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PAYING FINANCIAL SANCTIONS VIA INCARCERATION: A CASE STUDY OF “SITTING OUT”

BETH A. COLGAN* & JORDAN BLAIR WOODS**

This Article provides a comprehensive statewide study of a practice by which courts order defendants to pay financial sanctions—fines, costs, and probation fees—by serving terms of incarceration. Though several states authorize these practices, to date, very little is known about the extent to which payment via incarceration occurs and the different ways it is employed. This Article examines the use of the practice in Nebraska, where it is colloquially referred to as “sitting out.” Our study specifically focuses on all misdemeanor cases in Nebraska county courts with judgments (an adjudication of guilt and/or sentencing) during the year 2019.

This study examines the ways in which payment via incarceration is consistent with and diverges from the archetypal “modern debtors’ prison,” in which penalties related to the nonpayment of fines are

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widespread, imposed against people of limited means and particularly people of color, and which carry the risk that the inherent revenue-generating qualities of financial sanctions will pervert crime policy.

We find that Nebraska's practices are consistent with that archetype in that payment via incarceration is deeply integrated into the jurisdiction's legal systems as evident through its widespread use. We discover that courts ordered 10,027 defendants to pay financial sanctions via incarceration in over a quarter of all misdemeanor cases in our dataset, an alarmingly high rate. Those defendants also sat out a notably high amount of financial debt—\$2,105,462 in the aggregate. At \$150 per day (the rate at which Nebraska credits incarceration against financial debt), the defendants in our study spent a minimum of 14,036 days in Nebraska county jails to pay off fines, costs, and probation fees.

The results of the study are also consistent with a second archetype—that in modern debtors' prisons, people of limited means, and particularly people of color, are subjected to financial sanctions they have no meaningful ability to pay and punished for their poverty when payment is not forthcoming. Our findings illustrate that many defendants who were subjected to sitting out were convicted for offenses frequently linked to poverty and many were declared indigent by the court for the purposes of appointing counsel. Further, the cases in our database exhibit troubling racial disparities.

Other findings, however, complicate the narrative surrounding modern debtors' prisons, especially with regard to revenue-generation incentives of government actors. On its face, sitting out appears to undermine the idea that government actors are motivated by revenue generation. Unlike systems in which the debt remains outstanding, when a defendant is ordered to sit out financial sanctions, the debt is paid off by the incarceration. This ensures that revenues are never secured, while leaving the jurisdiction to bear the expense of incarceration. To investigate this issue and track how money moves into and out of government coffers when sitting out is employed, we create an original typology of the various forms of payment via incarceration useful for studying Nebraska's system and those in other jurisdictions. What we find is geographic diversity in the mechanisms for sitting out that carry different fiscal implications.

After presenting the study's results, we conclude by discussing the key takeaways of our research, its limitations, and several law and policy implications that open potential avenues for future research.

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INTRODUCTION

On any given day, hundreds of people across the state of Nebraska are incarcerated in county jails where courts order defendants to serve periods of incarceration to pay off fines, costs, and probation fees imposed in misdemeanor cases—a process colloquially referred to in Nebraska as “sitting out.”¹ Nebraska is not alone. At least eighteen states have codified the use of incarceration as a payment method for financial sanctions, and other jurisdictions may employ the practice with or without such codification.² The rate by which time incarcerated pays for financial sanctions varies by jurisdiction, ranging between \$1 and \$250 per day, with Nebraska crediting incarceration against financial sanctions at \$150 per day in jail.³

¹ See *infra* Part I.A (describing Nebraska’s statutory scheme). System actors in some Nebraska counties also call this practice “laying out.” *E.g.*, Cases 12801, 12833, 13836, 14452, 15017, 15515, 15690, and 15727 in our dataset. We gave unique identifiers to each case in our dataset between numbers 1 and 15731. We use those identifiers in this Article when referencing cases as examples.

² See ALASKA STAT. § 12.55.051(a) (2024) (crediting \$50 per day towards fines and restitution); ARK. CODE ANN. § 16-13-703(c)(2) (2025) (crediting a maximum of \$100 per day towards fines); CAL. PENAL CODE § 1205(a) (Deering 2024) (crediting \$125 per day towards fines); CONN. GEN. STAT. § 18-50(a)(1) (2024) (crediting “a per diem rate equal to the average daily cost of incarceration as determined by the Commissioner of Correction” and an additional credit of \$50 per day towards fines if “such person is employed at productive or maintenance work and has established a satisfactory work record”); HAW. REV. STAT. § 706-644(3) (2024) (crediting \$250 per day towards fees or fines); IDAHO CODE § 20-624 (2024) (crediting \$35 per day towards fines); IND. CODE § 35-38-1-18(d)(2) (2024) (crediting \$20 per day towards fines); KY. REV. STAT. ANN. § 534.070(1) (LexisNexis 2017) (crediting \$50 per day towards costs, fees, or fines without participation in a community service or a labor program and \$100 per day with participation in a community service or a labor program); ME. STAT. tit. 17-A, § 1711(4)(A)(1) (2024) (crediting a minimum of \$25 and maximum of \$100 per day towards fines, the exact amount to be specified in the court’s order); NEB. REV. STAT. § 29-2412(4)(a) (2019) (crediting \$150 per day towards fines or costs); NEV. REV. STAT. § 176.075(1) (2023) (crediting \$150 per day towards fines or forfeitures); N.H. REV. STAT. ANN. § 618:8 (2024) (crediting \$150 per day towards fines); OHIO REV. CODE ANN. § 2947.14(D) (LexisNexis 2023) (crediting \$50 per day towards fines); OKLA. STAT. tit. 57, § 20 (2024) (crediting \$1 per day towards fines and costs); S.D. CODIFIED LAWS § 23A-27-25.5 (2024) (crediting \$60 per day towards fines or costs); TEX. CODE CRIM. PROC. ANN. art. 43.09(a) (West 2022) (crediting \$100 per day towards fines and costs); WIS. STAT. § 800.095(1)(b)(1)(a) (2020) (crediting at least \$50 per day against monetary judgments); WYO. STAT. ANN. § 6-10-105 (2011) (crediting \$15 per day towards fines or costs); see also VT. STAT. ANN. tit. 13, § 7180(c)(4)(B)(v) (2024) (allowing imprisonment to be credited against fines, surcharges, court costs, and any other assessments at “a rate determined by the court”).

³ See sources cited in *supra* note 2. The vast majority of cases in our dataset in which incarceration is ordered to pay off financial sanctions involve incarceration in Nebraska’s

These practices relate to what has come to be known as “modern debtors’ prisons,” something scholars, advocates, and journalists have paid significant attention to in the decade since abuses by the municipal courts in Ferguson, Missouri, and other jurisdictions struck a nerve.⁴ Broadly speaking, the archetypal modern debtors’ prison has three key, interrelated characteristics. First, it is a deeply integrated part of a jurisdiction’s system for processing public offenses, as evident, for example, through its widespread use.⁵ Second, it involves systems in which people of limited means, and particularly people of color, are effectively punished for their poverty when incarceration or other penalties (such as extensions of

county jails, though in a small number of cases the terms are served in state prisons. For ease of reference, we use the term “jail” to refer to both throughout.

⁴ See generally C.R. DIV., U.S. DEP’T OF JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [<https://perma.cc/6MLY-6Q9Y>]. For additional reports around the same period of time, see generally ALEX BENDER, STEPHEN BINGHAM, MARI CASTALDI, ELISA DELLA PIANA, MEREDITH DESAUTELS, MICHAEL HERALD, ENDRIA RICHARDSON, JESSE STOUT & THERESA ZHEN, NOT JUST A FERGUSON PROBLEM: HOW TRAFFIC COURTS DRIVE INEQUALITY IN CALIFORNIA (2015), <https://lccrsf.org/wp-content/uploads/2021/05/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-2015.pdf> [<https://perma.cc/SD6E-GENX>] (regarding the negative repercussions for low-income Californians of the use of driver’s license suspensions and financial penalties for nonpayment of traffic tickets); ACLU OF WASH. & COLUMBIA LEGAL SERVS., MODERN-DAY DEBTORS’ PRISONS: THE WAYS COURT-IMPOSED DEBTS PUNISH PEOPLE FOR BEING POOR (2014), <https://www.aclu-wa.org/docs/modern-day-debtors-prisons-washington> [<https://perma.cc/LX8N-HFC8>] (regarding the ways in which practices related to the imposition and collection of financial sanctions entrench low-income Washingtonians in poverty); HUMAN RIGHTS WATCH, PROFITING FROM PROBATION: AMERICA’S “OFFENDER-FUNDED” PROBATION INDUSTRY (2014), <https://www.hrw.org/report/2014/02/05/profitting-probation/americas-offender-funded-probation-industry> [<https://perma.cc/QPS9-M32J>] (regarding the practice of placing people on probation because they are unable to pay financial sanctions); ACLU, IN FOR A PENNY: THE RISE OF AMERICA’S NEW DEBTORS’ PRISONS (2010), <https://www.aclu.org/publications/penny-rise-americas-new-debtors-prisons> [<https://perma.cc/95PK-D2RU>] (regarding the implications of practices related to the imposition and collection of financial sanctions for low-income individuals in Georgia, Louisiana, Michigan, Ohio, and Washington).

⁵ In addition to the sources cited in *supra* note 4, see, for example, C.R. DIV., U.S. DEP’T OF JUST. & U.S. ATT’Y’S OFF., S. DIST. MISS., INVESTIGATION OF THE LEXINGTON POLICE DEPARTMENT AND THE CITY OF LEXINGTON, MISSISSIPPI 1, 23–25 (2024), <https://www.justice.gov/crt/media/1370761/dl?inline> [<https://perma.cc/BM3P-5X5R>] (regarding the common practice of unlawfully incarcerating people who cannot afford fines or fees in Mississippi); First Amended Class Action Complaint at 1–5, 8–44, *Coleman v. Brookside*, No. 2:22-CV-00423-RDP (N.D. Ala. June 17, 2022) (detailing a “years-long policy, practice, and custom of using [the town’s] law-enforcement and municipal-court systems to generate revenue for the [t]own’s police department, prosecutor’s office, and municipal court.”).

probation, imposition of interest or collections costs, driver's license suspensions, or other penalties) are imposed for nonpayment of financial sanctions.⁶ And third, it involves the risk that the inherent revenue-generating qualities of financial sanctions will create perverse incentives, whereby crime policy may be distorted as government actors use revenues from such sanctions as a means of tax avoidance.⁷

Very little is known, however, about the use of incarceration as a means of payment for financial sanctions⁸ and how it comports with or

⁶ E.g., Maureen R. Waller, Peter Rich & Nathan L. Robbins, *Predation and the Disproportionate Risk of Driver's License Suspensions in Economically and Racially Marginalized Communities*, 10 *SOCIUS* 1, 1–4, 13–14 (2024) (regarding driver's license suspensions); Beth A. Colgan, *Wealth-Based Penal Disenfranchisement*, 72 *VAND. L. REV.* 55, 57–86 (2019) (regarding extensions of probation and parole and the inability to register to vote due to nonpayment of financial sanctions); Dylan Lysen, *Low-Income Kansans Are Going into Debt Because Unpaid Traffic Tickets Rack Up Interest*, *KCUR* (Aug. 13, 2024, at 03:00 CT), <https://www.kcur.org/politics-elections-and-government/2024-08-13/low-income-kansans-are-going-into-debt-because-unpaid-traffic-tickets-rack-up-interest> [<https://perma.cc/L66V-YHLL>] (regarding interest).

⁷ The literature documenting these dual concerns is too expansive to be fully captured here, but recent publications include, for example, Beth A. Colgan & Jean Galbraith, *The Failed Promise of Installment Fines*, 172 *U. PA. L. REV.* 989 (2024); Jordan Blair Woods, *Reimagining Traffic Fines and Fees*, 14 *U.C. IRVINE L. REV.* 936 (2024); Alexes Harris, Mary Pattillo & Bryan L. Sykes (issue editors), *State Monetary Sanctions and the Cost of the Criminal Legal System: How the System of Monetary Sanctions Operates (issue 1) & The Consequence of Monetary Sanctions (issue 2)*, 8 *RSF: THE RUSSELL SAGE FOUND. J. SOC. SCIS. ISSUES 1 & 2* (Jan. 2022); Jordan Zvonkovich, Stacy H. Haynes, & R. Barry Ruback, *A Continuum of Coercive Costs: A State-Level Analysis of the Imposition and Payment Enforcement of Statutory Fees*, 34 *FED. SENT'G REP.* 113, 114 (2022); Katelyn J. B. King, Amber Petkus & Ebony L. Ruhland, *Exploring How Fines and Fees Finance Community Supervision*, 34 *FED. SENT'G REP.* 139, 139 (2022); Amy F. Kimpel, *Paying for a Clean Record*, 112 *J. CRIM. L. & CRIMINOLOGY* 439 (2022); Devah Pager, Rebecca Goldstein, Helen Ho & Bruce Western, *Criminalizing Poverty: The Consequences of Court Fees in a Randomized Experiment*, 87 *AM. SOCIO. REV.* 529 (2022); Karin D. Martin, Kimberly Spencer-Suarez & Gabriela Kirk, *Pay or Display: Monetary Sanctions and the Performance of Accountability and Procedural Integrity in New York and Illinois Courts*, 8 *RSF: THE RUSSELL SAGE FOUND. J. SOC. SCIS.* 128, 144 (2022); Jeffrey T. Ward & Nathan W. Link, *Financial Sanctions in Pennsylvania: An Examination of Assessed Amounts and Repayment by Indigent Status*, 34 *FED. SENT'G REP.* 166 (2022); Alexandra Natapoff, *Criminal Municipal Courts*, 134 *HARV. L. REV.* 964 (2021); Judith Resnik, *(Un)Constitutional Punishments: Eighth Amendment Silos, Penological Purposes, and People's "Ruin,"* *YALE L.J.F.* 365, 370–75, 386 (2020).

⁸ In 2016, the ACLU of Nebraska published the findings of a project for which they reviewed court records from four urban counties and observed arraignments and sentencing hearings in three of those counties, supplemented by defense attorney interviews, as part of a larger project regarding the use of bail and imposition of fines and costs. See generally *ACLU OF NEB., UNEQUAL JUSTICE: BAIL AND MODERN DAY DEBTORS' PRISONS IN NEBRASKA*

differs from general understandings of the modern debtors' prison. To examine those questions, our study focuses on all misdemeanor cases in Nebraska county courts with judgments (an adjudication of guilt and/or sentencing) during the year 2019.⁹

(2016) [hereinafter ACLU OF NEB., 2016], https://www.aclunebraska.org/app/uploads/2016/12/unequal_justice_2016_12_13.pdf [https://perma.cc/6WX6-4LAP] (regarding Douglas, Hall, Lancaster, and Sarpy counties). In 2022, they published an updated report based on court observations in two of those urban counties. *See generally* ACLU OF NEB., *BROKEN RULES: LAWS MEANT TO END DEBTORS' PRISONS ARE FAILING NEBRASKANS* (2022) [hereinafter ACLU OF NEB., 2022], https://www.aclunebraska.org/app/uploads/2022/12/aclu_broken_rules.pdf [https://perma.cc/W74V-ZPDU] (regarding Douglas and Lancaster counties). As indicated further below, the findings in the reports are consistent with our study. Outside of Nebraska, a pair of studies from Massachusetts examine what in that jurisdiction is referred to as "fine time." The first study, conducted on behalf of the state's Senate Committee on Post Audit and Oversight, examined 105 cases identified by ten of fourteen sheriff's departments in which judges had issued "Mittimus for Unpaid Monies" in 2015. SENATE COMM. ON POST AUDIT AND OVERSIGHT, *FINE TIME MASSACHUSETTS: JUDGES, POOR PEOPLE, AND DEBTORS' PRISONS IN THE 21ST CENTURY* 11 (2016). The second involves a survey of probation officers showing support for reforms restricting the use of payment via incarceration. *See generally* Matheson Sanchez & Shytierra Gaston, *Out With "Fine Time," in with Financial Waivers: Recent Developments in Massachusetts Probation Fines and Fees Policies*, 10 SOC. SCIS. 391 (2021). In addition, in 2025, the ACLU of Wisconsin released a report including a brief discussion of the use of "stay to pay contracts" through which Wisconsin municipal courts impose payment via incarceration at a minimum of \$50 per day, though the practice appears to be limited to a relatively small number of cases in two municipal courts. ACLU OF WIS., *FAILURE TO PAY: THE USE OF DEBT-BASED CARCERAL SANCTIONS AND WARRANTS IN WISCONSIN'S MUNICIPAL COURTS* 11 (2024), https://www.aclu-wi.org/sites/default/files/field_documents/2024.11.21-wi-finesfees-web.pdf [https://perma.cc/RPA6-LXMN]. Payment via incarceration also is occasionally mentioned in descriptive accounts of financial sanction practices. *See, e.g.*, ASHLEY SPALDING, PAM THOMAS, PATIENCE MARTIN, SCOTT WEST, & KAYLEE RAYMER, KY. CTR. FOR ECON. POL'Y, *THE HIDDEN WEB OF CRIMINAL LEGAL SYSTEM FINES AND FEES IN KENTUCKY* 6–7 (2025), <https://kypolicy.org/wp-content/uploads/2025/07/Hidden-Web.pdf> [https://perma.cc/5NGE-KF4J] (regarding the expense to the government of both forgoing collections of financial sanctions and expending resources on incarcerating people to pay such sanctions at \$50 per day); ALICIA BANNON, REBEKAH DILLER & MITALI NAGRECHA, BRENNAN CTR. FOR JUST., *CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY* 23 (2010) (stating that some states offer individuals the "choice" to pay fines and fee debt via incarceration).

⁹ Over 80% of criminal cases processed in Nebraska state courts involve misdemeanors, allowing us to study sitting out processes across a broad sample of cases. *See* COREY R. STEEL, NEB. JUD. BRANCH, COUNTY COURT ANNUAL CASELOAD REPORT: FISCAL YEAR 2024 4 (2024), <https://supremecourt.nebraska.gov/sites/default/files/publication-report-files/FY-2024-County-Court-Annual-Caseload-Report.pdf> [https://perma.cc/BE9F-4DB6] (reporting 64,189 misdemeanor cases and 15,737 felony cases filed in Nebraska county courts in fiscal year 2024); COREY R. STEEL, NEB. JUD. BRANCH, DISTRICT COURT ANNUAL CASELOAD REPORT: FISCAL YEAR 2024 4 (2024) <https://nebraskajudicial.gov/sites/default/files/>

With respect to the first key characteristic of modern debtor's prisons, our study shows that the scope of payment via incarceration in Nebraska is integral to the state's legal system and widely used, with defendants in our study paying fines, court costs, and/or probation fees via incarceration at an alarmingly high rate. Specifically, we identified 10,027 people who sat out financial debt through incarceration in 15,731—approximately one in every four—of the 62,390 misdemeanor cases with judgments from 2019 in the Nebraska county courts.¹⁰ Those defendants sat out a notably high amount of financial debt—\$2,105,462 in the aggregate.¹¹ At \$150 per day (the rate at which Nebraska credits incarceration against financial debt), the defendants in our study spent a minimum of 14,036 days in Nebraska county jails to pay off fines, costs, and probation fees.¹²

Our study is also consistent with the archetypal modern debtors' prison in that it provides evidence suggesting that the use of payment via incarceration results in people of limited means, and particularly people of color, being effectively punished for the inability to pay financial sanctions. While further research is needed to understand the role of poverty, our study provides reason for concern. The cases in our dataset include a significant number of failure to appear convictions (a practice that has been linked to nonattendance brought on by a fear that unpayable sanctions will be imposed, resulting in arrest or other poverty penalties) as well as convictions for other offenses frequently linked to poverty.¹³ We also found that in nearly 40% of cases the court entered an order to appoint counsel and/or found the defendant to be indigent for the purposes of appointing counsel—a key indicator suggesting that many people subjected to sitting out practices in our study had limited financial means.¹⁴ This is particularly noteworthy because both statutory and constitutional law restricts the substitution of incarceration for financial sanctions to cases in which defendants are capable of paying but do not do so.¹⁵ Further, we discovered troublesome racial disparities surrounding people subjected to sitting out

publication-report-files/FY-2024-District-Court-Caseload-Annual-Report.pdf [https://perma.cc/KMB4-FQYD] (reporting 1,221 “Felony 1” cases and 10,213 “Other Criminal” cases filed in Nebraska district courts in fiscal year 2024).

¹⁰ See *infra* Part II.

¹¹ See *id.*

¹² For a discussion of why this is a likely a conservative calculation, see *infra* note 56 and accompanying text and Methodology Appendix, Section D.2.

¹³ See *infra* Part III.A.

¹⁴ See *id.*

¹⁵ See *infra* note 185 and accompanying text.

processes in our study, especially with regard to Black and Native American defendants.¹⁶ In other words, our findings provide evidence supporting the claim that modern debtors' prisons do, in fact, exist.

The results of our study, however, also complicate the modern debtors' prison story, particularly by potentially destabilizing concerns that perverse incentives flow from the revenue generating capacity of financial sanctions. On its face, payment via incarceration appears to undercut the risk of perversion, because it both ensures no revenue is generated and creates systems costs related to incarceration. To examine whether this holds true, we analyze the revenue streams that would be interrupted by allowing payment for incarceration for various types of financial sanctions. We also create an original typology of the forms sitting out takes in Nebraska, organized temporally. We broadly categorize cases as involving: imposition of a jail term following a period in which the defendant had time to pay, imposition of time to be served directly after sentencing, application of credit for time served prior to sentencing, or a hybrid of those types. We find the use of these sitting out types varied across geographic area. Urban jurisdictions were most likely to employ sitting out to pay for mandatory costs and in ways that avoided the expense of collections oversight and additional jail time.¹⁷ Suburban and rural counties were more likely to employ sitting out to pay for discretionary fines, costs, and probation fees in ways that necessitated the expense of collections oversight and further incarceration.¹⁸

The Appendix includes greater detail about the design of our study, but two methodological notes are useful at the outset.

First, we chose Nebraska as the focus of our study for several principled and practical reasons. Nebraska is representative of other jurisdictions, in that the courts are empowered to impose not only fines, but also a wide variety of costs and probation fees.¹⁹ Examples include court

¹⁶ See *infra* Part III.B.

¹⁷ See *infra* Part IV.

¹⁸ *Id.*

¹⁹ See generally FINES & FEES JUST. CTR., ASSESSMENTS & SURCHARGES: A 50-STATE SURVEY OF SUPPLEMENTAL FEES (2022), <https://finesandfeesjusticecenter.org/content/uploads/2022/12/Assessments-Surcharges-2.pdf> [<https://perma.cc/QDD7-F92M>]; FINES & FEES JUST. CTR., 50 STATE SURVEY: PROBATION AND PAROLE FEES (2022), <https://finesandfeesjusticecenter.org/content/uploads/2022/05/Probation-and-Parole-Fees-Survey-Final-2022-.pdf> [<https://perma.cc/5YAC-7NAP>]. The nomenclature regarding costs and fees can vary from jurisdiction to jurisdiction. Costs may be broken down, for example, to distinguish between surcharges (also known as "assessments"), which fund government services that are not directly related to the underlying case, and costs (or fees), which relate

costs, prosecutor and indigent defense fees, and law enforcement costs—as well as financial sanctions that supply funding for a variety of projects unrelated to a given defendant’s case, including funds used for the training of various system actors, judicial retirement, and Nebraska’s civil legal aid system.²⁰ Moreover, Nebraska has a racially diverse population of almost 2 million people.²¹ Nebraska is also a state with great geographic diversity that includes a mix of urban, suburban, and rural areas.²² By examining the entire state of Nebraska, our study can explore similarities and differences in practices across those varied communities. Further, Nebraska’s collection methods, and in particular its use of failure to appear charges and warrants for nonpayment, are reflective of systems in place in many other jurisdictions.²³ Finally, Nebraska’s Administrative Office of the Courts and Probation has digitized its court files and captures audio transcripts of all hearings, which provides an opportunity for a mass data analysis of what occurs in these cases.²⁴

Second, we limited our study to 2019 for other substantive and practical reasons. This time frame allows a sufficient lag time both before and after sentencing to accommodate various types of sitting out given that

directly to a service or expense actually incurred in the case, such as an indigent defense fee. Nebraska does not describe the costs and fees it employs as surcharges or assessments. It also broadly uses the term costs as an umbrella term that includes some charges it calls “fees.” For purposes of compatibility with Nebraska’s court records and to avoid confusion, we use “costs” to refer to both surcharges and direct expenses (whether called costs or fees), and “probation fees” to refer to additional expenses incurred in relation to probation.

²⁰ See *infra* notes 30–37, 143–150 and accompanying text.

²¹ The 2020 Census reported that approximately 78.4% of Nebraska residents reported their race as White alone, 4.9% Black alone, 2.7% Asian alone, 1.2% American Indian and Alaska Native alone, 0.1% Native Hawaiian and Other Pacific Islander alone, 5.4% Other Race alone, and 7.3% Two or More Races. 12% of Nebraska residents reported their ethnicity as Hispanic. Residents who report their ethnicity as “Hispanic” in the U.S. Census can identify as any race, and thus are included in all applicable race categories. *NEBRASKA: 2020 Census*, U.S. CENSUS BUREAU (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/nebraska-population-change-between-census-decade.html#race-ethnicity> [<https://web.archive.org/web/20250402050538/https://www.census.gov/library/stories/state-by-state/nebraska.html#expand>] (scroll down to “Race and Ethnicity,” then click “Hispanic Origin”).

²² *Id.*

²³ See *infra* notes 82–84 and accompanying text.

²⁴ The Nebraska Judicial Branch has digitized its court records and made them available to the public online. *JUSTICE Search*, NEB. JUD. BRANCH [hereinafter JUSTICE], <https://www.nebraska.gov/justicecc/ccname.cgi> [<https://perma.cc/Q9AA-VFLZ>] (last visited Oct. 10, 2025). When users search for cases by judgment date, the search results note whether the judgment in the case has been satisfied or not.

the period of incarceration used to pay financial sanctions may include presentence detention or post-sentencing periods in cases where courts afforded defendants time to pay. Moreover, the nature of our research requires systematic coding of individual case files, ranging from only a few pages to over 150 pages long. With nearly 16,000 misdemeanor cases involving payment via incarceration with judgments in 2019 alone, the focus on a single year allows us to balance the high volume of misdemeanor cases with the research required to systematically examine and code the relevant case files.

This Article proceeds in five parts. Part I describes the statutory structure for payment via incarceration in Nebraska and explains the development of our dataset of cases in which courts ordered defendants to sit out financial sanctions in Nebraska. Part II presents the broad-scale results of our study which illustrate the scope of Nebraska's sitting out practices. Part III focuses on the question of who is subject to sitting out. It documents evidence consistent with the notion that people with limited means to pay are incarcerated for non-payment under these practices, with disparities evident along the lines of race alone and at the intersection of race, sex, and age. Part IV presents the original typology for sitting out practices. The typology provides a structure to assist scholars, practitioners, and lawmakers in assessing payment via incarceration in Nebraska and in other jurisdictions. The categorization of different mechanisms for sitting out within the typology reveals the ways in which a system seemingly designed to address a small number of cases in which those who can pay but do not can metastasize into a complex and far-reaching system. And it further sheds light on the complexity of the assumption that such systems are driven by revenue generation goals. Finally, Part V concludes by examining the takeaways, limitations, and numerous constitutional law and public policy concerns raised by our results that open potential avenues for future study.

I. SITTING OUT IN NEBRASKA

We begin with a discussion of the practice of "sitting out" in Nebraska. Following an overview of Nebraska's statutory structure, which restricts the use of the application of sitting out to those who can pay, we discuss our method for identifying sit out cases from among Nebraska's misdemeanor cases in 2019.

A. OVERVIEW OF NEBRASKA'S SITTING OUT STATUTES

Nebraska's legislature has afforded its courts the power to sentence a defendant to a period of incarceration to pay for eligible fines, a set of

standard costs, certain additional costs, and probation fees,²⁵ but only if the person is financially capable of paying. This power is explicitly set out in statute through two mechanisms: (1) courts are authorized to impose a period of incarceration at the time of sentencing, when they may order a defendant to “stand committed and be imprisoned in the jail of the proper county until the fines or costs are paid or secured to be paid or the offender is otherwise discharged according to [the] law”²⁶; and (2) courts are authorized to impose incarceration if a defendant ordered to pay fines and costs over a period of time fails to do so.²⁷

An assessment of a defendant’s financial capacity to pay in relation to the use of payment via incarceration in Nebraska dates back to at least the 1800s and continues today.²⁸ In the modern era, following advocacy by Nebraska’s ACLU, which spurred concerns that the state might be operating modern debtors’ prisons akin to practices in Ferguson, Missouri,²⁹ Nebraska’s legislature made three important sets of changes, which took effect in 2019.

²⁵ Nebraska’s primary sitting out statutes refer only to “fines and costs” without reference to probation fees. *See infra* notes 30–37 and accompanying text. At least some county courts appear, however, to have interpreted that phrase to encompass probation fees given that some cases in our dataset involve the payment of probation fees via incarceration. *See infra* Part IV.A. For further detail on what standard costs entail and what other costs are eligible for payment via incarceration, see *infra* notes 142–153 and accompanying text. Some Nebraska statutes setting out the structure for sitting out were amended during the time period in which the cases in our dataset were litigated. Where there is no relevant substantive distinction between statutes, we have included each date upon which the statute became effective in our citation. Where there is a distinction, we have indicated that through separate citations. Unless otherwise noted, any quoted statutory text is from the iteration of the statute in effect as of the date of publication. For all other citations to Nebraska statutes, we have included the date to the most recent published edition.

²⁶ NEB. REV. STAT. § 29-2206(1)(a) (2019 & 2020); NEB. REV. STAT. § 29-2206(1) (2012). As of July 1, 2019, Nebraska’s code also contains a less detailed and essentially duplicative statute allowing courts to order sitting out at sentencing. *Id.* § 29-2404 (2019).

²⁷ NEB. REV. STAT. § 29-2206(2) (2019 & 2020); NEB. REV. STAT. § 29-2206(2) (2012).

²⁸ NEB. GEN. STAT. 1873, ch. 58, § 528 (mandating a court to release a person confined for the nonpayment of fines and costs where the person “hath no estate wherewith to pay such fines and costs, or costs only . . . which discharge shall operate as a complete release of such fine and costs”). For the statute in effect for the cases in our dataset predating July 1, 2019, and with nearly identical language to the 1873 statute, see NEB. REV. STAT. § 29-2412(1) (2010).

²⁹ *New Nebraska law aims to keep poor people out of jail*, NEBRASKA.TV (May 28, 2017, at 17:30 CT), <https://nebraska.tv/news/local/new-nebraska-law-aims-to-keep-poor-people-out-of-jail> [<https://perma.cc/G9LE-RSRF>]; *see also* ACLU OF NEB., 2016, *supra* note 8, at 4–5, 7–8, 29–39 (documenting sitting out practices in four Nebraska counties).

First, with respect to those ordered to stand committed at the time of sentencing, the 2019 reforms emphasized the relevance of financial capacity—explicitly limiting the practice to cases in which the court “determines that the offender has the financial ability to pay such fines or costs”³⁰—and authorizing specific actions depending on the results of that determination. If a court finds a defendant can pay, it may order the defendant to sit out the financial sanctions imposed.³¹ If a court finds that a defendant may eventually be able to pay, but is incapable of doing so in full immediately, the court may order the defendant to pay in installments.³² If, however, a court finds that a defendant is unable to pay at all, it may not substitute in a term of incarceration. It must instead either decline to sentence the defendant to pay fines or costs or discharge the defendant from any previously imposed fines or costs; in addition, it may sentence the defendant to community service.³³

Second, the 2019 reforms provided procedures to be followed when a court affords a defendant time to pay but the defendant does not do so. The relevant statutory language requires courts, upon the arrest of a defendant on a warrant for the failure to pay financial sanctions, to hold a hearing for the purpose of determining whether the defendant has the ability to pay in full or in installments.³⁴ If a defendant is able to pay but refuses to do so,

³⁰ NEB. REV. STAT. § 29-2206(1)(a) (2019 & 2020). The prior iteration of the statute also discussed consideration of ability to pay. NEB. REV. STAT. § 29-2206(2) (2012) (allowing payment by installments “when any offender demonstrates to the court or magistrate that he or she is unable to pay such fines or costs in one lump sum”).

³¹ NEB. REV. STAT. § 29-2206 § (1)(b)(i) (2019 & 2020). Rather than ordering a period of incarceration, if the defendant can pay the court also has the option of imposing community service. *Id.* § (1)(b)(ii). While the prior iteration of the statute also authorized the court to order a defendant to stand committed, it was silent as to community service. NEB. REV. STAT. § 29-2206(1)–(2) (2012).

³² NEB. REV. STAT. § 29-2206(2) (2019 & 2020). When a court orders a defendant to pay by installment and the defendant is capable of paying but fails to do so, the court may find the defendant in contempt. *Id.* at § 29-2206.01. Further, in addition to ordering payment by installments, the court “may deduct costs from a bond posted by the offender.” *Id.* § 29-2206(3). Because the use of a bond does not result in additional jail time, cases in which fines and costs are paid through deduction from a bond are not included in our dataset unless some additional amount of financial sanction debt is also paid via incarceration. *See also* NEB. REV. STAT. § 29-2206(2)–(3) (2012) (authorizing payment by installments and bond deductions).

³³ *Id.* § 29-2206(1)(c)(i)–(ii) (2019 & 2020). The prior statute did not include direction to the court on what to do in cases in which the defendant was found incapable of paying and did not discuss community service. *See generally* NEB. REV. STAT. § 29-2206 (2012).

³⁴ NEB. REV. STAT. § 29-2412(1)(a) (2019). The reforms taking effect in 2019 also allowed a defendant to raise the issue of ability to pay on their own accord by requesting a

the court is authorized to incarcerate the defendant or to discharge the debt and order the defendant to complete community service.³⁵ But, as is the case at the initial sentencing, if the court determines that the defendant is unable to pay at the time of the hearing, it must either discharge the obligation to pay the financial sanctions or “make any necessary modifications” that would make it possible for the person to pay via installment.³⁶ Courts may also order the debt discharged and may also impose a term of community service.³⁷

Third, the 2019 reforms increased the rate at which days incarcerated were credited against financial sanctions owed,³⁸ raising the rate from \$90 to \$150 per day.³⁹

In addition to the explicit statutory authority noted above, some—though not all—of the county courts have expanded sit out practices beyond that provided in the relevant statutes to allow for the crediting of time spent in jail prior to sentencing against the debt.⁴⁰ Nebraska’s code does require

hearing. NEB. REV. STAT. § 29-2208(1)–(2) (2019). The determination of ability or inability to pay at that hearing leads to the same outcomes as at a hearing initiated by the court. *Id.* §§ 29-2208(3)–(5). The prior statute did not provide a mechanism for allowing time to pay. NEB. REV. STAT. § 29-2412 (2010). There are numerous cases in our dataset, however, in which courts had afforded time to pay in cases pre-dating the July 1, 2019 effective date of the statute. This may be because courts were aware of the pending change to the statutory language, which was signed into law in 2017. 2017 NEB. LAWS, L.B. 259, § 11. It may also be that the revised statute was designed to reflect existing practice.

³⁵ NEB. REV. STAT. § 29-2412(1)(b)(i)–(ii) (2019).

³⁶ NEB. REV. STAT. § 29-2412(1)(c)(i)(A)–(B) (2019). The prior statute mandated discharge of fines and costs upon a determination of inability to pay. NEB. REV. STAT. § 29-2412(1) (2010) (stating “it shall be the duty of such court or judge, on his or her own motion or upon the motion of the person so confined, to discharge such person from further imprisonment for such fine or costs, which discharge shall operate as a complete release of such fine or costs”).

³⁷ NEB. REV. STAT. § (1)(c)(i)(A), (ii) (2019).

³⁸ As noted, Nebraska has employed some form of payment via incarceration since at least 1873, at which point the rate was “at least one day for every three dollars of the amount adjudged against him.” NEB. GEN. STAT. 1873, § 528. The \$3 rate in 1873 is the equivalent of \$80.76 as of the date of publication. Ian Webster, *Consumer Price Index Inflation Calculator*, <https://www.officialdata.org/us/inflation/1873?amount=3> [https://perma.cc/QD9N-S6E8] (last visited Oct. 10, 2025).

³⁹ NEB. REV. STAT. § 29-2412(4)(a) (2019) (“Any person held in custody for nonpayment of fines or costs or for default on an installment shall be entitled to credit on the fines, costs, or installment of one hundred fifty dollars for each day so held.”). Though the statute increasing the rate did not go into effect until July 1, 2019, we found that courts had shifted to using the \$150 rate for all cases within our dataset.

⁴⁰ See *infra* Part IV.B.3 (describing the forms this practice takes in the counties in which it occurs).

courts to credit time spent in custody “prior to trial, during trial, [and] pending sentence,” though the statutes reference credit against jail sentences in the first instance, rather than against financial sanctions.⁴¹ The Nebraska appellate courts have never directly interpreted any of these statutes as providing authority to use time served pretrial to pay financial sanctions. In two cases decided in 1982, defendants challenged the application of time served pretrial against a financial sanction rather than the prison term imposed; the Nebraska Supreme Court agreed the application of past credit was procedurally improper under Nebraska’s statutory structure because the sentencing court had acted “without affording an opportunity [to the defendant] to show indigency,” so as to determine whether he must be “given an opportunity to pay.”⁴² In 2011, the Nebraska Court of Appeals interpreted the state’s good time statute, which provides credit against a jail term for time served, holding that days credited could not be counted as days sat out against financial sanctions.⁴³ In doing so, the court noted that the Nebraska Supreme Court had “not specifically [held] that credit for presentence incarceration can never be used to satisfy a fine.”⁴⁴ In the absence of explicit statutory authority or judicial interpretation, many county courts have been applying time served pre-trial to pay financial sanctions at the rate of \$150 per day.⁴⁵

B. IDENTIFYING “SIT OUT” CASES

Identification of sit out cases was greatly aided by the fact that Nebraska has digitized its court records and made them available to the public online through a case search system called “JUSTICE.”⁴⁶ On the JUSTICE website, users are able to search for trial cases by judgment date

⁴¹ NEB. REV. STAT. §§ 47-503, 83-1,106 (2024); *see* *State v. Zamarron*, 806 N.W.2d 128, 131 (Neb. App. 2011) (distinguishing between the statute affording credit for time served and the statute setting out the rate of payment for sitting out, the latter of which explicitly discusses those “held in custody for nonpayment of a fine or costs”), *superseded by statute on other grounds*, *State v. Collins*, 950 N.W.2d 89, 98–99 (Neb. 2020).

⁴² *State v. Holloway*, 322 N.W.2d 818, 821 (Neb. 1982); *see also* *State v. Brumfield*, 324 N.W.2d 407, 408 (Neb. 1982) (citing *Holloway* for the proposition that “[w]here a fine has been imposed as part of a penalty which authorizes imprisonment up to the maximum period permissible, a court may not peremptorily direct that the fine be satisfied by crediting the pretrial custody time against it” because “[t]he defendant must be afforded an opportunity to pay the fine in accordance with law”).

⁴³ *Zamarron*, 806 N.W.2d at 131.

⁴⁴ *Id.* at 132.

⁴⁵ *See infra* Part IV.B.3.

⁴⁶ JUSTICE, *supra* note 24.

(month, day, and year), court type (county versus district⁴⁷), county name, and case type (civil, criminal, juvenile, probate, small claims, and traffic). After running a search, users can then electronically access the standardized docket and documents in the case file for each case result. The standardized docket contains various details about the case, including information about the parties/attorneys to the case; offense information by count (for example, the offense date, whether the defendant pled guilty or not, the sentence imposed, etc.); warrant information; bond information; itemized court costs; payment types, dates, and amounts; and a register of actions, including notes organized by date of the events occurring in the case, with .pdf links to most relevant documents. Although the number of available electronic documents varied by county and by case, the available documents usually included, at a minimum, the complaint or citation, appearance bonds, orders of release from custody, any warrants issued, court orders (including orders to appear and appoint indigent defense counsel), and journal entries and orders that include information about the case (including the names of the judge and attorneys, whether indigency hearings for the purpose of appointing counsel were held and the outcomes of those hearings, and detailed information about sentencing and any credit for time served against a defendant's jail sentence or financial debt).

To identify the sit out cases, we followed a few steps. First, we searched for criminal county court cases in every Nebraska county for each calendar date during 2019. We then downloaded .pdfs of the standardized dockets and individual case files. We scraped the standardized dockets with a Python script to acquire the data associated with each case. Part of our dataset was built using that scraped data.

From the scraped data, we identified 62,390 misdemeanor cases with judgments in Nebraska county courts during 2019.⁴⁸ We primarily used two methods of narrowing down that subset of cases to identify the 15,731

⁴⁷ Though both county and district courts may hear misdemeanor cases in Nebraska, our preliminary review of the district court dockets from 2019 across all Nebraska counties did not reveal any non-felony cases, though it is possible that some district court cases were ultimately pled down to misdemeanors. *See infra* note 206 and accompanying text.

⁴⁸ Cases in the Nebraska county courts are classified as felony, extradition, misdemeanor, or game and parks. Given that our study focused on misdemeanors, we exclude felony and extradition cases from our final dataset. Game and parks cases typically involve misdemeanors or low-level violations. Therefore, we consider those cases to meet our definition of "misdemeanor" for the purposes of our study and include them in our final dataset. *See infra* Methodology Appendix at B.1.

misdeemeanor cases involving a sit out.⁴⁹ First, the scraped payments data allowed us to separate cases that included “jail time” payments for any financial sanction imposed in the case. From our hand-coding of each of those case files, we concluded that nearly all jail time payments corresponded with defendants who paid financial sanctions via incarceration, excluding only a handful that appeared to be data entry errors. Second, while coding the case files, we discovered that one urban county also used an “alternative satisfaction” label for the payments listed in 3,665 cases to reflect instances where defendants paid financial sanctions via incarceration or other alternate means such as community service. We manually went through each of those case files and determined that 3,458 involved a sit out. We also examined the use of the “alternative satisfaction” label in other counties and found it was used much less frequently (202 cases total), but as a matter of precaution, we examined those files and determined that very few constituted sit outs. Finally, we also examined the 1,261 cases in which a payment type was described as “non-monetary recognition,” finding that a handful of those cases referred to instances where courts ordered defendants to pay financial sanctions via incarceration.

II. BROAD-SCALE RESULTS: THE SCOPE OF SITTING OUT IN NEBRASKA

One of the key characteristics of modern debtors’ prisons is that the practices are deeply integrated into a jurisdiction’s legal system as evident, for example, from its widespread use—something that holds true for payment via incarceration in Nebraska in our study. The analysis below presents broad-scale findings on the frequency of sit out cases; the amounts of financial sanctions defendants sat out; the various punishments imposed in the sit out cases; and the manner of disposition in the sit out cases. It is evident from the extensive use of sitting out in Nebraska that its system is consistent with the archetypal modern debtors’ prison.

⁴⁹ In a small number of case files where the prosecution had filed charges in more than one matter, the prosecution agreed to dismiss one or more cases as part of a plea agreement in which the costs for those dismissed cases were to be paid in exchange for the dismissal. *E.g.* Case 12317, Transcript of Sentencing Hearing. The case files for those in which a conviction is entered only record sit outs for costs associated with the case of conviction. Although it is possible that defendants also sat out the costs for the cases that were dismissed at their own cost, we could not locate the case files for those dismissed cases on Nebraska’s JUSTICE website, and therefore the actual use of sitting out documented here may be slightly conservative.

Since our study results take geographic diversity into account, it is instructive to explain our approach to operationalizing that aspect of the study. Given its geographic diversity and our ability to obtain case files statewide, Nebraska offers an opportunity to examine observable geographic differences in how sitting out is imposed in the state. To operationalize geographic diversity, we used the U.S. Department of Agriculture's 2023 Rural-Urban Continuum Codes (RUCC) to classify Nebraska's counties in our dataset as urban, suburban, or rural.⁵⁰ The 2023 RUCC is based on data from the 2020 U.S. Census, which is the closest available Census data to the 2019 time frame of our study. The RUCC assigns a code between one and nine to each county in the United States that "distinguish[es] U.S. metropolitan (metro) counties by the population size of their metro area, and nonmetropolitan counties by their degree of urbanization and adjacency to a metro area."⁵¹ Counties with greater degrees of rurality receive higher codes. Metropolitan counties—which we designated as "urban"—receive codes between one and three. The most rural counties—which we designated as "rural"—receive codes between seven and nine. Nonmetropolitan counties with greater degrees of urbanization and proximity to a metro area—which we designated as "suburban"—receive codes between four and six. Cases from seventy-nine of Nebraska's ninety-three counties were represented in our dataset.⁵² Based on the RUCC codes, we classified eleven of the Nebraska counties represented in the dataset as urban, eleven as suburban, and fifty-seven as rural.

Case Frequency. Our broad-scale results show that sitting out in Nebraska's county courts is widespread: 10,027 people sat out financial sanction debt through incarceration in 15,731—approximately one in every four (25.21%)—of the 62,390 misdemeanor cases with judgments from 2019. Of the 10,027 defendants, 68.39% (6,857 defendants) sat out financial debt through incarceration in only one case in our dataset, 19.41% (1,946 defendants) sat out financial debt in two cases, 6.56% (658 defendants) sat out in three cases, and 5.64% (566 defendants) sat out in four or more cases.⁵³

⁵⁰ Austin Sanders, *Rural-Urban Continuum Codes - Documentation*, U.S.D.A. (Jan. 7, 2025), <https://www.ers.usda.gov/data-products/rural-urban-continuum-codes/documentation> [<https://perma.cc/92Z2-NST2>].

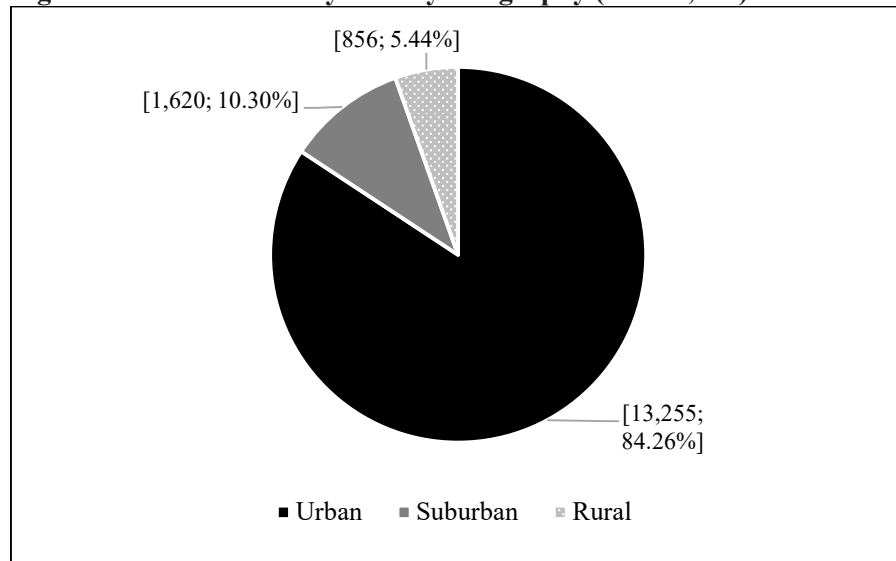
⁵¹ *Id.*

⁵² All of the fourteen counties that are not represented in the dataset are rural.

⁵³ More specifically, 3.05% (306 defendants) sat out financial debt in four cases, 1.06% (106 defendants) sat out in five cases, 0.75% (75 defendants) sat out in six cases, 0.28% (28

To understand whether these broad-scale results were consistent state-wide, we examine the frequency of the imposition of payment via incarceration by county type. Unsurprisingly, urban counties—which have larger populations—account for the greatest proportion of cases in our dataset. As Figure 1 shows below, 84.26% of the cases came from urban counties, 10.30% from suburban counties, and 5.44% from rural counties.

Figure 1: Sit Out Cases by County Geography ($N = 15,731$)



We then compare the proportion of misdemeanor cases that involve sit outs to those that do not across county type. As noted above, in our preliminary data analysis we identified 62,390 misdemeanor cases with judgments from 2019 in Nebraska county courts statewide. As Figure 2 shows below, we find that sitting out was more common in urban counties (31.81% of 41,674 urban cases) compared to suburban counties (15.13% of 10,707 suburban cases) and rural counties (8.55% of 10,009 rural cases). In other words, the greatest number of sit out cases came from urban counties both in actual terms and as a percentage of misdemeanors adjudicated in those counties overall.

defendants) sat out in seven cases, and 0.51% (51 defendants) sat out in eight or more cases. The maximum number of cases that a single defendant in our dataset was involved in was thirty-three.

Figure 2: Proportion of Sit Out Cases in All Misdemeanor Cases with Judgments from 2019 in Nebraska County Courts by County Geography



Amount Sat Out. The defendants in our dataset sat out a total of \$2,105,462 in fines, standard costs, other costs, and probation fees,⁵⁴ which—at \$150 per day—translates to a minimum of 14,036 days that defendants sat out their respective financial sanctions in jail. Many cases include documentation showing defendants sat out financial sanctions at a pro-rated amount proportional to the amount owed (e.g., 5.28 hours for \$33 in costs).⁵⁵ It is important to note, however, our calculation of days sat out is a particularly conservative one, as we discovered several cases in which defendants were incarcerated for longer periods when sitting out debt than the amount that they actually owed at the statutory rate.⁵⁶ The amount of the financial sanctions sat out in any given case is also noteworthy. The average amount that defendants in our dataset sat out in each case is \$133.84, the median amount is \$45, and the maximum is \$2,183. What is

⁵⁴ We round any reported dollar amounts to the nearest dollar.

⁵⁵ For examples, see *infra* notes 181–182 and accompanying text.

⁵⁶ E.g., Case 6308 (requiring defendant to sit out \$300 worth of time for a \$283 debt). The records in some of the counties were not sufficient to ascertain the scope of this problem. See *infra* notes 181–182 and accompanying text. Therefore, we are only able to provide a minimum number of days defendants were incarcerated to pay off financial sanctions.

striking is that courts ordered defendants be incarcerated to collect only \$1 in seventy-one cases (0.45% of cases in our dataset) and to collect less than \$10 in 154 cases (0.98% of cases in our dataset).

As shown in Table 1 below, the dollar value of financial sanctions paid via incarceration is driven by fines, whereas the number of cases where courts imposed incarceration to pay financial sanctions is driven by costs.

Table 1: Dollar Amounts of Financial Sanctions Paid via Incarceration

Fines		
<i>Financial Sanction</i>	<i># of Cases Imposed and Sat Out</i>	<i>Dollar Amount Sat Out (%)</i>
State Fines	4,538	\$1,040,281 (49.41)
City Fines	2,602	\$473,162 (22.47)
Total	7,090	\$1,513,442 (71.88)
Standard Costs		
<i>Financial Sanction</i>	<i># of Cases Imposed and Sat Out</i>	<i>Dollar Amount Sat Out (%)</i>
Filing Fees	14,184	\$199,015 (9.45)
Filing Fee/JRF	14,123	\$84,365 (4.01)
Legal Aid/Services Fund.	14,099	\$59,834 (2.84)
Indigent Defense Fee	14,112	\$42,047 (2.00)
Law Enforcement Improvement Fund	14,175	\$28,392 (1.35)
Civil Legal Services Fund	14,029	\$14,058 (0.67)
NSC Education Fee	13,986	\$14,015 (0.67)
Crime Victim Fund	13,583	\$13,621 (0.65)
Dispute Resolution Fee	13,989	\$10,513 (0.50)
Total	14,541	\$465,860 (22.13)
Other Costs		
<i>Financial Sanction</i>	<i># of Cases Imposed and Sat Out</i>	<i>Dollar Amount Sat Out (%)</i>
Sheriff's Service Fees	3,027	\$60,210 (2.86)
Witness Fees	525	\$23,646 (1.12)
Lab Tests	175	\$15,008 (0.71)
Breath Test-Other	166	\$9,682 (0.46)
Reimburse Co-Fees Advanced	209	\$3,798 (0.18)
Breath Test-Co.	41	\$2,910 (0.14)
Reimburse City	134	\$2,243 (0.11)
Reimburse Attorney Fee-Co.	1	\$470 (0.02)
District Court Filing Fee	2	\$142 (0.01)
Holding Acct.	4	\$80 (0.00)
Cert/Auth Copy Fees	5	\$6 (0.00)
Seal Affixed	5	\$6 (0.00)
Total	3,835	\$118,201 (5.61)

Probation Fees		
<i>Financial Sanction</i>	<i># of Cases Imposed and Sat Out</i>	<i>Dollar Amount Sat Out (%)</i>
Probation Fee	15	\$3,778 (0.18)
Offender Assessment Screen	181	\$1,803 (0.09)
Substance Abuse Testing	30	\$1,628 (0.08)
Probation Administration Fee	25	\$750 (0.04)
Total	205	\$7,959 (0.38)
Grand Total		\$2,105,462 (100.00)
# of Sit Out Days (\$150/day)		14,036.41

Fines account for the greatest share of total dollar amounts defendants sat out in our dataset, comprising 71.88% (\$1,513,442) of the \$2,105,462 defendants sat out overall. Defendants sat out debt owed from a fine in 7,090 (45.07%) of the 15,731 sit out cases. Approximately 64% of those cases involve state fines (4,538 cases) and 36.70% involve city fines (2,602 cases).⁵⁷ The average fine satisfied through sitting out in a single case is \$213.46 and the median is \$150. The minimum amount of fines sat out in a single case is \$1.00 and the maximum amount is \$2,100.

Sitting out of costs is far more prevalent than fines in the dataset. Defendants are charged a standard set of \$50 in costs in each case, \$33 of which are eligible for defendants to pay through incarceration.⁵⁸ Defendants sat out a standard cost in 14,541 (92.44%) of the sit out cases in our dataset. The average amount of standard costs sat out in a single case is \$32.04 and the median is \$33.00. The minimum amount of standard costs sat out in a single case is \$0.25 and the maximum amount is \$66.00. Standard costs accounted for 22.13% (\$465,860) of the \$2,105,462 defendants sat out overall.

In addition to standard costs, judges may also impose a variety of other costs in a defendant's case. Table 1 above shows that defendants sat out at least one of these other costs in 3,835 (24.37%) of the sit out cases. The average amount of other costs sat out in a single case is \$30.81 and the median amount is \$12.00. Moreover, the minimum amount of other costs sat out in a single case is \$1.00 and the maximum is \$765.20. These other

⁵⁷ In fifty cases in our dataset (0.71% of the 7,090 cases in which defendants sat out fines via incarceration), defendants sat out both a state and a city fine.

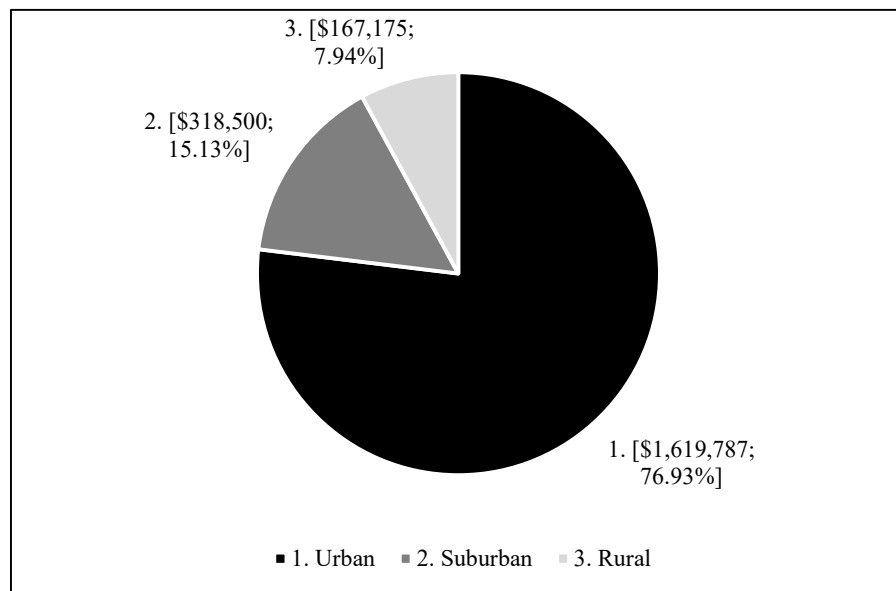
⁵⁸ For a more comprehensive discussion of these standard costs, see *infra* Part IV.A.

costs accounted for 5.61% (\$118,201) of the \$2,105,462 defendants sat out overall.

Finally, Table 1 above shows that defendants sat out probation fees in 205 (1.30%) of the sit out cases. The average amount of probation fees sat out in a single case is \$38.82 and the median amount is \$10.00. Moreover, the minimum amount of probation fees sat out in a single case is \$0.75 and the maximum is \$730.00. Probation fees account for 0.38% (\$7,959) of the \$2,105,462 that defendants sat out overall.

As with case volume, unsurprisingly, urban counties account for the greatest proportion of the \$2,105,462 total financial sanctions paid via incarceration in our dataset—though, defendants sat out higher amounts of financial sanctions on average in the suburban and rural counties. As shown in Figure 3 below, urban counties account for 76.93% (\$1,619,787), suburban counties account for 15.13% (\$318,500), and rural counties account for 7.94% (\$167,175). Moreover, sit outs in the urban counties average \$122.20 per case, whereas suburban counties average \$196.60 per case, and rural counties average \$195.30 per case.

Figure 3: Financial Sanctions Paid via Incarceration by County Geography



The higher case volume/lower dollar value of the average sit out in urban counties and lower case volume/higher dollar amount of the average

sit out in suburban and rural counties is explained in part by the nature of the financial sanctions imposed. As Table 2 shows below, a considerably higher proportion of standard costs were paid through incarceration in urban counties compared to suburban counties and rural counties, but a higher percentage of fines, other costs, and probation fees were paid through incarceration in suburban counties and rural counties compared to urban counties.

Table 2: Financial Sanctions Paid via Incarceration by County Geography

	Urban (%)	Suburban (%)	Rural (%)
Fines	\$1,137,741 (70.24)	\$249,000 (78.18)	\$126,702 (75.79)
Standard Costs	\$401,719 (24.80)	\$41,915 (13.16)	\$22,226 (13.30)
Other Costs	\$76,776 (4.74)	\$24,973 (7.84)	\$16,451 (9.84)
Probation Fees	\$3,551 (0.22)	\$2,612 (0.82)	\$1,796 (1.07)
Total	\$1,619,787 (100.00)	\$318,500 (100.00)	\$167,175 (100.00)

Other Punishments Imposed. We are also interested in the relationship between financial sanctions paid via incarceration and the imposition of jail and probation (or not) in Nebraska's misdemeanor cases.⁵⁹ To understand that relationship, we examine the types of punishment imposed at initial sentencing.⁶⁰ Figure 4 below sets out the rates at which courts imposed jail and probation in the dataset cases, along with the imposition of fines, costs,⁶¹ and probation fees (with "probation" representing both the term of probation and probation fees, given that at least some fees were imposed in all probation cases).⁶² Courts imposed jail time as a sentence in its own right in nearly 60% of all cases (9,720 cases, or 61.79%). In most cases, courts imposed either jail or fines, imposing both in only 1,218 (7.74%) of cases. There were 485 cases (3.08% of cases in our dataset) where courts imposed terms of probation/probation fees. Courts imposed probation/probation fees along with jail in over 40% of all

⁵⁹ Nebraska's misdemeanor courts also occasionally applied other forms of punishment, including restitution, community service, house arrest, and driver's license suspension.

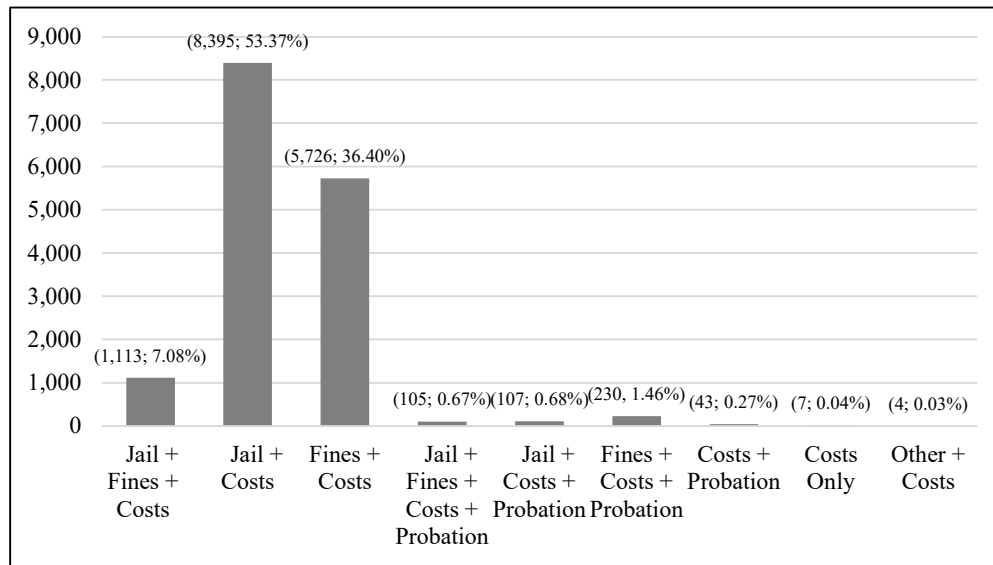
⁶⁰ Of course, some cases in which a person is initially sentenced to probation ultimately resulted in a term of incarceration if courts revoked probation. But for our purposes here, we are addressing only sentencing initially imposed.

⁶¹ For purposes of legibility, we have not differentiated between standard costs and other costs in this portion of the analysis. See *infra* notes 142–153 and accompanying text (describing various forms of costs eligible to be paid through sitting out).

⁶² See *infra* notes 152–153 and accompanying text.

probation cases (212 cases, 43.71%), along with fines in over two-thirds of all probation cases (335 cases, 69.07%), and both jail and fines in just over 20% of all probation cases (105 cases, 21.65%).⁶³ Whether or not jail or probation was imposed, courts imposed costs in all cases and, surprisingly, there were a small number of cases—seven in total—for which the imposition of court costs was the only punishment ordered.⁶⁴

Figure 4: Sanction Types Imposed in Sit Out Cases (N = 15,731)



⁶³ It was less common for a court to impose jail, fines, and probation; of the 105 cases in which a court did so, 78.10% (eighty-two cases) involved DUI offenses.

⁶⁴ The offenses of conviction for these seven cases were for shoplifting (Case 2268, Case 13882), driving with a suspended license (Case 3478), disorderly conduct (Case 3798), loitering and trespass (Case 9751, Case 12094), and having overgrown weeds (Case 12920). There were an additional four cases, which we have described in Figure 4 as “Other + Costs.” In three of those cases the court-imposed restitution (which is ineligible for payment via incarceration) along with costs that became subject to a sit out. *See* Case 14378 (criminal mischief); Case 14592 (shoplifting); Case 15099 (issuing a bad check under \$500). Nebraska statutes that set out the structure for sitting out only explicitly credit incarceration against fines, costs, or “installments” (which Nebraska statutes describe as arrangements set by the court to authorize payment of fines or costs over a set period time). *See* NEB. REV. STAT. § 29-2412(3) (2010); *id.* at § 29-2412(4)(a) (2019) (“Any person held in custody for nonpayment of fines or costs or for default on an installment shall be entitled to a credit on the fines, costs, or installment of one hundred fifty dollars for each day so held”); NEB. REV. STAT. § 29-2206(2) (2012, 2019, 2020) (regarding “installments”); *see also* NEB. REV. STAT. § 29-2286 (2024) (regarding restitution). In one additional case, a court imposed a term of community service in addition to costs paid via incarceration. *See* Case 9340 (disturbing the peace).

There are some geographic differences in the use of the various forms of punishment. As shown in Table 3, the imposition of jail is consistent across county geography and standard costs were imposed in all cases, but urban judges were less likely to impose fines, other costs, and probation/probation fees than judges in suburban and rural counties.

Table 3: Sanction Types Imposed in Sit Out Cases by County Geography

	Urban (%) (N = 13,255)	Suburban (%) (N=1,620)	Rural (%) (N=856)
Jail	8,219 (62.01)	960 (59.26)	537 (62.73)
Fines	5,775 (43.57)	938 (57.90)	461 (53.86)
Standard Costs	13,255 (100.00)	1,620 (100.00)	856 (100.00)
Other Costs	3,634 (27.42)	1,013 (62.53)	450 (52.57)
Probation/Probation Fees	354 (2.67)	102 (6.30)	29 (3.39)

We also explore whether judges revoked a defendant's driver's license as punishment given the many ways that a suspended license can contribute to a cycle of debt-based poverty, especially for individuals who rely on their vehicles for work obligations or basic needs like groceries and child-care.⁶⁵ We find that judges revoked a defendant's driver's license as punishment in 8.23% of the cases in our dataset (1,295 cases). Courts often imposed license revocations for significant periods of time (6 months or longer). Just over 60% of these cases involve driving under the influence (DUI) offenses (62.01%, 803 cases). Over one-third of these cases (36.60%, 474 cases), however, involve traffic offenses, most commonly for driving on a suspended or revoked license.

Disposition. Finally, we examine the manner of disposition. Unsurprisingly, convictions secured via plea bargaining are prominent in

⁶⁵ See William E. Crozier & Brandon L. Garrett, *Driven to Failure: An Empirical Analysis of Driver's License Suspension in North Carolina*, 69 DUKE L.J. 1585, 1598 (2020) ("Court debt can make it difficult for individuals to secure employment, housing, public assistance, and reinstatement of driver's licenses."); Foster Kamanga, Virginia Smercina, Barbara G. Brents, Daniel Okamura & Vincent Fuentes, *Costs and Consequences of Traffic Fines and Fees: A Case Study of Open Warrants in Las Vegas, Nevada*, 10 SOC. SCIS. 440, 443 (2021) (noting that because of monetary sanctions, "[d]rivers may have their licenses suspended . . . risk . . . loss of voting rights, job loss, [and] reduced housing and credit opportunities" (internal citations removed)).

the dataset, as is typical of misdemeanor practices nationwide.⁶⁶ Over 99% of the 15,731 sit out cases have at least one conviction that resulted from a guilty or no-contest plea (15,622 cases, 99.31%).⁶⁷ Only 117 sit out cases (0.74%) include a conviction at trial.⁶⁸ These cases are not mutually exclusive in that several cases had some counts resolved by guilty pleas and other counts that resulted in convictions after bench or jury trials.

III. PUNISHMENT OF POVERTY: CASE AND DEFENDANT CHARACTERISTICS

The paradigmatic story of the modern debtors' prison is one where people of limited means, and particularly people of color, are subjected to financial sanctions they have no meaningful ability to pay, and then—when payment is not forthcoming—they are punished for their poverty through terms of incarceration or other poverty penalties all while the underlying debt remains outstanding.⁶⁹ The question is whether a system in which incarceration is used to pay financial sanctions will also be employed against people of limited means—a practice forbidden by applicable statutes and constitutional rules—and also exhibit racial disproportionality.

With the dataset cases identified, we are able to observe the characteristics of the cases in which courts ordered payment via incarceration for the 10,027 defendants, with the goal of discerning whether the quintessential story of the modern debtors' prison holds true in a system in which payment via incarceration is used. As detailed below, key findings from this investigation include the significant relationship between sitting

⁶⁶ See Jenny Roberts, *Crashing the Misdemeanor System*, 70 WASH. & LEE L. REV. 1089, 1093–94 (2013) (discussing how plea bargaining is central to misdemeanor adjudication).

⁶⁷ More specifically, 11,663 of the 15,731 sit out cases (74.14%) include at least one conviction from a guilty plea and 4,031 cases (25.62%) include at least one conviction from a no-contest plea. It is important to note that these cases are not mutually exclusive in that several cases included a mix of some counts resolved by guilty pleas and others resolved by no-contest pleas.

⁶⁸ Given how rarely trials occurred, there is insufficient information from which to assess whether there is evidence of a “trial penalty”—in other words, whether courts sentenced defendants more severely for opting for trial rather than agreeing to plead guilty. See, e.g., Andrew Chongseh Kim, *Underestimating the Trial Penalty: An Empirical Analysis of the Federal Trial Penalty and Critique of the Abrams Study*, 84 MISS. L.J. 1195, 1242–43, 1252 tbl. 3 (2015) (finding that the average defendant who opted for trial received a 64% longer sentence than those who pled guilty).

⁶⁹ Additional poverty penalties may include extensions of probation or parole terms, interest and collection costs, and other collateral consequences. See *supra* note 6 and accompanying text.

out practices and crimes frequently related to poverty—including failure to appear convictions, the underlying cause of which may be a defendant’s fear of arrest for nonpayment, as well as other possible crimes of poverty. Further, we find concerning data suggesting courts imposed sitting out on defendants who qualified as indigent for purposes of defense representation. Both findings are consistent with court observations conducted by the ACLU in 2016 and 2022, in which the observed courts rarely conducted ability to pay analyses.⁷⁰ In addition, we find disparities in race alone, and at the intersection of race, sex, and age.

A. CASE CHARACTERISTICS INDICATIVE OF POVERTY

To better understand the role poverty plays in sitting out in Nebraska, we examine case characteristics as they relate to the nature of the offense, with a particular eye toward whether offenses of conviction may be related to a defendant’s poverty, and also examine access to indigent defense counsel.

To establish a baseline, we consider the charges brought in the dataset cases, finding that 34,275 total charges are represented. Over 60% of the cases in our dataset involve multiple charges (9,791 cases, 62.24%). The average number of charges per case is 2.17 and the median is two. The maximum number of charges in a single sit out case is nine.⁷¹ Almost half of the sit out cases have at least one dropped or dismissed charge (7,439 cases, 47.29%). Moreover, 9.26% of the sit out cases involve a charge that was amended to a lesser offense (1,457 cases).

We also examine convictions in our dataset. Just over 70% of the 15,731 cases involve a conviction on only one charge (11,288 cases, 71.76%), leaving almost 30% of the cases involving convictions on

⁷⁰ See ACLU OF NEB., 2022, *supra* note 8, at 7 (“People are routinely asked whether they would like to ‘sit out’ fees and fines in jail at a statutory rate of \$150 credit per day served because they cannot afford the costs.”); *id.* at 14–15 (reporting that judges frequently failed to advise a person about opportunities to present information related to ability to pay or to request a payment plan, a discharge of fines and fees, or community service and that “judges received information about the person’s ability to pay a fine before imposing that fine in only 36% of observed cases”); ACLU OF NEB. 2016, *supra* note 8, at 30–31 (reporting that in cases observed, judges made no inquiries about ability to pay or informed defendants of the payment plan, discharge, or community service options).

⁷¹ Of the 15,731 sit out cases, 5,938 cases (37.75%) have one charge, 4,774 cases (30.35%) have two charges, 2,772 cases (17.62%) have three charges, 1,388 cases (8.82%) have four charges, 564 cases (3.59%) have five charges, 182 cases (1.16%) have six charges, sixty-nine cases (0.44%) have seven charges, eighteen cases (0.11%) have eight charges, and twenty-six cases (0.17%) have nine charges.

multiple charges (4,443, 28.24%). The average number of convictions in a single sit out case is 1.36 and the median is one. The maximum number of convictions is eight.⁷²

Primary Offense Types. We turn next to the nature of the offenses underlying the convictions in our dataset. We classify the offenses underlying the convictions into eight primary offense categories: (1) violent;⁷³ (2) property;⁷⁴ (3) drug;⁷⁵ (4) DUI;⁷⁶ (5) public order;⁷⁷ (6) traffic;⁷⁸ (7) failure to appear;⁷⁹ and (8) other.⁸⁰ We organize the conviction data in a way that shows how many of the sit out cases in our dataset involve convictions from each of the primary offense categories. As Figure 5 shows, traffic offenses, property offenses, and public order offenses are

⁷² Of the 15,731 sit out cases, 11,288 cases (71.76%) have one conviction, 3,557 cases (22.61%) have two convictions, 627 cases (3.99%) have three convictions, 174 cases (1.11%) have four convictions, sixty-five cases (0.41%) have five convictions, twelve cases (0.08%) have six convictions, five cases (0.03%) have seven convictions, and three cases (0.02%) have eight convictions.

⁷³ Offenses in the “violent” primary offense category include assault/battery; child abuse/negligent care of a minor; disturbing the peace-fighting; domestic assault; enticing a minor into vehicle; false imprisonment; harassment/intimidation; motor vehicle homicide; sexual assault; stalking; and violating a protection order.

⁷⁴ Offenses in the “property” primary offense category include criminal mischief; fraud offenses; property damage; theft offenses; and trespass offenses.

⁷⁵ Offenses in the “drug” primary category include breath/inhale/drink/use of toxic compounds; causing a child/adult to ingest methamphetamine; imitating controlled substances; possessing controlled substances; unlawful acts relating to drugs; and use/possession of drug paraphernalia.

⁷⁶ Offenses in the “DUI” primary category include: boating under the influence; driving under the influence; transporting a child while intoxicated; violating an interlock restriction; and zero tolerance violations. We separated DUI from other traffic offenses to better capture its prevalence in the dataset cases.

⁷⁷ Offenses in the “public order” primary category include: animal violations, alcohol/tobacco offenses, contempt/lawful order/government operations violations, curfew, decency laws, disturbing the peace, failure to return library materials, firearm/weapon offenses, fire-related offenses, fireworks violations, food & beverage permit and operation violations, gambling/lottery violations, game/parks/hunting/fishing violations, housing violations, labor violations, nuisance offenses, parking violations, pedestrian violations, public property/littering violations, parental conviction for a child’s truancy, and violating custody orders.

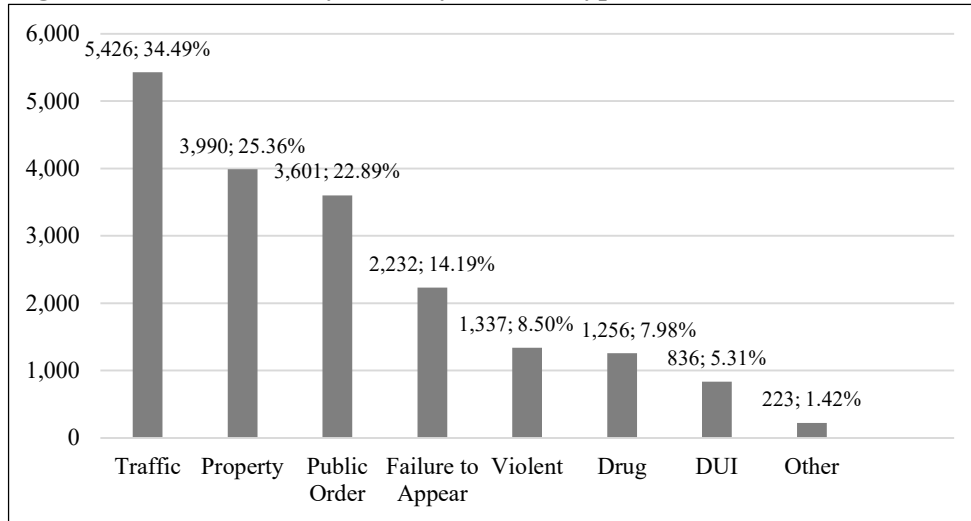
⁷⁸ Offenses in the “traffic” primary offense category include bicycle violations; commercial vehicle violations; equipment violations; leaving the scene of an accident; licensing, registration, or insurance violations; moving violations; and seat belt violations.

⁷⁹ See *infra* notes 81–83 and accompanying text.

⁸⁰ Offenses in the “other” primary offense category include inchoate offenses (accessory; aiding and abetting; and attempt); contributing to the delinquency of a child; and harboring a child.

the most common primary offense categories represented in the cases. Specifically, just over one in every three cases (34.49%) involves a traffic offense conviction, just over one in every four cases (25.36%) involves a property offense conviction, and just over one in every five cases (22.89%) involves a public order offense.⁸¹

Figure 5: Sit Out Cases by Primary Offense Type



Offenses Indicative of Poverty. One conviction type in this breakdown of offenses—failure to appear—is of particular interest because of its possible relationship to a defendant’s inability to pay financial sanctions, given that a reason defendants may not appear in court is due to fear of the imposition of unpayable financial sanctions or arrest for nonpayment.⁸² That fear may be well-grounded in Nebraska. Case files in one county included notations indicating that defendants were “arrested at counter,” suggesting arrests occurred at the time a defendant had come to the clerk’s window in the courthouse.⁸³ As a general matter, however, the case files do not include relevant documentation and so it is not possible from the

⁸¹ Figure 5 includes 18,901 offense categories of conviction for the 15,731 cases because in approximately 1,100 cases the defendant was convicted of more than one offense, with the offenses falling in at least two categories that did not involve failure to appear.

⁸² Cf. Crozier & Garrett, *supra* note 65, at 1592, 1598 (describing lower court treatment of failure to appear as related to inability to pay financial sanctions and the possibility that failure to appear warrants and charges can balloon financial sanction debt).

⁸³ E.g., Case 9575; Case 9755; Case 10075; Case 9672.

records to determine the overall scope of this or similar practices. Given this potential connection, we look specifically at circumstances under which, and the frequency by which, failure to appear convictions occur in the dataset cases. We find that 14.19% of the cases in our dataset include a failure to appear conviction (2,232 cases). Of those cases, in 10.35% (231 cases), failure to appear is ultimately the only charge for which the defendant was convicted. These figures underrepresent the use of failure to appear, as it does not include cases in which the prosecution added a failure to appear charge but later dismissed the charge prior to the defendant's entry of a guilty plea.⁸⁴

In addition to failure to appear, there are other crimes of conviction that may be indicative of poverty. To be clear, we do not suggest that every case in which a conviction of such an offense occurred stemmed from a person's poverty; rather, these are offenses frequently associated with poverty. We include in this analysis the following categories of poverty offenses:

Licensing, Registration, and Insurance: These offenses have frequently been tied to an inability of drivers to pay for licensing and registration fees or for automobile insurance, rather than improper driving conduct.⁸⁵ Additionally, in Nebraska, license revocation may be employed for the failure to pay child support, which may also be the result of limited financial means.⁸⁶ In Nebraska, driver's license fees range from \$10 to \$29.⁸⁷ Registration of a passenger vehicle in Nebraska includes a motor vehicle tax and motor vehicle fee—which are dependent upon the vehicle's value, age, and use, and ranges from \$25 to \$1,900 and \$5 and \$30 respectively—as well as registration fees of \$24.60 (which are significantly higher for electric vehicles), and additional local fees and taxes depending on the county of registration.⁸⁸ For example,

⁸⁴ *E.g.*, Case 2268.

⁸⁵ *E.g.*, John B. Mitchell & Kelly Kunsch, *Of Driver's Licenses and Debtor's Prison*, 4 SEATTLE J. FOR SOC. JUST. 439, 443 (2005) (reporting that most of the 186,500 driver's license suspensions in the state of Washington are due to nonpayment of fines). We did not include offenses related to commercial vehicles in this analysis.

⁸⁶ NEB. REV. STAT. § 43-3318(1)(c)(2) (2024); *see also* Vicki Turetsky & Maureen R. Waller, *Piling on Debt: The Intersections Between Child Support Arrears and Legal Financial Obligations*, 4 UCLA CRIM. JUST. L. REV. 117, 135 (2020) (regarding the ways in which license suspension undermines the goals of child welfare systems because “it reduces the ability of already economically destabilized parents to work, pay child support, and maintain parent-child relationships”).

⁸⁷ *Driver's License (Class O)*, NEB. DEP'T OF MOTOR VEHICLES, <https://dmv.nebraska.gov/dl/driver-license> [<https://perma.cc/MVF6-CD87>].

⁸⁸ *Registration Fees and Taxes*, NEB. DEP'T OF MOTOR VEHICLES, <https://dmv.nebraska.gov/dvr/reg/registration-fees-and-taxes> [<https://perma.cc/C8VT-CYLV>]; *Motor Vehicle Tax Calculation Table*, NEB. DEP'T OF MOTOR VEHICLES, <https://dmv.nebraska.gov/>

a 2019 analysis showed that the initial registration for a used 2007 sedan in Lincoln, Nebraska, would cost \$615.53 with annual registration fees of \$101.50 for subsequent years.⁸⁹ While insurance varies depending on the scope of coverage, age of vehicle, and other factors, one analysis of national insurance rates placed the average cost of automobile insurance in Nebraska in 2019 at \$1,370, a figure that has consistently trended upward, reaching an average of \$2,049 in 2024.⁹⁰ It is noteworthy that nearly 90% of the cases in the traffic offense category included at least one conviction related to licensing, registration, or insurance.

Equipment Violations: Another set of traffic offenses that may be tied to poverty are those related to equipment violations, such as a broken taillight or turn signal, given that the repair of that equipment may involve an expenditure that a person has no means to incur.⁹¹

Failure to Pay a Parking Ticket: One case in our dataset involves failure to pay a parking ticket. We have included this case because there is some literature indicating that ticketing for parking violations may occur disproportionately in low-income areas and particularly in low-income communities of color.⁹²

Homeless: These are offenses frequently associated with homelessness,⁹³ including placing a tent or other structure on a public sidewalk, remaining in a park or other

[sites/dmv.nebraska.gov/files/doc/dvr/MV_Tax_Fee_Chart.pdf](https://dmv.nebraska.gov/files/doc/dvr/MV_Tax_Fee_Chart.pdf) [https://perma.cc/RFG2-QRU9].

⁸⁹ Adam Weinberg, *Sticker Shock: How Nebraska Vehicle and Wheel Taxes Work*, PLATTE INST. (Dec. 30, 2019), <https://platteinstitute.org/sticker-shock-nebraska-vehicle-and-wheel-taxes/> [https://perma.cc/TM8G-GC54].

⁹⁰ SUSAN MEYER, THE ZEBRA, 2025 AUTO INSURANCE TRENDS REPORT (Jan. 15, 2026), <https://www.thezebra.com/resources/car-insurance/auto-insurance-trends-report/> [https://perma.cc/MAU7-Q6FR]; THE ZEBRA, 2020 THE STATE OF AUTO INSURANCE 47, <https://www.thezebra.com/state-of-insurance/auto/2020/reports/The-Zebra-State-of-Auto-Insurance-Report-2020.pdf> [https://perma.cc/HA4T-36Q9] (last visited Jan. 15, 2026).

⁹¹ See Nicholas J. Klein, Rounaq Basu & Michael J. Smart, *In the Driver's Seat: Pathways to Automobile Ownership for Lower-Income Households in the United States*, 18 TRANSP. RSCH. INTERDISC. PERSPS. 1, 10 (2023) (finding that among low-income car owners, “[t]he most common hardship was neglecting necessary car repairs because they were too expensive”).

⁹² E.g., Kasey Henricks & Ruben Ortiz, *When Turnips Bleed: The Racial Duality of Predatory Ticket Debt*, 59 LAW & SOC’Y REV. 265, 287 (2025) (regarding different degrees of asset poverty across racial group in Chicago in relation to ability to pay parking ticket debt); Noli Brazil, *The Unequal Spatial Distribution of City Government Fines: The Case of Parking Tickets in Los Angeles*, 56 URB. AFFS. REV. 823, 837–48 (2018) (finding disproportionately high parking ticket rates in Black communities in Los Angeles).

⁹³ The literature on the relationship between poverty and homelessness is far too expansive to be captured here, but for a recent example of that relationship, see Katherine M. O’Regan, Ingrid Gould Ellen & Sophie House, *How to Address Homelessness: Reflections from Research*, 693 ANNALS AM. ACAD. POL. & SOC. SCI., 322, 324 (2021) (noting “literature that establishes the robust link between homelessness and poverty”); Marybeth

area after closing, entering an uninhabitable building, public urination or defecation, and various forms of trespass. We would note that this category in particular is likely to be both overinclusive and underinclusive. In particular, the offense of trespass does often appear to directly relate to homelessness, such as situations where the offense involves a failure to leave shelters or other facilities providing services to unhoused people,⁹⁴ but may also capture other cases, including those initially charged as incidents of domestic violence that are pled down to trespass offenses.⁹⁵ On the other hand, we have not included within this category drug and alcohol offenses given the prevalence of both legal and illicit drug use among the general population, despite the significant link between homelessness and substance abuse.⁹⁶

Theft/Shoplifting/Checks: In this category we include various forms of theft (including possession and receipt of stolen property), shoplifting, and the issuance of bad checks. This category is likely overinclusive as there are undoubtedly situations in which people engage in such offenses for reasons other than poverty. Studies are, in fact, mixed on the relationship between theft offenses and poverty.⁹⁷ We include it here, however, because of the frequency by which documentation in the case files indicates such a relationship, such as when defendants are convicted for stealing items related to basic human needs.⁹⁸

Sex Work: These are offenses where the defendant was convicted of engaging in sex work but does not include cases in which a defendant solicited a sex worker. We include this as a category given the likelihood that sex work occurs under

Shinn & Colleen Gillespie, 37 AM. BEHAV. SCI. 505, 511–12 (1994) (“Not surprisingly, groups with the highest poverty rates are most likely to become homeless.”).

⁹⁴ E.g., Case 1775.

⁹⁵ E.g., Case 1609.

⁹⁶ See generally Ryan D. Assaf, Meghan D. Morris & Elana R. Straus, *Illicit Substance Use and Treatment Access Among Adults Experiencing Homelessness*, 333 J. AM. MED. ASS’N 1222 (2025).

⁹⁷ See Dean A. Dabney, Richard C. Hollinger & Laurie Dugan, *Who Actually Steals? A Study of Covertly Observed Shoplifters*, 21 JUST. Q. 693, 700–01, 719 (2004) (presenting findings on shoplifting from an observational study of a retail drug store in the Atlanta metropolitan area showing that “persons who appear to come from the lower and working classes engaged in more theft than those from the middle or upper classes”); Kaaryn Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, 3 U.C. IRVINE L. REV. 297, 323–33 (2013) (discussing connections between poverty and higher rates of retail theft for essential needs). But see Carlos Blanco, Jon Grant, Nancy M. Petry, H. Blair Simpson, Analucia Alegria, Shang-Min Liu & Deborah Hasin, *Prevalence and Correlates of Shoplifting in the United States: Results from the National Epidemiologic Survey on Alcohol and Related Conditions (NESARC)*, 165 AM. J. PSYCH. 905, 911 (2008) (presenting a study on shoplifting based on nationally representative data showing that “[s]hoplifting occurred across all sociodemographic strata” but “was more common among those with higher education and income”).

⁹⁸ E.g., Case 6359 (describing a theft offense as the shoplifting of baby formula).

circumstances where impoverished and financially vulnerable people sell sex as a survival strategy.⁹⁹

Taken together with the failure to appear cases, over half (58.09%) of the 15,731 cases in our dataset involve at least one poverty offense conviction (9,138 cases). Table 4 below provides a breakdown of the number of cases that involve at least one conviction in the poverty offense categories described above. To reiterate, we do not claim that the behavior underlying each of these cases was actually propelled by a defendant's poverty. It is, however, noteworthy that so many of the cases in our dataset—cases that by law should only include defendants who had the means to pay financial sanctions imposed—involve offenses that are commonly tied to poverty.

Table 4: Sit Out Cases Involving Poverty Offenses

<i>Poverty Offense Category</i>	<i># of Cases</i> ¹⁰⁰
Failure to Appear	2,232
Licensing, Registration, Insurance	4,880
Equipment Violations	69
Failure to Pay a Parking Ticket	1
Theft/Shoplifting/Checks	2,040
Homeless	1,521
Sex Work	11
<i>Total</i>	<i>9,138</i>

When broken down by geographic area, we find that urban counties are more likely (both in actual terms and by percentage of overall cases) than suburban and rural counties to involve cases with a poverty conviction, though a substantial number of poverty offenses are implicated across the board. As shown in Table 5, of the 9,138 cases involving a poverty offense conviction, 87.59% (8,004 cases) came from urban counties, 8.35% (763 cases) suburban counties, and 4.06% (371 cases) rural counties. When

⁹⁹ See Yvette Butler, *Survival Labor*, 112 CALIF. L. REV. 403, 413 (2024) (describing the “exchange of sexual services for compensation” as an example of a survival crime); see also Meda Chesney-Lind, *Girls’ Crime and Woman’s Place: Toward A Feminist Model of Female Delinquency*, 35 CRIME & DELINQ. 5, 24 (1989) (explaining how statutes intended to “protect” young people instead force “young female runaways . . . into the streets”).

¹⁰⁰ Note that the sum of each poverty offense category is greater than the total (9,138) because there were a small proportion of cases involving convictions across more than one poverty offense category.

adjusted for the percentage of cases in the jurisdiction, urban county convictions for poverty offenses remain higher.

Table 5: Sit Out Cases Involving Poverty Offenses

<i>County Type</i>	<i># of Sit Out Cases</i>	<i># of Poverty Offense Cases</i>	<i>% (# of Poverty Offense Cases/# Sit Out Cases)</i>
Urban	13,255	8,004	60.38
Suburban	1,620	763	47.10
Rural	856	371	43.34
<i>Total</i>	<i>15,731</i>	<i>9,138</i>	<i>58.09</i>

Provision of Indigent Defense Counsel. Another indicator of poverty is whether the case involves the provision of indigent defense counsel. Nebraska’s code allows for the appointment of indigent defense counsel in any case in which an indigent defendant is charged with a misdemeanor that is “punishable by imprisonment,”¹⁰¹ and the Sixth Amendment mandates the provision of counsel in any case in which a term of incarceration is actually imposed upon an indigent defendant.¹⁰² Nebraska courts must advise a defendant of the right to counsel at their first appearance, after which the onus is on the defendant to claim indigency.¹⁰³ Indigency hearings may also occur at a later stage in the case.¹⁰⁴ Nebraska defines indigency to mean “the inability to retain legal counsel without prejudicing one’s financial ability to provide economic necessities for one’s self or one’s family.”¹⁰⁵ Indigency hearings therefore necessarily involve an examination of the defendant’s financial condition.¹⁰⁶

¹⁰¹ NEB. REV. STAT. § 29-3902 (2024) (regarding appointment of public defenders); *id.* § 29-3906 (regarding appointment of attorneys in counties without public defender offices). The language “punishable by imprisonment” suggests that the statutory right applies in any instance in which an offense may carry a term or imprisonment. *See* State v. Austin, 219 Neb. 420, 421–23 (1985) (per curiam) (suggesting the statutory language “punishable by imprisonment” is broader than the Sixth Amendment right to counsel but declining to determine its applicability given the failure to include in the appellate record evidence that the underlying municipal offense could result in a jail term). In practice, however, at least some judges appear to have interpreted the statutory right to exist only in cases in which a jail term is actually imposed unrelated to sitting out.

¹⁰² *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972). For a more detailed explanation of the right to counsel, see *infra* notes 194–196 and accompanying text.

¹⁰³ NEB. REV. STAT. §§ 29-3902, -3906 (2024).

¹⁰⁴ *Id.* § 29-3904.

¹⁰⁵ *Id.* § 29-3901(3).

¹⁰⁶ *Id.* § 29-3906 (“When such a defendant asserts indigency, the court shall make a reasonable inquiry to determine the defendant’s financial condition and may require him or

The structure of indigent defense representation varies by county across three forms: an established public defender office headed by an elected public defender; a contract defender system by which one or more attorneys serve as indigent defense counsel for the jurisdiction with the fee established via contract; or an assigned counsel system in which the court maintains a list of local attorneys willing to take on indigent defense cases and assigns cases from that list.¹⁰⁷ Urban and suburban counties predominantly rely on public defender offices, whereas rural counties predominantly rely on assigned counsel.¹⁰⁸ In addition, each county court maintains a list of private attorneys who may be appointed to provide indigent defense representation in matters involving conflicts.¹⁰⁹

From the scraped and manual coding of the data in the case files, we identify three indicators that a court had declared a defendant indigent for the purpose of providing indigent defense counsel: (1) a court order to appoint counsel due to a defendant's indigency; (2) a court order to reimburse attorney's fees for private attorneys who the court appointed to provide indigent defense representation; and (3) judges' notes that an indigency hearing occurred and that the court judged a defendant indigent for the purposes of providing indigent defense counsel.¹¹⁰ We identify 6,235 cases (39.64% of total cases) in which one or more of these three indicators involving indigency is present.

It is possible that many of the defendants in the remaining 9,496 cases were also indigent. There is no attorney of record listed for the defendants in 9,161 cases (58.24% of cases in our dataset), suggesting that they did not have counsel. Unrepresented defendants may have in fact been indigent

her to execute an affidavit of indigency."); *see also id.* § 29-3902 (same); § 29-3916 (regarding financial information included in applications for appointment of counsel).

¹⁰⁷ *See generally* NEB. MINORITY JUST. COMM., REPORT TO THE NEBRASKA SUPREME COURT ON INDIGENT DEFENSE SYSTEMS AND FEE STRUCTURES (2006), <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1032&context=publicpolicypublications> [<https://perma.cc/239L-AKQ9>].

¹⁰⁸ *See id.* at 3–4 tbl. 1. In our study, of the eleven urban counties, eight rely on public defender offices and three rely on assigned counsel; of the eleven suburban counties, eight rely on public defender offices, two rely on contract defenders, and one relies on assigned counsel; of the fifty-seven rural counties, eight rely on public defender offices, fifteen rely on contract defenders, and thirty-four rely on assigned counsel.

¹⁰⁹ NEB. CT. R. § 4-17.

¹¹⁰ There were an additional twenty-nine cases (0.18% of 15,731 total cases) in which an indigency hearing was held but the court's determination was unclear, as well as thirty-six cases (0.23% of 15,731 total cases) in which an indigency hearing was held but the court found the defendant was not indigent.

despite the lack of representation; they may not have understood an advisement of their right to counsel, they may never have asked for an indigency determination, they may have been unable to provide sufficient documentation of their financial condition, they may have waived counsel to avoid delay in resolving their case, and so on¹¹¹; unfortunately, the record does not provide that information.¹¹² Additionally, it appears that in some instances, courts have treated cases involving offenses in which the statutorily prescribed punishment was limited to a fine as falling outside of the statutory and constitutional requirements noted above—which afford counsel only in cases where a term of incarceration is imposed—despite the fact that such a term was effectively imposed through the order to sit out fines and costs.¹¹³ For the remaining 355 cases (2.13% of cases in our dataset), defendants were represented by counsel. The overwhelming majority of these cases have no reference to an indigency determination.¹¹⁴ Having privately-retained counsel may mean that the defendant was capable of paying for counsel or that the attorney took on the matter low or pro bono; the records do not differentiate.

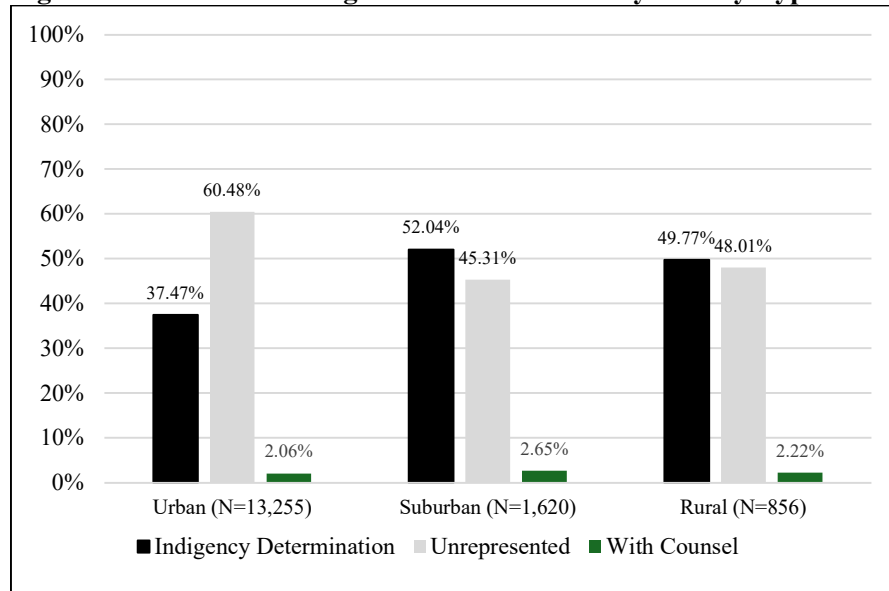
We also examine the provision of indigent defense counsel by county type. As Figure 6 shows below, suburban and rural counties were more likely to involve cases in which an indicator of an indigency determination is present (52.04%, 843 cases for suburban; 49.77%, 426 cases for rural; and 37.47%, 4,966 cases for urban). Unsurprisingly then, urban counties were more likely to involve unrepresented defendants than suburban or rural counties (60.48%, 8,016 cases for urban; 45.31%, 734 cases for suburban; 48.01%, 411 cases for rural). The percentage of cases involving defendants who had counsel—most of which were without reference to an indigency determination—is generally low, at between 2% and 3% across geographic type (2.06%, 273 cases for urban; 2.65%, 43 cases for suburban; and 2.22%, 19 cases for rural).

¹¹¹ See MALCOLM M. FEELY, *THE PROCESS IS THE PUNISHMENT: HANDLING CASES IN A LOWER CRIMINAL COURT* 30–31, 241–42 (1979) (describing how defendants may plead guilty, rather than ask for counsel to defend a case, because litigation takes time that could result in the loss of employment and other harms).

¹¹² A majority of the defendants were unrepresented at the moment in which a court decided to order them to sit out their financial sanctions. The constitutional and policy implications of that deficiency are outside the scope of this Article.

¹¹³ E.g., Case 14444, Transcript of Sentencing Hearing; Case 14429, Transcript of Sentencing Hearing. See *infra* notes 194–196 and accompanying text.

¹¹⁴ Courts found that defendants were not indigent after conducting an indigency hearing in only twenty-nine of the 1,247 cases in which defendants were represented by counsel (2.33%).

Figure 6: Provision of Indigent Defense Counsel by County Type

In sum, whether through the use of sitting out for offenses linked to poverty or its application against those found to be indigent, there is good reason to be concerned that the practice is regularly employed against people who cannot pay, despite statutory and constitutional restrictions prohibiting its use in that manner.

B. DEFENDANT CHARACTERISTICS

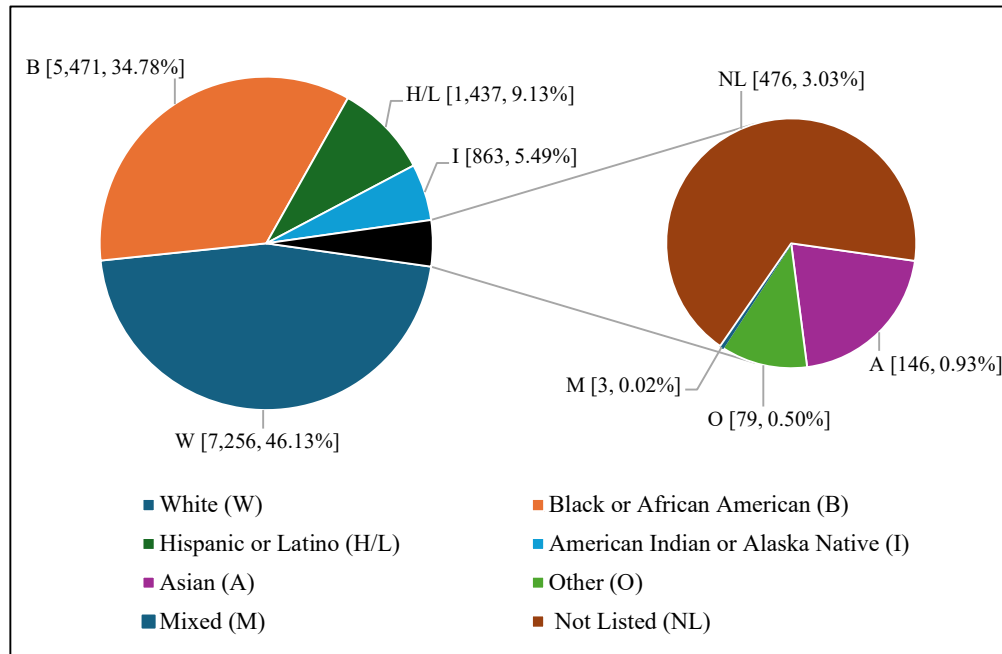
In addition to poverty, another aspect of modern debtors' prisons seen in the literature is the disproportionate use of such practices against people of color, raising the question of whether the same would be true for systems of payment via incarceration. We were able to collect and analyze data involving the race, as well as the sex and age, of the defendants who sat out fines, costs, and probation fees in our dataset.¹¹⁵ Nebraska courts do not include information on the race or sex of defendants on the standardized dockets, making it impossible to scrape for that information. Accordingly, while we do not have demographic data for all 62,390 misdemeanor cases with a judgment in 2019, we were able to manually code each of the cases

¹¹⁵ When available, demographic information appeared on specific documents in the case files (for instance, warrants, citations, and criminal complaints). *See* Methodology Appendix, *infra* Part D.3.

in our dataset for that demographic information.¹¹⁶ As detailed further below, we find some disparities regarding the use of payment via incarceration related to race in its own right and at the intersection of race, sex, and age.

We begin by examining whether racial disparities exist when comparing the defendants in our dataset against data from the U.S. Census.¹¹⁷ Figure 7 below presents the data regarding the race of the defendants involved in the cases in our dataset. For consistency purposes, our codes for race match the codes used in the case files. In terms of race, 46.13% of the defendants in the cases are White; 34.78% are Black or African American; 9.13% are Hispanic or Latino; 5.49% are American Indian or Alaska Native; 5.49% are American Indian or Alaska Native; and 0.93% are Asian.¹¹⁸

Figure 7: Race Defendants in Sit Out Cases (N=15,731)



¹¹⁶ *Id.*

¹¹⁷ U.S. CENSUS BUREAU, *supra* note 21.

¹¹⁸ *Id.* In addition, three defendants (0.02%) have a race marked as “Mixed,” seventy-nine defendants (0.50%) have a race marked as “Other,” and 476 defendants (3.02%) have a race that is not listed in our case files and that we cannot determine from other Nebraska court files or documents. *Id.* Given their small sample sizes, our analysis of race does not include these defendants.

As Table 6 shows below, a comparison between our dataset and the U.S. Census data reveals an overrepresentation of Black or African American defendants (34.78% v. 4.9%) and American Indian or Alaska Native defendants (5.49% v. 1.2%), and an underrepresentation of White defendants (46.13% v. 78.4%) and Asian defendants (0.93% v. 2.7%).¹¹⁹ Due to a potential categorization mismatch between the dataset cases and the Census, we did not compare Hispanic or Latino defendants.¹²⁰

Table 6: Race of Defendants in Sit Out Cases Compared to 2020 U.S. Census Data

<i>Race</i>	<i>Our Dataset</i>	<i>U.S. Census NE Percent</i> ¹²¹
White	46.13%	78.4%
Black or African American	34.78%	4.9%
American Indian or Alaska Native	5.49%	1.2%
Asian	0.93%	2.7%

The information in our dataset allows us to examine the racially disproportionate application of sitting out against Black or African American defendants and American Indian or Alaska Native defendants in terms of geography, in relation to sex and age, and in relation to poverty offenses.

First, as Figure 8¹²² shows, almost all of the Black or African American defendants in our dataset (97.42%, 5,330 cases) involve

¹¹⁹ *Id.* These disparities are consistent with other studies of misdemeanor cases. *E.g.*, ISSA KOHLER-HAUSMANN, *MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING* 51 (2018) (reporting on the increasingly disproportionate representation of Black and Hispanic people among misdemeanor defendants in New York City in the years following implementation of the city's broken windows policing practices).

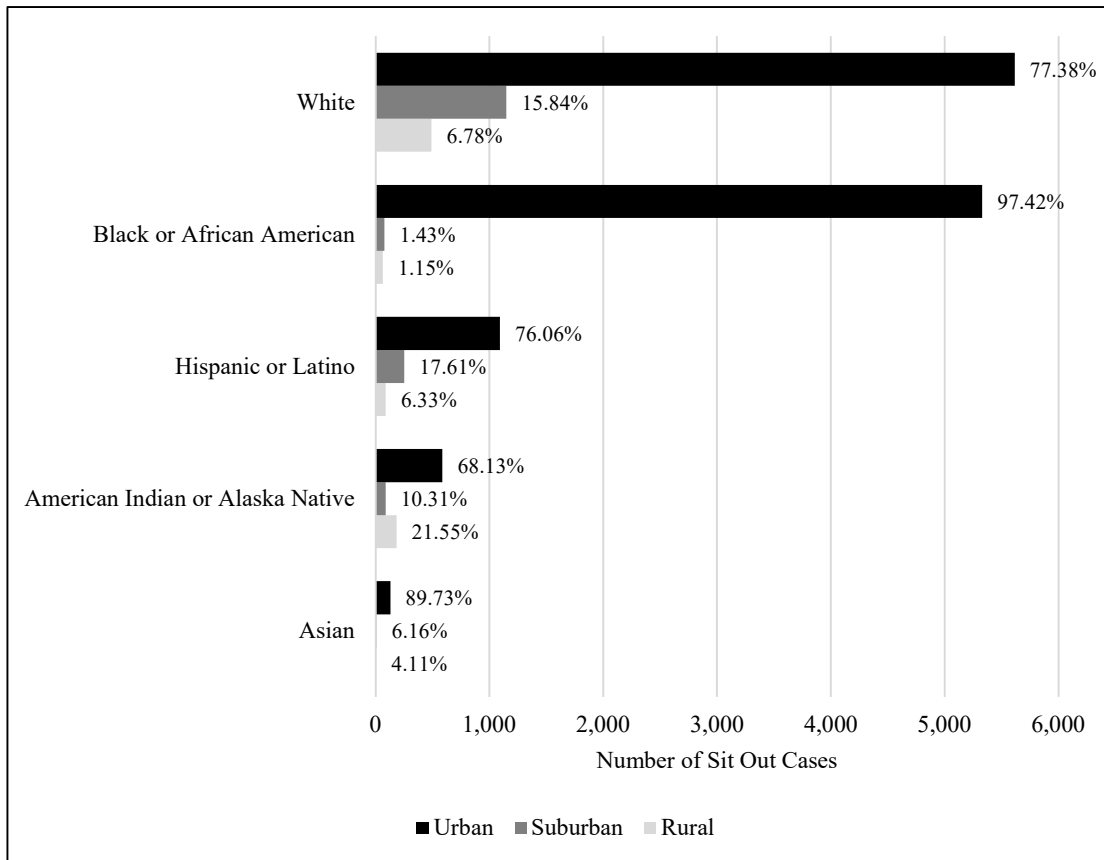
¹²⁰ 12% of Nebraska residents reported their ethnicity as Hispanic. Residents who report their ethnicity as "Hispanic" in the U.S. Census can identify as any race, however, and thus are included in all applicable race categories. U.S. CENSUS BUREAU, *supra* note 21.

¹²¹ The reported percentages for 2020 U.S. Census data in Table 6 reflect Nebraska residents who reported their races as "White alone," "Black or African American alone," "American Indian or Alaska Native alone," and "Asian alone." The 2020 U.S. Census allows respondents to report more than one race. Since the defendants in our sample overwhelmingly identified with a single race, we concluded that using Census data that only focuses on a single reported race would be the optimal comparator.

¹²² Approximately 3.55% of the cases in our dataset (558 cases) are not represented in Figure 8 because they involve defendants with races that are not listed in the case files (440

convictions in urban counties, whereas impositions of sitting out for American Indian or Alaska Native defendants show a greater geographic mix. While the greatest proportion of cases involving American Indian or Alaska Native defendants arise out of urban convictions, (68.13%, 588 cases), a considerably higher proportion of American Indian or Alaska Native defendants (21.55%, 186 cases) are represented in rural counties as compared to defendants in any other racial category.¹²³

Figure 8: Defendant Race by County Geography



cases) or involve a small number of defendants with Mixed (39 cases) or Other races (79 cases).

¹²³ These findings are in keeping with analyses conducted by the ACLU of Nebraska, in which they found racial disparities in the overall populations of people held in jail pretrial in four urban counties. ACLU OF NEB., 2022, *supra* note 8, at 8; ACLU OF NEB., 2016, *supra* note 8, at 20–22.

Our data also allow us to examine the relationship between race, sex, and age. As with race, our codes for sex match the codes used in the case files. In terms of sex, 72.38% of the defendants in the 15,731 sit out cases are male (11,386 defendants) and 27.06% of the defendants are female (4,257 defendants).¹²⁴ This result was unsurprising, given that males make up the bulk of misdemeanor defendants nationally.¹²⁵ In contrast with race, no noteworthy disparities emerged upon examination of the distribution of male and female defendants across county geography.¹²⁶

We measure age as the difference in terms of years between the defendant's date of birth and the judgment date of the defendant's case.¹²⁷ The mean and median ages of defendants hold fairly consistent across county geography.¹²⁸ The average age of defendants in our dataset is 33.92 and the median age is 31, which is consistent with prior research on misdemeanors.¹²⁹ At the same time, a wide range of defendant ages are

¹²⁴ We cannot determine the sex of defendants from the case files in eighty-eight cases (0.56%).

¹²⁵ See Sandra G. Mayson & Megan T. Stevenson, *Misdemeanors by the Numbers*, 61 B.C. L. REV. 971, 996 (2020) (presenting findings from a multi-jurisdictional study on misdemeanor courts finding that male misdemeanor defendants ranged from 67% to 77% across jurisdictions); TOM RICH & KEVIN M. SCOTT, U.S. DEP'T. OF JUST., DATA ON ADJUDICATION OF MISDEMEANOR OFFENSES: RESULTS FROM A FEASIBILITY STUDY 10 (2022), <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/damorfs.pdf> [<https://perma.cc/S3TP-S2VV>] (reporting that male misdemeanor defendants ranged from 61.5% to 81.7% across twenty-seven cities providing data).

¹²⁶ Specifically, 71.71% of the cases in urban counties (9,505 cases), 74.81% in suburban counties (1,212 cases), and 78.15% in rural counties (669 cases) involve male defendants. Moreover, 27.63% of the cases in urban counties (3,662 cases), 25.19% in suburban counties (408 cases), and 21.85% in rural counties (187 cases) involve female defendants.

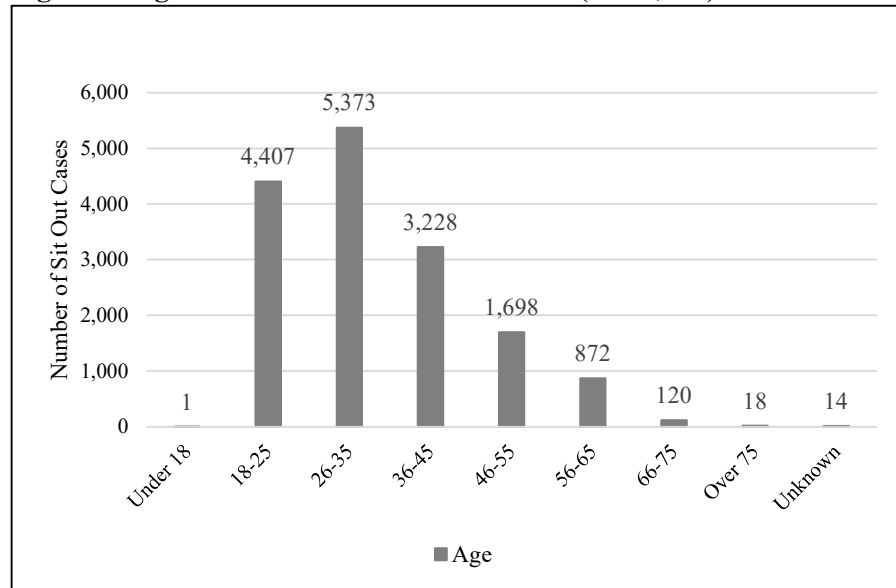
¹²⁷ For the twenty Merger Hybrid cases in our dataset—cases in which after splitting the charges into two different sentences, the cases effectively merged back together, resulting in a single moment in which a term of incarceration was used to pay off both sets of debt—the case files capture the judgment date of the last hearing that involves a guilty conviction. See *infra* Part IV.B.4. We use that judgment date to calculate the age of the defendants.

¹²⁸ The average age of defendants in urban counties in our dataset is 34.04, 33.40 in suburban counties, and 32.97 in rural counties. The median age of defendants is thirty-two in urban counties, thirty-one in suburban counties, and thirty in rural counties.

¹²⁹ See, e.g., KOHLER-HAUSMANN, *supra* note 119, at 48 (reporting that between 1990 and 2015 in New York City, “somewhere between 60 and 70 percent of misdemeanor arrests were of people aged between sixteen and thirty-five”); Mayson & Stevenson, *supra* note 125, at 996 (reporting results from a multi-jurisdictional study on misdemeanor courts finding that the average age of defendants was between thirty-one and thirty-five across jurisdictions); RICH & SCOTT, *supra* note 125, at 10 (reporting that the average age of misdemeanor defendants was 34.8 years across twenty-seven cities providing data).

represented in our dataset, with the minimum age at 17 and the maximum age at 86.¹³⁰ Figure 9 below illustrates this range.¹³¹

Figure 9: Age of Defendants in Sit Out Cases (N=15,731)



While, as a general matter, both Black or African American defendants and American Indian or Alaska Native defendants are overrepresented in the dataset as a whole when compared against U.S. Census data, as shown in Figure 10,¹³² Black defendants trend younger,

¹³⁰ There is some data to suggest that misdemeanor convictions of older people increase as law enforcement focuses its efforts on minor offenses. See KOHLER-HAUSMANN, *supra* note 119, at 48 (reporting that as New York City shifted toward broken windows policing, the percentage of misdemeanor arrests of people aged fifty or older increased for approximately 3% in 1990 to 13% by 2015).

¹³¹ The data in Figure 8 is somewhat consistent with literature regarding the age-crime curve, in which it has been found that for all but a minority of chronic offenders, criminal behavior declines significantly beginning in the mid-twenties. *E.g.*, Duzbayeva Saltanat Bekbolatkyzy, Dzhansarayeva Rima Yerenatovna, Yergali Adlet Maratuly, Atakhanova Gulzagira Makhatovna & Kevin M. Beaver, *Aging Out of Adolescent Delinquency: Results from a Longitudinal Sample of Youth and Young Adults*, 60 J. CRIM. JUST. 108, 108 (2018). We are unable to investigate whether the age-crime curve applies because our dataset lacks longitudinal data regarding offense history.

¹³² The underlying data for Figure 9 is as follows:

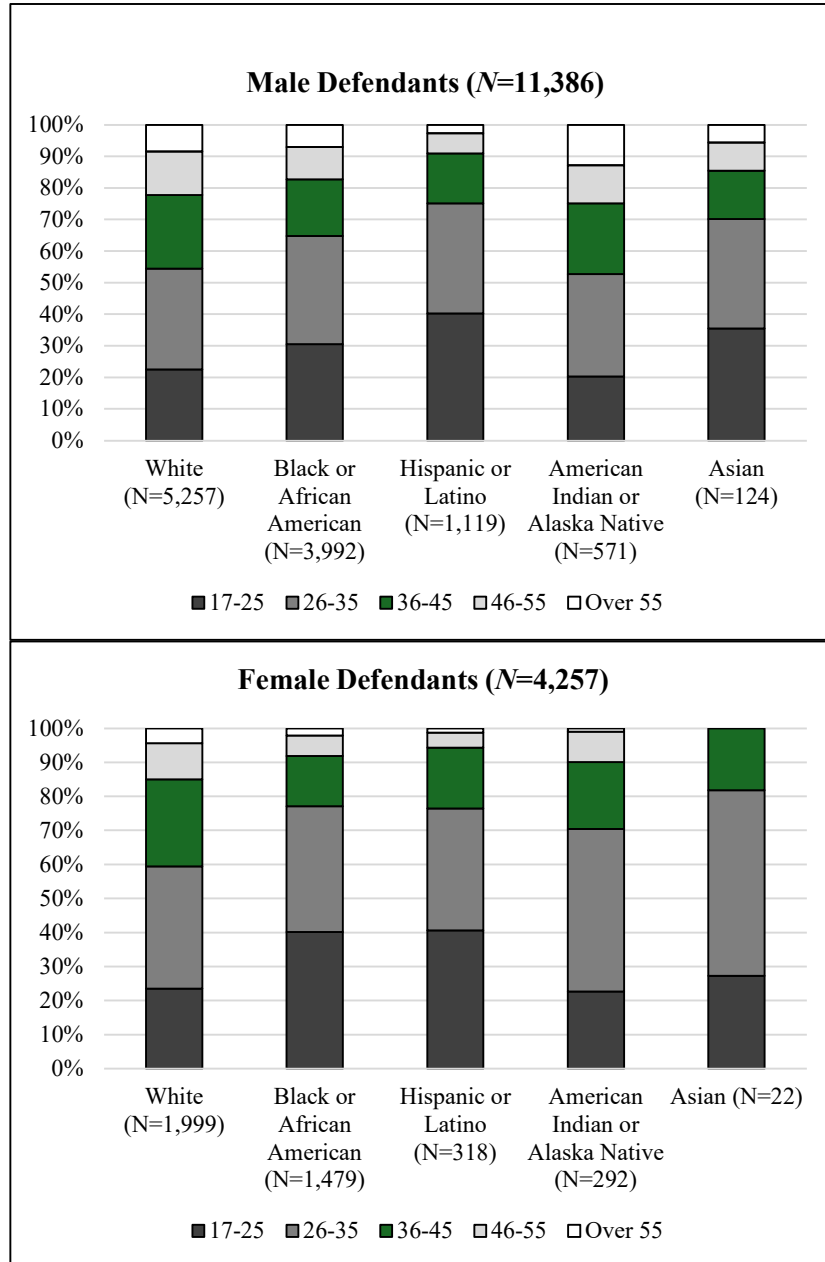
For Male Defendants. White [17–25 (1,117, 22.43%); 26–35 (1,680, 31.96%); 36–45 (1,221, 23.23%); 46–55 (722, 13.75%); Over 55 (447, 8.50%)]; Black or African American [17–25

with the majority of both male and female defendants between the ages of 17 and 35 (men: 2,585, 64.75%; women: 1,140, 77.07%). American Indian or Alaska Native defendants are more evenly distributed across age, though trend somewhat older, with the largest segment of men between 26 and 45 (313, 54.82%) and of women between the ages of 26 and 35 (139, 47.60%). Though we are unable to compare the cases in the dataset against the U.S. Census data for Hispanic and Latino defendants, within the dataset, both male and female Hispanic and Latino defendants also trend younger. We also note that while White defendants in general are underrepresented as compared to the U.S. Census data, within the dataset there is a higher proportion of White women (4.35%) in the over 55 age category compared to women in the other race categories (2.16%, Black; 1.26%, Hispanic; 1.03%, American Indian or Alaska Native, 0% Asian).

(1,216 , 30.46%); 26–35 (1,369, 34.29%); 36–45 (406, 17.94%); 46–55 (406, 10.17%); Over 55 (283, 7.09%); Hispanic or Latino [17–25 (450, 40.21%); 26–35 (390, 34.85%); 36–45 (177, 15.82%); 46–55 (72, 6.43%); Over 55 (30, 2.68%); American Indian or Alaska Native [17–25 (116, 20.32%); 26–35 (185, 32.40%); 36–45 (128, 22.42%); 46–55 (69, 12.08%); Over 55 (73, 12.78%); Asian [17–25 (44, 35.48%); 26–35 (43, 34.68%); 36–45 (19, 15.32%); 46–55 (11, 8.87%); Over 55 (7, 5.65%)]. The sum of these percentages is not 100% for all races due to defendants' unknown ages in some race categories.

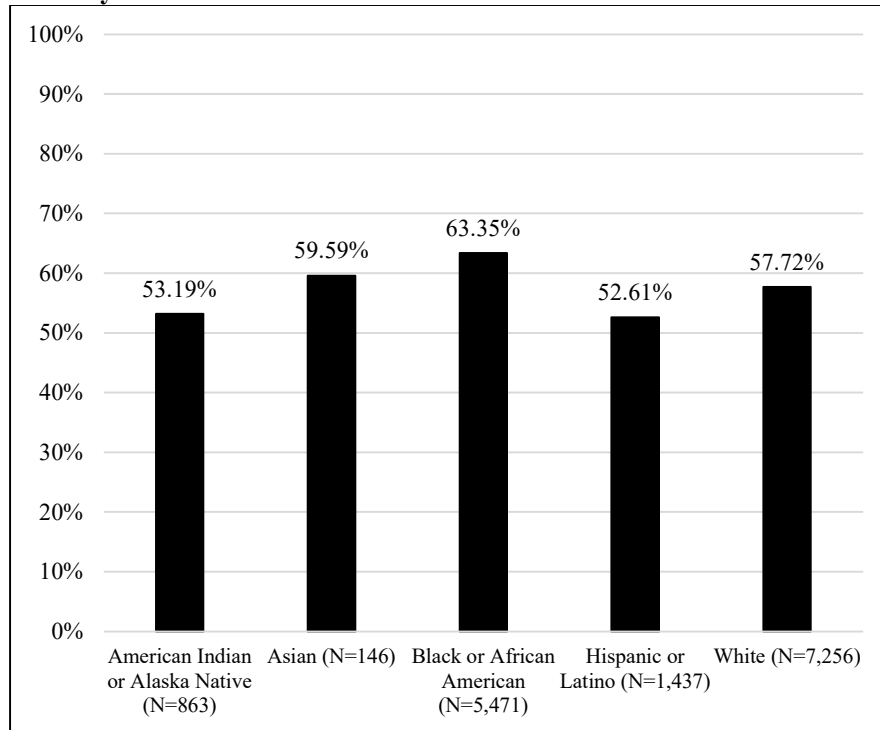
For Female Defendants. White [17–25 (470, 23.51%); 26–35 (716, 35.82%); 36–45 (512, 25.61%); 46–55 (212, 10.61%); Over 55 (87, 4.35%); Black or African American [17–25 (593, 40.09%); 26–35 (547, 36.98%); 36–45 (218, 14.74%); 46–55 (88, 5.95%); Over 55 (32, 2.16%); Hispanic or Latino [17–25 (129, 40.57%); 26–35 (114, 35.85%); 36–45 (57, 17.92%); 46–55 (14, 4.40%); Over 55 (4, 1.26%); American Indian or Alaska Native [17–25 (66, 22.60%); 26–35 (139, 47.60%); 36–45 (57, 19.52%); 46–55 (26, 8.90%); Over 55 (3, 1.03%); Asian [17–25 (6, 27.27%); 26–35 (12, 54.55%); 36–45 (4, 18.18%); 46–55 (0, 0%); Over 55 (0, 0%)]. The sum of these percentages is not 100% for all races due to defendants' unknown ages in some race categories.

Figure 10: Percent Distribution Sex, Race, and Age of Defendants in Sit Out Cases (N=15,731)



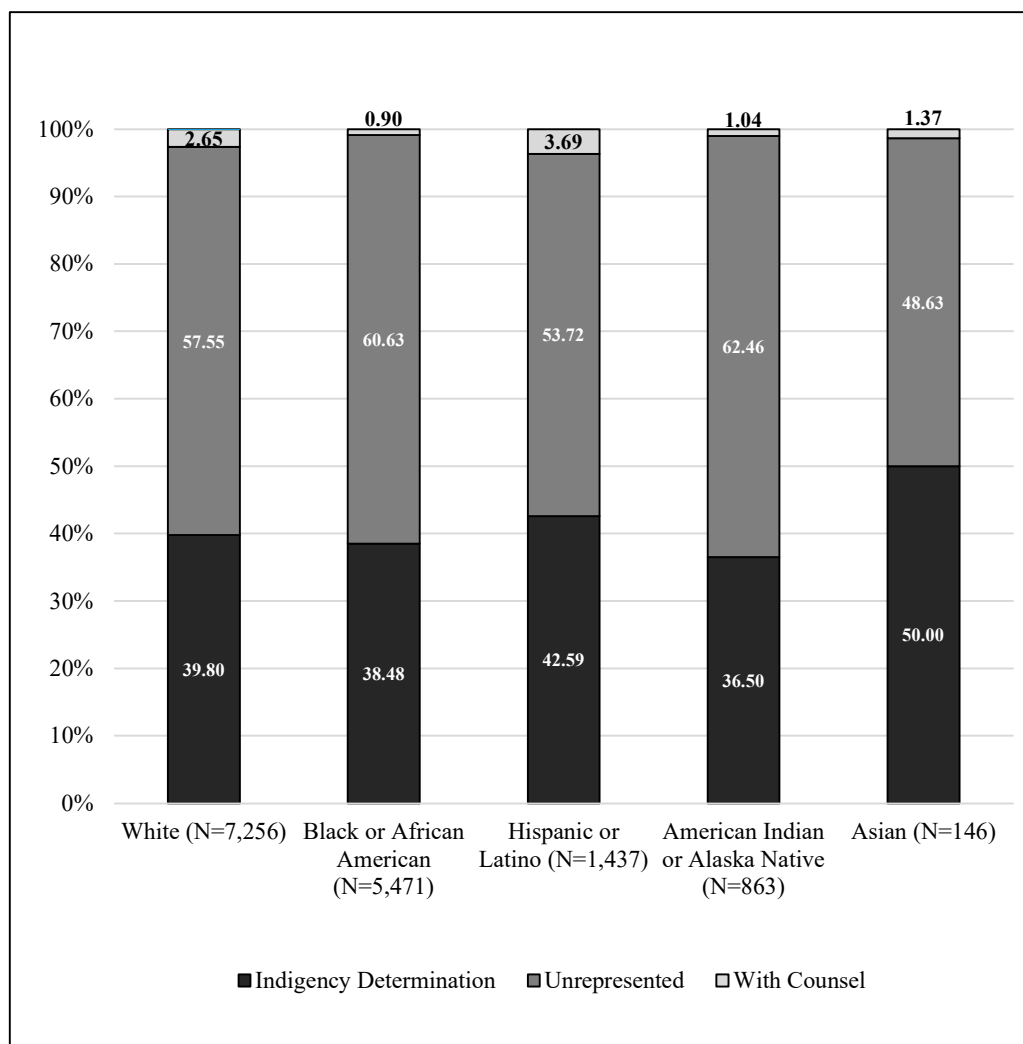
Finally, we examine the relationship between race and poverty. As Figure 11 shows below, there is a slightly greater percentage of Black or African American defendants among the cases with at least one conviction for a poverty offense as compared to defendants in other racial categories. It is also noteworthy that convictions for poverty offenses are an issue for defendants across the board.

Figure 11: Comparing Percentage of Defendants Involved in Poverty Cases by Race



Indigency determinations in relation to appointment of counsel are also relatively consistent across the racial categories. As Figure 12 shows, a slightly higher percentage of Asian (50%) and Hispanic or Latino (42.59%) defendants are included among cases with an indigency determination compared to White (39.80%), Black or African American (38.48%), or American Indian or Alaska Native (36.50%) defendants. A higher percentage of American Indian or Alaska Native defendants (62.46%), Black or African American (60.63%), and White (57.55%) defendants lacked counsel in the sit out cases compared to Hispanic or Latino (53.72%) and Asian (48.63%) defendants.

Figure 12: Percent Distribution of Counsel Status by Race in Sit Out Cases (N=15,731)



* * *

In sum, there is good reason for concern that the use of payment via incarceration in Nebraska serves as a form of modern debtors' prison. Though structurally distinct from practices more commonly addressed in the literature—both because financial sanctions are paid through sitting out

and due to the explicit statutory prohibitions on the use of sitting out against people of limited means—our study provides evidence showing the likelihood that payment via incarceration is employed against people with little ability to pay and disproportionately against people of color. Over half of all cases in the dataset involve a conviction for at least one offense linked to poverty, including over 60% of urban cases. There is also significant evidence related to the appointment of counsel indicating that courts are imposing sitting out in cases involving indigent defendants. Our findings also reveal meaningful connections between racial disparities and the punishment of poverty. Sitting out is employed more frequently against Black defendants, driven by cases involving younger defendants in urban areas, as well as Native American defendants statewide. Further, while there is slightly higher representation of Black defendants among cases with at least one conviction for a poverty offense, in all racial categories, over half of all cases involve poverty offense convictions, with the rates of indigency determinations remaining fairly consistent across all categories.

IV. REVENUE GENERATION: A COMPLICATED PICTURE

Another concern raised by the specter of the modern debtors' prison is the possibility that government actors—legislators, judges, prosecutors, and even defense counsel—will be incentivized by the ability to use criminal charges to fill government coffers, funding legal systems and beyond, rather than by fair and just crime policy goals.¹³³ In the more commonly studied form of modern debtors' prison, these actors employ incarceration or other poverty penalties as a threat to prompt payment, thus ensuring the collection of at least some of the financial sanctions imposed. In Ferguson, for example, those arrested for nonpayment would be released from the municipality's jail if they, their family, or friends were able to scrape together the funds to pay their financial sanctions.¹³⁴ Though there is increasing evidence that the expense of incarcerating people, along with related expenses such as the issuance and processing of warrants,

¹³³ E.g., Karin D. Martin, *Monetary Myopia: An Examination of Institutional Response to Revenue from Monetary Sanctions for Misdemeanors*, 29 CRIM. JUST. POL'Y REV. 630, 633 (2018) (discussing “the revenue incentive inherent in monetary sanctions for misdemeanor convictions”). See generally Wayne A. Logan & Ronald F. Wright, *Mercenary Criminal Justice*, 2014 U. ILL. L. REV. 1175 (2014).

¹³⁴ Class Action Complaint, at 5, 8–9, *Fant v. City of Ferguson*, 107 F. Supp. 3d 1016 (E.D. Mo. 2015) (No. 4:15-CV-00253).

undermines the fiscal benefits of such systems,¹³⁵ the concern is that so long as government actors understand the practices employed as revenue generating, their use will continue.

On its face, sitting out appears to undermine the idea that government actors are motivated by revenue generation: Unlike systems in which the debt remains outstanding, when a defendant is ordered to sit out financial sanctions, the debt is paid off by the incarceration, ensuring that revenues are never secured, while at the same time the jurisdiction necessarily bears the expense of incarceration.

A robust cost-benefit analysis of Nebraska's system is beyond the scope of this Article, as the focus here is limited to cases in which a sit out occurred, rather than a broader analysis of revenue generated from financial sanctions imposed in this system as a whole, or the ways in which monies expended on processing misdemeanor cases might be better spent on social services that reduce crime.¹³⁶ Further, the records in our dataset do not provide systematic evidence of what motivates government actors to employ sitting out.

But our analysis of Nebraska's system provides an entry point for examining the relationship between sitting out and revenue generation by documenting how money moves in and out of the system in relation to different funding streams and different mechanisms by which sitting out is imposed. To begin, we set out the public purposes for which various financial sanctions are intended to generate revenue to understand what revenue is (purportedly) lost through sitting out.¹³⁷ Then, to better understand exactly how those revenue streams are interrupted and when the expenses caused by the related incarceration are incurred, we create an original typology of the mechanisms by which courts impose sitting out in Nebraska.

A. FINANCIAL SANCTION REVENUES AND DOLLAR VALUES

To understand what the revenue implications of sitting out are, we begin by examining which streams of revenue could be diverted by the practice. Each misdemeanor case file includes a standardized docket sheet with a section entitled "Payments Made to the Court" that provides detailed

¹³⁵ See generally Matthew Menendez et. al, *The Steep Costs of Criminal Justice Fees and Fines*, 5 BRENNAN CTR. FOR JUST. (2019) [hereinafter Menendez et al.].

¹³⁶ For a brief discussion of these issues, see *infra* Part V.C.

¹³⁷ We note that the loss is merely purported here because it assumes that revenues would be collectable but for the use of sitting out, which would not be the case if it is imposed on people without the means to pay. See *infra* Part V.C.

information on the types and amounts of each financial sanction imposed in a given case, as well as the manner in which those sanctions were paid. This allows us to ascertain what types of financial sanctions are at issue, and thus what revenue streams would be interrupted by the use of sitting out.

Nebraska county courts impose a variety of financial sanctions that may be subject to payment via incarceration. We group the relevant financial sanctions for the purposes of our study into four categories: (1) fines; (2) standard costs; (3) other costs; and (4) probation fees.¹³⁸

First, in some but not all cases, Nebraska county courts impose fines. Pursuant to Nebraska's Constitution, all revenue generated from fines, whether imposed under the state code or a municipal code, must be appropriated for the use of funding public schools in the respective jurisdiction.¹³⁹ This constitutional provision renders Nebraska somewhat unique, in that fine revenue is not distributed at least in part to fund law enforcement or court systems or placed in general funds,¹⁴⁰ but it still operates as a form of tax avoidance, albeit a "tax" only incurred by people convicted of an offense for which a fine is imposed. In our dataset, fines imposed in a single case were as low as \$1 and as high as \$2,100.¹⁴¹

Second, whether fines are imposed or not, Nebraska courts also impose a set of standard costs at sentencing that are eligible for payment via incarceration.¹⁴² In 2019, those standard costs amounted to \$33. Several

¹³⁸ A financial sanction designated by the court as a "fine" is addressing something that more traditionally would be understood as a "cost." In at least one county, prosecutors requested that courts impose a "fine" to help pay for cost bills submitted by appointed counsel. *E.g.*, Case 12825, Transcript of Sentencing Hearing. For our purposes, because those financial sanctions were treated as fines, we kept them in the "fines" category.

¹³⁹ NEB. CONST. art. VII-5(1). An exception is made for fines imposed for driving an overloaded vehicle on public roads and highways, for which fine revenue is distributed to state and county highway funds, but no such offenses appeared in the cases in our dataset. *Id.*

¹⁴⁰ *E.g.*, *How Do State and Local Revenues from Fines, Fees, and Forfeitures Work?*, TAX POL'Y CTR. (Jan. 2024), <https://taxpolicycenter.org/briefing-book/how-do-state-and-local-revenues-fines-fees-and-forfeitures-work> [<https://perma.cc/J96U-SXHV>].

¹⁴¹ *See supra* Part II.

¹⁴² Nebraska county courts also typically subject defendants to additional financial sanctions that are ineligible for payment via incarceration. By statute, Nebraska excludes restitution, instead allowing courts to convert unpaid restitution to a civil judgment. NEB. REV. STAT. § 29-2286 (2024); *supra* note 64 (regarding statutes limiting sitting out to fines and costs). Also by statute, Nebraska excludes \$17 worth of additional costs imposed at sentencing. NEB. REV. STAT. § 29-2709 (2003) (carving out certain costs as non-waiverable); *id.* §§ 47-632, -633 (2024) (designating a \$1 uniform data analysis fee to "support operations costs and analysis relating to the implementation and coordination of the uniform analysis of crime data"); *id.* §§ 24-227.01, 33-107.03 (designating an \$8 automation fee to "support

costs within this standard set were (and continue to be) employed to fund programs unrelated to the underlying case: a \$1 “NSC education fee,” which is used to provide training to judicial employees;¹⁴³ separate \$1 and \$4.25 charges for funds that support the provision of legal aid to low-income individuals in civil cases;¹⁴⁴ a \$6 charge to support the state’s judicial retirement fund;¹⁴⁵ and a \$2 charge supporting a law enforcement improvement fund, which is “used for payment of administrative and operations expenses of the Nebraska Law Enforcement Training Center and other expenses as budgeted by the Legislature for the improvement of law enforcement.”¹⁴⁶ The standard set also included one additional cost imposed for services that technically could have been applicable, but was not for the cases in the dataset: a \$0.75 charge used to fund the Office of Dispute Resolution, which provides restorative justice services.¹⁴⁷ Two other costs within the standard set are applicable to a subset of cases but are routinely imposed even if not relevant: a \$3 indigent defense charge, which helps reimburse counties for indigent defense expenses (imposed regardless of whether counsel was appointed)¹⁴⁸ and a \$1 crime victim fund charge, a portion of which goes to “the Victim’s Compensation Fund to be awarded as compensation for losses and expenses allowable under the Nebraska Crime Victim’s Reparations Act” (imposed regardless of whether there was

automation expenses of the Supreme Court, Court of Appeals, district courts, separate juvenile courts, county courts, and Nebraska Probation System”); *id.* § 24-703(3) (imposing a \$6 fee in support of the state’s judicial retirement fund); *infra* note 144 (regarding a \$2 fee in support of the Legal Aid and Services Fund). Courts may address nonpayment of the \$17 fee via waiver. NEB. REV. STAT. § 29-2709 (2024).

¹⁴³ NEB. REV. STAT. § 33-154 (2024); *Education*, NEB. JUD. BRANCH, <https://supremecourt.nebraska.gov/programs-services/education> [<https://perma.cc/JKD8-59Y6>] (last visited Oct. 15, 2025).

¹⁴⁴ NEB. REV. STAT. §§ 25-3007, -3010 (2024); NEB. REV. STAT. § 33-107.01 (2024). The relevant statutes indicate that the amount charged is \$6.25, but \$2 of that charge is made part of the costs that are ineligible for payment via incarceration. *See supra* text accompanying note 142.

¹⁴⁵ NEB. REV. STAT. § 33-124 (2024). The relevant statute combines this contribution to judicial retirement and a filing fee. In the dataset cases, the breakdown was \$6 to judicial retirement and \$14 for filing fees. *E.g.*, Case 3478. As of the date of publication, the statute had been amended to distribute \$12 to judicial retirement, though the total amount assessed remains at \$20. NEB. REV. STAT. § 33-124 (2024).

¹⁴⁶ NEB. REV. STAT. §§ 81-1428, -1429 (2024).

¹⁴⁷ NEB. REV. STAT. §§ 25-2911, -2912.01 (2024); NEB. REV. STAT. § 33-155 (2024).

¹⁴⁸ NEB. REV. STAT. § 29-3920(6) (2024); NEB. REV. STAT. § 33-156 (2024); *see also supra* Part III.A.3 (regarding cases in which hearings were held on the appointment of indigent defense counsel).

a victim in the given case).¹⁴⁹ The remaining cost within the standard set is a \$14 filing fee.¹⁵⁰

Third, in addition to standard costs imposed at sentencing, courts may require that defendants pay a variety of other costs depending on the specifics of a given case. For instance, courts may order defendants to pay additional sheriff's service fees for the issuance of subpoenas or in relation to the post-sentencing use of warrants as a mechanism for collecting financial sanctions, and in some cases it appears that additional costs are imposed in relation to indigent defense representation.¹⁵¹

Finally, for those defendants sentenced to a term of probation, courts impose additional fees related to probation administration, drug testing, and other probation conditions.¹⁵² The payment of these probation fees are in addition to other probation conditions that might require defendants to expend funds, such as conditions requiring the defendant to attend classes or treatment programs at the defendant's expense.¹⁵³

As shown previously in Table 1, the dollar value of financial sanctions paid via incarceration in the cases in our dataset is driven by fines that would otherwise be used to fund public education, whereas the number of cases in which courts imposed incarceration to pay financial sanctions is driven by costs that would otherwise be used to fund myriad aspects of Nebraska's criminal and civil legal systems.¹⁵⁴ Specifically, defendants sat out a total of \$1,513,422 in fines across 7,090 cases, \$465,860 in standard costs across 14,541 cases, \$118,201 in other costs across 3,835 cases, and \$7,959 in probation fees across 205 cases. In total, defendants sat out a notably high amount of financial debt—\$2,105,462 in the aggregate.¹⁵⁵

¹⁴⁹ NEB. REV. STAT. §§ 33-157, 83-917 (2024). A portion of the crime victim fund cost is deposited in the state's Reentry Cash Fund, which is used by the Department of Correctional Services "for tuition, fees, and other costs associated with reentry and reintegration programs offered to offenders that are placed in the incarceration work camps." *Id.* There is no indication that any cases in our dataset involve incarceration work camps.

¹⁵⁰ NEB. REV. STAT. § 33-124 (2024); *see supra* text accompanying note 145.

¹⁵¹ *E.g.*, Case 12286 (imposing \$52.82 in sheriff's service fees); Case 12409 (imposing \$470 in attorney fees).

¹⁵² *See* NEB. REV. STAT. § 29-2262.06 (2024) (describing various probation fees).

¹⁵³ *E.g.*, Case 13245; Case 13711; Case 14522.

¹⁵⁴ *See supra* Part II.

¹⁵⁵ *See id.*

B. SIT OUT TYPOLOGY

The relationship between the modern debtors' prison as it is generally understood and revenue generation is one in which lawmakers authorize courts to impose financial sanctions, leaving the defendant to struggle with the debt for some period of time, ultimately resulting in incarceration of the defendant for failure to pay. That structure allows for the possibility of payment without the expense of incarceration if payment is forthcoming (though with the expense of overseeing collections efforts) and employs the threat of incarceration as a cudgel to promote payment. Sitting out in Nebraska does match that stereotype in some, though not all cases.

To better understand the complexities of Nebraska's system, after establishing our dataset of cases in which courts ordered defendants to sit out financial sanctions, we further coded the cases by sit out type. Determining the sit out type for each case required us to go through the individual files for each of the 15,731 cases in the dataset. We then organized those types into an original typology, which contains three broad temporal categories: (1) "Delayed Time," which includes cases matching the generally-recognized form, in which the court allows some time for the defendant to pay after sentencing, but ultimately orders the defendant's incarceration for nonpayment; (2) "Direct Sentence Time," which includes cases in which the court imposes the jail term used to pay off financial sanctions at sentencing without the defendant being afforded time to pay—thus losing out on the chance for payment and necessarily incurring the expense of incarceration; and (3) "Pre-Sentence Time," which includes cases in which the financial sanctions are credited against time already served in jail prior to sentencing—which, again, results in no chance of payment but also avoids the expense of further incarceration. As detailed in Part I, Delayed Time and Direct Sentence Time are explicitly allowed under Nebraska's statutes, whereas Pre-Sentence Time appears to be a judicial innovation. Further, we find a notable amount of diversity within each of these three broader temporal categories, which shows how a seemingly simple policy—here, allowing courts to substitute incarceration for payment for those who are able to pay—can metastasize. To capture that array of variations, we create subcategories within each of the broader temporal categories.

Table 7 below displays the frequencies and percentages for the sit out types and subtypes with fuller explanations of the typology to follow.

Table 7: Typology of Sit Out Types (N=15,731)

Delayed Time		
Type	Freq	%
Time to Pay	3,630	23.08
Probation	315	2.00
House Arrest	40	0.25
Delayed Past Credit	16	0.10
<i>Total</i>	<i>4,001</i>	<i>25.43</i>
Direct Sentence Time		
Type	Freq	%
Straight Time	983	6.25
Consecutive Time	3,720	23.65
Concurrent Time	235	1.49
<i>Total</i>	<i>4,938</i>	<i>31.39</i>
Pre-Sentence Time		
Type	Freq	%
Past Credit	1,529	9.72
Simultaneous Credit	4,786	30.42
<i>Total</i>	<i>6,315</i>	<i>40.14</i>
Hybrids		
Type	Freq	%
Typical Hybrid	338	2.15
Independent Hybrid	46	0.29
Merger Hybrid	20	0.13
<i>Total</i>	<i>404</i>	<i>2.57</i>
Inconclusive		
Type	Freq	%
Inconclusive	73	0.46
<i>Grand Total</i>	<i>15,731</i>	<i>100.00</i>

1. Delayed Time

One of the primary categories of cases in the data set—“Delayed Time” cases—are those in which the court affords the defendant a period of time to pay and then later, upon the failure of the defendant to do so, orders a period of incarceration to pay off the financial sanction debt. This type has the advantage of allowing for the potential of revenue-generation should payment be forthcoming, though does carry with it costs associated with overseeing collections (such as additional hearings and arrest warrants issued for non-payment) and ultimately (with one exception detailed below) the expense of incarceration. This primary category of cases accounts for

25.43% (4,001 cases) of the cases in our dataset. As with other categories to be discussed, there are a variety of iterations of Delayed Time cases.

The most common and straightforward subcategory of the Delayed Time cases—what we call “Time to Pay” cases—are explicitly set out in Nebraska’s statutory scheme.¹⁵⁶ These are cases in which the judge sets a deadline for the defendant to pay the debt and imposes a term of incarceration at a later date upon a failure to pay.¹⁵⁷ The time to pay varies from case to case, with some courts affording only a few days or weeks to pay and others allowing months or more.¹⁵⁸ Further, in some cases nonpayment resulted in one or more extensions of the original deadline, though in all of these cases the defendant ultimately paid some or all of the debt through incarceration. It is important to note that this is a particularly conservative definition, as it does not include people who are given time to pay, subject to an arrest for nonpayment, and who manage to pay upon arrest to secure their release.¹⁵⁹ While those people are subjected to the burden of arrest that comes with Time to Pay cases, we have excluded them from our data set because the court never credits a period of incarceration against the debt. Time to Pay cases account for 23.08% (3,630 cases) of the total cases in our dataset and 90.73% of the Delayed Time cases.

A second subcategory of the Delayed Time cases are those involving probation (“Probation” cases). These are 315 cases (2.00% of total cases, 7.87% of Delayed Time cases) in which the court imposed a term of probation and either made payment of fines, costs, and probation fees a condition of probation but treated the failure to pay separately without any effect on the person’s probationary status (“Time to Pay/Probation”) or used incarceration as a form of payment occurring in conjunction with the

¹⁵⁶ See *supra* notes 27, 32, 34–37 and accompanying text.

¹⁵⁷ Though the relevant statutes authorize the use of installment plans rather than simply setting a date at which a full amount is paid. Most courts take the latter approach, though there are a few exceptions. *E.g.*, Case 12793; Case 15173. Further, these orders may also set a deadline for payment of restitution or costs that are ineligible for payment via incarceration. We only include those cases in which the failure to pay eligible financial sanctions in our dataset.

¹⁵⁸ *E.g.*, Case 14819 (approximately two weeks); Case 14841 (three days); Case 15185 (approximately two weeks); Case 15623 (approximately two weeks); Case 15653 (three days).

¹⁵⁹ While these cases suggest that these defendants did have the ability to pay, it is worth noting that payment might be extremely difficult for some. See Steven Mello, *Fines and Financial Wellbeing*, 92 REV. ECON. STUD. 3340, 3371 (2024) (regarding how the payment of fines increases financial precarity). Further, when assessing system costs, these practices do create administrative expense even if the debt is ultimately collected. For a brief discussion of these issues in relation to future analyses, see *infra* Part V.C.

revocation of probation (“Intertwined Probation”).¹⁶⁰ Time to Pay/Probation cases account for 0.47% (74 cases) of the total cases in our dataset and 1.85% of the Delayed Time cases. Intertwined Probation cases account for 1.53% (241 cases) of the total cases in our dataset and 6.02% of the Delayed Time cases.

To better understand the relationship between financial sanctions and probation revocation, we further examine the Intertwined Probation cases. As is typical in other jurisdictions and along with other requirements,¹⁶¹ Nebraska courts may order the payment of fines and costs as a condition of probation¹⁶² in addition to the payment of probation fees¹⁶³ and any restitution imposed.¹⁶⁴ Courts also have the power to revoke probation and impose a term of incarceration in response to the violation of any condition, including the nonpayment of financial sanctions.¹⁶⁵ Among the 241 Intertwined Probation cases, 23.65% of revocations (57 cases) are based at least in part on the failure to pay financial sanctions (“Pay-Based Probation Revocation”). In other cases, one or more of the allegations of the violation are for the failure to complete a condition that carries with it a probation fee (e.g., the failure to take a drug test for which a person must pay a fee). Because we are unable to discern from the documentary record whether a person did not fulfill the condition because of an inability to pay or for some other reason, we have called those cases “Inconclusive Probation Revocation;” they make up 42.32% of revocations (102 cases).¹⁶⁶ The remaining 34.02% of revocations (82 cases) are for reasons unrelated to the

¹⁶⁰ In our dataset courts ordered probation in 485 cases. *See supra* Part II. We only include 315 cases here because the cases in which the sit out was wholly unrelated to probation are captured in other categories. For example, where a defendant was incarcerated pretrial and the court credited that time to pay fines and costs imposed at sentencing, that case would be categorized as Pre-Sentence Time even if the court also sentenced the defendant to a term of probation.

¹⁶¹ Fiona Doherty, *Obey All Laws and Be Good: Probation and the Meaning of Recidivism*, 104 GEO. L.J. 291, 295–96, 301–22 (2016).

¹⁶² NEB. REV. STAT. § 29-2262(2)(l), (s) (2024). Even in cases where the original imposition of fines, costs, and/or probation fees was satisfied without a term of incarceration (typically through cash payments or conversion of a bail bond), a court may ultimately order a defendant to serve a term of incarceration to pay costs incurred in relation to the defendant’s arrest in the lead up to a probation revocation. *E.g.*, Case 12283 (ordering incarceration for payment of \$20 in sheriff’s service fees).

¹⁶³ *See supra* note 152 and accompanying text.

¹⁶⁴ NEB. REV. STAT. § 29-2262(2)(r) (2024).

¹⁶⁵ *Id.* at § 29-2268(2) (2024).

¹⁶⁶ For additional details on the coding of probation violations, see Methodology Appendix, *infra* Part C.

failure to pay (“Other Probation Revocation”). It should be noted, however, that these classifications likely undercount the role poverty plays in revocation because the Other Probation Revocation category includes violations of conditions that may be related to financial precarity—e.g., conditions requiring the maintenance of employment or housing—and does not capture other references in the revocation documentation to challenges people may face in relation to payment such as serious mental health or chemical dependency issues.¹⁶⁷

A third subcategory of the Delayed Time cases are those involving house arrest (“House Arrest” cases).¹⁶⁸ In these cases, documents in the case files indicate that courts approved the defendant to sit out financial sanctions through house arrest,¹⁶⁹ or ordered a term of house arrest and a period of time to pay fines and costs, but at some point the period of house arrest was revoked for the failure to comply with its requirements. Like a probation revocation, that effectively terminated the opportunity to pay as courts would then convert the sentence so that the remaining debt would be paid with time in jail.¹⁷⁰ We call these cases “House Arrest Revocation.” House Arrest cases account for only 0.25% (40 cases) of the total cases in our dataset and 1.00% of the Delayed Time cases. House Arrest Revocation cases account for 45.00% (18 cases) of the House Arrest cases.

Finally, we also include within the Delayed Time cases a circumstance unique to one of the urban counties, which we have called “Delayed Past Credit.” These are cases in which the court initially affords a defendant time to pay but then upon arrest for nonpayment, when it becomes clear that payment is not forthcoming, the court credits the defendant time spent in jail pre-sentencing. This allows the government the opportunity to have its cake and eat it too: they obtain the benefit of the possibility of payment during the delayed time period but avoid the cost of further jail time by awarding the credit for the time already served. The defendant who cannot pay does not fare so well, having had the threat of arrest and incarceration for nonpayment during the delayed time period when the court could have

¹⁶⁷ E.g., Case 554 (memo from probation officer to prosecutor).

¹⁶⁸ For additional details on the coding of house arrest cases, see Methodology Appendix, *infra* Part C.

¹⁶⁹ House Arrest approvals were found in the commitment order, sentencing information in the standardized docket, or the Journal Entry and Order. *See, e.g.*, Case 10262 (standardized docket); Case 10351 (standardized docket); Case 14073 (JEO); Case 15244 (commitment order).

¹⁷⁰ We did not include financial sanctions paid through house arrest in our calculations but did include financial sanctions paid via incarceration upon revocation of house arrest.

simply credited the pre-sentence time from the outset. Delayed Past Credit cases only account for 0.10% (sixteen cases) of the total cases in our dataset, and 0.40% of the Delayed Time cases (0.50% of total and 1.35% of Delayed Time cases from that county).

2. *Direct Sentence Time*

As noted in Part I.A, Nebraska's statutory scheme allows courts to impose a period of incarceration as a means of paying financial sanctions at the time of sentencing¹⁷¹—what we have called “Direct Sentence Time.” By immediately imposing a term of incarceration, this type of sitting out both eliminates the possibility that revenue will be generated and ensures the expense of incarceration will be borne, albeit without the cost of overseeing collections. As Table 7 shows above, this primary category of cases accounts for 31.39% (4,938 cases) of the cases in our dataset. Within this broader category, we include three subcategories.

The first subcategory—“Straight Time” cases—are those for which the court imposes a substitution of a term of incarceration for financial sanctions at the time of sentencing, without affording the defendant an opportunity to pay, and for which there is no jail term left to serve (either because no jail term was imposed or because the court awarded credit for time served pre-sentencing to satisfy the jail term). Straight Time cases account for 6.25% (983 cases) of the total cases in our dataset, or 19.91% of all Direct Sentence Time cases.

The remaining two subcategories relate to the relationship between the sitting out of financial sanctions and any jail term imposed. Nebraska's statute is silent as to whether courts should impose the term of incarceration used to pay financial sanctions consecutive to or concurrent with a jail term.¹⁷² Nebraska's judges have filled in that gap, though not consistently.¹⁷³ We refer to cases in which a court substitutes a term of incarceration for financial sanctions and orders it be run consecutive to any jail term imposed as “Consecutive Time” and those ordering the sit out to run concurrent to the jail term as “Concurrent Time.” Consecutive Time cases account for 23.65% (3,720 cases) of the total cases in our dataset, or 75.33% of the Direct Sentence Time cases. Concurrent Time cases account

¹⁷¹ See *supra* notes 26, 30, 33 and accompanying text.

¹⁷² NEB. REV. STAT. § 29-2206 (2012, 2019, 2020).

¹⁷³ E.g., Case 14962, Sentencing Hearing Transcript (regarding a judge explaining that he “can’t” run a period of sitting out to pay for financial sanctions and a jail term concurrently).

for 1.49% (235 cases) of the total cases in our dataset, or 4.76% of the Direct Sentence Time cases. In other words, judges overwhelmingly filled the statutory gap by imposing longer periods of incarceration.

3. *Pre-Sentence Time*

The third primary category of cases—what we call “Pre-Sentence Time”—are those in which the court credits the financial sanctions imposed against time a defendant already served in jail prior to sentencing. This type of sitting out does not allow for revenue-generation but does save the expense of both collections costs and the cost of further incarceration. As Table 7 shows above, this primary category of cases accounts for 40.14% (6,315 cases) of the 15,731 total cases in our dataset. Within this broader category of Pre-Sentence Time, we include two subcategories: “Past Credit” and “Simultaneous Credit.” Past Credit cases are those for which the court credited financial sanctions against time served in jail prior to sentencing. Past Credit cases account for 9.72% (1,529 cases) of the total cases in our dataset and 24.21% of the Pre-Sentence Time cases. Simultaneous Credit cases are those in which the court credited both financial sanctions and a sentence to a jail term against time served prior to sentencing. Simultaneous Credit cases account for 30.42% (4,786 cases) of the total cases in our dataset and 75.79% of the Pre-Sentence Time cases.

A particularly noteworthy aspect of the use of Pre-Sentence Time in Nebraska is that it is not explicitly authorized by statute or court rule. As detailed in Part I.A, Nebraska’s statutory structure allows for the imposition of a term of incarceration as payment to be imposed post-sentencing upon a failure to pay or served at the time of sentencing and also allows time incarcerated pre-trial to be credited against a jail term.¹⁷⁴ Despite the lack of explicit statutory authority, judges frequently, though not universally, employ presentence time. In the dataset cases judges often declined to award Pre-Sentence Time in favor of other forms of sit out even when defendants were incarcerated prior to sentencing, and in at least one urban county judges appear to have explicitly rejected the use of Pre-Sentence Time.¹⁷⁵ But, as shown in Table 7 above, Pre-Sentence Time cases make up over 40% of all cases in the dataset.

¹⁷⁴ See *supra* notes 26–37 and accompanying text.

¹⁷⁵ E.g., Case 13441, Sentencing Hearing Transcript (“But you can’t retroactively get credit for the fines and costs, so that’ll be one more day.”); Case 13473, Sentencing Hearing Transcript (rejecting the idea that a defendant can use time served in jail to sit out).

4. *Hybrids*

In 2.57% (404 cases) of the cases in our dataset, courts employed a combination of two or more of the categories presented above—what we call “Hybrids.” This most frequently happened where a court awarded some pre-sentenced time, but the amount awarded was insufficient to pay off the full debt at the \$150 per day rate, and so the remaining financial sanctions would be paid through Delayed Time or Direct Sentence Time.¹⁷⁶ These “Typical Hybrid” cases account for 2.15% (338 cases) of the cases in our dataset and 83.66% of the Hybrids.

A unique practice in one of the urban counties in our dataset led us to add two additional subcategories of Hybrids. When multiple charges are filed in a case in one of the urban counties, its judges will at times sentence a defendant on some of the charges on date one, and others at date two. In some of those cases, this will result in a situation in which the person serves out two unique periods of payment via incarceration, not because one period did not fully satisfy the dollar amount owed, but because the court treated them as effectively two separate cases. To avoid overcounting the number of cases in which sit outs occurred, we treat these cases as a single case, coding them as “Independent Hybrid” cases. Independent Hybrid cases only account for 0.29% (46 cases) of the cases in our dataset and 11.39% of the Hybrids. At other times, after splitting the charges into two different sentences, the cases effectively merged back together, resulting in a single moment in which a term of incarceration was used to pay off both sets of debt. We have coded these cases as “Merger Hybrid” cases. Merger Hybrid cases account for only 0.13% (20 cases) of the total cases in our dataset and 4.95% of the Hybrids.

5. *Inconclusive Cases*

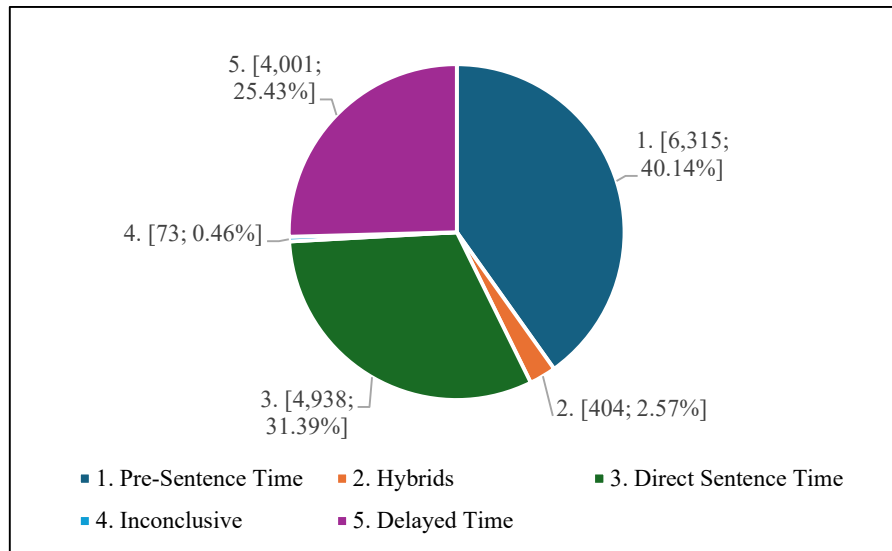
Finally, although not formally part of our typology, in 0.46% (73 cases) of the cases we are able to document that the court ordered payment via incarceration and thus include them as a sit out case in our dataset, but are unable to identify the exact sit out type from the information in the case files. We label these as “Inconclusive” cases.

¹⁷⁶ *E.g.*, Case 15259 (sentencing defendant to pay \$154 in costs, awarding one day Past Credit to cover \$150).

C. CONNECTIONS BETWEEN SIT OUT TYPE AND REVENUE GENERATION

With the typology in place, we turn to the question of consistency between the general understanding that modern debtors' prisons are motivated by revenue generation goals on the one hand, and the practice of payment via incarceration on the other. We know from our data that, at \$150 per day (the rate at which Nebraska credits incarceration against financial sanction debt¹⁷⁷), the defendants in our study spent a minimum of 14,036 days in Nebraska county jails to pay off fines, costs, and probation fees. We would expect to see courts prioritizing revenue-intake—which is only possible through Delayed Time cases in which a jurisdiction creates an opportunity to generate revenue by giving time to pay financial sanctions—and to prioritize limiting system costs—*i.e.*, through the use of Pre-Sentence Time cases in which the court affords credit for time served, which avoids both the costs of collection and further incarceration. As shown in Figure 13 below, Delayed Time cases make up just over a quarter of all cases in our dataset and Pre-Sentence Time cases constitute over 40% of all cases in our dataset. The least cost-effective mechanism—Direct Sentence Time cases, which both ensure no revenue is forthcoming and that incarceration costs will accrue, made up just under a third of the cases in the dataset.

¹⁷⁷ See *supra* note 39 and accompanying text.

Figure 13: Typology of Sit Out Types (N=15,731)

When considered through the lens of dollar value, however, the picture changes. Table 8 below displays the relevant data. Though courts imposed Delayed Time in only approximately a quarter of all cases, those cases also account for the greatest proportion of financial sanctions paid via incarceration (39.81%), followed by Direct Sentence Time cases (27.65%), and then Pre-Sentence Time cases (26.32%). A closer look at the data reveals that this results from the fact that fines account for the greatest amount of total dollars paid via incarceration compared to other financial sanction types. In other words, when there is more money at stake in a case in which courts impose fines (in addition to costs), courts are more likely to allow time to pay thus increasing the opportunity for revenue generation while also taking on the expense of collections.

Table 8: Dollars Sat Out (\$) by Sit Out Type and Financial Sanction Type

Delayed Time - Dollars Sat Out (%)					
	Fines	Standard Costs	Other Costs	Probation Fees	Total
Time to Pay	\$607,329 (28.85)	\$95,494 (4.54)	\$28,160 (1.34)	\$370 (0.02)	\$731,353 (34.74)
Probation	\$65,917 (3.13)	\$6,851 (0.33)	\$9,654 (0.46)	\$6,168 (0.29)	\$88,590 (4.21)
House Arrest	\$10,778 (0.51)	\$1,091 (0.05)	\$1,673 (0.08)	\$0 (0.00)	\$13,542 (0.64)
Delayed Past Credit	\$4,137 (0.20)	\$400 (0.02)	\$117 (0.01)	\$0 (0.00)	\$4,654 (0.22)
<i>Total</i>	<i>\$688,161 (32.68)</i>	<i>\$103,836 (4.93)</i>	<i>\$39,604 (1.88)</i>	<i>\$6,538 (0.31)</i>	<i>\$838,139 (39.81)</i>
Direct Sentence Time - Dollars Sat Out (%)					
	Fines	Standard Costs	Other Costs	Probation Fees	Total
Straight Time	\$146,667 (6.97)	\$29,599 (1.41)	\$4,156 (0.20)	\$110 (0.01)	\$180,532 (8.57)
Consecutive Time	\$180,409 (8.57)	\$117,580 (5.58)	\$32,529 (1.54)	\$641 (0.03)	\$331,159 (15.73)
Concurrent Time	\$56,456 (2.68)	\$5,826 (0.28)	\$8,009 (0.38)	\$120 (0.01)	\$70,411 (3.34)
<i>Total</i>	<i>\$383,532 (18.22)</i>	<i>\$153,005 (7.27)</i>	<i>\$44,694 (2.12)</i>	<i>\$871 (0.04)</i>	<i>\$582,102 (27.65)</i>
Pre-Sentence Time - Dollars Sat Out (%)					
	Fines	Standard Costs	Other Costs	Probation Fees	Total
Past Credit	\$229,974 (10.92)	\$42,535 (2.02)	\$6,179 (0.29)	\$90 (0.00)	\$278,778 (13.24)
Simultaneous Credit	\$99,894 (4.74)	\$153,025 (7.27)	\$21,975 (1.04)	\$410 (0.02)	\$275,304 (13.08)
<i>Total</i>	<i>\$329,868 (15.67)</i>	<i>\$195,560 (9.29)</i>	<i>\$28,154 (1.34)</i>	<i>\$500 (0.02)</i>	<i>\$554,082 (26.32)</i>
Hybrids - Dollars Sat Out (%)					
	Fines	Standard Costs	Other Costs	Probation Fees	Total
Typical Hybrid	\$89,399 (4.25)	\$9,538 (0.45)	\$3,520 (0.17)	\$50 (0.00)	\$102,507 (4.87)
Independent Hybrid	\$10,966 (0.52)	\$1,365 (0.06)	\$592 (0.03)	\$0 (0.00)	\$12,923 (0.61)
Merger Hybrid	\$3,972 (0.19)	\$482 (0.02)	\$0 (0.00)	\$0 (0.00)	\$4,454 (0.21)
<i>Total</i>	<i>\$104,337 (4.96)</i>	<i>\$11,385 (0.54)</i>	<i>\$4,112 (0.20)</i>	<i>\$50 (0.00)</i>	<i>\$119,884 (5.69)</i>
Inconclusive - Dollars Sat Out (%)					
	Fines	Standard Costs	Other Costs	Probation Fees	Total
Inconclusive	\$7,544 (0.36)	\$2,074 (0.10)	\$1,637 (0.08)	\$0 (0.00)	\$11,255 (0.53)
Grand Total - Dollars Sat Out (%)					
	Fines	Standard Costs	Other Costs	Probation Fees	Total
<i>All Sit Out Types</i>	<i>\$1,513,442 (71.88)</i>	<i>\$465,860 (22.13)</i>	<i>\$118,201 (5.61)</i>	<i>\$7,959 (0.38)</i>	<i>\$2,105,462 (100.00)</i>

Analyzing the composition of sit out types within the urban, suburban, and rural counties provides even more granular detail. As Table 9 shows below, we find that Delayed Time cases—those in which the court affords the defendant a period of time to pay and then later imposes incarceration to pay off the financial sanction debt—account for 40.65% of the cases from rural counties and 40.31% from suburban counties, compared to only 22.63% from urban counties. The opposite trend, however, held true for Pre-Sentence Time cases—those in which the court credits the financial sanctions imposed against time a defendant already served in jail prior to sentencing. Urban counties have a higher proportion of cases involving Pre-Sentence Time (43.02%) compared to suburban counties (26.67%) and rural counties (21.03%). The urban counties are also more likely to employ Hybrids (2.90%) as compared to suburban (0.80%) and rural (0.82%) counties. In other words, urban counties are less likely to expend resources on collections oversight and future incarceration than their suburban and rural counterparts.

Table 9: Dollars Sat Out (\$) by Sit Out Type and County Geography

Urban Counties (N = 13,255)				
Type	Freq. of Cases	% Urban Sit Out Cases	Dollars Sat Out (\$)	% Dollars Sat Out in Urban Cases
Delayed Time	3,000	22.63	\$617,590	38.13
Direct Sentence Time	4,121	31.09	\$424,613	26.21
Pre-Sentence Time	5,703	43.03	\$458,127	28.28
Hybrids	384	2.90	\$113,184	6.99
Inconclusive	47	0.35	\$6,274	0.39
<i>Total</i>	<i>13,255</i>	<i>100.00</i>	<i>\$1,619,787</i>	<i>100.00</i>
Suburban Counties (N = 1,620)				
Type	Freq. of Cases	% of Suburban Sit Out Cases	Dollars Sat Out (\$)	% Dollars Sat Out in Suburban Cases
Delayed Time	653	40.31	\$134,911	42.36
Direct Sentence Time	517	31.91	\$106,693	33.50
Pre-Sentence Time	432	26.67	\$73,032	22.93
Hybrids	13	0.80	\$3,322	1.04
Inconclusive	5	0.31	\$543	0.17
<i>Total</i>	<i>1,620</i>	<i>100.00</i>	<i>\$318,500</i>	<i>100.00</i>
Rural Counties (N = 856)				
Type	Freq. of Cases	% of Rural Sit Out Cases	Dollars Sat Out (\$)	% Dollars Sat Out in Rural Cases
Delayed Time	348	40.65	\$85,639	51.23
Direct Sentence Time	300	35.05	\$50,796	30.38
Pre-Sentence Time	180	21.03	\$22,924	13.71
Hybrids	7	0.82	\$3,379	2.02
Inconclusive	21	2.45	\$4,438	2.65
<i>Total</i>	<i>856</i>	<i>100.00</i>	<i>\$167,175</i>	<i>100.00</i>
Grand Total	15,731	100.00	\$2,105,462	100.00

The greater reliance on Delayed Time may explain, at least in part, the higher imposition of other costs in the suburban and rural counties. A closer analysis of the data revealed that “sheriff’s service fees” drive the higher imposition of costs in both suburban counties (\$18,689; 74.84% of other costs paid via incarceration) and rural counties (\$12,172; 73.99% of other costs paid via incarceration). In our dataset, sheriff’s service fees most often

applied in situations when sheriffs served and returned warrants against the defendant. Under Nebraska law, sheriffs are required to charge \$2 in fees for serving a warrant and mileage fees for returning a warrant at specified statutory rates.¹⁷⁸ Because Delayed Time cases are those in which the court affords the defendant time to pay, courts frequently issue warrants for a defendant's arrest when payment is not forthcoming.¹⁷⁹

* * *

Taken all together, this study shows that the fiscal realities of employing sitting out practices are complex, varying across urban, suburban, and rural counties, complicating the generally-recognized story in which government actors may be motivated by revenue generation. Urban counties are more likely to impose payment via incarceration. Those payments, however, are dominated by addressing the standard package of court costs that courts are mandated to impose in all cases, as opposed to more discretionary fines, costs, and probation and its attendant fees. Further, urban courts are more likely to rely on Pre-Sentence Time, meaning that defendants are more likely to be released at sentencing, thereby avoiding further incarceration costs, rather than rearrested for nonpayment in relation to Delayed Time or incarcerated at the point of sentencing for Direct Sentence Time. In contrast, suburban and rural counties are less likely to use sit outs overall, but the amount of money they resolve via sitting out per case is higher given their greater likelihood of imposing fines, other costs, and probation and probation fees. In turn, suburban and rural judges are more likely to rely on Delayed Time and Direct Sentence Time.

The foregoing analysis also shows how the process of sitting out can grow beyond statutory schemes opening the door to inconsistent application. Nebraska courts filled in a gap in the existing statutory scheme, with some courts running the period of incarceration used to pay financial sanctions concurrent to any jail term imposed and other courts running the period consecutively, resulting in longer overall terms for some defendants. The courts also expanded the use of payment via incarceration to include the crediting of time served prior to sentencing against the financial sanctions imposed, a practice that, as noted above, is used predominantly, though inconsistently, in urban counties.

¹⁷⁸ NEB. REV. STAT. § 33-117(1) (2024).

¹⁷⁹ *E.g.*, Case 9073; Case 2941; Case 13277.

V. TAKEAWAYS, LIMITATIONS, AND IMPLICATIONS FOR FUTURE
RESEARCH

We conclude with the takeaways, limitations, and several law and policy implications of our research that can serve as a basis for future study.

A. TAKEAWAYS

Our study of Nebraska's misdemeanor cases shows that the use of incarceration as a method of paying financial sanctions is widespread, resulting in the incarceration of thousands of people. Courts in our study ordered defendants incarcerated to pay fines, court costs, or probation fees in 15,731 cases, constituting over a quarter of misdemeanor cases with judgments from 2019. Courts ordered 10,027 defendants to spend a minimum of 14,036 days in jail to pay off an aggregate of \$2,105,462 in financial sanctions.¹⁸⁰

Not only are there a concerning number of defendants subjected to sitting out, but our research also reveals indications that defendants are effectively incarcerated due to their poverty as well as troubling demographic disparities that are consistent with general understandings of modern debtors' prisons. Despite statutory restrictions prohibiting the use of sitting out against defendants who are unable to pay financial sanctions, our analysis shows both that failure to appear convictions (which are linked to the notion that people who are afraid to be subject to unpayable financial sanctions or to be arrested for nonpayment will not attend court), and convictions for other offenses commonly linked to poverty, are common. Further, in almost 40% of cases the court entered an order to appoint counsel, pay appointed counsel fees, and/or found the defendant to be indigent after holding an indigency hearing. Racial disparities are also evident. Black defendants—particularly young people in urban counties—are overrepresented in the dataset as compared to Nebraska's population. So too are Native American defendants, the greatest number of which also stem from urban county convictions, though a considerably higher portion of Native American defendants were convicted in rural counties as compared to defendants in any other racial category. When considering poverty and race together, we found a slightly higher representation of Black defendants among cases with at least one conviction for a poverty

¹⁸⁰ To reiterate, our calculation of the days spent in jail is likely conservative given that we found files in which some defendants appear to have sat out longer than required to pay off outstanding fines and costs at the \$150 per day rate. *See supra* note 56 and accompanying text.

offense. For all racial categories, however, over half of all cases involve poverty offense convictions, with the rates of indigency determinations also fairly consistent across racial categories.

Where the results of our study complicate the generally understood implications of modern debtors' prisons relates to the issue of perverse incentives created by the revenue-generating capacity of financial sanctions. Urban counties are more likely to employ sitting out for costs courts are mandated to impose, and the courts there do so using forms of sitting out that avoid the expense of collections oversight and further incarceration (Pre-Sentence Time). Suburban and rural counties are more likely to employ sitting out to pay for discretionary financial sanctions—fines, certain costs, and probation fees—and to do so in ways that necessitate collections expenses and ensure incarceration is imposed (Delayed Time and Direct Sentence Time).

In addition, our analysis also shows how the process of sitting out can grow beyond statutory schemes, leading to inconsistent application. As noted above, Nebraska courts filled in a gap in the existing statutory scheme, with some courts running the period of incarceration used to pay financial sanctions concurrent to any jail term imposed and other courts running the period consecutively, resulting in longer overall terms for some defendants. The courts also expanded the use of payment via incarceration to include the crediting of time served prior to sentencing against the financial sanctions imposed, a practice that is used predominantly, though inconsistently, in urban counties.

A final takeaway from our research involves best practices for recording instances of sitting out. In our research we discovered that counties differed in terms of how case files recorded periods of incarceration used to pay off financial sanctions in a given case. Some counties were very transparent in their practices, making it easy to see when exactly defendants sat out fines, costs, and probation fees and for what amount. For instance, the case files from one county included a document from the county sheriffs that displayed a grid of the exact days and times, divided into one-hour intervals, that individuals sat out financial sanctions.¹⁸¹ Another county used a sheet that included a formula calculating the exact amount of time that a defendant had to sit out to satisfy their financial sanction debt to the day, hour and minute, and listed the exact start date and time that a person began sitting out and the exact

¹⁸¹ *E.g.*, Case 12680; Case 12696.

date and time of release.¹⁸² The level of detail in these types of documents made it easy to trace when exactly incarceration was used to pay off financial sanctions owed and whether those dates and times overlapped with other jail sentences that a person was ordered to serve. These types of records make the system more transparent for purposes of oversight and study and also make it less likely that errors that lead to over-incarceration will occur.¹⁸³

B. LIMITATIONS

Although our study has several takeaways, it is important to consider the possible limitations of this research. One category of limitations involves choices surrounding the design of our study. Our choice to focus on one state—Nebraska—inevitably raises generalizability questions. Additional research on payment via incarceration in other states would provide greater insight into whether patterns and trends that we identified in our research are consistent across jurisdictions.¹⁸⁴ Further, our study focuses on misdemeanors, not felonies. Additional research is necessary to examine how payment via incarceration practices unfold in felony cases, and whether the patterns and trends that emerge in felony cases are consistent with those that we identify herein.

A second category of limitations involves practical constraints that we encountered during our research. For instance, we discovered that although the standardized docket included certain information consistently across counties, the documents that courts included in the case files differed from county to county. At times, these inconsistencies hindered our ability to determine whether a case was a sit out or not, sit out type, and other information relevant to our study such as demographic information. In many, though not all, cases, we were able to address this limitation through listening to audio files of the sentencing hearings or referencing other cases involving the same defendant that did include demographic information.

¹⁸² *E.g.*, Case 13774; Case 13813.

¹⁸³ *See supra* note 56 and accompanying text (describing situations in which records show errors due to which defendants sat out more time than money owed).

¹⁸⁴ For a list of several states that have codified the use of incarceration as a payment method for financial sanctions, see *supra* note 2 and accompanying text.

C. IMPLICATIONS AND POTENTIAL AVENUES FOR FUTURE RESEARCH

While identifying and analyzing Nebraska's sit out cases, a number of other concerning issues came to the fore that we intend to examine in future work. One critical issue, that we began examining here, is the likelihood that courts are imposing terms of incarceration to pay financial sanctions in violation of both Nebraska law and relevant constitutional doctrines. Both sources of law mandate that the use of incarceration as a method of paying off financial sanctions may only be employed if the person is able to pay but is willfully noncompliant.¹⁸⁵ What we have seen in the records, however, suggests that the vast majority of these cases involve defendants who have little or no meaningful ability to pay the financial sanctions imposed. In addition to convictions for poverty offenses and data related to indigent defense representation noted above, and though the scope of documentation varies widely from county to county, many of the case files in our dataset also include other indications of financial precarity. That

¹⁸⁵ As detailed above, Nebraska law limits the use of incarceration to those who are able to pay financial sanctions. *See supra* notes 30–37 and accompanying text. In terms of constitutional law, prohibitions against the imposition of incarceration for the nonpayment of financial sanctions is longstanding. In the early 1970s, the Court held that converting financial sanctions into a term of incarceration when the person was not capable of paying violated the Fourteenth Amendment. *Tate v. Short*, 401 U.S. 395, 397–401 (1971); *Williams v. Illinois*, 399 U.S. 235, 240–41 (1970). Approximately a decade later the Court struck down the automatic revocation of probation for nonpayment, requiring courts to first hold a hearing to determine if the failure to pay was willful or due to a lack of means; if the latter, revocation was prohibited unless there was no other way for the state to meet its punitive goals. *Bearden v. Georgia*, 461 U.S. 660, 662 (1983). The Court made it unlikely that the state could meet that test, given that it approved the discharge of the debt, reduction of the debt, or substitution of community service as available options. *Id.* at 671–72. In addition, in 2021, the Idaho Supreme Court struck down the issuance of warrants for nonpayment of financial sanctions without probable cause that the failure to pay was willful. *Beck v. Elmore Cnty. Magistrate Ct.*, 489 P.3d 820, 835–36 (Idaho 2021). And while the U.S. Supreme Court has not yet resolved the question of whether a defendant's financial condition is relevant to determining excessiveness for purposes of the Eighth Amendment's Excessive Fines Clause, it has suggested that it will do so, and state supreme courts taking up the question have already determined it is relevant. *See Timbs v. Indiana*, 586 U.S. 146, 151–52 (2019) (discussing historical evidence supporting the constitutional relevance of financial condition in noting the Court has not yet determined the constitutional relevance of financial effect (citing *United States v.ajakajian*, 524 U.S. 321, 340, n.15 (1998))); *City of Seattle v. Long*, 493 P.3d 94, 99, 110–16 (Wash. 2021) (holding that financial condition is relevant to excessiveness); *Colo. Dep't of Lab. & Emp. v. Dami Hosp., L.L.C.*, 442 P.3d 94, 96, 101–02 (Colo. 2019), *cert denied*, 589 U.S. 1139 (2020) (same); *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 124 P.3d 408, 421 (Cal. 2005) (same).

evidence includes financial affidavits completed for other purposes;¹⁸⁶ *in forma pauperis* petitions filed in conjunction with appeals;¹⁸⁷ law enforcement and probation department records indicating the defendant is, for example, living with serious disabilities that would limit employment opportunities or is unhoused,¹⁸⁸ or describing offenses seemingly connected to a person's poverty;¹⁸⁹ correspondence from defendants and others to the court attesting to their financial circumstances;¹⁹⁰ statements by the court that a defendant is unable to pay;¹⁹¹ and so on. Further, in examining audio recordings of court hearings in order to confirm the type of sit out in several cases, we were struck by how little time and attention is given to anything resembling an ability to pay assessment.¹⁹² Therefore, in future work, we intend to engage in a more fulsome investigation into the manner in which the Nebraska courts make ability to pay determinations.

In addition to the likelihood of illegalities regarding the incarceration of people with little or no meaningful ability to pay, we also noted another potential constitutional defect related to the provision of indigent defense representation. As noted above, in just over 58% of cases, defendants were subjected to sitting out without representation.¹⁹³ While the Supreme Court has interpreted the Sixth Amendment right to counsel as inapplicable in misdemeanor cases in which only financial sanctions are imposed,¹⁹⁴ provision of counsel for indigent defendants is required in misdemeanor cases in which incarceration is ordered¹⁹⁵ (as it is in the Direct Sentence Time and Pre-Sentence Time cases). Further, the Court has held that the Sixth Amendment right to counsel does not "permit activation of a suspended sentence" for which a condition of the suspension is payment of

¹⁸⁶ *E.g.*, Case 12579 (poverty affidavit to obtain release); Case 13193 (form assessing eligibility for personal recognizance bond).

¹⁸⁷ *E.g.*, Case 12269; Case 12266.

¹⁸⁸ *E.g.*, Case 9340 (including in an arrest report that the defendant was living in a residential program for adults with serious intellectual or developmental disabilities); Case 9837 (reporting that probationer "has reported to this Officer that he is currently homeless and sleeping on the streets").

¹⁸⁹ *See supra* note 98 and accompanying text (providing an example of a theft of a basic necessity).

¹⁹⁰ *E.g.*, Case 9243 ("I currently do not reside anywhere, my children and I are living in a domestic violence shelter. I am currently looking for employment as well.").

¹⁹¹ *E.g.*, Case 14062; Case 15684.

¹⁹² *E.g.*, Case 15517; Case 15518; Case 15534.

¹⁹³ *Supra* note 112 and accompanying text.

¹⁹⁴ *Scott v. Illinois*, 440 U.S. 367, 373–74 (1979).

¹⁹⁵ *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972).

financial sanctions (as is arguably occurring in the Delayed Time cases) if the defendant was not afforded counsel during the prosecution of the charged offense.¹⁹⁶ Further, in cases in which defendants were represented by counsel, the apparent dearth of arguments against the imposition of sit outs in cases involving defendants for whom payment would be difficult, if not impossible—and even requests for the imposition of a sit out *because* of the defendant's inability to pay¹⁹⁷—raises the question of whether counsel is ineffective in at least some cases.

The records we reviewed also revealed miscommunications and other errors resulting in wrongful incarceration beyond the period of time allowed for sitting out.¹⁹⁸ This is perhaps unsurprising in systems as complex as what has developed in Nebraska, where incarcerating people to pay for financial sanctions is routine. Regardless, it opens Nebraska's government up to additional risk of litigation and damages for wrongful imprisonment.

Finally, sitting out raises several policy implications. On the one hand, because of the scope of financial sanction practices broadly, even with the lost revenue and expenses related to sitting out, Nebraska's misdemeanor courts may yet generate millions of dollars from financial sanctions annually, reducing the likelihood that its lawmakers will seriously consider reforms.¹⁹⁹ On the other hand, the use of sitting out means that the government did not collect over \$2.1 million in revenue (albeit, revenue that may be uncollectable given the financial circumstances of the defendants). At the same time, the government expended resources on incarcerating defendants subjected to the practice along with expenses related to court, probation, and law enforcement personnel responsible for

¹⁹⁶ *Alabama v. Shelton*, 535 U.S. 654, 662 (2002).

¹⁹⁷ *E.g.*, Case 13699 (request by defense attorney to allow a client to sit out because of the client's indigence).

¹⁹⁸ *E.g.*, Case 12680 (including a sentencing order by the court to apply the bond to cover financial sanctions and documentation but showing incarceration occurred instead); Case 13236 (same); Case 12503 (including a sentencing order by the court to waive costs and a commitment return showing the person was incarcerated for those same costs); Case 14478 (including a sentencing order in which the judge ordered Past Credit applied to financial sanctions, but the credit was not applied, resulting in the defendant being subjected to a later arrest); Case 14999 (including a sentencing order of Simultaneous Credit and declaring "This sentence is completed," but later subjecting defendant to incarceration to pay the same financial sanctions); Case 9741 (sentencing the defendant to one day Past Credit but later incarcerating the defendant as payment for the same financial sanctions); Case 14994 (waiving all costs at sentencing, but later making the defendant sit out costs); *see also supra* note 56 (providing an additional example).

¹⁹⁹ *See generally* Martin, *supra* note 133.

administering the system²⁰⁰—all while taking on the risk of costly litigation. And the costs of such systems do not end there. Among other things, there is also the opportunity costs of expending money on criminal processes rather than services that may be better at curbing crime, including money spent on housing, community-based mental health and addiction treatment, and the like. Redirecting monies in that way may result in not only a reduction of crime, but also a reduction in the potential harms to the people subjected to payment via incarceration and their families, making Nebraska's communities safer and more resilient.

²⁰⁰ See Menendez et al., *supra* note 135, at 5.

METHODOLOGY APPENDIX

The following provides detailed information about the study conducted in support of this Article, including how we obtained relevant records, the mechanisms used for the identification of cases to include within the dataset, our process for coding each case in the dataset for sit out type, and the use of scraping and coding to obtain further information employed in our analysis.

A. OBTAINING RECORDS

The Administrative Office of Courts and Probation, which guides the administrative functions of the Nebraska Judicial Branch (NJB), has digitized the records of its county courts, which are made available through a publicly available website (called “JUSTICE”).²⁰¹ We obtained two licenses that granted us permission to engage in bulk downloading of materials from the site. The bulk subscription licenses allowed us to view and download up to 20,000 cases per month with each license. Because we wanted to allow for lag time both before and after sentencing to account for cases in which courts may award past credit or time to pay post-sentencing, we engaged in bulk downloading of cases in which the judgment (when a court adjudicated the guilt of the defendant and/or sentenced the defendant) took place in 2019. In terms of reliability and validity, Nebraska’s JUSTICE website includes misdemeanor cases in every county court throughout the state from 2010 to the current year. Each case includes both detailed docket information and downloadable .pdf images of most documents in the physical case file. The records are sufficient to identify a wide range of information, including case-specific information necessary to engage in the coding and analysis detailed below.

In most cases, the information that we needed for the analysis in this Article was included in the case files. In addition to the case files, however, we also requested copies of audio recordings of sentencing hearings directly from the Nebraska county courts to clarify or verify coding as needed. The NJB allows members of the public to order copies of digital audio recordings of court hearings for a fee. Given that our final dataset had 15,731 cases, it was impractical to order sentencing hearings for every case. We ordered audio recordings of the sentencing hearings for each case in our dataset in which the case files lacked sufficient information for us to code the case, and we thought that having the recording would provide sufficient additional information for coding purposes. As of October 2025, we had

²⁰¹ JUSTICE, *supra* note 24.

responses from sixty-two of the seventy-nine Nebraska counties represented in our dataset. Of the seventeen counties we did not hear from, fourteen are smaller rural counties whose cases together comprise approximately 0.5% of our dataset. The other three counties are relatively smaller urban counties whose cases together comprise approximately 1.52% of our dataset.

There were fewer documents in the case files for one urban county in our dataset. Accordingly, to clarify or verify our coding for cases in that county, in addition to requesting copies of audio recordings of sentencing hearings, we also obtained a detailed database of jail records for that county's jail through a public records request. That database included dates and times that defendants were incarcerated and released from the county jail. We were able to use information in the case files to match entries in the database of jail records. This allowed us to confirm the precise dates and times that defendants in our database were incarcerated for the offenses in which they paid financial sanctions through incarceration.

B. IDENTIFICATION OF DATASET CASES

The purpose of this research is to identify and examine cases in which a court ordered a defendant to serve a period of incarceration as a means of paying for financial sanctions, what in Nebraska is typically referred to as “sitting out.”²⁰² In Nebraska, the sanctions eligible for this process are fines, most costs, and probation fees but not restitution or a small subset of costs.²⁰³ It is important to note that this definition is conservative; though restitution and a subset of costs are ineligible for sitting out, they can have similar effects given that ongoing debt from those cases may mean a person is subjected to arrest for nonpayment. Because the court does not use any period of incarceration stemming from the arrest to pay off the underlying debt, such cases are excluded from our analysis.²⁰⁴ Further, our dataset does not include cases in which a defendant was afforded time to pay, subject to warrants for arrest for nonpayment, and paid at the time the arrest warrant

²⁰² Some system actors in Nebraska also use the term “laying out.” *See supra* text accompanying note 1.

²⁰³ *See supra* notes 138–50 and accompanying text. Note that probation fees are not referenced in the relevant statutes, but we did find payment of probation fees via incarceration in some cases.

²⁰⁴ Even though \$17 in standard costs may not itself be paid through incarceration, it can still effectively result in a term of incarceration. *E.g.*, Case 14247 (applying time served prior to sentencing to pay off the eligible costs, leaving the \$17 remaining, but also showing that law enforcement arrested the defendant for nonpayment of the \$17, at which point the court imposed additional fees for the sheriff's execution of the warrant, and then subjected the defendant to an additional sit out to pay off the sheriff's service fees).

was executed because in those cases the court never credited a period of incarceration against the financial sanctions.

1. Data Collection

Cases in the Nebraska county courts are classified as felony, extradition, misdemeanor, or game and parks. Given that our study focused on misdemeanors, we excluded felony and extradition cases from our final dataset. Game and parks cases typically involve misdemeanors or low-level violations. Therefore, we consider those cases to meet our definition of “misdemeanor” for the purposes of our study and include them in our final dataset.

We focus on misdemeanors for two interrelated reasons. First, over 80% of criminal cases processed in Nebraska state courts involve misdemeanors, allowing us to study sitting out processes across a broad sample of cases.²⁰⁵ Second, our goal was to study cases with completed sentences so that we could examine how sitting out practices occur at different points in a case (before sentencing, directly upon sentencing, and considerable periods after sentencing if courts afford defendants time to pay financial sanctions). Due to the likelihood of significantly longer felony sentences and a corresponding reduced likelihood of sentence completion, focusing on misdemeanors allows us to include a much higher number of cases in our dataset.

We began data collection on Nebraska’s JUSTICE website in March 2023. The first phase of data collection was to identify a preliminary list of the case numbers for all cases, including misdemeanor cases, in Nebraska county courts with judgments during the year of 2019. In Nebraska, the majority of misdemeanors are heard in county courts.²⁰⁶ District courts, which were outside the scope of our study, typically hear felony cases.²⁰⁷ On the JUSTICE website, users are able to search for trial cases by judgment date (month, day, and year), court type (county versus district), county name, and case type (civil, criminal, juvenile, probate, small claims,

²⁰⁵ STEEL, *supra* note 9.

²⁰⁶ *Additional Information: Misdemeanor Cases in Nebraska*, NEB. JUD. BRANCH, <https://supremecourt.nebraska.gov/self-help/criminal/additional-information-misdemeanor-cases-nebraska> [https://perma.cc/X55V-P2PQ] (last visited Jan. 4, 2026).

²⁰⁷ *Additional Information: Felony Cases in Nebraska*, NEB. JUD. BRANCH, <https://nebraskajudicial.gov/self-help/criminal/additional-information-felony-cases-nebraska> [https://perma.cc/FH3L-4Y7U] (last visited Jan. 4, 2026). We did a preliminary search on Nebraska’s JUSTICE system of district court criminal cases from several counties with judgment dates during 2019 and did not identify non-felony cases from our search results.

and traffic). After running a search for judgments on a particular calendar date in JUSTICE, a results list will appear with the case number, case type (misdemeanor, extradition, or felony), and the defendant's name. Users can then electronically access the standardized docket and documents in the case file for each case result. With the assistance of a data scientist, we were able to compile the results lists for each calendar day in 2019 of all cases in Nebraska county courts with judgments during that year. This gave us a preliminary list of all cases, including misdemeanor cases, in Nebraska county courts with judgments during 2019. A total of 65,623 cases met these criteria. It took the entire month of March 2023 to compile this preliminary list.

As we were building the preliminary list of cases, we started to download the individual case files for each case result. Since the volume of county court cases with judgments in 2019 varied by county, and the number of documents and pages also varied by county and by case, the process of individually downloading the case files took several months (March to November 2023). The individual case files include a standardized docket and various documents in the file. The standardized docket contains information about the case, including information about the parties/attorneys to the case; offense information by count (for example, the offense date, whether the defendant pled guilty or not, and the sentence imposed); warrant information; bond information; itemized court costs; payment types, dates, and amounts; and a register of actions that included notes organized by date on the events that occurred in the case with .pdf links to any relevant documents. Although the number of available electronic documents varies by county, at a minimum, the available documents typically include the complaint or citation, appearance bonds, orders of release from custody, any warrants issued, court orders (including orders to appear and appoint indigent defense counsel), and journal entries and orders that include various information about the case (including the names of the judge and attorneys in the case, whether indigency hearings related to the appointment of counsel were held and the outcomes of those hearings, and detailed information about sentencing and any credit for time served against a defendant's jail sentence or financial debt).

As noted above, it took longer for us to construct the preliminary list of cases than it did to download the individual case files. One limitation we ran into was that there were a handful of instances where a misdemeanor case appeared in our preliminary list but was no longer available on the JUSTICE website by the time that we tried to download the case file. We excluded those cases from our study. We ran into a similar issue when confirming the accuracy of our preliminary case list in November 2023.

There, we discovered that a handful of cases appeared in the search results that had not appeared when we created the initial list in 2023. We were able to download the individual case files for those additional cases and included them in our study.

2. *Scraped Data*

Early in the process of obtaining case records from the JUSTICE website, we reviewed a small subset of cases to determine what information could be marshalled to identify potential sit out cases. Each case contained a standardized docket sheet that included, among other information, a description of “Payments Made to the Court” (the “Payment List”). This section included a detailed breakdown of the way various financial sanctions and bond requirements were paid in the case. The most obvious entry likely to relate to a sit out was “Jail Time.” We also noted two other entries that were potentially related to sitting out: “Alternative Satisfaction” and “Non-Monetary Recognition.” We then worked with a data scientist to develop computer coding with a Python script to scrape detailed information on the types and amounts of each financial sanction imposed and paid in each case from the downloaded standardized docket sheets. We also scraped data from a section of the standardized docket sheets entitled Register of Actions (the “Register”), which provided a chronological account of the case from its initiation by law enforcement or the prosecution²⁰⁸ through case termination.²⁰⁹ In some cases, the Register included a “Jail in lieu of fines” entry suggesting that a judge allowed a defendant to sit out, and other information in the case file confirmed that the defendant actually paid financial sanctions via incarceration. In other cases, the Register included explicit language suggesting that a sit out actually occurred in the case.²¹⁰ The scraped data provided us a volume of information about the cases, which we organized into separate Excel databases. Out of the 65,623 cases in the preliminary list, 16,645 cases matched these qualifications.

²⁰⁸ Particularly in some of the smaller counties, cases originated with a ticket issued by law enforcement rather than a complaint filed by a prosecutor. *E.g.*, Case 13276; Case 14356; Case 15102.

²⁰⁹ In a very small number of cases, the case had not terminated at the time of data scraping because some aspect of the case remained outstanding. These cases were, however, included in our dataset if documents made clear that a sit out had occurred prior to the date of scraping.

²¹⁰ *E.g.*, Case 9099; Case 13242; Case 14014.

3. Manually Coded Data

Although the scraped data provided a wealth of information about the case, it was necessary to manually code documents in the case files for the subset of cases in which it appeared a sit out may have occurred to evaluate whether certain cases were in fact sit out cases and to obtain other pertinent information. We used the qualitative data analysis software Atlas.ti to manually code each of the 16,645 sit out case files. As detailed further below, to preserve intercoder reliability, we separately and independently coded each of the case files and then compared our coding results. With export data functions in Atlas.ti, we were able to compare our results and reach agreement on any codes that we did not initially agree on as well as merge our final manually coded data with the scraped data in Excel databases.

For manual coding on whether a case was a sit out, we independently reviewed all documents in each case (which ranged from a few pages to one hundred or more pages per case) to determine whether the defendant did in fact serve a term of incarceration as payment for financial sanctions. It was not sufficient to review documents related to the sentencing hearing because not all counties documented payment via incarceration in sentencing orders and in some cases costs that were ultimately sat out were added post-sentencing.²¹¹

We found that relevant data was most typically (though not exclusively) found in records of the sentencing hearings, orders for release, commitment orders and related returns from jails, time payment orders, warrants for nonpayment, and documents related to probation revocation, though the extent to which these materials were found in the files varied by county and case type. The review of records was time consuming for a variety of reasons, including that the relevant terminology and forms of documentation varied amongst the seventy-nine of Nebraska's ninety-three counties that were represented in our dataset, and because the scraped documents did not follow the case chronologically. Though the remaining case documents supported a determination that a sit out occurred in the bulk of cases with a "Jail Time" entry in the Payment List, in a small handful of cases, records indicated that the entry was an error; we excluded such cases

²¹¹ *E.g.*, Case 3423 (adding sheriff's service fees for the execution of a warrant for nonpayment post-sentencing). In at least one case, the sentencing record did not include fines imposed at sentencing because the court forgot to include them. *E.g.*, Case 9371 (letter from court to defendant after sentencing ordering the immediate payment of \$750 or the execution of a Time Pay Agreement).

from our dataset.²¹² The Alternative Satisfaction entry on Payment Lists was most typically used in one of the urban counties in our dataset, either on its own or in addition to a Jail Time entry. We confirmed with the clerks of the county court in that county that the “alternative satisfaction” label is typically used to refer to situations when defendants pay for financial sanctions via incarceration.²¹³ We coded Alternative Satisfaction payments as a sit out only if the underlying documents showed a period of incarceration for an amount matching the amount on the Payment List.²¹⁴ We also confirmed that defendants in those cases were incarcerated on the days that corresponded with the dates for “Alternative Satisfaction” payments from the database of jail records for that urban county that we obtained through a public records request. We also examined the use of the “alternative satisfaction” label in other counties and found it was used much less frequently, but as a matter of precaution, we examined those files and determined that very few constituted sit outs. We excluded Alternative Satisfaction entries in cases in which the Payment List also included credit for community service on the same date and no records suggested a failure to comply with the community service order. We also excluded Alternative Satisfaction entries when information in the standardized docket sheet clearly indicated that the payment involved a payment type other than incarceration (for instance, credit against fines for completing an educational class or program). We found that very few Nonmonetary

²¹² In one suburban county we discovered that for cases involving one judge, “Jail Time” appeared in Payments Lists but the judge used language in Journal Entries and Orders and during the audio recordings of sentencing hearings indicating that the judge was waiving fines/costs, and therefore, a sit out never occurred. We reviewed all cases involving that judge and excluded cases from our dataset in which the judge used “waiver” language in the Journal Entries and Orders. We received audio recordings of sentencing hearings for all but two of those cases, and as a matter of caution, excluded those two cases in which “waiver” language was used in the Journal Entries and Orders but we did not have the recordings of the sentencing hearings.

²¹³ We received this confirmation via e-mail on May 7, 2025.

²¹⁴ *E.g.*, Case 2636: Journal Entry and Order (sentencing defendant on Mar. 19, 2019 to pay \$400 in fines and \$50 in costs and suspending the payment until July 19, 2019); Time Pay Application and Order (ordering defendant to pay \$450 in fines and costs by July 19, 2019); Time Pay Warrant (ordering on Sep. 30, 2019 that law enforcement arrest and detain the defendant for the \$433 in fines and costs eligible to be sat out); Service Return (documenting the arrest of the defendant pursuant to a Time Pay Warrant on Oct. 18, 2019); Payment List (listing an Alternative Satisfaction of \$133 and the remaining amounts plus sheriff’s service fees on the warrant paid by check, all on Oct. 21, 2019).

Recognition entries in the Payment Lists constituted sit outs and so we excluded the bulk of those cases.²¹⁵

As noted above, we independently reviewed all documents in each case to determine whether the defendant did in fact serve a term of incarceration as payment for financial sanctions, leading us to conclude that a case was in fact a sit out case. We had very high intercoder agreement (over 99%) for whether a case was a sit out. For seventeen cases, it was not possible to discern whether payment via incarceration occurred, and so we excluded those cases from our dataset. Of the remaining cases, we did not have initial agreement in approximately eighty cases. For some of these cases, we were able to use the audio recordings of the sentencing hearings to discern whether the defendant did in fact sit out financial sanctions. After discussing our codes and listening to the sentencing hearings we had on file, we came to agreement on whether a case was a sit out or not in all but sixteen cases. Given the uncertainty regarding those cases, we excluded them from our dataset. Fourteen of those sixteen cases came from an urban county in our dataset with a very high volume of cases. Therefore, we can conclude that any bias resulting from this exclusion was nominal at best.

Upon completing this manual coding, our final dataset included 15,731 sit out cases.²¹⁶ We gave each case a unique identifier from number 1 to 15,731 to preserve the anonymity of people who were subjected to sitting out processes in our dataset.

C. CODING FOR CASE TYPE

Prior to coding for case type, we grounded our initial hypotheses in part on the articulation of sitting out in Nebraska statutes and in part on our examination of the cases we pulled from Nebraska's JUSTICE case search system for preliminary review. Because Nebraska's code allowed courts to immediately sentence those able to pay to a term of incarceration or to afford defendants time to pay,²¹⁷ we assumed that those broad categories ("Direct Sentence Time" and "Delayed Time," respectively) would be

²¹⁵ From the misdemeanor cases we collected, non-monetary recognition primarily appears to have been used in cases where a bail bond was converted to pay for financial sanctions or where costs were waived. Neither constitute a sit out.

²¹⁶ In a small number of case files where the prosecution had filed charges in more than one matter, the prosecution agreed to dismiss one or more cases as part of a plea agreement in which the costs for those dismissed cases were to be paid in exchange for the dismissal. For our purposes we have only included cases in which a conviction was entered, as the dismissed cases do not appear in Nebraska's JUSTICE website. *See supra* note 49.

²¹⁷ NEB. REV. STAT. § 29-2206 (2012, 2019, 2020); *id.* § 29-2412 (2019).

evident in the cases in our dataset. Additionally, in our preliminary review of cases, we saw that some courts were awarding credit for time served prior to sentencing (“Pre-Sentence Time”) and so included that in our coding plan.²¹⁸ We also thought it was likely that a combination of these sit out types might be in play in a single case and so created a “Hybrids” coding option.

While we found that our initial hypotheses were consistent with the practices observed in the case files within our dataset,²¹⁹ we also found that there was a much wider array of practices within those broader categories. Therefore, we revised our coding plan at multiple points to better capture that diversity and recoded any cases we had coded previously to ensure that this diversity was captured throughout our dataset.

Within the Delayed Time Cases, we differentiated the cases in three ways. The first category are cases in which the judge set a deadline for a defendant to pay off the financial sanctions imposed (“Time to Pay”). The second category are those in which the defendant was initially sentenced to a period of probation (“Probation”). To properly capture the complexity of the relationship between financial sanctions and probation as well as Nebraska’s practices, we further divided the Probation cases between those in which courts impose incarceration for nonpayment without implicating the probation sentence (“Time to Pay/Probation”) and those in which the use of incarceration as payment occurs in conjunction with probation revocation (“Intertwined Probation”). We further differentiated that later subcategory as to the rationale for the revocation: those based in part on failure to pay (“Pay-Based Probation Revocation”), those unrelated to the failure to pay (“Other Probation Revocation”), and those in which the revocation was on the grounds that the defendant failed to fulfill a condition of probation that carried with it a fee or other personal expense but without documentation showing the reason the condition was not met (“Inconclusive Probation Revocation”). A third category within the Delayed Time cases are those in which documents in the case files indicated that courts approved that the defendants could sit out financial sanctions during a term of house arrest, or the judge initially ordered house arrest along with time to pay financial sanctions, but upon revocation of

²¹⁸ *E.g.*, Case 140; Case 2827; Case 91068.

²¹⁹ Though Nebraska authorized the use of installment plans rather than setting a due date by which defendants must pay the amount owed in full, installment plans were rarely employed. Courts did, however, routinely afford defendants some period of time to pay, at times in combination with probation or house arrest, without establishing a specific structure for payments to be made during that time.

house arrest converted the unpaid debt to a term of incarceration (“House Arrest Revocation”). And, finally, we created a unique code for circumstances seen in one of the urban counties in which the court initially afforded a defendant time to pay but upon arrest for nonpayment credited for time served prior to sentencing to pay the debt (“Delayed Past Credit”).

Within the Direct Sentence Time cases, we differentiated between those in which the court ordered only financial sanctions to be sat out (“Straight Time”) and those in which the court ordered incarceration both for financial sanctions and a jail term.²²⁰ Regarding the latter, the records were sufficient to allow us to distinguish between cases in which the portion of the time served used to pay financial sanctions was in addition to the jail term (“Consecutive”) or at the same time as the jail term (“Concurrent”). There were some cases in which judges at sentencing approved time to pay financial sanctions, but in actuality, the defendant sat out the debt immediately after sentencing (including in some cases consecutively to a jail sentence). Given that the approval of time to pay did not come to fruition, we classified these cases as Straight Time cases (if served on its own) or Consecutive cases (if served consecutive to a jail sentence).

Within the Pre-Sentence Time cases, we differentiated between cases in which past credit was used to pay financial sanctions (“Past Credit”) or to pay financial sanctions and cover a portion of a jail sentence (“Simultaneous Credit”). In Simultaneous Credit cases we did not attempt to determine whether the same days previously served were used to cover both financial sanctions and jail time or instead whether there were enough days served to separately account for the two types of sentences. The records were generally insufficient to make that determination.

Because courts occasionally employed multiple types of payment via incarceration, we also created a code for “Hybrids” and differentiated the cases in three ways. The first category are cases in which courts employed a hybrid of two or more of the categories discussed above (“Typical Hybrid”). Within the Hybrids we also included two additional codes to capture unique practices in one of the urban counties. In some instances,

²²⁰ In one urban county, it was not entirely clear from the case files and sentencing hearings whether in cases where the sentence was to jail term and financial sanctions and a judge awarded credit for time served against the jail term, that credit also applied simultaneously to pay financial sanctions or if, instead, defendants were required to serve additional time after the sentencing hearing to satisfy those sanctions. The court clerk for that county confirmed that the judges in those cases did not apply credit for time served in jail to the financial sanctions, leading us to classify those cases as Straight Time cases.

judges in the county would sentence the defendant to pay financial sanctions for some charges on one date and some on another, resulting in a situation in which the defendant served out two unique periods of incarceration; we treat those as a single case within our dataset with the code “Independent Hybrid.” In some of these cases in which sentencing is split, the cases effectively merged back together, resulting in a single moment in which a term of incarceration was used to pay off both sets of financial sanctions; again, we treat those as a single case in the dataset with the code “Merger Hybrid.”

Finally, although not formally part of our typology, there were some instances in which we were able to discern that payment via incarceration occurred, but the documents were insufficient to code as to sit out type. We coded those cases as “Inconclusive.”

It was not possible to scrape data related to sit out type, and so we both reviewed each case file in the dataset. As with identifying whether a case involved a sit out, we were unable to simply review the sentencing documents because of the complicated and varied nature by which payment of financial sanctions occurred in many cases. For example, in one case, the original sentencing order indicated that the court would award past credit for the costs and that the defendant was to pay the fine, which would suggest that the case should be coded as Past Credit; other documents in the file, however, showed that the defendant actually paid cash for the costs, signed a Time Pay Agreement, and was ultimately arrested on a warrant for nonpayment, putting the case in the Time to Pay coding category.²²¹

Our initial intercoder agreement for sit out type codes was also high. In over 90% of cases, we agreed that there was enough information in the case file to determine sit out type and agreed on that sit out type. In approximately 1,500 cases, we either agreed that we did not have enough information in the case files to determine sit out type or we initially disagreed on sit out type. Many initial inconsistencies were due to accidental mismarking by one or the other coder in Atlas.ti. In some instances, a particular case or set of cases did not fit within our existing codes for sit out type and we decided to create a new code to capture those cases. When this occurred, we then went back to independently recode the cases we suspected might fall under that new code. For several other cases, we were able to resolve disagreements about sit out type based on the audio recordings of the sentencing hearings and jail records for the one urban county from which we received the jail record database. After discussing

²²¹ *E.g.*, Case 12512.

our codes, listening to the sentencing hearings, and referencing the jail records for the one urban county, we came to agreement on sit out type in all but 73 cases. We marked those 73 cases, which accounted for only 0.46% of our final dataset, as “inconclusive” for sit out type. Just over 60% of these inconclusive cases came from four urban counties in our dataset with a high volume of cases.

D. CODING FOR ADDITIONAL ANALYSIS

In addition to coding for type, we coded for additional case information, monetary analysis, and defendant characteristics to understand more about the people who were subjected to sitting out.

1. Case Make-up

Charges Per Case. The scraped data from the standardized docket sheets contained detailed information on each charge brought against the people subjected to sitting out in our database, including whether a charge was dropped or amended, and if amended, to what charge.

Convictions and Manner of Disposition. The scraped data included information on whether a defendant was convicted on a particular charge, and whether the defendant pled guilty or no contest to a charge.

Offense Categories. We classified the charges underlying all convictions in our dataset into eight primary offense categories: violent, property, drug, DUI, public order, traffic, failure to appear, and other.²²²

Poverty Offense Categories. We classified crimes of conviction that may be indicative of poverty into the following categories: Failure to Appear; Licensing, Registration, and Insurance; Equipment Violations; Failure to Pay a Parking Ticket; Theft/Shoplifting/Checks; Homeless; and Sex Work. We do not suggest that every case in which a conviction of such an offense occurred necessarily stemmed from a defendant’s poverty; rather, these are offenses that are frequently associated with poverty.

County Geography. We used the U.S. Department of Agriculture’s 2023 Rural-Urban Continuum Codes (RUCC) to classify the Nebraska counties in our dataset as urban, suburban, or rural.²²³ The 2023 RUCC is based on data from the 2020 U.S. Census, which is the closest available Census data to the 2019 time frame of our study. The RUCC assigns a code between one and nine to each county in the United States that

²²² For a list of offenses that are included in each of these primary offense categories, see *supra* notes 73–80 and accompanying text.

²²³ Sanders, *supra* note 50.

“distinguish[es] U.S. metropolitan (metro) counties by the population size of their metro area, and nonmetropolitan counties by their degree of urbanization and adjacency to a metro area.”²²⁴ Counties with greater degrees of rurality receive higher codes. Metropolitan counties—which we designated as “urban” counties in our study—receive codes between one and three. The most rural counties—which we designated as “rural” counties—receive codes between seven and nine. Nonmetropolitan counties with greater degrees of urbanization and proximity to a metro area—which we designated as “suburban” counties—receive codes between four and six.

2. *Financial Matters*

Types and Amounts of Financial Sanctions. As noted above, the standardized docket sheet included a Payment List that provided detailed information on the types and amounts of each financial sanction imposed in each case, which we were able to scrape.

Amount Sat Out. From the scraped financial data, we determined the amount sat out in a particular case by adding the total dollar amount of financial sanctions paid with “jail time,” and/or “alternative satisfaction” in the cases that used the “alternative satisfaction,” and/or “non-monetary recognition” in cases that used the “non-monetary recognition” label to refer to instances of sitting out. In this Article, the reported figures are rounded to the nearest dollar.

Days of Incarceration Used to Pay Financial Sanctions. We determined the days of incarceration used to pay financial sanctions by dividing the total amount sat out by \$150—the rate at which Nebraska credits incarceration against the debt. Many cases include documentation showing defendants sat out the amount at a pro-rated amount proportional to the amount owed (e.g., 5.28 hours for \$33 in costs). It is important to note, however, that the calculation of days sat out is a particularly conservative one, as we discovered several cases in which defendants were incarcerated for longer periods when sitting out debt than the amount that they actually owed at a rate of \$150/day. This definition also does not include people who are given time to pay, subject to an arrest for nonpayment, and who then manage to pay upon arrest. While those people are subjected to the burden of arrest that comes with Time to Pay cases, we excluded these cases from our data set because the court never credited a period of incarceration against the debt.

²²⁴ *Id.*

3. Defendant Characteristics

Demographic Information. In general, case files included demographic information on the race, sex, and age of the defendants. The case files included the following categories for race: White; Black or African American; Hispanic or Latino; American Indian or Alaska Native; Asian; Mixed; and Other. We used the same codes for consistency purposes in our study. The case files also included Male and Female categories for “sex.”

Not all case files, however, included demographic information involving the race and sex of the defendants. We employed two approaches to fill in demographic data that was missing in case files: When race/sex demographic information for a repeated defendant in our dataset was missing from one or more case files, we were able to pull this information from another case file involving that defendant. When this was not possible, because a defendant was only represented once in our dataset, we were often able to obtain race/sex demographic information through searching in Nebraska’s JUSTICE website case search system for a criminal case involving the same defendant with a judgment at a time other than 2019. In cases where we could not find race/sex demographic information through these approaches, we marked the defendant’s race or sex as “Not Listed.”

As to age, the standardized docket sheets included the defendant’s date of birth and the judgment date of the defendant’s case. We measured age as the difference in terms of years between the defendant’s date of birth and the judgment date.

Representation by Counsel and Indigent Defense Qualification. The scraped data from the standardized docket sheet included information on the name and address of counsel representing the defendant. In general, cases in which this information was left blank in the standardized docket sheet or “self-represented litigant” appeared in that section of the docket sheet indicated that a defendant was not represented by counsel in that case.

We gathered information about indigent defense qualification through manual coding of the case files. The standardized docket sheet included entries when judges entered orders for defendants to be appointed counsel in the case or entered orders for the reimbursement of attorney’s fees for private counsel who were appointed to provide indigent defense representation in that case. Moreover, the “Journal and Entry Orders” in the case file included a section on “Appearances and Advisement,” which included information on whether an indigency inquiry was held during the hearing and whether the defendant was judged indigent and appointed counsel.

Identifying Unique Defendants. The scraped data included the name of the defendant as it appeared in the case title (usually first name, last name, and middle name or middle initial) and date of birth (DOB) in format of XX/XX/XXXX. We organized the scraped data involving names of defendants as follows: [Last name, First name, Middle name or initial, Suffix]. For simplicity, we label this as “NAME.” To prevent punctuation from showing duplicates, we deleted all commas and spaces from the NAME.

We began by merging the NAME with the defendant’s DOB (NAME+DOB). We then highlighted for all duplicates involving NAME+DOB and deleted all duplicates. That left us with 10,695 cases. The limitation with that subset is that it does not catch duplicates involving a defendant whose name was listed differently in different cases. For instance, one case could have only used a defendant’s middle initial when another case used their full middle name. To account for this, we then merged the first four letters of the defendant’s last name with the defendant’s date of birth (XX/XX/XXXX) and highlighted and deleted the duplications. That left us with 10,043 unique cases. The limitation with that subset is that it included cases where the defendant had the same name, but one case had missing DOB information, or we suspected a possible mistake on the DOB for a particular case. We suspected this when only one digit was off in the DOBs for two cases involving a defendant with the same name. To account for that issue, we highlighted the names that were duplicates. From this step, we suspected that thirty-one defendants were represented twice, and one defendant was represented three times in the remaining dataset (65 cases total). We then separated these 65 cases and went back to the original case files to see if the defendants had the same driver’s license ID number (this information was only available in some cases). This step helped us to identify additional duplicate cases, leaving 10,027 unique defendants.

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