

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

AMY MCFALLS, JASON CRUNETTI,	:	
VINCENT ESPOSITO, GREGORY	:	
JACKSON, and BRENDA LACY, on	:	No.4 M.D. 2021
behalf of themselves and all persons	:	Class Action
similarly situated,	:	Original Jurisdiction
	:	
<i>Petitioners,</i>	:	
v.	:	
	:	
38 <sup>TH</sup> JUDICIAL DISTRICT, Hon.	:	
CAROLYN T. CARLUCCIO, President	:	
Judge (in her official capacity),	:	
MICHAEL R. KEHS, Esq. Court	:	
Administrator (in his official capacity),	:	
and LORI SCHREIBER, Clerk of	:	
Courts (in her official capacity),	:	
	:	
<i>Respondents.</i>	:	

**APPLICATION FOR SUMMARY RELIEF**

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Petitioners Amy McFalls, Jason Crunetti, Vincent Esposito, Gregory Jackson, and Brenda Lacy, on behalf of themselves and the certified Class they represent, respectfully move this Court for an Order granting them summary relief on each of their claims. In this Application, Petitioners request only declaratory relief, reserving a determination on other relief for a later date. In support of this Application, together with the accompanying memorandum, affidavits, and supporting exhibits, which are incorporated herein by reference, Petitioners aver:

#### **I. BASIS FOR SUMMARY RELIEF**

1. No cost can be imposed upon a criminal defendant unless that cost is authorized by statute. *See, e.g., Commonwealth v. Coder*, 415 A.2d 406, 410 (Pa. 1980); *Commonwealth v. Houck*, 335 A.2d 389, 391 (Pa. Super. Ct. 1975); *Commonwealth v. Gill*, 432 A.2d 1001, 1004 (Pa. Super. Ct. 1981) (“[C]osts must not be assessed except as authorized by law, and . . . the burden of justifying, by a preponderance of the evidence, costs imposed upon a defendant rests upon the Commonwealth.”) (internal citation omitted).

2. None of the statutes that authorize court costs in criminal cases allow for the imposition of those costs more than once in a case.

3. Yet Respondents maintain a policy and practice of imposing certain costs more than once per case, without statutory authorization. This duplication of costs results from administrative and policy decisions made and practices created by Respondents and not from any court order.

4. The parties do not genuinely dispute any material fact and, indeed, the parties already have stipulated to, and this Court already has found, the core facts that form the basis of this motion.<sup>1</sup>

5. Petitioners seek and are entitled to summary relief in the form of a declaration on each of Petitioners' claims. Counts I, IV, and V of the Petition for Relief challenge the legality of Respondents' policy of duplicating costs. Counts II and III of the Petition for Relief challenge the assessment of costs without due process. Count VI sets forth Petitioners' request for declaratory relief.

## II. THE PARTIES

6. Named Petitioner Amy McFalls was sentenced on December 11, 2019 in case CP-46-CR-0002346-2018. Findings of Fact ¶ 27. Various costs were assessed more than once in her case. *See* Exhibit 7, Docket Sheet in *Commonwealth v. McFalls*, CP-46-CR-0002346-2018. The costs duplicated in her case amounted to an overbilling of approximately \$226.25.<sup>2</sup> Respondents have never given Petitioner McFalls an itemized, per-charge breakdown of the costs assessed against her. Findings of Fact ¶ 32.

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<sup>1</sup> Most facts relied on by Petitioners have been found by the Court in its Memorandum Opinion certifying this case as a class action, *see McFalls et al. v. 38th Judicial District et al.*, No. 4 M.D. 2021, 2023 WL 3513283 at \*1-4 (Pa. Cmwlth. Ct. Apr. 6, 2023) (Findings of Fact); or have been agreed to by the parties in a joint stipulation, *see* Exhibit 1: Joint Stipulations of Fact and Law Submitted for the January 25, 2023 Class Certification Hearing ("Joint Stipulation"). Petitioners also rely upon the Exhibits appended to the Declaration of Andrew Christy and the deposition testimony of Melissa Jenkins-Phongphachone, whom the Clerk of Courts designated to provide deposition testimony on behalf of the Clerk of Courts' Office.

<sup>2</sup> Those costs are: ATJ; CJES; Commonwealth Cost; Court Cost; Court Child Care; Crime Victims Compensation; Firearms and Education Training Fund; JCPS; Judicial Computer Project; OAG-JCP; State Court Costs; Variable Amount to be Distributed CVC/VWS (which appears four times on her docket and should appear only twice), and Victim Witness Service.

7. Named Petitioner Jason Crunetti was sentenced in the 38th Judicial District on July 11, 2019 in case CP-46-CR-0002332-2019. Findings of Fact ¶ 28. Various costs were assessed more than once in his case. *See* Exhibit 8, Docket Sheet in *Commonwealth v. Crunetti*, CP-46-CR-0002332-2019. The costs duplicated in his case amounted to an overbilling of approximately \$208.75.<sup>3</sup> Respondents have never given Petitioner Crunetti an itemized, per-charge breakdown of the costs assessed against him. Findings of Fact ¶ 32.

8. Named Petitioner Vincent Esposito was sentenced in the 38th Judicial District on October 17, 2019 in case CP-46-CR-0002750-2018. Findings of Fact ¶ 29. Various costs were assessed more than once in his case. *See* Exhibit 9, Docket Sheet in *Commonwealth v. Esposito*, CP-46-CR-0002750-2018. The costs duplicated in his case amounted to an overbilling of approximately \$276.25.<sup>4</sup> Respondents have never given Petitioner Esposito an itemized, per-charge breakdown of the costs assessed against him. Findings of Fact ¶ 32.

9. Named Petitioner Gregory Jackson was sentenced in the 38th Judicial District on December 5, 2019 in case CP-46-CR-0003593-2019. Findings of Fact ¶ 30. Various costs were assessed more than once in his case. *See* Exhibit 10, Docket Sheet

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<sup>3</sup> Those costs are: ATJ, CJES, Commonwealth Cost, County Court Cost, Court Child Care, Crime Victims Compensation, Firearms Education and Training Fund, JCPS, Judicial Computer Project, OAG-JCP, State Court Costs, Variable Amount to be Distributed CVC/VWS (which appears four times and should appear only twice), and Victim Witness Service.

<sup>4</sup> Those costs are: ATJ, CJES, Commonwealth Cost, Costs of Prosecution – CJEA, County Court Cost, Court Child Care, Crime Victims Compensation, Domestic Violence Compensation, Firearms Education and Training Fund, JCPS, Judicial Computer Project, OAG – JCP, State Court Costs, Variable Amount to be Distributed CVC/VWS (which appears four times and should appear only twice), and Victim Witness Service.

in *Commonwealth v. Jackson*, CP-46-CR-0003593-2019. The costs duplicated in his case amounted to an overbilling of approximately \$272.75.<sup>5</sup> Respondents have never given Petitioner Jackson an itemized, per-charge breakdown of the costs assessed against him. Findings of Fact ¶ 32.

10. Named Petitioner Brenda Lacy was sentenced in the 38th Judicial District on October 4, 2019 in case CP-46-CR-0003398-2017. Findings of Fact ¶ 31. Various costs were assessed more than once in her case. *See* Exhibit 11, Docket Sheet in *Commonwealth v. Lacy*, CP-46-CR-0003398-2017. The costs duplicated in her case amounted to an overbilling of approximately \$361.50.<sup>6</sup> Respondents have never given Petitioner Lacy an itemized, per-charge breakdown of the costs assessed against her. Findings of Fact ¶ 32.

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<sup>5</sup> Those costs are: ATJ, CJES, Commonwealth Cost, Costs of Prosecution – CJEA, County Court Cost, Crime Victims Compensation, Domestic Violence Compensation, Firearms Education and Training Fund, JCPS, Judicial Computer Project, OAG-JCP, State Court Costs, Variable Amount to be Distributed CVC/VWS (which appears four times and should appear only twice), and Victim Witness Service.

<sup>6</sup> Those costs are: ATJ, CJES, Commonwealth Cost, Costs of Prosecution – CJEA, County Court Cost, Court Child Care, Crime Victims Compensation, Domestic Violence Compensation, Firearms Education and Training Fund, JCPS, Judicial Computer Project, State Court Costs, Substance Abuse Education, Variable Amount to be Distributed CVC/VWS (which appears four times and should appear only twice), and Victim Witness Service.

11. The Named Petitioners represent a Class certified by this Court and consisting of

All individuals who have appeared or will appear as defendants in criminal cases in the 38th Judicial District and upon whom any duplicated costs were imposed on or after January 1, 2008, or will be imposed in the future, in one criminal case when the charges arise out of the same occurrence, or in which the charges have been included in one complaint, information, or indictment by the use of different counts.

12. The Class consists of thousands of individuals, and continues to grow, as Respondents continue to unlawfully duplicate costs.

13. None of the named Petitioners has any active or pending criminal charges in the 38th Judicial District. Findings of Fact ¶ 33; Joint Stipulation ¶¶ 32–33.

14. Respondent the 38th Judicial District, which sits in Montgomery County, Pennsylvania, is a judicial district of Pennsylvania's Unified Judicial System, and includes the Montgomery County Court of Common Pleas.

15. Respondent Carolyn Carluccio is the current President Judge of the 38<sup>th</sup> District. Judge Carluccio is the administrative head of the court and supervises the court's judicial business.

16. Respondent Michael Kehs is currently the District Court Administrator of the 38th Judicial District. As District Court Administrator, he supervises and directs the court administrative staff that completes the paperwork attendant to criminal proceedings, including the disposition or sentencing form that is signed by the judge (referred to as sentencing orders).

17. Defendant Lori Schreiber is currently the Clerk of Courts for Montgomery County. As Clerk of Courts, she is responsible for the maintenance of all

criminal court records. She supervises and directs the staff that enters sentencing and other docket information in criminal cases into the Common Pleas Case Management System (“CPCMS”) computer system. In addition, Defendant Schreiber supervises staff that collects all fines, costs, and restitution arising from criminal cases in the Court of Common Pleas for the 38<sup>th</sup> Judicial District.

18. In the 38th Judicial District, Respondent Clerk of Court collects all costs, fines, and monetary restitution from criminal defendants. Findings of Fact ¶ 12; Joint Stipulation ¶ 29.

### **III. UNDISPUTED FACTS**

#### **A. The Sentencing Hearing**

19. In the 38th Judicial District, when a defendant pleads guilty to or is convicted of criminal charges in a case, a judge will hold a sentencing hearing. Findings of Fact ¶ 2; Joint Stipulation ¶ 4.

20. At the sentencing hearing, the sentencing judge imposes a sentence on the defendant and may order the defendant to pay a fine or restitution. Findings of Fact ¶ 2; Joint Stipulation ¶ 4.

21. A defendant also will be statutorily required to pay certain costs, unless expressly relieved of that obligation in whole or in part by the sentencing judge. Findings of Fact ¶ 3; Joint Stipulation ¶ 5.

22. To impose costs on a criminal defendant who has pleaded guilty to or been convicted of criminal charges, sentencing judges in the 38<sup>th</sup> Judicial District regularly order defendants to pay “costs,” sometimes orally identifying each count for which “costs” must be paid. Findings of Fact ¶ 4; Joint Stipulation ¶¶ 6, 9.

23. Sentencing judges in the 38<sup>th</sup> Judicial District do not have a policy or practice of specifying which costs a defendant is to pay in connection with any particular count, or of specifying the amount owed by the defendant as a result. Findings of Fact ¶ 5; Joint Stipulation ¶ 10

24. In the 38<sup>th</sup> Judicial District, the specific costs attributable to specific charges are not set by the sentencing judges. Exhibit 13 Respondent 38th Judicial District Responses to Petitioners' Requests for Admissions, ¶ 3.

### **B. The Sentencing Order**

25. During a sentencing hearing, an employee of the 38th Judicial District known as a court clerk records the sentencing judge's orders on a form known as either a sentencing sheet, a disposition sheet, or a green sheet, which is thereafter signed by the judge (hereinafter "sentencing order"). Findings of Fact ¶ 7; Joint Stipulation ¶¶ 11, 13–16.

26. Court Clerks record on the sentencing order form the counts on which the presiding judge ordered the defendant to pay costs. Joint Stipulation ¶ 13.

27. Unless a sentencing judge issues an order regarding costs in response to a defendant's motion to waive costs, the sentencing order and hearing transcript constitute the only record of the sentencing judge's imposition of costs upon a given defendant. Findings of Fact ¶ 9; Joint Stipulation ¶ 16.

28. No completed sentencing order contains information regarding the specific statutory costs that a given defendant is liable for or the precise dollar amount that is owed as a result. *See* Findings of Fact ¶ 8; Joint Stipulation ¶ 14.



### **C. The Common Pleas Case Management System (CPCMS)**

29. CPCMS is a database used in Pennsylvania's Courts of Common Pleas to document the events that occur in each criminal case. Findings of Fact ¶ 1; Joint Stipulation ¶¶ 1–2.

30. Once the sentencing order is completed and signed, the sentencing order is sent to another 38th Judicial District employee, known as a criminal court assistant. Findings of Fact ¶ 10; Joint Stipulation ¶¶ 18–20, 24.

31. The criminal court assistant updates the defendant's case file in CPCMS with the non-financial terms of the sentence recorded in the sentencing order. Joint Stipulation ¶¶ 18–20, 24.

32. The criminal court assistant does not assess the costs in the case. Joint Stipulation ¶ 8; Findings of Fact ¶ 13.

33. Once the criminal court assistant updates the defendant's case file on CPCMS, she then transmits the pertinent case file and sentencing order to the Clerk of Court's office. Findings of Fact ¶ 11; Joint Stipulation ¶ 21.

34. At no point during this process is information recorded in CPCMS that explains why a judge ordered costs on more than one count. Findings of Fact ¶ 17; Joint Stipulation ¶ 22.

### **D. The Imposition of Costs through CPCMS**

35. The costs imposed in a specific case are not actually determined until a Clerk of Court's office employee, known as a disposition clerk, accesses the CPCMS computer system, and, using the sentencing order, manually adds the costs in the electronic case file. Findings of Fact ¶ 13; Joint Stipulation ¶¶ 8, 25–27.

36. Pursuant to an interpretive policy of the Clerk of Court’s office, if a sentencing order directs imposition of “costs” on multiple counts in a case, then the Clerk of Court will impose all “offense related” costs on the defendant for *each* of those counts. Joint Stipulation ¶ 23.

37. That interpretive policy was adopted by the Clerk of Court’s office in 2015 at the instruction of the 38th Judicial District’s leadership and has been in place since then. Findings of Fact ¶ 15; Joint Stipulation ¶ 23.

38. That policy institutionalized the practice of the Clerk of Courts in imposing costs on multiple counts, which has been consistent from at least 2008 to the present. *See* Declaration of Andrew Christy at ¶10 and Exhibit 4.<sup>7</sup>

39. As used by the Clerk of Courts, the phrase “offense related” costs refers to a category of costs in the CPCMS computer system. That computer system lists some costs on a screen labeled “Offense-Related Assessments” and lists other costs on a screen labeled “Non-Offense-Related Assessments.” Deposition of Melissa Jenkins-Phongphachone, April 20, 2022, at 47:3-15 (Exhibit 14).

40. These labels appear only in the CPCMS computer system and the user manual for that system; no statute, court rule, or court opinion uses these terms or draws such a distinction between these costs.<sup>8</sup> No statute, court rule, or court opinion

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<sup>7</sup> As the Christy Declaration explains, Respondents choose to duplicate—and not duplicate—the same costs under the interpretive policy that they were duplicating and not duplicating before 2015. *See* Declaration of Andrew Christy at ¶ 10 and Exhibit 4.

<sup>8</sup> The Clerk of Courts uses a manual produced by the AOPC to train its clerks on the use of CPCMS. That manual distinguishes between three types of assessments that may be imposed in a criminal case: “Offense-related assessments,” “Non-offense-related assessments,” and “Docket/registry-based assessments.” AOPC Manual at page 1, attached as Exhibit 12. The Manual

uses the terms “offense related” or “non-offense related” as they relate to court costs or draws a distinction between “offense-related” or “non-offense related” costs.

41. In the 38<sup>th</sup> Judicial District, there are twenty-five statutorily authorized costs that Respondents routinely impose in criminal proceedings—meaning these costs are not reimbursements billed by the prosecutor and are not otherwise unique to the procedure in that case (such as the cost to file an appeal). *See* Christy Declaration at ¶ 6 and Exhibits 2 (Table of Costs) and 3 (docket sheets with costs highlighted).

42. The disposition clerk in the Clerk of Courts office can and does add or remove costs in CPCMS, regardless of whether the computer system automatically adds those costs. Jenkins-Phongphachone Dep. at 72:14-73:1 (stating that it is “correct” that there are circumstances where the disposition clerks remove costs that are automatically added by CPCMS).

43. When a criminal defendant has been found guilty of more than one count, disposition clerks in the Clerk of Court’s office must deselect some costs that CPCMS automatically adds to the second count in order to avoiding duplicating costs that the Clerk of Courts has determined should only be imposed once. Jenkins-Phongphachone Dep. at 53:21-54:5. For example, the Booking Center cost is manually removed from any counts other than the lead count because it is automatically added in CPCMS for

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describes “Offense-related assessments” as “Assessments which are added at the time of sentencing or upon entering into a diversionary (ARD) program, based upon conviction of a particular offense. They are usually statutorily mandated.” *Id.* The Manual provides instruction on how to navigate between the various screens in the CPCMS database to add the different types of assessments. *See, e.g.*, AOPC Manual at 13-14 (“Adding Offense-Related Assessments”); *id.* at 15 (“Adding Non-offense-Related Assessments”).

each count, but the Clerk of Courts believes it should only be imposed once per case. Jenkins-Phongphachone Dep. at 79:16-22.

44. While CPCMS has a function that would enable the Clerk of Courts to add all costs to every selected count in the case, pursuant to Respondents' policy, Clerk of Courts employees "do not use that function." Jenkins-Phongphachone Dep. at 46:7-23. Rather, the disposition clerk selects which costs to duplicate and which are not duplicated because in Respondents' view "certain things that only go on once." *Id.* at 46:21-47:2.

45. In the past, a second deputy in the Clerk of Courts would review cost-related statutes to determine whether the costs could be imposed more than once per case. Jenkins-Phongphachone Dep. at 52:5-14. She instructed Clerk of Courts employees on which costs are permitted to appear more than once in a single case. Jenkins-Phongphachone Dep. at 79:10-80:4.<sup>9</sup>

46. Unless the sentencing order states that costs should be imposed on more than one count, Clerk of Courts employees do not routinely impose any costs on a count other than the lead count, even when the defendant is convicted of multiple charges and there are eligible unique costs that could be imposed on the non-lead counts. *See* Christy Decl. at ¶¶ 12-13 and Exhibit 5. For example, in CP-46-CR-0000649-

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<sup>9</sup> For example, the Clerk of Courts employees have been "given instruction" that certain costs, such as the Automation Fee, are "only one per case, always." Jenkins-Phongphachone Dep. at 78:10-79:4. Also, Respondents will only charge defendants the "Clerk of Courts Processing Fee" once per case, even if the sentencing judge's sentencing order calls for "costs" to be imposed in connection with multiple counts. *See* Christy Decl. at ¶ 8 and Exhibit 3; Jenkins-Phongphachone Dep. at 50-51 and deposition exhibit 20 (noting Clerks of Courts Processing Fee as only to be applied once per case) (Jenkins-Phongphachone Dep. ex. 20 is attached to the deposition at Pet'r Exhibit 14).

2023, the docket shows that the defendant's lead offense was a Title 18 retail theft offense, and the defendant also was convicted of a Title 35 drug possession offense. The Title 35 offense would normally incur a Substance Abuse Education cost. Because there was no court order to impose counts on anything other than the lead count, Respondents did not a Substance Abuse Education cost for the possession offense. Thus, the defendant did not pay the costs associated with the possession conviction, even though the defendant was convicted of drug possession. *See* Christy Declaration at ¶ 13.

47. Pursuant to the criminal division judges' directions, the disposition clerk or other relevant employee of the Clerk of Court's office will not assess any costs associated with a charge that has been withdrawn by a nolle prosequi, even if the sentencing order records that the presiding judge ordered the criminal defendant to pay costs on the withdrawn count. Joint Stipulation ¶ 27; Jenkins-Phongphachone Dep. at 65:2-6. *See also* Jenkins-Phongphachone Dep. at 64:20-65:6 (explaining that if costs were ordered on counts that had been nolle prossed, the Clerk of Courts employees "would not add the nol pros cost").

48. "Verifiers" employed by the Clerk of Court's Office check the information the disposition clerks have entered into CPCMS to ensure that costs assessed on each defendant match the information on the relevant sentencing order.

Findings of Fact ¶ 16; Joint Stipulation ¶ 23.

49. All relevant Clerk of Court employees have been trained how to interpret sentencing orders and assess the costs that have been imposed upon defendants in a uniform way. Findings of Fact ¶ 14; Joint Stipulation ¶ 28.

50. Having previously signed the sentencing order, the sentencing judge does not, as a matter of policy or practice, subsequently verify that the Clerk of Courts imposed costs in the way the judge intended. Jenkins-Phongphachone Dep. at 86-87.

51. As explained in the Christy Declaration at ¶ 6 and Exhibit 3, there are twenty-five statutorily authorized costs that Respondents routinely impose in criminal proceedings in the Montgomery County Court of Common Pleas.<sup>10</sup> As the Christy Declaration sets forth, there are six statutorily authorized costs that Respondents *never* impose more than once in a case. However, there are nineteen others that Respondents do impose multiple times in one case. *Id.* at ¶¶ 8, 9. Each cost is authorized by its own statute. *See* Exhibit 2.

52. Pursuant to the interpretive policy adopted by the Clerk of Court's office at the instruction of the 38th Judicial District's leadership and the Clerk of Courts' determinations about which costs may be imposed only once or multiple times, Respondents never duplicate the following six costs in criminal cases, even if the sentencing order calls for costs to be imposed on more than one count:<sup>11</sup>

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<sup>10</sup> These costs are sometimes labelled "fees" or "surcharges" in the statutes. Because there is no legal distinction between these labels, for consistency, Petitioners refer to all of these statutorily imposed assessments as costs.

<sup>11</sup> In Petitioners' Application and Brief, costs that Respondents do not duplicate appear in tables with blue shading, while costs that Respondents do duplicate appear in tables with orange shading. The full statutory language for each cost appears on the table provided as Exhibit 2.

UNDUPLICATED COSTS	AUTHORIZING LANGUAGE
<b>Clerk of Courts Processing Fee (COC Processing Fee Misd/Fel)</b> , 42 P.S. § 21061	imposing a cost “for all proceedings” in misdemeanor and felony cases
<b>Crime Lab User Fee (County Lab Fees)</b> , 42 Pa.C.S. § 1725.3(a)	imposing a cost “in every case where laboratory services were required to prosecute the crime or violation,” on “a person” who is “convicted of a crime”
<b>Booking Center Fee</b> , 42 Pa.C.S. § 1725.5	imposing a cost on a “person” who is “is convicted of a crime”
<b>DNA Detection Fund</b> , 44 Pa.C.S. § 2322	imposing a cost on “any person convicted” of “a felony sex offense or other specified offense,” including any felony or certain misdemeanors
<b>Offender Supervision Program (OSP)</b> , 18 P.S. § 11.1102	imposing as a cost of supervision at least \$25 “on any offender placed on probation, parole, accelerated rehabilitative disposition, probation without verdict or intermediate punishment”
<b>CAT/MCARE/General Fund</b> , 75 Pa.C.S. § 6506(a)(1)	imposing a “surcharge . . . (1) Upon conviction for any violation” of certain traffic offenses

53. Pursuant to the interpretive policy adopted by the Clerk of Court’s office at the instruction of the 38th Judicial District’s leadership and the Clerk of Courts’ determinations about which costs may be imposed only once or multiple times, Respondents duplicate the following nineteen costs in criminal cases if the sentencing order calls for costs to be imposed on more than one count:

DUPLICATED COSTS	AUTHORIZING LANGUAGE
<p><b>Criminal Justice Enhancement Account (CJEA)</b>, 42 Pa.C.S. § 3575(b)</p> <p><b>County Court Cost</b>, 42 Pa.C.S. § 1725.1(b)</p> <p><b>State Court Cost</b>, 42 Pa.C.S. § 1725.1(b)</p>	<p>imposing a cost “in each judicial proceeding” or “in every criminal case”</p>
<p><b>Automation Fee</b>, 42 Pa.C.S. § 1725.4(b)</p> <p><b>Court Child Care</b>, 42 Pa.C.S. § 3721(c)(2)(iii)</p> <p><b>Judicial Computer Project (JCP)</b>, 42 Pa.C.S. § 3733(a.1)(1)(iii)</p>	<p>imposing a cost “for the initiation” of a criminal case</p>
<p><b>Access to Justice (ATJ)</b>, 42 Pa.C.S. § 3733.1(a)(3)</p> <p><b>Criminal Justice Enhancement Surcharge (CJES)</b>, 72 P.S. § 1795.1-E(c)(3)(ii)</p> <p><b>Judicial Computer Program Surcharge (JCPS)</b>, 72 P.S. § 1795.1- E(c)(1)(iv) and (d)</p> <p><b>Office of Attorney General Judicial Computer Project (OAG-JCP)</b>, 72 P.S. § 1795.1- E(c)(3)(iii)</p>	<p>imposing a cost “[i]n addition to each fee imposed under section 3733(a.1)” — which is any time JCP cost is triggered; or “in addition to the fees imposed under 42 Pa.C.S. §§ 3733(a.1) and 3733.1” —which is any time JCP and ATJ costs are triggered.</p>
<p><b>Crime Victims Compensation</b>, 18 P.S. § 11.1101(a)(1)</p> <p><b>Victim Witness Service</b>, 18 P.S. § 11.1101(b)(2) (repealed)</p> <p><b>Crime Victim Compensation/Victim Witness Service Variable Amount</b>, 18 P.S. § 11.1101(a)(1)</p> <p><b>Domestic Violence Compensation</b>, 71 P.S. § 611.13(b)</p> <p><b>Firearms and Education Training Fund</b>, 61 Pa.C.S. § 6308(b)(1)</p> <p><b>Substance Abuse Education</b>, 18 Pa.C.S. § 7508.1</p>	<p>imposing a cost on a “person” or “individual” who is convicted of “a crime,” or “any crime,” or “a felony or misdemeanor” or “a violation” of certain offenses.</p>
<p><b>Commonwealth Cost</b>, 42 Pa.C.S. § 3571(c)(2)</p> <p><b>Emergency Medical Services</b>, 75 Pa.C.S. § 3121</p> <p><b>PA Transportation Trust Surcharge</b>, 75 Pa.C.S. § 6506(a)(2)-(7)</p>	<p>imposing a cost where there is a “conviction,” or a “violation” of a type or a statute.</p>



**E. The Respondents Do Not Provide Notice of the Costs They Impose**

54. In the Montgomery County Court of Common Pleas, after a criminal conviction or guilty plea, neither the defendant nor their attorney is provided at the time of sentencing with a list of costs that will be imposed or the specific charges to which those costs apply. Joint Stipulation ¶ 30.

55. The Clerk of Court's Office does not automatically or proactively provide defendants or their attorneys an itemized breakdown of assessed costs, but instead provides that only upon request and, in addition, makes a list available through criminal docket sheets that are accessible online. Findings of Fact ¶ 14; Joint Stipulation ¶ 31. *See also* Jenkins-Phongphachone Dep. at 84:11-16 (acknowledging that it is "correct" that a defendant is not provided with a document that lists one-by-one the assessments in the case).

56. The public docket sheet accessible online does not correlate a specific cost to a specific count. Jenkins-Phongphachone Dep. at 84:22-24.

57. The first notice that a defendant may receive from the Clerk of Courts about costs they owe is an "Introduction Letter" sent to defendants who are not incarcerated to notify them of the total costs, fines and restitution assessed in their case and set a payment schedule. This letter is sent approximately two weeks before their first payment is due. Jenkins-Phongphachone Dep. at 81:9-14. That notice only goes to the defendant and not counsel. *Id.* at 81:15-17.

58. Incarcerated defendants do not receive any correspondence from the Clerk of Courts when costs are entered.

59. The first payment is due four weeks from the date that the Clerk of Courts processes the sentencing order and imposes the court costs, not from the date of sentencing. Jenkins-Phongphachone Dep. at 81:21-82:21. Although most sentencing orders are processed the same week, some are processed up to two weeks after the date of sentencing. Jenkins-Phongphachone Dep. at 83:3-8.

60. In keeping with existing policies, Respondents did not provide Petitioners with an itemized, per-charge breakdown of the costs that had been assessed against them. Findings of Fact ¶ 32; Joint Stipulation ¶¶ 30–31. And Respondents do not provide defendants with any instruction on how to challenge the costs imposed. Jenkins-Phongphachone Dep. at 78:1-7.

#### **IV. THIS COURT SHOULD GRANT DECLARATORY RELIEF IN FAVOR OF PETITIONERS**

##### **A. Imposing costs more than once per case is *ultra vires*.**

61. Costs cannot be imposed unless authorized by statute. *Coder*, 415 A.2d at 410.

62. Each of the twenty-five statutorily authorized costs that Respondents impose in criminal cases is set forth in a separate statute. No statute authorizes the imposition of any cost more than once in a single criminal case, and no statute has language such that an individual cost may be imposed “per count” or “per offense.”

63. This Court has already explained that “costs imposed in the context of sentencing in criminal cases are penal,” meaning that “where there is any ambiguity within a statute that authorizes the imposition of costs upon a guilty defendant, that statute must be construed narrowly and in the defendant’s favor.” *McFalls v. 38th Jud.*

*Dist.*, No. 4 M.D. 2021, 2021 WL 3700604, at \*12 (Pa. Cmwlth. Ct. Aug. 6, 2021) (unpublished). Proper statutory interpretation shows that Respondents have no legal basis to impose any individual cost more than once per case.

64. Respondents' imposition of duplicative costs is also unlawful because Pennsylvania law has prohibited imposing costs on different counts of a single criminal complaint since 1905. *See* Act 17 of March 10, 1905, P.L. 35.

**B. Petitioners' Sentencing Orders do not Require the Duplication of Costs.**

65. When a sentencing judge orders "costs" on more than one count in a criminal case, the sentencing order does not say anything about which costs will be assessed in connection with each count, or whether any cost is to be assessed more than once.

66. It is the Judicial District and the Clerk of Courts that have decided, as an administrative policy, to assess some court costs on *each* of the counts identified by the sentencing judge, while assessing other court costs only on the lead count in the case. It is the Judicial District and the Clerk of Courts that have decided to impose costs multiple times where the legislature directed they be imposed once.

67. There is no reason for Respondents to duplicate *any* cost when a sentencing order calls for costs on more than one count. The legal way to effectuate such a sentencing order is to impose all of the costs that apply to the lead count and any unique costs related to additional counts identified by the sentencing order, without duplicating any costs.

68. Many costs apply only to specific crimes or categories of crimes. For example, the Substance Abuse Education cost imposed by 18 Pa.C.S. § 7508.1 only applies to violations of the Controlled Substance, Drug, Device and Cosmetic Act and to driving under the influence. If the lead count in a case does not trigger the Substance Abuse Education cost but the second count in the case does, then the Clerk of Courts would need to assess costs on both counts to capture all of the costs applicable to the offenses to which the defendant pleaded or was convicted.

69. To lawfully impose costs on multiple counts in a case, Respondents should assess all applicable costs on the lead count in the case, and then add any additional unique costs that arise from the second (or third, or fourth) count, thus assuring that the defendant pays all costs that apply to each of the counts identified in the sentencing order.

**C. By duplicating some costs but not others without a rational basis for making such distinctions, Respondents have violated the guarantee of Equal Protection set forth in the U.S. and Pennsylvania Constitutions.**

70. Respondents duplicate ten costs that the legislature specifically stated apply per “case” or “proceeding,” while not duplicating other costs that have the same statutory language. Respondents similarly duplicate some costs, but not others, that the legislature imposes on a “person” who pleads guilty or is convicted. And Respondents duplicate or don’t duplicate, without any rational reason, various costs the legislature frames as a “surcharge” for a conviction.

71. Respondents lack a rational basis for arbitrarily deciding that, within an individual criminal case, some costs should be duplicated and others should not, rather

than simply applying the costs applicable to each count identified by the sentencing judge.

72. Although Equal Protection is often thought of as a prohibition on discrimination on the basis of membership in a group, it also protects against arbitrary government action. *Downingtown Area Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals*, 913 A.2d 194, 201 (Pa. 2006) (“[I]t is well settled that the federal equal protection concept proscribing purposeful and/or systemic discrimination—again, the floor for Pennsylvania uniformity jurisprudence—pertains even to a class of one.”); *see also Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *Uniontown Newspapers, Inc. v. Roberts*, 839 A.2d 185, 197-98 (Pa. 2003). Because they lack a rational basis for their actions, Respondents have violated the Equal Protection guarantees of the U.S. and Pennsylvania Constitutions.

**D. By not providing notice of the costs imposed in each criminal case, Respondents have violated the guarantee of Due Process set forth in the U.S. and Pennsylvania Constitutions.**

73. None of the Petitioners or other Class members have *ever* received a bill of costs or other statement from Respondents setting forth the specific costs assessed in their cases. *See Coder*, 415 A.2d at 410 (explaining that a defendant is entitled to a bill of costs on which she can file objections); *Commonwealth v. Allshouse*, 924 A.2d 1215 (Pa. 2007), *vacated sub nom Allshouse v. Pennsylvania*, 562 U.S. 1267 (2011) (it is “well-settled” that a defendant must receive a bill of costs).<sup>12</sup>

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<sup>12</sup> The judgment in this case was vacated by *Allshouse v. Pennsylvania*, 562 U.S. 1267 (2011), because of the Supreme Court’s decision in *Michigan v. Bryant*, 562 U.S. 355 (2011), concerning the Confrontation Clause. This subsequent history does not disturb the separate holding on costs.

74. The assessment of court costs is a deprivation of property. *See Nelson v. Colorado*, 581 U.S. 128, 136 (2017); *Buck v. Beard*, 879 A.2d 157, 160 (Pa. 2005). Under both the U.S. and Pennsylvania Constitutions, the government may not deprive a person of property without notice and an opportunity to contest the deprivation. Accordingly, Respondents' failure to provide a bill of costs or other notice of the costs assessed against Petitioners violates the right to Procedural Due Process protected under the U.S. and Pennsylvania Constitutions and renders those costs void.

## V. CONCLUSION

Petitioners respectfully request that this Court grant their Application for Summary Relief and issue a declaration finding for Petitioners on each of their claims. A proposed form of Order is submitted herewith.

Respectfully submitted,

Date: March 1, 2024

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I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

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