



MODERN-DAY DEBTORS' PRISONS: The Ways Court-Imposed Debts Punish People for Being Poor

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INTRODUCTION

Men and women charged with and convicted of crimes are overwhelmingly poor.¹ According to the Washington Office of Public Defense, 80-90% of people charged with felonies are found to be indigent by the courts.² The majority of those incarcerated lack a high school diploma, have below-average literacy levels,³ and have few job opportunities.⁴ It is not surprising, then that up to 60% of former inmates remain unemployed one year after release from prison.⁵ Without adequate education and employment, people often struggle to pay for even the most basic of necessities – food, shelter, utilities, childcare, and transportation.

Washington’s criminal justice practices should seek to increase the likelihood that people will successfully re-enter their communities. Yet court-imposed debt presents a formidable barrier, pushing people deeper into poverty and prolonging their involvement with the criminal justice system.⁶

Nearly every person convicted in a Washington court receives a bill for Legal Financial Obligations at sentencing.⁷ Known more commonly as “LFOs,” these include the fees, fines, costs, and restitution imposed by the court on top of a criminal sentence.⁸ The average amount of LFOs imposed in a felony case is \$2540 — an amount so large that poor defendants simply cannot pay it in a lump sum. After imposition, LFOs increase rapidly due to the application of a statutorily-mandated high interest rate and other fees. Those who cannot afford to pay often face a demoralizing cycle of

court hearings, contempt charges, and arrest warrants.

The practice of imposing and collecting excessive LFOs results in a counterproductive system that punishes people simply for being poor and brings little to no benefit to the government or the general public. It even results in some poor people being locked up in jail because they cannot afford to pay debts – a modern version of the despised debtors’ prison.

Regardless of the rationale behind imposing LFOs on persons convicted of crimes, in practice this system places severe, long-lasting burdens on persons living in poverty.

Furthermore, there are few checks and balances in place to protect people from unfair collection and enforcement practices that fail to take into account an individual’s current financial situation, as required by law.

Under these circumstances, no one wins. Impoverished persons suffer because LFOs keep them tied to the criminal justice system, often obstructing housing and employment opportunities and preventing them from rebuilding their lives. Children may be separated from their mothers and fathers who are jailed for non-payment, and households break up. The public does not benefit, as there are significant costs incurred in collecting and sanctioning persons who are too poor to pay LFOs. And incarcerating indigent defendants neither deters crime nor serves a rehabilitative purpose. The funds used to jail people for non-

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payment would be better used on alternatives to incarceration, community outreach, education, and anti-poverty efforts.

CONSIDER THESE FACTS:

- **Many courts routinely impose LFOs without considering whether a person is able to pay them, contrary to state law.** People convicted of crimes in Washington are ordered to pay high amounts of fines, fees, and court costs. In superior court, the average LFO is \$2540 per case. Yet courts regularly fail to consider an individual's ability to pay when imposing discretionary court costs, as is required by state law.
- **LFOs can amount to a lifetime sentence.** After it is imposed, an LFO debt can grow quickly – due to a 12% statutorily-mandated interest rate and added collection fees of \$100 per year. A person making \$20 payments per month in an effort to repay the average LFO debt may be unable to succeed even after years of regular payment. LFOs cannot be discharged in bankruptcy and many never expire.
- **People who are unable to pay can end up behind bars as a result of procedures that violate their rights.** Courts have the power to incarcerate debtors for non-payment of LFOs and routinely use that power without considering a person's ability to pay LFOs, in violation of state and federal constitutions and case law.
- **In Benton County, approximately 20% of people booked into county jail are serving time because of LFO non-payment.** This staggeringly high rate of incarceration is entirely counterproductive. It wastes valuable state and local resources while making repayment more difficult for some due to job loss and further indebtedness resulting from incarceration.
- **The threat of incarceration forces impoverished people to choose between meeting their most basic needs and paying for LFOs.** Some Washington counties require individuals to transfer public payments for subsistence to pay for LFO debt, even though those benefits cannot lawfully be garnished or attached to pay other debt.

This report spotlights LFO practices throughout Washington state, in the hope that the courts and legislature will reexamine and reform existing policies concerning criminal justice debt. Focusing on four counties, we document problems with LFO practices and profile individuals who have been impacted. Finally, we recommend alternative practices that state lawmakers should enact and courts should employ to create a better LFO system in Washington state.

These changes will ensure that LFOs are imposed and collected in conformance with state and federal law, hold accountable those who can afford to pay, increase payments of restitution to victims, and reduce unnecessary barriers for poor people seeking to reenter society.

I. OUR INVESTIGATION

The **ACLU of Washington** (ACLU) and **Columbia Legal Services** (CLS) have increasingly heard from impoverished individuals struggling with LFOs. Some are currently incarcerated for failing to pay LFOs; others are trying to make payments and find ways to access relief and avoid sanctions. While we have heard from low-income individuals throughout the state, complaints about practices in a few particular jurisdictions stand out: Benton, Clark, Clallam, and Thurston counties.

This past spring the ACLU and CLS launched an investigation into LFO policies and practices in Washington state. We sought to determine how courts in different jurisdictions impose and collect LFOs from people with scant resources. We conducted court observations, reviewed court records, and interviewed debtors, attorneys, and community members in **Benton, Clark, Clallam, and Thurston Counties**. This investigation provided firsthand evidence of the impact LFOs have on Washington residents, their families, and our communities.

Our investigation uncovered problems in each of these counties, including the following:

- Courts impose discretionary LFOs (including court costs) without considering a person's present or future ability to pay.
- While state law says restitution payments to victims should take precedence, county clerks' offices garner annual LFO collection fees prior to using LFO payments to provide restitution to victims.
- The state's excessive interest rate for LFOs creates insurmountable debt for already impoverished people, prolonging their involvement with the criminal justice system and imposing severe barriers to re-entry into their communities.
- Courts require that persons use public assistance for basic needs to pay off LFOs.
- Courts incarcerate persons for nonpayment even when they are destitute and unable to pay.



II. SQUEEZING BLOOD FROM A TURNIP

LFO Policies and Practices Result in Debt That Keeps People in Poverty

Most of the individuals we spoke with explained that they would like nothing more than to satisfy their LFOs. Yet, those who cannot afford to immediately pay LFOs find themselves facing ever-increasing debt. This begins at sentencing, where courts often impose LFOs without considering the defendant's poverty. From this point, the debt quickly increases due to usurious interest rates and the imposition of annual collections fees. As a result, even those who make regular payments are unable to fully pay off LFOs. They remain tethered to the criminal justice system for decades.

Imposition of LFOs

Superior courts are empowered to impose over 20 different LFOs, including the costs of using public defense,⁹ fees for requesting a jury trial,¹⁰ criminal filing fees,¹¹ and the costs incurred by the county or city for serving a warrant.¹² Some LFOs are mandatory, and a court must impose them regardless of a defendant's poverty. Mandatory LFOs include the \$500 Victim Penalty Assessment (VPA) and the \$100 DNA database fee.¹³ But most LFOs are not mandatory, and judges have wide discretion to impose or waive them.

Before ordering that a defendant pay discretionary court costs, state law requires the court to take into account the financial resources of the defendant and the nature of the burden imposed by LFOs.¹⁴ In addition, if a court finds that the defendant is indigent and does not have the current or future ability to pay costs, courts are permitted to waive all or part of the non-mandatory LFOs.¹⁵

Unfortunately, courts often fail to inquire into

a defendant's ability to pay before imposing LFOs. Even when they do inquire, Washington law provides no standard or methodology to determine whether someone has the ability to pay. The result is wide disparities in the amount of LFOs imposed in different jurisdictions throughout the state. For example, in some counties, an indigent individual is ordered to pay only the mandatory LFOs, while in other counties, including all four that we investigated, an indigent defendant routinely receives a score of discretionary LFOs that he or she may never be able to pay.

They remain tethered to the criminal justice system for decades.

Interest and Collection Fees

An impoverished person's situation only gets worse after LFOs are imposed due to the interest rate that accrues on LFO debts. By law, superior court-ordered debt begins to accrue interest from the date of imposition at the exorbitant rate of 12% per year — including while an individual is incarcerated and therefore earning little to no money to pay off the debt.¹⁶ District and municipal court LFOs may also accrue 12% interest if the case is assigned to a collections agency and placed in collection status.¹⁷ The 12% rate is almost twice the current rate for interest in some civil cases, such as personal injury cases.¹⁸

Giving first priority to the collection fee runs contrary to state law ... Nevertheless, taking collection fees first appears widespread.

The interest rate disproportionately impacts low-income persons, because those with the

financial means to pay their LFOs quickly can avoid interest accrual that exacerbates debt burdens and prolongs criminal justice involvement.

Court collection fees add to escalating LFO debts. Court clerks in the jurisdiction where the LFOs were imposed are responsible for monitoring and collecting LFOs.¹⁹ Superior court clerks are authorized to charge individuals up to \$100 annually for collection of outstanding LFOs.²⁰ Many clerks collect this fee every year on every open LFO account.²¹ Even worse, many superior court clerks extract the collection fee from individuals' monthly payments before distributing payments to other LFOs.²² For example, if a person pays \$150 a year towards LFOs, the clerk will first deduct the \$100 collection fee before applying the remaining \$50 to restitution, fines, and court costs.

Giving first priority to the collection fee runs contrary to state law, which prioritizes restitution to victims over all other financial obligations. By law, "[u]pon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs,

and assessments imposed, unless otherwise ordered by the court."²³ Nevertheless, taking the collection fee first appears widespread.²⁴

Clark County provides a prime example of the problems that result from the imposition of a high mandatory interest rate and the discretionary annual collection fees on poor defendants.²⁵ In Clark County, the courts routinely impose discretionary LFOs without considering a defendant's ability to pay them. For example, virtually every indigent defendant in Clark County Superior Court is ordered to pay a minimum of \$800 for the cost of his or her public defender.

When both mandatory and discretionary LFOs are taken into account, the median LFO amount ordered in a single case in Clark County Superior Court is \$2072 — an excessive amount for a poor person.²⁶ Every year, this amount accrues 12% interest and the court clerk imposes a \$100 annual collection fee per open account.²⁷ Yet, on average, the county clerk collects only \$117 per year per account. Therefore, in the average case, a person owing LFOs in Clark County is barely able to pay the annual collection fee over the course of a year and makes hardly a dent in the underlying LFO balance.

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LFO debts.***

III. TAKING FROM PETER TO PAY PAUL *Washington Courts Require People to Pay LFOs from Payments for Basic Needs*

Individuals who owe LFOs are often forced to make payments from funds necessary to meet their basic needs. This problem is particularly acute when a person's only income comes from public benefits, such as Temporary Assistance to Needy Families (TANF) or Social Security Disability Insurance (SSDI). These programs have been established to help the

most vulnerable meet their basic needs, such as food, housing, and child care. Yet, because failure to pay LFOs can result in jail time or other sanctions, recipients of public assistance often feel that they have no choice but to turn their payments for necessities over to the courts, to the detriment of their families or their own well-being.

In Washington, people whose only income comes from public assistance are the very definition of poor and live well below the poverty level. Under state law and court rules, persons who receive needs-based public benefits are entitled to the assistance of a public defender in a criminal case and to the waiver of civil case filing fees.²⁸ Furthermore, because public assistance recipients depend on these payments for basic needs, public benefits generally cannot be garnished or attached in order to pay creditors.²⁹

Nevertheless, we observed judges and court clerks in a number of counties ordering and allowing individuals to pay LFOs (including court costs) from public payments for basic needs. Most court clerks request specific

information about a person's eligibility for needs-based assistance, but then count these funds as income when setting payment plans. This practice occurs in Thurston County, which includes the state capital, Olympia. Even after public defenders successfully fought to

protect two individuals from being forced to pay public benefits to LFOs, courts in Thurston County have not changed their policy. Courts will also sanction those known to subsist on needs-based assistance if they fail to pay LFOs. This practice is unlawful, as federal statutes prohibit garnishment and seizure of public assistance payments. The practice is also unfair, particularly when people are forced to surrender money necessary for their basic needs to cover court costs such as filing fees and the cost of public defense.

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IV. TURNING A BLIND EYE TO FAIRNESS

Courts Jail People Without Considering Their Ability to Pay or Honoring Their Right to Counsel

Individuals unable to pay their LFOs may face an array of court sanctions, including being locked up.³⁰ In Benton County, our investigation revealed that approximately 20% of the people in custody on any given day are being sanctioned for non-payment of LFOs.³¹ While Benton County provides the most extreme example of this practice, other counties in Washington also incarcerate debtors for non-payment.³²

Debtors' prisons are illegal. In *Bearden v. Georgia* (1983), the United States Supreme Court held that a person cannot be incarcerated for failing to pay his criminal debt if his failure to pay was due solely to his poverty.³³ Therefore,

Benton County superior and district courts regularly fail to consider ability to pay, and instead aggressively use incarceration as a collections tool.

before a court can order jail time for failing to pay criminal debt, it must first inquire into the defendant's ability to pay.³⁴ The court should inquire into a defendant's financial resources, reasonable expenses, and good-faith effort to acquire the money to pay.³⁵ A defendant cannot be incarcerated unless, considering those factors, he has the ability to pay but refuses to do so.

Despite this clear guidance, both Benton County superior and district courts regularly fail to consider ability to pay, and instead aggressively use incarceration as a collections tool. How does this happen? First, Benton County imposes a wide variety of discretionary LFOs without

considering defendants' ability to pay. Payment plans are set according to the amount owed, not an individual's financial circumstances. Then, people who cannot pay the full monthly amount are ordered to appear at a failure to pay hearing.³⁶ Both the district and superior courts hold these hearings weekly, processing up to a hundred individuals in an hour or two. Those who fail to appear have warrants issued for their arrest, and are ordered to pay a \$100 fee per warrant issued, which is added to existing LFOs. Those who appear are rushed through a truncated process designed to force payment.

In Benton County District Court, the judge is the primary collection officer. At the failure to pay hearing, if a person has not previously missed payments, he is typically allowed to "restart" his payment plan. Occasionally, the court will lower monthly payments, although the court's stated policy is to require a minimum of \$25 per month. If the court refuses to restart, the person is ordered to pay the entire amount owing or report to work crew.

Benton County's work crew program is a form of partial custody supervised by a community corrections officer.³⁷ People on work crew perform manual labor for 9-10 hours, 4 days a week, and earn \$80 credit against fines per day. Therefore, a person ordered to work off \$800 in fines would need to participate in work crew for 10 days. Work crew participants are required to pay \$5 per day up front in order to participate. So, a person ordered to work crew for 10 days would need to pay \$50 to participate. For the indigent, the cost of participating in work crew is prohibitive. In addition, people who have previously failed to report, or who have been convicted of certain offenses, are not eligible for work crew.

One individual became seriously ill while participating in work crew, did not report, was charged with "escape," and then jailed for non-payment.

A person who cannot complete work crew, or who is not eligible to participate, is ordered to jail. For example, the ACLU spoke with one individual who became seriously ill while participating in work crew, did not report, was charged with "escape," and then jailed for non-payment. People who "sit out" their fines, earn \$50 of credit per day spent in jail.³⁸ So, a person ordered to sit out \$1000 in fines will spend 20 days in jail. Benton County's debtors' prison results in extremely long sentences, and often individuals end up spending more time in jail for nonpayment of fines and fees than they did for the underlying offense.

In Benton County Superior Court, the process similarly disregards federal and state constitutions and case law. At superior court failure-to-pay-fine hearings, the court clerks informally negotiate "pay or appear" agreements with individuals (meaning they must either "pay" the amount owed or "appear" before the court). Individuals are often told that they can avoid jail time by signing these agreements, and most do so without the assistance of counsel.

The court often accepts these agreements without inquiring whether the defendant can actually afford to pay. If an individual fails to make the monthly payments, the clerk then negotiates "pay or stay" agreements, where individuals agree to pay a particular amount or serve jail time. Again, these agreements are "agreed" to without the assistance of counsel and are sometimes entered into without court inquiry into an individual's financial circumstances. They also unfairly contain findings that non-payment is willful. An individual who cannot pay the ordered amount is almost invariably incarcerated. People do not earn any credit against superior court LFOs if they are sentenced to jail for non-payment. They

leave owing as much as they did upon entering jail, plus interest that accrued during that time.

In both district and superior courts, there is little meaningful inquiry into the reasons for non-payment. At no point in the district court process did we see the court (1) advise people that ability to pay is a crucial issue; (2) inquire into a defendant's actual financial resources and expenses; (3) consider waiving or reducing any LFOs due to manifest hardship; or (4) consider any alternatives to incarceration besides work crew, which is not a viable alternative for the indigent, because participants must pay \$20 per week to participate. And while some superior court judges advised people that ability to pay is a crucial issue, many individuals facing incarceration had already signed agreements and "admitted" that they had the ability to pay — without being advised of their right to assistance of counsel. The end result was regular incarceration for non-payment, even for those clearly without the means to pay.

... judges ordered incarceration for non-payment when debtors were homeless, unemployed, or had mental health or addiction issues preventing them from gaining employment.

ACLU and CLS attorneys observed both district and superior court judges order incarceration for non-payment when debtors were homeless, unemployed, or had mental health or addiction issues preventing them from gaining employment. We also observed the district court order incarceration of single parents supporting young children and people whose

only income was public assistance.

This system is costly, both for the government and individuals. The Benton County Jail spends \$68.59 to incarcerate a person for one day.³⁹ It costs \$125,000 per year to run a work crew of 8-12 individuals.⁴⁰ These figures don't account for the salaries of clerks who staff collections units, judicial time for collections hearings, and the costs of issuing and serving warrants for non-payment. It is clear that Benton County and its cities are spending hundreds of thousands of dollars every year on LFO collections.

Furthermore, most individuals in Benton County, or other counties, do not have the assistance of lawyers to protect their rights. Defendants who face the possibility of jail time because of non-payment have the right to a court-appointed attorney.⁴¹ Yet, in the hearings observed by ACLU and CLS attorneys, defendants were not told that they had the right to counsel. Most often, the judge said something along the lines of, "I'm inclined to order jail time. Do you want to talk to an attorney before I do that?" This informal statement is not enough to inform people of their rights.⁴² Most of the people serving time for non-payment did not understand that they had the right to an attorney, that their ability to pay their LFOs was a crucial issue, or that an attorney could help them make arguments to avoid jail time.

This system does not magically make indigent people able to pay LFOs. Instead, people incarcerated for non-payment lose their housing, jobs, and other opportunities to productively re-enter society. As the following profiles illustrate, the impact on individuals and their families is severe.

V. PROFILES

VIRGINIA DICKERSON



Virginia Dickerson was in and out of the criminal justice system from 1997-2009 on drug and driving-related charges. Since then, she has made major steps toward turning her life around. She has been sober for the past 32 months, is living in stable housing, has created a parenting plan for her child, and is working full-time as a server in a restaurant. She also is active in community groups and mentors at-risk youth.

Still, Virginia lives under constant pressure due to LFOs. Between 2010 and 2011, Virginia was ordered to pay the Benton County Superior Court over \$5000 in fines and penalties plus \$1920 in court costs and attorney's fees because of two drug-related convictions. She was also ordered to pay the Benton County District Court \$525 in fines and \$593 in court costs and fees for a possession of marijuana conviction in

2011. Since Virginia was released from prison 9 months ago after serving her time, she has been trying hard to pay her fines, but feels like

“ I’ve done my time...it seems it doesn’t matter if I’ve tried to pay or if I can’t pay. If I miss a month or can’t make a full payment, I’ll get a warrant and go to jail. I’m trapped. ”

the collections systems set people up for failure. “When I got out of prison, I was supposed to start paying \$50 a month to the Benton County District Court and \$40 per month to Superior

Court. But I couldn’t find a job. I was willing to do any work, but it’s really hard to get work with a felony record. So, I went to the District Court to ask for an extension on paying my fines. They denied me. I couldn’t get them to reconsider my payment plan until after I’d already failed to pay the full amount for several months.”

Virginia is currently required to pay \$35 a month to the district court and an additional \$40 per month to Superior Court. She has managed to keep up with her District Court payments so far,

but has not been able to pay the full amount to Superior Court each month. "Sometimes, I have to choose between paying for transportation to my job or for food and paying the full amount on my LFOs." Because of this, Virginia lives in constant fear that she will have a warrant issued for her arrest or be incarcerated. "I've been locked up in the past for not paying court fines. It didn't matter that I was homeless at the time. The very clear message was that I needed to pay exactly what I was ordered, or I would go to jail. And I didn't have the money – so I went to jail."

Now, even making her best efforts to pay, Virginia feels that she will never be able to get out from under her court-imposed debt. "My

superior court fines are collecting 12% interest and it just keeps growing. I'd love to pay extra every month, but I just can't. I make minimum wage and by the time I pay my fines, rent, food, phone bill, transportation to work, and the costs of getting my license reinstated, there's nothing left."

Virginia takes responsibility for her past, and she's doing her best to try to rebuild her life. "I understand that I made choices in my life that landed me where I am today. But I've done my time. If I'm paying what I can, that should be acceptable. But it seems it doesn't matter if I've tried to pay or if I can't pay. If I miss a month or can't make a full payment, I'll get a warrant and go to jail. I'm trapped."

| VIRGINIA DICKERSON BY THE NUMBERS | |
|--|--------------------|
| Original amount owed to the Benton County Superior Court..... | \$6,920 |
| Interest accrued since December 2010..... | \$2,124 |
| Estimated time to full payment of principal..... (assuming \$40/month payment and 12% interest) | 14.75 years |
| Estimated time to payment of principal & interest.. | 28.25 years |



DAVID RAMIREZ

David Ramirez has not been convicted of a crime in 10 years, but the LFOs from his one felony case continue to haunt him. In 2003, David pled guilty to one count of residential burglary after he entered his ex-wife's home without permission. He was ordered to pay \$2144 in restitution and over \$1147 in penalties and costs. "I wasn't making much money at the time, maybe earning about \$10 an hour. I also had to pay \$500 per month in child support. So money was very, very tight."

For years, David has been under constant pressure to pay his LFOs in full or face incarceration. "If you miss payments, they can issue a warrant for your arrest," David explained. "To get the warrant removed, you have to pay the entire amount you owe, plus an extra \$100 warrant fee." For example, when David had a warrant issued in 2008, he was told that he needed pay \$800 to get it removed.

He said, "I didn't have that kind of money, and they wouldn't take a partial payment. So I basically lived in fear of arrest for a year until a lawyer in my church agreed to help me

“ I’ve had judges tell me that they don’t care what my other obligations are, LFOs come first. First before anything. First before food and shelter. ”

negotiate a lower payment to quash the warrant.” David was unemployed and dependent on public assistance at the time, but after 6 months, he was able to borrow enough

money to quash the warrant. Once the warrant was removed, David was able to get back on a payment plan, and he's been paying regularly since. David is still paying \$30 per month towards LFOs despite the fact that he's been raising 4 children and his family's sole income is public assistance. He has been unable to get back to work in his former field because of medical problems, so his family relies entirely on about \$400 from temporary assistance to needy families and food stamps.

The family's budget is tight, and David often has

to choose between meeting his family's needs and paying his fines. "Sometimes, I have to choose between paying the electricity bill and paying LFOs, or between buying my kid a winter coat and paying LFOs. The message the courts have sent to me over and over again is that if I don't pay in full every month, I'll go to jail and I'll lose everything. I've had judges tell me that they don't care what my other obligations are, LFOs come first. First before food and shelter. It doesn't matter what my family suffers, so long as the court gets paid." Even more frustrating

for David, all that he owes at this point is interest. "I have a balance of \$1838.74, and that's exactly what I owe in interest. It's discouraging to keep paying and see that interest amount grow. It's exhausting." Still, David remains hopeful, for himself and his kids. "I believe in America, you know? I love this country. I want to start a business and provide for my family. My kids are straight A students, and I want them to go to college. But right now, I feel like the fines keep me from getting up and breathing and being the person I want to be."

DAVID RAMIREZ BY THE NUMBERS

| | |
|---|----------------|
| Original amount owed..... | \$4,291 |
| Added debt for warrants and interest..... | \$2,138 |
| Warrant fees: \$300 | |
| Interest: \$1838 | |
| Outstanding balance..... | \$1,838 |
| Time to payment of interest..... | 5 years |



ANGELA ALBERS

In 2012, Angela Albers spent 21 days in jail because she was unable to pay fines and court costs related to misdemeanor convictions from 2008 and 2010. “My difficulties all started in 2008 when I got a ticket for failing to stop at a stop sign,” Angela said. “At the time, I was going through a divorce and I forgot to pay the ticket. My license was suspended without my knowledge.” Angela was pulled over and charged twice with driving with a license suspended (DWLS), a misdemeanor. One of those times, police found a pipe in her car and charged her with possession of drug paraphernalia. All told, Angela was ordered to pay the district court \$1550 in fines and \$1399 in court costs and attorney’s fees.

“I was getting \$126 a week from unemployment. It wasn’t even enough to pay for rent and food, much less fines. I tried to talk to the clerk and explain my situation, but the clerk just told me that I had to pay the \$100 per month the court ordered.”

Angela was expected to begin making monthly payments of \$90 immediately. But without a job, she could not make the payments. “I was looking for work every day, but wasn’t able to find it. I missed payments for three months, and

then the court issued a warrant for my arrest. Right after the warrant was issued, I found a job and sent a friend to pay \$160 from my first paycheck. But the clerk wouldn’t take my money. She said I had to pay the entire amount I was behind, plus \$200 in warrant fees. That was almost \$500 and I didn’t have that kind of money.” Angela turned herself in a few months later; after being jailed, she was able to get her payments restarted after she explained to the court that she had found a job. But she fell behind again. “I was making minimum wage and a huge portion of my check was going to pay child support. Once I paid for rent and food, some months I couldn’t make the full payments on fines.”

Still, Angela made LFO payments when she could. She succeeded in completely paying off one case and made significant progress on another. But then, she lost her job and could not find another one. “I was getting \$126 a week

from unemployment. It wasn't even enough to pay for rent and food, much less fines. I tried to talk to the clerk and explain my situation. But the clerk just told me that I had to pay the \$100 per month the court ordered."

In 2012, the court ordered Angela to work off the balance of her fines. "I begged to have my fines restarted, or to have payment delayed until I could get another job. But the judge refused." Angela says that no one asked her about her income and expenses, and the court refused to restart her fines even after she explained that she was unemployed. "I wasn't even aware that my financial situation mattered. The judge told me that I had restarted my fines for the last time and that the cases were too old. The only options were to pay off my fines in full, work them off, or go to jail."

Angela served 91 hours on the county work crew, cleaning debris out of the river and weeding on public property. She was forced to

pay \$20 a week just to participate in work crew. Unfortunately, she was removed from the work crew after a positive urine analysis and was forced to jail for 21 days, earning \$50 against her fines per day in jail. "I lost everything. I couldn't make my rent payments and I lost my home. I had to move out of state to live with friends. I couldn't see my children and it interrupted my relationship with them."

Angela takes full responsibility for the mistakes she has made. "I don't make any excuses for my past behavior, and I understand that paying a fine is part of the punishment. But it feels like a vicious cycle. The court and clerks don't try to work with you or recognize when you're trying your best. The more time you're there, the more warrants they issue, the more money you have to pay. And if you can't pay the exact amount they want, even if you could pay something, they judge you as a deadbeat before you even walk into the courtroom. You're done before you even open your mouth."

| ANGELA ALBERS BY THE NUMBERS | |
|--|---------------|
| Total owed to Benton County District Court..... | \$2949 |
| Fines: \$1559 | |
| Court Costs: \$1399 | |
| Total paid to the court..... | \$1490 |
| Estimated cost the city spent on collection..... | \$1740 |
| 21 days in jail: \$1344 | |
| 9 days of work crew: \$300 | |
| Estimated net loss by the government..... | \$250 |

C.J.

In May 2010, C.J. was convicted in Thurston County Superior Court and ordered to pay over \$3000 in LFOs. His sole source of income is SSDI, benefits that the federal government provides to persons with disabilities who have limited income and resources. The court initially ordered C.J. to pay \$25 per month towards his LFOs; however C.J. does not always have the financial resources to pay this amount. Therefore, he is ordered to regularly appear before the court to explain his failure to pay or be arrested for non-compliance and brought before the court if he does not appear.

In early 2012, the Thurston County Clerk's office discovered that C.J. would be receiving back payments of SSDI totaling almost \$2000. The court then ordered C.J. to pay the full \$2000 to his LFOs. C.J. refused to make the entire payment, and was appointed a public defender, Patrick O'Connor, who challenged the order. The court agreed with Mr. O'Connor that the SSDI payments could not be garnished or attached to pay LFOs.

Unfortunately, the court's order only applied to C.J. for a particular review period. C.J. continues to live in poverty and worries constantly about being arrested for non-

payment of LFOs. He must also attend regular review hearings to prove that his failure to pay is due to poverty. Recently, the court again ordered him to pay \$25 per month towards his LFOs despite no change in his financial circumstances. Furthermore, the county continues to issue warrants for non-payment, and C.J. has been jailed while awaiting court hearings to explain his failure to pay. Equally troubling is the fact that the court has ordered C.J. to pay a \$100 warrant service fee, which is added to his existing LFOs.

Following C.J.'s case, Mr. O'Connor brought the benefits issue to the attention of the judges in Thurston County and informed them of the problems associated with this practice. However, the court has yet to adopt a policy barring the use of needs-based benefits to pay for LFOs. Without a change in court policy, judges in Thurston County may continue to order individuals to pay LFOs using public benefits. In fact, the Thurston County public defenders recently challenged another court order requiring an individual defendant to use his Veteran's Affairs benefits to pay LFOs. If there is a silver lining to these cases, it is that the public defenders in Thurston County have recognized and addressed LFO practices that unfairly burden poor individuals.

D.Z.

D.Z. was released from Benton County jail this summer after sitting out his fines for over two months. The 26-year-old Kennewick resident has struggled with addiction issues since he was about 16 years old. When he was 18, he was convicted of being a minor in possession of alcohol and of consuming alcohol. The court ordered him

to pay \$2076 in fines, fees, and court costs. Even though D.Z. had no income, he was put on a payment plan and ordered to pay \$50 a month.

D.Z. applied for dozens of jobs, but without a high school diploma, finding a job was tough. He was homeless and had trouble meeting his basic

needs. "I wanted to pay my court fines," he said. "But I couldn't even start until I found a job." Struggling to find work, and battling addiction, D.Z. missed court dates to explain why he hadn't paid. The court then issued warrants for his arrest. Once the warrants were issued, D.Z. could not get rid of them without paying a \$100 fee per warrant.

He was arrested twice for not paying his fines. D.Z. explained, "Both times, I went to the judge and said that I couldn't pay them. I tried to explain that I didn't have a job, but that I was trying hard to find one. I was basically homeless." The first time, the judge let D.Z. restart his payment plan. The second time, he was also allowed to restart. "But," D.Z. said, "the judge told me this was my last chance. If I couldn't pay my fines every month, I would have to sit them out in jail."

In 2013, D.Z. was ordered to pay \$2376 or report to work crew. Two months later, D.Z. finally found a job working the night shift at a fast food restaurant and making minimum wage. He got one paycheck, and paid \$350 in rent for clean and sober housing. The rest of the money went to food and paying for transportation to work. Then, police officers showed up at his workplace to arrest him for failure to pay his court fines. He spent the weekend in jail, and then appeared before a judge. D.Z. tried to tell the judge that he had a job and could start

making payments after his next paycheck came through. But the judge stated that court policy was to allow only two restarts.

The judge ordered D.Z. to pay \$2376 that day or serve 47 days in jail. He was also sentenced to an additional 10 days in jail as a punishment for not showing up to court hearings. D.Z. said "The judge made it seem like it would be better for me – just sit it out and get it over with, right? But I lost everything. I lost my job. I lost everything I owned. I left jail with just the clothes on my back."

D.Z. was released from prison with a voucher for one month's housing, and he is trying to find work again. His old job will not take him back after his arrest. He is hoping to enroll in an apprenticeship program, to learn to be an electrician. That dream, though, is on hold. Apprenticeship programs cost money, and D.Z. still owes \$750 to the courts. He knows that if he cannot pay those fines, he will likely end up back in jail.

D.Z. knows that he has made mistakes, but he does not understand how the county benefits from jailing him when he cannot pay fines. "It seems like the only thing that matters to the court is money. I want to pay my fines, but it doesn't make any sense to have me sit in jail if I could be working and getting the money to pay them."

“It seems like the only thing the matters to the court is money. I want to pay my fines, but it doesn't make sense to have me sit in jail if I could be working and getting the money to pay them.”

D.Z. BY THE NUMBERS

| | |
|--------------------------------------|---------------|
| Total owed to Benton County..... | \$3130 |
| Total paid..... | \$0 |
| Estimated cost of incarceration..... | \$3909 |
| 57 days @ \$68.59/day | |

VI. RECOMMENDATIONS FOR REFORM

People in Washington should not be punished for being too poor to pay onerous obligations set by state law and local courts, after proceedings that are often unfair or unconstitutional. Rather, Washington public policy and practice must ensure that no one is jailed or faces other legal sanctions simply because he or she is too poor to pay court-ordered debts.

LFOs should not be treated as a funding source for our court system. Rather, LFOs should be imposed for the purpose of providing restitution to victims and furthering successful re-entry of offenders. Incarceration should not be a tool to force payment from those already struggling to meet basic needs.

It should be public policy throughout Washington state that no one is jailed ... because he or she is impoverished and unable to pay debts.

There are better methods for imposing and collecting LFOs, ones that ensure that persons receive LFOs which reflect their ability to pay and then are held accountable when they choose not to make payments.

To ensure that Washington's LFO systems adhere to these values, we offer the following specific recommendations. These recommendations will not only relieve indigent persons of unfair and unnecessary burdens stemming from LFOs but also could save counties valuable resources spent on unsuccessful collection efforts.

1) Establish clear statewide criteria for determining a person's ability to pay LFOs:

All courts must be required to consider the ability to pay when imposing discretionary

costs, fines, or fees, setting monthly payment schedules, and determining whether sanctions are appropriate. The courts that now currently conduct an ability to pay analysis use divergent and highly subjective standards, leading to wide disparities from county to county in imposing and enforcing LFOs. The criteria for determining ability to pay should build upon existing guidelines that determine whether a person qualifies for a public defender. The result would be a uniform standard that is applied equally to all persons facing the imposition of LFOs or sanctions for failing to pay LFOs.

2) End transfer of public payments for necessities to pay for LFOs: Persons who receive state and federal benefits have already been deemed by the government to be indigent and to require assistance to meet basic needs. The receipt of benefits should be considered a per se finding of inability to pay, and the legislature should prohibit transfer or assignment of public payments for basic needs to pay off LFOs, other than restitution.

3) Eliminate the current 12% interest rate on non-restitution LFOs, and suspend all interest during incarceration: Eliminating the interest rate during incarceration will ensure that LFO debt does not grow excessively. Interest should not accrue until 90 days after an individual is released from incarceration. This will ensure that LFO debt does not multiply when a person is unable to earn enough money to pay it off. These practices will encourage regular payment and prevent LFOs from being needlessly punitive.

4) Distribute LFO payments to restitution prior to other fees and costs: Victims entitled to restitution should be paid before any other obligation. Court collection fees should not be assessed on individuals who are keeping up with their payments or are indigent, and in any case should not be paid before victim restitution. If clerks' collections fees cannot be collected until after restitution is satisfied, victims will be paid more promptly.

5) Establish clear processes for waiver of all LFOs: Judges should have the discretion to waive any non-restitution LFOs when payment of the amounts would result in hardship that would result in a person's inability to meet basic needs or re-enter society. Defense attorneys should advocate for waiver of LFOs whenever there is reason to believe that imposition will cause such hardship. There should be a clear process to apply for such a waiver after sentencing, and the court should be required to consider waiver whenever contemplating sanctions for non-payment.

6) Ensure that individuals know their rights and have assistance of counsel whenever appearing in court or signing an order to be entered with the court for LFO collections. Our investigation found that most courts offered the assistance of counsel only at the very end of the collection process, after the court had

already determined that the failure to pay was willful and decided to impose jail time. Assistance of counsel and other procedural protections at an earlier stage in the process will ensure that persons are advised of their rights and responsibilities. The courts should also develop educational materials to make sure that individuals understand that ability to pay is a crucial issue, are informed about mechanisms for seeking relief, and are aware of their right to counsel.

7) Expand reporting requirements to account for the cost of collecting LFOs: County clerks are required to provide an annual report to the Washington State Legislature on the amounts of LFOs they collect for superior court cases.⁴³ Unfortunately, this report does not account for the costs expended to collect LFOs, including staff time, court time, jail costs, and law enforcement costs. Policy-makers would benefit from more complete reporting that includes the costs of collection.

We hope that the jurisdictions named in this report, as well as others throughout Washington, carefully examine this report and implement changes that will end excessive imposition of LFOs and the use of debtors' prisons, and will guarantee that LFOs are imposed and collected reasonably. ■

REFERENCES

¹See Alicia Bannon, Mitali Nagrecha & Rebekah Diller, “Criminal Justice Debt: A Barrier to Reentry,” Brennan Center for Justice (2010) at 4; see also Washington Office of Public Defense, Update on Criteria and Standards for Determining and Verifying Indigency (2007) (stating that between 80 and 90% of those charged with felonies in the United States qualify for indigent defense).

²See Washington State Office of Public Defense, “Update on Criteria and Standards for Determining and Verifying Indigency” (2007) at 17.

³See Bannon, et. al., supra n. 1 (nearly 65% of those incarcerated in the U.S. did not receive a high school diploma; 70% function at the lowest literacy levels).

⁴See Devah Pager et al, Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records (2009) (finding that people with criminal history are half as likely to receive a follow up interview as people with similar skills and education but no criminal history).

⁵See Bannon, et. al., supra n. 1.

⁶See Katherine Beckett, Alexes Harris, & Heather Evans, “The Assessment and Consequences of Legal Financial Obligations in Washington State,” Washington State Minority and Justice Commission (Aug. 2008).

⁷See Beckett, et. al., supra n. 6.

⁸RCWs 9.94A.760; 36.110.020.

⁹RCW 9.94A.030(30).

¹⁰RCWs 10.01.160; 10.46.190; 36.18.016.

¹¹RCW 36.18.020(2)(h).

¹²RCW 10.01.160.

¹³See RCW 7.68.035 (VPA); 43.43.7541 (DNA). The VPA is imposed regardless of whether the crime involved a victim. The DNA database fee is also collected whenever a defendant is convicted of a felony, regardless of whether the state has already collected his DNA.

¹⁴See RCW 10.01.160(3); see also State v. Bertrand, 165 Wn.App. 393, 404 (Div. 2, 2011).

¹⁵See, e.g., RCW 9.94B.040; 10.01.160(4); 10.73.160.

¹⁶See RCW 10.82.090; 4.56.110(4); 19.52.020. Interest is simple, meaning it accrues every year.

¹⁷See RCW 3.62.020(5); 3.62.040(5).

¹⁸As of Nov. 11 2013, many civil judgments accrue 5.25% interest. See RCW 4.56.110 (3)(b) (interest on civil judgments 2% above the federal reserve’s prime rate); Federal Reserve Bank, Daily Interest Rates, available at <http://www.federalreserve.gov/releases/h15/> (last visited Nov. 11, 2013) (setting federal bank prime loan rate at 3.25%).

¹⁹RCW 9.94A.760 (8); RCW 9.94A.753(4). LFOs are collected by the clerk of the court where the underlying conviction occurred. So, a conviction in King County Superior Court will be collected by the clerk of that court.

Superior courts, which handle all felony cases in Washington, impose LFOs. So do district and municipal courts, which handle misdemeanors and violations of city codes. LFOs and the collections processes differ significantly from court to court.

²⁰RCW 36.18.016(29); RCW 9.94A.780.

²¹See Clark County Superior Court Collections Unit at www.co.clark.wa.us/courts/clerk/LFO.html. Many counties, including Clark County, also charge a per payment “convenience fee” for payments made online or through credit or debit cards. See <http://www.clark.wa.gov/courts/clerk/lfo.html>. Therefore, unless a person can appear in person to submit a cash payment, he will have to pay about 3% of each individual payment towards this fee, not his underlying LFO balance.

²²Washington Association of County Officials (WACO), “Ninth Annual Report to the Legislature on the Collection of Court Ordered Legal Financial Obligations by County Clerks as Required by Senate Bill 5990, Chapter 379, Laws of 2003,” (Feb. 5, 2013) at 4 (acknowledging that clerks collect the fee “in advance”).

²³RCW 9.94A.760(1).

²⁴See WACO Report, *supra* n.22, at 4 (“To supplement the funding available to support this work, many clerks assess a statutory collection fee of up to \$100 per year.”).

²⁵We note that Clark County’s practices in this regard are not unusual. Similar practices appeared in every other county that we investigated, and it is likely that they exist statewide.

²⁶Beckett and Harris, *supra* n. 6, at 90.

²⁷See WACO Report, *supra* n. 22 at Table 8.

²⁸See RCW 10.101.010(3) (defining people receiving TANF, food stamps, veteran’s disability benefits and SSI as indigent for the purpose of obtaining a public defender); General Rule 34(3)(A) (defining people receiving such benefits as indigent and entitled to waiver of filing fees); *Jafar v. Webb*, 177 Wn. 2d 520 (2013) (holding that GR 34 requires a total waiver of all civil filing fees for indigent people, and rejecting trial court’s attempt to require partial fee payment over time).

²⁹See, e.g., 42 U.S.C. § 407(a) (SSI and SSDI exempt from garnishment); 42 U.S.C. § 1383(d)(1) (same); 38 U.S.C. § 5301 (benefits administered by the Veterans Administration exempt from garnishment).

³⁰See RCW 9.94B.040(3)(a)(i); RCW 10.01.180.

³¹This estimate is based upon the ACLU’s and CLS’s review of jail rosters and court records between May and October of 2013. People who are in custody for non-payment of district court fines are listed as “sitting out fines” and we simply calculated the number of those individuals. To estimate how many people are in custody for non-payment of superior court fines, we identified those individuals who were listed on the jail roster as having “non-compliance with the conditions of sentence.” To weed out those whose non-compliance was not LFO-related, we reviewed court records to identify those people who, before reporting to jail, were ordered to pay a specific amount to LFOs or serve time in jail. Together, the numbers for those sanctioned for non-payment of district and superior court LFOs averaged about 20% of the jail’s daily inmate roster.

³²See Jody Lawrence-Turner, “Debt to Society,” *The Spokesman-Review* (May 24, 2009) (Stating that on any given day, up to 200 of the estimated 1,200 people incarcerated in Spokane County’s two correctional facilities are there for failing to pay LFOs; see also *State v. Nason*, 168 Wn. 2d 936 (2010) (discussing and ruling unconstitutional Spokane’s former policy requiring people who hadn’t paid LFOs to report to jail without a hearing). Our investigation revealed that Clark, Clallam and Thurston counties also regularly incarcerate individuals for non-payment of LFOs.

³³*Bearden v. Georgia*, 441 U.S. 660 (1983). See also WA Const. Art. 1, § 17 (“There shall be no imprisonment for debt, except in cases of absconding debtors.”).

³⁴See *Bearden*, supra n. 33, 461 U.S. at 674 (stating that the lower court violated fundamental fairness by sentencing a person to prison for failure to pay without considering the reasons for inability to pay or the propriety of reducing the fine or extending time for payments).

³⁵See *Bearden*, supra n. 33, 461 U.S. 660. See also *State v. Bower*, 64 Wn. App. 227, 233 (Div. 1, 1992).

³⁶Court records indicate that warrants may also be issued even if a person hasn't missed a hearing to explain the reason for non-payment: in other words, a warrant is sometimes issued based simply on failure to pay.

³⁷See RCW 9.94A.725; 9.94A.731.

³⁸See RCW 10.01.180 (requiring credit against LFO balance for days served in jail on account of non-payment of district court fines). The Benton County jail also offers a "trustee" program, in which inmates serving a jail term work 12 hour shifts. Trustees earn \$80 per day against LFOs, allowing many to shorten their stays.

³⁹See Kristen Kraemer, "Paying District Court Fines with Jail Time Debated in Benton County, Tri-City Herald" (Nov. 4, 2013).

⁴⁰See Kraemer, supra n. 39.

⁴¹See *State v. Stone*, 165 Wn. App 796, 814 (Div. 2, 2012).

⁴²A person cannot give up their right to counsel unless waiver is "knowing, intelligent, and voluntary." See *Stone*, supra n. 41. This is a high standard, and the burden of proving voluntary waiver is on the State.

⁴³RCW 36.23.110.

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