

Booking Fees

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The Seventh Circuit just ruled that the \$30 booking fee charged to each arrestee in an Illinois town is constitutional. *Markadonatos v. Village of Woodridge*, ___ F.3d ___, 2014 WL 60452 (7th Cir. Jan. 8, 2014). I had never heard of booking fees and decided to learn a bit more about them, including where they are in effect and what courts have said about them.

Booking fees generally. Booking fees are in use in Illinois, [Colorado](#), [Washington State](#), [Michigan](#), [Minnesota](#), [Ohio](#), [Indiana](#), and [California](#), at least. 36% of the jails that responded to [this](#) DOJ survey imposed booking fees. The fees work differently in different jurisdictions. The amount of the fee ranges from \$12 to \$100 or more. In almost all jurisdictions, the fee is refunded if the arrestee is acquitted or charges are dropped, though the procedure for seeking a refund varies. In some cases, arrestees who are mentally ill or indigent are exempt from booking fees.

Legal controversy over booking fees. Booking fees are often challenged in court, frequently due process grounds. Case outcomes have been mixed. *See, e.g., Roehl v. City of Naperville*, 857 F.Supp.2d 707 (N.D. Ill. 2012) (denying motion to dismiss constitutional challenge to booking fee); *Hohsfield v. Polhemus*, 2012 WL 603089 (D. N.J. Feb. 23, 2012) (unpublished) (analyzing booking fee along with daily jail fee and upholding both); *Berry v. Lucas County*, 2010 WL 480981 (N.D. Ohio Feb. 4, 2010) (unpublished) (upholding \$100 booking fee that was to be refunded upon acquittal or applied to “pay-for-stay” obligations upon conviction); *Gonzalez v. City of Fife*, 2008 WL 2482010 (W.D. Wash. June 17, 2008) (unpublished) (denying city’s motion for summary judgment and questioning whether booking fee deprived arrestees of due process); *Allen v. Leis*, 213 F.Supp.2d 819 (S.D. Ohio 2002) (nonrefundable booking fee violated due process).

The Seventh Circuit Case. As noted above, the Seventh Circuit recently waded into the fray. The village of Woodridge is a suburb of Chicago. It has an ordinance that requires each arrestee to pay a \$30 booking fee. Unlike many other jurisdictions that impose a fee, Woodridge provides no procedure for contesting or refunding the fee, even if the arrestee is subsequently acquitted.

Plaintiff Jerry Markadonatos was arrested for retail theft. He expressly admitted that there was a basis for his arrest as part of his entry into a deferred prosecution agreement. He completed the deferral and ultimately received an adjudication of “not guilty.” He did not receive a refund of the booking fee, and sued the village in federal court under 42 U.S.C. § 1983, alleging that the imposition of the fee without any means to contest it violated due process.

The federal district court dismissed his claim, and a divided panel of the Seventh Circuit affirmed. The majority rejected his procedural due process claim because (1) the booking fee is modest, (2) the fee is used to “offset at least a portion of the administrative costs associated with processing [an] arrest,” and (3) providing a hearing about the propriety of imposing such a small fee would be unreasonably burdensome for the village. The court also suggested that a person who was unlawfully arrested could ask a judge to refund the fee or could pursue other “state remedies,” though it acknowledged that this “opportunit[y]” is not “formally provided for in the [ordinance].” Furthermore, the court rejected the plaintiff’s substantive due process claim, finding that there is nothing that “shocks the conscience” about charging a modest amount to a person who was properly arrested, and ruling that Mr. Markadonatos lacked standing to make a claim on behalf of wrongly arrested people.

Judge Hamilton argued in dissent that the ordinance is unconstitutional on its face because it is “in substance a criminal fine” that is “imposed regardless of the validity of the arrest and regardless of whether there is any criminal prosecution or what its outcome might be.”

Booking fees in North Carolina? I’m not aware of any jurisdictions in North Carolina that charge booking fees. If you are, please post a comment or send me an email. There is, of course, a daily cost-of-confinement fee, which Jamie discussed [here](#). In case any jurisdictions are considering booking fees, it is worth noting that a nonrefundable fee like Woodridge’s might not pass muster under *State v. Webb*, 358 N.C. 92 (2004) (invalidating nonrefundable appointment-of-counsel fee for indigent defendants). As noted above, even refundable fees are often challenged in court, and it seems to be an open question whether they generate enough revenue to offset the cost of administering them, though their prevalence may suggest that they do.