warrant. Indeed, one municipal judge from a neighboring municipality told us that this practice has resulted in what he believes to be a widespread belief that those who attend court but cannot pay will be immediately arrested—a view that municipal judge says is “entirely the municipal courts’ fault” for perpetuating because they have not taken steps to correct it. Recent reports have documented other problematic practices. For example, a June 2014 letter from Presiding Circuit Court Judge Maura McShane to municipal court judges in the region discussed troubling and possibly unlawful practices of municipal courts in St. Louis County that served to prevent the public from attending court sessions. These practices included not allowing children in court. Indeed, as late as October 2014, the municipal court website in the neighboring municipality of Bel Ridge—where Judge Broeckmeyer serves as prosecutor—stated that children are not allowed in court. While it appears that Ferguson’s court has always allowed children, we talked with people who assumed it did not because of their experiences in other courts. One man told us he was aggressively questioned by FPD officers after he left his child outside court with a friend because of this assumption. Thus, even though Ferguson might not engage in some of these practices, and while it may even be the case that other municipalities have themselves implemented reforms, the long history of these practices continues to shape community members’ views of what might happen to them if they attend court. — Court officials have told us that Ferguson’s expansive list of “must appear” offenses is not driven by any public safety need. That is underscored by the fact that, in some cases, attorneys are allowed to resolve such offenses over the phone without making any appearance in court. Nonetheless, despite the acknowledged obstacles to appearing in person in court and the lack of any articulated need to appear in court in all but a few instances, Ferguson has taken few, if any, steps to reduce the number of cases that require a court appearance:

b. Driver’s License Suspensions Mandated by State Law and Unnecessarily Prolonged by Ferguson Make It Difficult to Resolve a Case and Impose Substantial Hardship

— For many who have already had a warrant issued against them for failing to either appear or make a required payment, appearing in court is made especially difficult by the fact that their warrants likely resulted in the suspension of their driver’s licenses. Pursuant to Missouri state law, anyone who fails to pay a traffic citation for a moving violation on time, or who fails to appear in court regarding a moving traffic violation, has his or her driver’s license suspended. Mo. Rev. Stat. § 302.341.1. Thus, by virtue of having their licenses suspended, those who have already missed a required court appearance are more likely to fail to meet subsequent court obligations if they require physically appearing in court—fostering a cycle of missed appearances that is difficult to end. That is

particularly so given what some City officials from Ferguson and surrounding communities have called substandard public transportation options. We spoke with one woman who had her license suspended because she received a Failure to Appear charge in Ferguson and so had to rely on a friend to drive her to court. When her friend canceled, she had no other means of getting to court on time, missed court, and had another Failure to Appear charge and arrest warrant issued against her—adding to the charges that required resolution before her license could be reinstated.

—To be clear, responsibility for the hardship imposed by automatically suspending a person’s license for failing to appear in a traffic case rests largely with this state law. Notably, however, Ferguson’s own discretionary practices amplify and prolong that law’s impact. A temporary suspension can be lifted with a compliance letter from the municipal court, but the Ferguson municipal court does not issue compliance letters unless a person has satisfied the *entire fine* pending on the charge that caused the suspension. This rule is not mandated by state law, which instead provides a municipality with the authority to decide when to issue a compliance letter. *See* Mo. Rev. Stat. § 302.341.1 (“Such suspension shall remain in effect until the court with the subject pending charge requests setting aside the noncompliance suspension pending final disposition.”). Indeed, Ferguson court staff told us that they will issue compliance letters before full payment has been made for cases that they determine, in their unguided discretion, to be sympathetic.

—This rule and the Ferguson practices that magnify its impact underscore how missed court appearances can have broad ramifications for individuals’ ability to maintain a job and care for their families. We spoke with one woman who received three citations during a single incident in 2013 in which she pulled to the side of the road to allow a police car to pass, was confronted by the officer for doing so, and was cited for obstructing traffic, failing to signal, and not wearing a seatbelt. The woman appeared in court to challenge those citations, was told a new trial date would be mailed to her—and instead received notice from the Missouri Department of Revenue several months later that her license was suspended. Upon informing the Court Clerk that she never received notice of her court date, the Clerk told her the trial date had passed two weeks earlier and that there was now a warrant for her arrest pending. Given that the woman’s license was suspended only two weeks after her trial date, it appears the court did not send a warning letter before entering a warrant and suspending the license, contrary to purported policy. Court records likewise do not indicate a letter being sent. The woman asked to see the Municipal Judge to explain the situation, but court staff informed her that she could only see the Judge if she was issued a new court date and that she would only be issued a new court date if she paid her \$200 bond. With no opportunity to further petition the court, she wrote to Mayor Knowles about her situation, stating:

—Although I feel I have been harassed, wronged and unjustly done by Ferguson . . . [w]hat I am upset and concerned about is my driver’s license being suspended. I was told that I may not be able to [be] reinstate[d] until the tickets are taken care of. I am a hard working mother of two children and I cannot by any means take care of my family or work with my license being suspended and being unable to drive. I have to have [a] valid license to keep my job because I transport clients that I work with not to mention I drive my children back and forth to school, practices and rehearsals on a daily basis. I am writing this letter because no one has been able to help me and I am really hoping that I can get some help getting this issue resolved expediently.

It appears that, at the Mayor’s request, the court entered “Not Guilty” dispositions on her cases, several months after they first resulted in the license suspension:

c. Court Operations Impose Obstacles to Resolving Even Those Offenses that Do Not Require In-Person Court Appearance

The limited number of code violations that do not require an in-person court appearance can likewise be difficult to resolve, even if a person can afford to do so. The court has accepted mailed payments for some time and has recently begun to accept online payments, but the court's website suggests that in-person payment is required and provides no information that payment online or by mail is an option. As a result, many people try to remit payment to the court window within the police department. But community members have informed us that the court window often closes earlier than the posted hours indicate. Indeed, during our investigation, we observed the court window close at 4:30 p.m. on days where an evening court session was not being held, despite the fact that both the Ferguson City website and the Missouri Courts website state that the window closes at 5:00 p.m. On one such occasion, we observed two different sets of people arrive after 4:30 p.m. but before 5:00 p.m. One man told us his ticket payment was due that day. Another woman arrived in the rain with her small child, unsuccessfully attempted to call someone to the window, and left. Even when the court window is technically open, we have seen people standing at the window waiting for a response to their knocks for long periods of time, sometimes in inclement weather—even as court staff sat inside the police department tending to their normal duties.

As noted above, documents we reviewed showed that even where individuals are successful in talking with court staff about a citation, FPD-issued citations are sometimes so deficient that court staff are unable to determine what the fine, or even charge, is supposed to be. Evidence also shows that court staff have at times been unable to even find a person's case file, often because the FPD officer who issued the ticket failed to properly file a copy. In these cases, a person is left unable to resolve her or his citation.

d. High Fines, Coupled with Legally Inadequate Ability to Pay Determinations and Insufficient Alternatives to Immediate Payment, Impose a Significant Burden on People Living In or Near Poverty

It is common for a single traffic stop or other encounter with FPD to give rise to fines in amounts that a person living in poverty is unable to immediately pay. This fact is attributable in part to FPD's practice of issuing multiple citations—frequently three or more—on a single stop. This fact is also attributable to the fine assessment practices of the Ferguson municipal court, including not only the high fine amounts imposed, but also the inadequate process available for those who cannot afford to pay a fine. Even setting aside cases where additional fines and fees were imposed for Failure to Appear violations, our investigation found instances in which the court charged \$302 for a single Manner of Walking violation; \$427 for a single Peace Disturbance violation; \$531 for High Grass and Weeds; \$777 for Resisting Arrest; and \$792 for Failure to Obey, and \$527 for Failure to Comply, which officers appear to use interchangeably.

For many, the hardship of the fine amounts imposed is exacerbated by the fact that they owe similar fines in other, neighboring municipalities. We spoke with one woman who, in addition to owing several hundred dollars in fines to Ferguson, also owed fines to the municipal courts in Jennings and Edmondson. In total, she owed over \$2,500 in fines and fees, even after already making over \$1,000 in payments and clearing cases in several other municipalities. This woman's case is not unique. We have heard reports from many individuals and even City officials that, in light of the large number of municipalities in the area immediately surrounding Ferguson, most of which have their own police departments and municipal courts, it is common for people to face significant fines from many municipalities.

— City officials have extolled that the Ferguson preset fine schedule establishes fines that are “at or near the top of the list” compared with other municipalities across a large number of offenses. A more recent comparison of the preset fines of roughly 70 municipal courts in the region confirms that Ferguson’s fine amounts are above regional averages for many offenses, particularly discretionary offenses such as non-speeding-related traffic offenses. That comparison also shows that Ferguson imposes the highest fine of any of those roughly 70 municipalities for the offense of Failing to Provide Proof of Insurance; Ferguson charges \$375, whereas the average fine imposed is \$186 and the median fine imposed is \$175. In 2013 alone, the Ferguson court collected over \$286,000 in fines for that offense—more than any other offense except Failure to Appear.

— The fines that the court imposes for offenses without preset fines are more difficult to evaluate precisely because they are imposed on a case-by-case basis. Typically, however, in imposing fines for non-TVB offenses during court sessions, the Municipal Judge adopts the fine recommendations of the Prosecuting Attorney—who also serves as the Ferguson City Attorney. As discussed above, court staff have communicated with the Municipal Judge regarding the need to ensure that the prosecutor’s recommended fines are sufficiently high because “[w]e need to keep up our revenue.” We were also told of at least one incident in which an attorney received a fine recommendation from the prosecutor for his client, but when the client went to court to pay the fine, a clerk refused payment, informing her that there was an additional \$100 owed beyond the fine recommended by the prosecutor.

— The court imposes these fines without providing any process by which a person can seek a fine reduction on account of financial incapacity. The court does not provide any opportunity for a person unable to pay a preset TVB fine to seek a modification of the fine amount. Nor does the court consider a person’s financial ability to pay in determining how much of a fine to impose in cases without preset fines. The Ferguson court’s failure to assess a defendant’s ability to pay stands in direct tension with Missouri law, which instructs that in determining the amount and the method of payment of a fine, a court “shall, insofar as practicable, proportion the fine to the burden that payment will impose in view of the financial resources of an individual.” Mo. Rev. Stat. § 560.026.

— In lieu of proportioning a fine to a particular individual’s ability to pay or allowing a process by which a person could petition the court for a reduction, the court offers payment plans to those who cannot afford to immediately pay in full. But such payment plans do not serve as a substitute for an ability-to-pay determination, which, properly employed, can enable a person in some cases to pay in full and resolve the case. Moreover, the court’s rules regarding payment plans are themselves severe: Unlike some other municipalities that require a \$50 monthly payment, Ferguson’s standard payment plan requires payments of \$100 per month, which remains a difficult amount for many to pay, especially those who are also making payments to other municipalities. Further, the court treats a single missed, partial, or untimely payment as a missed appearance. In such a case, the court immediately issues an arrest warrant without any notice or opportunity to explain why a payment was missed—for example, because the person was sick, or the court closed its doors early that day. The court reportedly has softened this rule during the course of our investigation by allowing a person who has missed a payment to go to court to seek leave for not paying the full amount owed. However, even this softened rule provides minimal relief, as making this request requires a person to appear in court the first Wednesday of the month at 11:00 a.m. If a person misses that session, the court immediately issues an arrest warrant.

— Before the court provided this Wednesday morning court session for those on payment plans, court staff frequently rejected requests from payment plan participants to reduce or continue monthly payments—leaving individuals unable to make the required payment with no recourse besides incurring a Failure to Appear charge, receiving additional fines, and having an arrest warrant issued. In July 2014, an assistant court clerk wrote in an email that she rejected a defendant’s request

for a reduced monthly payment on account of inability to pay and told the defendant, “everyone says [they] can’t pay.” This is consistent with earlier noted statements by the acting Ferguson prosecutor that he stopped granting “needless requests for continuances from the payment docket.” Another defendant who owed \$1,002 in fines and fees stemming from a Driving with a Revoked License charge wrote to a City official that he would be unable to make his required monthly payment but hoped to avoid having a warrant issued. He explained that he was unemployed, that the court had put him on a payment plan only a week before his first payment was due, and that he did not have enough time to gather enough money. He implored the City to provide “some kind of community service to work off the fines/fees,” stating that “I want to pay you guys what I owe” and “I have been trying to scrape up what I can,” but that “with warrants it’s hard to get a job.” The City official forwarded the request to a court clerk, who noted that the underlying charge dated back to 2007, that five Failure to Appear charges had been levied, and that no payments had yet been made. The clerk responded: “In this certain case [the defendant] will go to warrant.” Records show that, only a week earlier, this same clerk asked a court clerk from another municipality to clear a ticket for former Ferguson Police Chief Moonier as a “courtesy.” And, only a month later, that same clerk also helped the Ferguson Collector of Revenue clear two citations issued by neighboring municipalities: — Ferguson does not typically offer community service as an alternative to fines. City officials have emphasized to us that Ferguson is one of only a few municipalities in the region to provide *any* form of a community service program and that the program that is available is well run. But the program, which began in February 2014, is only available on a limited basis, mostly to certain defendants who are 17 years old or younger. We have heard directly from individuals who could not afford to pay their fines—and thus accumulated additional charges and fines and had warrants issued against them—that they requested a community service alternative to monetary payment but were told no such alternative existed. One man who still owes \$1,100 stemming from a speeding and seatbelt violation from 2000 told us that he has been arrested repeatedly in connection with the fines he cannot afford to pay, and that “no one is willing to work with him to find an alternative solution.” City officials have recognized the need to provide a meaningful community service option. In August 2013, one City Councilmember wrote to the City Manager and the Mayor that, “[f]or a few years now we have talked about offering community service to those who can’t afford to pay their fines, but we haven’t actually made it happen.” The Councilmember noted the benefits of such a program, including that it would “keep those people that simply don’t have the money to pay their fines from constantly being arrested and going to jail, only to be released and do it all over again.”

1. The Court Imposes Unduly Harsh Penalties for Missed Payments or Appearancees

— The procedural deficiencies identified above work together to make it exceedingly difficult to resolve a case and exceedingly easy to run afoul of the court’s stringent and confusing rules, particularly for those living in or near poverty. That the court is at least in part responsible for causing cases to protract and result in technical violations has not prevented it from imposing significant penalties when those violations occur. Although Ferguson’s court—unlike many other municipal courts in the region—has ceased imposing the Failure to Appear charge, the court continues to routinely issue arrest warrants for missed appearances and missed payments. The evidence we have found shows that these arrest warrants are used almost exclusively for the purpose of compelling payment through the threat of incarceration. The evidence also shows that the harms of the court’s warrant practices are exacerbated by the court’s bond procedures, which impose unnecessary obstacles to clearing a warrant or securing release after being arrested on a warrant and often function to further prolong a case and a person’s involvement in the municipal justice system. These practices—together with the consequences to individual and communities that result—raise

significant due process and equal protection concerns:

a. The Ferguson Municipal Court Uses Arrest Warrants Primarily as a Means of Securing Payment

Ferguson uses its police department in large part as a collection agency for its municipal court. Ferguson's municipal court issues arrest warrants at a rate that police officials have called, in internal emails, "staggering." According to the court's own figures, as of December 2014, over 16,000 people had outstanding arrest warrants that had been issued by the court. In fiscal year 2013 alone, the court issued warrants to approximately 9,007 people. Many of those individuals had warrants issued on multiple charges, as the 9,007 warrants applied to 32,975 different offenses:

— In the wake of several new accounts indicating that the Ferguson municipal court issued over 32,000 warrants in fiscal year 2013, court staff determined that it had mistakenly reported to the state of Missouri the number of charged offenses that had warrants (32,975), not the number of people who had warrants outstanding (9,007). Our investigation indicates that is the case. In any event, it is probative of FPD's enforcement practices that those roughly 9,000 warrants were issued for over 32,000 offenses. Moreover, for those against whom a warrant is issued, the number of offenses included within the warrant has tremendous practical importance. As discussed below, the bond amount a person must pay to clear a warrant before an arrest occurs, or to secure release once a warrant has been executed, is often dependent on the number of offenses to which the warrant applies. And, that the court issued warrants for the arrest of roughly 9,000 people is itself not insignificant; even under that calculation, Ferguson has one of the highest warrant totals in the region:

— The large number of warrants issued by the court, by any count, is due exclusively to the fact that the court uses arrest warrants and the threat of arrest as its primary tool for collecting outstanding fines for municipal code violations. With extremely limited exceptions, every warrant issued by the Ferguson municipal court was issued because: 1) a person missed consecutive court appearances, or 2) a person missed a single required fine payment as part of a payment plan. Under current court policy, the court issues a warrant in every case where either of those circumstances arises—regardless of the severity of the code violation that the case involves. Indeed, the court rarely issues a warrant for any other purpose. FPD does not request arrest or any other kind of warrants from the Ferguson municipal court; in fact, FPD officers told us that they have been instructed not to file warrant applications with the municipal court because the court does not have the capacity to consider them:

— While issuing municipal warrants against people who have not appeared or paid their municipal code violation fines is sometimes framed as addressing the failure to abide by court rules; in practice, it is clear that warrants are primarily issued to coerce payment. One municipal judge from a neighboring municipality told us that the use of the Failure to Appear charge "provides cushion for judges against the attack that the court is operating as a debtor's prison." And the Municipal Judge in Ferguson has acknowledged repeatedly that the warrants the court issues are not put in place for public safety purposes. Indeed, once a warrant issues, there is no urgency within FPD to actually execute it. Court staff reported that they typically take weeks, if not months, to enter warrants into the system that enables patrol officers to determine if a person they encounter has an outstanding warrant. As of December 2014, for example, some warrants issued in September 2014 were not yet detectable to officers in the field. Court staff also informed us that no one from FPD has ever commented on that lag or prioritized closing it. Nor does there seem to be any public safety obstacle to eliminating failure to appear warrants altogether. The court has, in fact, adopted a temporary "warrant recall program" that allows individuals who show up to court to immediately

have their warrants recalled and a new court date assigned. And, under longstanding practice, once an attorney makes an appearance in a case, the court automatically discharges any pending warrants. That the primary role of warrants is not to protect public safety but rather to facilitate fine collection is further evidenced by the fact that the warrants issued by the court are overwhelmingly issued in non-criminal traffic cases that would not themselves result in a penalty of imprisonment. From 2010 to December 2014, the offenses (besides Failure to Appear ordinance violations) that most often led to a municipal warrant were: Driving While License Is Suspended, Expired License Plates, Failure to Register a Vehicle, No Proof of Insurance, and Speed Limit violations. These offenses comprised the majority of offenses that led to a warrant not because they are more severe than other offenses, but rather because every missed appearance or payment on any charge results in a warrant, and these were some of the most common charges brought by FPD during that period.

— Even though these underlying code violations would not on their own result in a penalty of imprisonment, arrest and detention are not uncommon once a warrant enters on a case. We have found that FPD officers frequently check individuals for warrants, even when the person is not reasonably suspected of engaging in any criminal activity, and, if a municipal warrant exists, will often make an arrest. City officials have told us that the decision to arrest a person for an outstanding warrant is “highly discretionary” and that officers will frequently not arrest unless the person is “ignorant.” Records show, however, that officers do arrest individuals for outstanding municipal warrants with considerable frequency. Jail records are poorly managed, and data on jail bookings is only available as of April 2014. But during the roughly six-month period from April to September 2014, 256 people were booked into the Ferguson City Jail after being arrested at least in part for an outstanding warrant—96% of whom were African American. Of these individuals, 28 were held for longer than two days, and 27 of these 28 people were black.

— Similarly, data collected during vehicle stops shows that, during a larger period of time between October 2012 and October 2014, FPD arrested roughly 460 individuals following a vehicle stop *solely* because they had outstanding warrants. This figure is likely a significant underrepresentation of the total number of people arrested for outstanding warrants during that period, as it does not include those people arrested on outstanding warrants not during traffic stops; nor does it include those people arrested during traffic stops for multiple reasons, but who might not have been stopped, much less arrested, without the officer performing a warrant check on the car and finding an outstanding warrant. Even among this limited pool, the data shows the disparate impact these arrests have on African Americans. Of the 460 individuals arrested during traffic stops solely for outstanding warrants, 43 individuals—or 96%—were African American.

That data also does not include those people arrested by *other* municipal police departments on the basis of an outstanding warrant issued by Ferguson. As has been widely reported in recent months, many municipal police departments in the region identify people with warrants pending in other towns and then arrest and hold those individuals on behalf of those towns. FPD’s records show that it routinely arrests individuals on warrants issued by other jurisdictions. And, although we did not review the records of other departments, we have heard reports of many individuals who were arrested for a Ferguson-issued warrant by police officers outside of Ferguson. On some occasions, Ferguson will decline to pick up a person arrested in a different municipality for a Ferguson warrant and, after however long it takes for that decision to be made, the person will be released, sometimes after being required to pay bond. On other occasions, Ferguson will send an officer to retrieve the person for incarceration in the Ferguson City Jail; FPD supervisors have in fact instructed officers to do so “regardless of the charge or the bond amount, or the number of prisoners we have in custody.” We found evidence of FPD officers traveling more than 200 miles to retrieve a person detained by another agency on a Ferguson municipal warrant.

Because of the large number of municipalities in the region, many of which have warrant

practices similar to Ferguson, it is not unusual for a person to be arrested by one department, have outstanding warrants pending in other police departments, and be handed off from one department to another until all warrants are cleared. We have heard of individuals who have run out of money during this process—referred to by many as the “muni shuffle”—and as a result were detained for a week or longer.

—The large number of municipal court warrants being issued, many of which lead to arrest, raises significant due process and equal protection concerns. In particular, Ferguson’s practice of automatically treating a missed payment as a failure to appear—thus triggering an arrest warrant and possible incarceration—is directly at odds with well-established law that prohibits “punishing a person for his poverty.” *Bearden v. Georgia*, 461 U.S. 660, 671 (1983); *see also Tate v. Short*, 401 U.S. 395, 398 (1971). In *Bearden*, the Supreme Court found unconstitutional a state’s decision to revoke probation and sentence a defendant to prison because the defendant was unable to pay a required fine. *Bearden*, 461 U.S. at 672–73. The Court held that before imposing imprisonment, a court must first inquire as to whether the missed payment was attributable to an inability to pay and, if so, “consider alternate measures of punishment other than imprisonment.” *Id.* at 672; *see also Martin v. Solem*, 801 F.2d 324, 332 (8th Cir. 1986) (noting that the state court had failed to adequately determine, as required by *Bearden*, whether the defendant had “made sufficient bona fide efforts legally to acquire the resources to pay,” but nonetheless denying habeas relief because the defendant’s failure to pay was due not to indigency but his “willful refusal to pay”).

—The Ferguson court, however, has in the past routinely issued arrest warrants when a person is unable to make a required fine payment without any ability-to-pay determination. While the court does not sentence a defendant to jail in such a case, the result is often equivalent to what *Bearden* proscribes: the incarceration of a defendant solely because of an inability to pay a fine. In response to concerns about issuing warrants in such cases, Ferguson officials have told us that without issuing warrants and threatening incarceration, they have no ability to secure payment. But the Supreme Court rejected that argument, finding that states are “not powerless to enforce judgments against those financially unable to pay a fine,” and noting that—especially in cases like those at issue here in which the court has already made a determination that penological interests do not demand incarceration—a court can “establish a reduced fine or alternate public service in lieu of a fine that adequately serves the state’s goals of punishment and deterrence, given the defendant’s diminished financial resources.” *Id.* As discussed above, however, Ferguson has not established any such alternative.

—Finally, in light of the significant portion of municipal charges that lead to an arrest warrant, as well as the substantial number of arrest warrants that lead to arrest and detention, we have considerable concerns regarding whether individuals facing charges in Ferguson municipal court are entitled to, and being unlawfully denied, the right to counsel.

b. Ferguson’s Bond Practices Impose Undue Hardship on Those Seeking to Secure Release from the Ferguson City Jail

Our investigation found substantial deficiencies in the way Ferguson police and court officials set, accept, refund, and forfeit bond payments. Recently, in response to concerns raised during our investigation, the City implemented several changes to its bond practices, most of which apply to those detained after a warrantless arrest. These changes represent positive developments, but many deficiencies remain. Given the high number of arrest warrants issued by the municipal court—and given that in many cases a person can only clear a pending warrant or secure release from detention by posting bond—the deficiencies identified below impose significant harm to individuals in Ferguson:

— Current bond practices are unclear and inconsistent. Information provided by the City reveals a haphazard bond system that results in people being erroneously arrested, and some people paying bond but not getting credit for having done so. Documents describe officers finding hundred dollar bills in their pockets that were given to them for bond payment and not remembering which jail detainee provided them; bond paperwork being found on the floor; and individuals being arrested after their bonds had been accepted because the corresponding warrant never cancelled. At one point in 2012, Ferguson's Court Clerk called such issues a "daily problem." The City's practices for receiving and tracking bond payments have not changed appreciably since then.

— The practices for setting bond are similarly erratic. The Municipal Judge advised us that he sets all bonds upon issuing an arrest warrant. We found, however, that bond amounts are mostly set by court staff, and are rarely even reviewed by the Judge. While court staff told us that the current bond schedule requires a bond of \$200 for up to four traffic offenses, \$100 for every traffic offense thereafter, \$100 for every Failure to Appear charge, and \$300 for every criminal offense, FPD's own policy includes a bond schedule that departs from these figures. In practice, bond amounts vary widely. *See* FPD General Order 421.02. Our review of a random sample of warrants indicates that bond is set in a manner that often departs from both the schedule referenced by court staff and the schedule found in FPD policy. In a number of these cases, the bond amount far exceeded the amount of the underlying fine.

— The court's bond practices, including the fact that the court often imposes bonds that exceed the amount owed to the court, do not appear to be grounded in any public safety need. In a July 2014 email to Chief Jackson and other police officials, the Court Clerk reported that "[s]tarting today we are going to reduce anyone's bond that calls and is in warrant[] to half the amount," explaining that "[t]his may bring in some extra monies this way." The email identifies no public safety obstacle or other reason not to implement the bond reduction. Notably, the email also states that "[w]e will only do this between the hours of 8:30 to 4" and that no half-bond will be accepted after those hours unless the Court Clerk approves it.⁷ Thus, as a result of this policy, an individual able to appear at the court window during business hours would pay half as much to clear a warrant as an individual who is actually arrested on a warrant after hours. That Ferguson's bond practices do not appear grounded in public safety is underscored by the fact that the court will typically cancel outstanding warrants without requiring the posting of any bond for people who have an attorney enter an appearance on their behalf. Records show that this practice is also applied haphazardly, and there do not appear to be any rules that govern the apparent discretion court staff have to waive or require bond following an attorney's appearance.

— It is not uncommon for an individual charged with only a minor violation to be arrested on a warrant, be unable to afford bond, and have no recourse but to await release. Longstanding court rules provide for a person arrested pursuant to an arrest warrant to be held up to 72 hours before being released without bond, and the court's recent orders do not appear to change this. Records show that individuals are routinely held for 72 hours. FPD's records management system only began capturing meaningful jail data in April 2014; but from April to September 2014 alone, 77 people were detained in the jail for longer than two days, and many of those detentions neared, reached, or exceeded the 72-hour mark. Of those 77 people, 73, or 95%, were black. Many people, including the woman described earlier who was charged with two parking code violations, have reported being held up until the 72-hour limit—despite having no ability to pay.

— Indeed, many others report being held for far longer, and documentary evidence is consistent with these reports. In April 2010, for example, the Chief of Police wrote an email to the Captain of the Patrol Division stating that the "intent is that when the watch commander / street supervisor gets the census from the jail he asks who will come up on 72 hrs.," and, if there is any such person; "he can have them given the next available court date and released, or authorize they remain in jail;

With the living, I am
familiar. A woman stretches
the truth to disappear it, throws
her voice to animate it. As when,
I imagine, the word was made
flesh. I've been trying to scrape
up what I remember:

1. 1,100 stems—long, headless;
2. a few bad apples;
3. “reports of a stolen pickup...”

You put down one color

Bearden thought *and it calls*

for an answer. What's an answer

to black, I wonder?