



**WASHINGTON STATE
MINORITY AND JUSTICE COMMISSION**

**THE ASSESSMENT AND CONSEQUENCES OF
LEGAL FINANCIAL OBLIGATIONS IN
WASHINGTON STATE**

Research Report

Katherine A. Beckett, Ph. D.
Alexes M. Harris, Ph. D.
Heather Evans

August 2008



**WASHINGTON STATE
MINORITY AND JUSTICE COMMISSION**

**THE ASSESSMENT AND CONSEQUENCES OF
LEGAL FINANCIAL OBLIGATIONS IN
WASHINGTON STATE**

Research Report

Washington State Minority and Justice Commission
Washington State Supreme Court
Temple of Justice
Post Office Box 41174
Olympia, Washington 98504-1174

Telephone: (360) 705-5327
Telefacsimile: (360) 357-2111
Email: minority.justice@courts.wa.gov

August 2008

Copyright © Washington State Minority and Justice Commission (2008)

ACKNOWLEDGMENTS

We are grateful for the suggestions and advice of Washington State Minority and Justice Commission members, particularly Commission co-chairs Justices Charles Z. Smith and Charles W. Johnson. Lori Pfingst provided useful editorial assistance, and Matthew Barreto generously provided Hispanic Surname Analysis data and program information. Thanks also to other academic colleagues at the University of Washington, particularly Steve Herbert, Ross Matsueda, Bryan Sykes, and Jonathan Wender. Many county clerks, correctional personnel, and defense attorneys were generous with their time and offered important insights and information. This study was commissioned and funded by the Washington State Minority and Justice Commission. The views expressed are based on an independent data analysis and may not reflect those of the Commission or particular Commissioners.

Katherine A. Beckett, Ph. D.

Alexes M. Harris, Ph. D.

TABLE OF CONTENTS

<u>Executive Summary</u>	1
<u>Introduction</u>	9
Criminal Justice Expansion and its Collateral Consequences	10
LFOs and the Re-entry Process	13
Research Questions	14
<u>Part I. The Assessment of Legal Financial Obligations in Washington State</u>	17
Data Analysis and Results: Descriptive Statistics	19
Explaining Variation in the Assessment of Legal Financial Obligations	25
Data Analysis	26
Results	28
<u>Part II. Consequences of Legal Debt for the Re-entry Process</u>	34
Data and Methods	34
Results	36
Financial Context and Consequences	36
Criminal Justice Consequences	49
Concerns about Assessment and Collections Processes	55
Concern about the Loss of Civil Rights	61
Interview Themes: Summary	62
<u>Part III. Summary of Findings and Recommendations</u>	65
LFO Assessment in Washington State	65
The Impact of LFOs on the Re-Entry Process	67
Policy Analysis	69
Policy Recommendations	75
Recommendations for Future Research	78
<u>References</u>	81
<u>Appendices</u>	
Appendix A. Washington State Superior Court LFOs	87
Appendix B. Characteristics of Felons Sentenced	88
Appendix C. Variables and Measures Utilized in HLM Analysis	91
Appendix D. Hierarchical Linear Model: Results	93
Appendix E. Interview Sample Characteristics	95
Appendix F. Federal Poverty Thresholds	96

LIST OF TABLES AND FIGURES

TABLES	PAGE
Table 1. Fines/Fees and Restitution Orders, Washington State Superior Court Convictions, 2004	20
Table 2. LFO Repayment, Washington State Superior Court Convictions 2004- 2007	21
Table 3. Average Amount Owed by Monthly Payment in 5, 10, 15 and 30 Years for Average LFO Assessed	22
Table 4. County-Level Variation in Washington State Superior Court LFO Assessment: Examples	24
Table 5. Explanatory Variables Included in Model	27
Table 6. HLM Results: Significant Predictors of Assessed Fees and Fines	30
Table 7. LFO Interview Sample: Social and Financial Characteristics	37
Table A1. Allowable Washington State Superior Court Financial Obligations	87
Table B1. Demographic Characteristics of Sentenced Felons, Washington State Superior Courts	88
Table B2. Legal Characteristics of Washington State Superior Court Cases	89
Table B3. Median Fees and Fines by County	90
Table D1. HLM Regression Results, Dependent Variable: Logged Fines and Fees	93
Table E1. 2006 Federal Poverty Thresholds by Marital Status and Number of Children	95
Table F1. 2006 Federal Poverty Thresholds by Marital Status and Number of Children	96

FIGURES

Figure 1. Median LFOs by County for Washington State	23
Figure 2. Percent Living Below Poverty Rates, LFO Interview Sample	37

EXECUTIVE SUMMARY

This study explores the assessment and consequences of Legal Financial Obligations (LFOs) in Washington State. For the purposes of this study, LFOs include the fees, fines and restitution orders assessed by judges at the time of criminal conviction. Persons assessed LFOs for offenses committed after July 1, 2000 may remain under the court’s jurisdiction “until the [financial] obligation is completely satisfied, regardless of the statutory maximum for the crime.”¹ It is important to note that other financial obligations may result from an arrest and/or criminal conviction, including jail booking and operations fees, Department of Corrections fees, and collection fees. This report focuses solely on the LFOs assessed by Washington State Superior Courts, and addresses three main research topics. Part I describes the nature of the fees and fines typically assessed, and identifies the case, defendant, and county-level factors that predict variation in the assessment of LFOs. Part II assesses how LFOs affect the lives of those who possess them, and, in particular, how legal debt affects the re-entry process. The concluding section considers whether the assessment of LFOs is consistent with legislative intent and other important policy goals, including the promotion of reintegration and the reduction of recidivism.

The study draws primarily on two main data sources to address these topics. First, data pertaining to 3,366 Washington State Superior Court cases sentenced in the first two months of 2004 were analyzed to quantitatively assess the nature of the LFOs imposed by the courts. Insofar as these records include all Washington State Superior Court cases sentenced in this time period, the results of the quantitative analysis pertain to the state as a whole. The study also

¹ RCW 9.94A.760 (4).

draws upon interviews with fifty Washington State residents who were assessed LFOs in at least one of four selected Washington State counties, as well as interviews with Department of Corrections (DOC) personnel, county clerks, defense attorneys, and others with particular expertise regarding LFOs. These interviews provide important information about collection processes and the consequences of LFOs for the reintegration process. However, because these interviews were conducted in four counties, the results may not capture dynamics across the state as a whole.

The results of the study indicate that the assessment of LFOs is characterized by a high degree of variability that cannot be attributed solely to the seriousness of the offense or the offender. The dollar value of assessed fees and fines varies a great deal, from a low of \$500 to a high of \$21,110 per felony conviction. If restitution is included, the maximum LFO assessed for a single felony conviction was \$256,257. A very small percentage of these debts had been collected three years post-sentencing. As a result of high rates of non-payment and the accrual of interest, the legal debt of most of those sentenced in 2004 had grown rather than shrunk by 2007.

The analysis of court records also indicates that defendant, case and county characteristics significantly influence LFO assessment even after the seriousness of the offense and offender are taken into account. Specifically, convictions involving Hispanic defendants are associated with significantly higher fees and fines than those involving white defendants, even after controlling for relevant legal factors. Drug convictions are associated with significantly higher fees and fines than convictions involving violent offense charges. Convictions that result from a trial rather than a guilty plea are also associated with significantly higher fees and fines. Finally, cases involving male defendants are assessed higher fees and fines than cases involving

female defendants. The assessment of LFOs also varies by jurisdiction. That is, even among cases involving identical charges and defendants with similar offense histories, there is significant county-level variation in the assessment of fees and fines. Counties characterized by smaller populations, higher drug arrest and violent crime rates, and/or comparatively small proportions of their budgets devoted to law and justice assess significantly higher fees and fines. The evidence thus indicates that defendants with similar criminal histories and charges may accrue very different amounts of legal debt depending upon where they are convicted.

In addition, the interview and survey data indicate that LFOs are an important barrier to the reintegration process. Like people living with a criminal conviction across the United States, many of those interviewed for this study reported living on quite limited incomes; over half of those interviewed have incomes that fall under federal poverty guidelines. Most of those interviewed were also parents and were financially supporting minor children at the time of the interview. As a result, many fell behind on their LFOs, which continued to grow as the result of the accrual of interest. Their legal debt not only potentially limits their income, but their credit ratings as well, which in turn limits their ability to secure stable housing. Some respondents also reported that the threat of lost wages and garnishment created an incentive for them to avoid work. Given evidence that employment, adequate income and stable housing reduce recidivism among persons with criminal histories, it is quite possible that by reducing income and employment, and rendering the search for stable housing more difficult, LFOs encourage repeat offending.² The long term nature of the legal debt also prevents many with LFOs from applying

² Chiricos et al., 2007; Council of State Governments 2005; Urban Institute 2006.

to have their criminal record sealed, which in turn perpetuates their economic disadvantage.³

Some respondents were so overwhelmed by their legal debt that they ceased making payments altogether. In some of these cases, warrants were issued for failure to pay. The issuance of an arrest warrant has many adverse consequences. Persons with warrants stemming from violation of a felony sentence are considered “fleeing felons”, and thus are ineligible for federal benefits including Temporary Assistance for Needy Families, Social Security Insurance (SSI), public or federally assisted housing, and food stamps.⁴ In addition, respondents in two of the four counties in which interviews were conducted reported being arrested and re-incarcerated as a result of their failure to make regular LFO payments. The threat of criminal justice intervention created an incentive for those who had not made regular LFO payments to hide from the authorities, but nonetheless made it difficult for those same persons to disentangle themselves from the criminal justice system.

In short, the interview findings suggest that LFOs exacerbate the many difficulties associated with the re-entry process. Even without legal debt, research indicates that people living with a criminal conviction have a difficult time securing stable housing and employment as a result of their criminal record. Our interview data indicate that LFOs added to these difficulties by: reducing income and worsening credit ratings, both of which make it more

³ Under Washington state law, Class B and C adult felony convictions involving nonviolent and non-sex offenses sentenced after July 1, 1984, may be vacated/sealed after all sentencing requirements have been met and a certificate of discharge has been issued. For Class B felonies, the applicant must have been crime-free for ten years; for Class C felonies, the applicant must be crime-free for five years. (RCW 9.94A.640)

⁴ 42 U.S.C. § 608 (a)(9)(A)(ii); Szymendera 2005. The Social Security Administration’s Office of Inspector General matches “wanted persons files provided by the participating law enforcement agency against SSA’s computer files of individuals receiving Title XVI payments, Title II benefits and/or serving as representative payees” in order to ensure that benefits are stopped in such cases.

(See <http://www.ssa.gov:80/oig/investigations/fugitivefelon/fugitivefelon.htm>.)

difficult to secure stable housing; hindering efforts to obtain employment, education and occupational training; reducing eligibility for federal benefits; creating incentives to avoid work and/or hide from the authorities; ensnaring some in the criminal justice system; and making it more difficult to secure a certificate of discharge, which in turn prevents people from restoring their civil rights and applying to seal one's criminal record.

For these reasons, we conclude that the Legislature's goal of holding offenders financially accountable for the consequences of their criminal behavior is in tension with its efforts to reduce recidivism by facilitating the successful reintegration of Washington State residents with a felony conviction. Although LFOs do hold those convicted of crimes financially accountable for their criminal behavior in theory, many of those with legal debt do not make regular LFO payments. Indeed, court records indicate that zero percent of the fees, fines and restitution orders assessed in 2004 were paid for approximately half of the convictions three years post-sentencing. The adverse consequences of LFOs for those who possess them are thus not outweighed by recoupment of significant restitution funds. It is also unclear whether the revenues generated by LFO payments are greater than the direct and indirect costs associated with their collection. Insofar as many of those assessed LFOs are overwhelmed by the magnitude of their legal debt and therefore stop making payments entirely, it is possible that attempting to hold defendants financially accountable to the state and counties reduces the capacity and/or willingness of those who are assessed restitution to make payments to crime victims.⁵

In summary, the evidence indicates that the assessment of LFOs holds some of those

⁵ There is evidence that offenders with higher incomes and smaller legal debts are more likely to pay their LFOs. There is also evidence that offenders are most likely to pay when they understand where their payments go and when their payments are directed toward crime victims (Ruback et al., 2006).

convicted of similarly serious crimes more accountable than others, and constitutes a significant barrier to reintegration. Moreover, it is not clear that the assessment of LFOs provides much financial benefit to either crime victims or state and local governments. In light of these findings, we recommend the following:

(1) Place a moratorium on the assessment of all LFOs other than restitution orders and the currently mandatory \$500 Victim Penalty Assessment fee until the concerns identified are adequately addressed. We also recommend that neither of these LFOs be subject to interest.

Streamlining LFOs in this manner offers several advantages. First, and most importantly, eliminating LFOs other than restitution and the VPA fee would eliminate the more discretionary and variable fees and fines, thereby eliminating variation associated with factors such as defendant ethnicity, adjudication method, conviction type, and county characteristics. Judges would no longer be obligated to determine defendants' future ability to pay. Although this proposal might reduce the revenues recouped, it is also likely to reduce state and county level expenditures devoted to collection of LFOs. Moreover, insofar as persons may be more likely to make LFOs payments when those payments are perceived as manageable and legitimate⁶, streamlining LFOs in this manner may increase revenues available to crime victims and crime victim advocates. Indeed, the majority of those interviewed accepted the premise that they should be held accountable for their past behavior, and were particularly accepting of the idea of restitution.

⁶ Ruback et al., 2006.

(2) Adopt a broader and more flexible conception of accountability that allows defendants determined to be indigent to convert monetary LFOs to community service obligations and/or provision of services for the persons directly harmed by their prior criminal behavior.

A broader conception of accountability would accomplish several goals. First, it would recognize that the primary obligation of those who have been convicted of a crime is to establish crime-free, productive lives, and to contribute emotionally and financially to their families and children. Holding persons with criminal convictions financially accountable for their past criminal behavior may interfere with this objective. Allowing those who possess LFOs but are indigent to “pay back” through community service work and/or service on behalf of crime victims would increase the likelihood that accountability is achieved in practice, and reduce the likelihood that people with LFOs and their family members will remain trapped in poverty. It would also reduce the likelihood that LFOs contribute to recidivism, thereby reducing the number of crime victims.

(3) Adopt legislation that automatically restores the civil rights of Washington State residents with a felony completion upon completion of their confinement sentence.

We agree with the many criminologists who have concluded that the denial of voting rights following completion of sentences of confinement serves no clear penological purpose and is an impediment to rehabilitation and may increase recidivism.⁷ We also believe that predicating

⁷ See Uggen and Manza 2006; En Banc Brief Submitted on Behalf of Certain Criminologists as Amicus Curiae in Support of Appellants and in Support of Reversal, submitted to the U.S. Court of Appeals for the Second Circuit, Available online at http://www.naacpldf.org/content/pdf/muntaqim/Criminologists_En_Banc_Amicus_Brief.pdf

the restoration of civil rights on elimination of legal debt constitutes a particular burden, and an obstacle to reintegration, for the poor. We therefore recommend adoption of legislation that restores the civil rights of those who are no longer in total confinement.

(4) Create a statewide database that would consolidate information about legal debt from all counties and all sources, including municipal, superior, and district courts as well as the Department of Corrections and jails.

This “centralized cashiering” system would eliminate some of the informational difficulties reported by those interviewed for this study, and could reduce collection costs. Although the monthly statements currently generated and sent by the AOC are useful, high rates of residential mobility among persons with criminal convictions mean that some individuals do not receive such statements. A consolidated database that could be accessed by those with LFOs and relevant others (such as DOC personnel) would enable parties to identify all sources of legal debt for particular individuals.

INTRODUCTION

This study was commissioned by the Washington State Minority and Justice Commission and explores the nature and consequences of Legal Financial Obligations (LFOs) assessed by Washington State Superior Courts. LFOs include the fees, fines and restitution orders that may be assessed upon criminal conviction.⁸ Under Washington State law, “Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence.”⁹ The assessment of only one of these fees and fines – the \$500 Victim Penalty Assessment – is mandatory for all felony convictions.¹⁰ Costs (fees) are to be assessed if the court determines that the defendant is or will be able to pay them, although the statute does not specify how the courts should assess defendants’ present or future ability to pay.¹¹ Fines may be imposed at the courts’ discretion within certain guidelines.¹² Under statute, courts also require those whose criminal offense had monetary consequences for victims to pay restitution to victims unless extraordinary circumstances exist.¹³ In short, although particular fees and fines may be assessed only for specific types of cases, statutory law allows courts to exercise significant discretion when determining whether to assess most fees and fines. (See Table A1 in

⁸ RCW 9.94A.030 (28) defines LFOs as follows: “Legal financial obligation means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims’ compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or inter-local drug funds, court-appointed attorneys’ fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction.”

⁹ RCW 9.94A.760.

¹⁰ RCW 7.68.035.

¹¹ RCW 10.01.160 (3).

¹² Under RCW 9.94A.550, persons convicted of Class A felonies may be fined up to \$50,000; those convicted of Class B felonies may be fined up to \$20,000; and those convicted of Class C felonies up to \$10,000.

¹³ RCW 9.94A.753.

Appendix A for a list of LFOs that may be assessed by Washington State Superior Courts). Persons assessed LFOs for offenses committed after July 1, 2000 may remain under the court's jurisdiction "until the [financial] obligation is completely satisfied, regardless of the statutory maximum for the crime."¹⁴

This report draws on a number of data sources to analyze patterns and variation in the assessment of LFOs among Washington State Superior Courts. It also explores the consequences of LFOs for those who possess them and for the re-entry process more generally. Finally, it considers whether assessment of LFOs promotes or hinders the achievement of a number of policy goals, including reimbursing victims, counties and the state for the costs associated with criminal conviction. It begins, however, with a brief discussion of the larger context in which this study is situated.

Criminal Justice Expansion and its Collateral Consequences

In recent decades, the criminal justice system has expanded dramatically. The United States incarceration rate has increased sevenfold since the 1970s to become the highest in the world. More than one in every 100 adult residents of the United States now lives behind bars.¹⁵ The number of people under criminal justice supervision, which includes those on probation and parole as well as those in prisons or jails, has jumped to over seven million.¹⁶ Since 1986, the

¹⁴ RCW 9.94A.760 (4).

¹⁵ PEW Center on the States 2008.

¹⁶ Bureau of Justice Statistics n.d

number of felons sentenced in state courts has increased by over 240%.¹⁷ Although Washington State's incarceration rate is lower than the national average,¹⁸ the number of Washington State residents living behind bars has increased sharply. According to the Washington State Institute for Public Policy, the Washington State adult imprisonment rate increased by 125 percent between 1980 and 2000 as the state came to rely more extensively on imprisonment, particularly for drug offenses.¹⁹ Washington State's community supervision rate (2,155 per 100,000 residents in 2005) is among the highest in the nation.²⁰ By 2004, over one million adults were sentenced for a felony conviction in the state courts each year.²¹ As a result, unprecedented numbers of U.S. residents have a criminal conviction on their record.²²

Studies indicate that felony conviction and incarceration have significant negative consequences that impede the reintegration process and increase recidivism (i.e. repeat offending). Nationally, 80% of those charged with a felony offense are indigent.²³ Although those who are convicted of felony offenses and/or incarcerated are generally disadvantaged prior to their conviction, there is evidence that conviction and incarceration exacerbate this disadvantage. For example, imprisonment has a negative impact on individuals' educational and

¹⁷ Langan and Graziadei 1995; Durose and Langan 2005.

¹⁸ In 2005, Washington State's incarceration rate was 465 per 100,000 residents; the national rate was 738 per 100,000 residents (BJS 2006). Interestingly, though, Washington State's black incarceration rate is higher than the national average (2,522 versus 2,290 per 100,000 black residents) (Mauer and King 2007, Table 3).

¹⁹ Washington State Institute for Public Policy 2003, Table 1.

²⁰ Glaze and Bonczar 2006.

²¹ Durose and Langan 2005.

²² Recent estimates indicate that over 16 million U.S. residents, or 7.5 percent of the adult population, are believed to possess at least one felony conviction. 23.3 percent of the black adult population, and 33.4 percent of the black adult male population, are felons (Uggen, Manza and Thompson 2006).

²³ New York State Bar Association 2006.

occupational attainment, employment prospects, income, and family life.²⁴ Even in the absence of incarceration, there is evidence that felony conviction imposes adverse “collateral consequences” that enhance social and financial disadvantage. For example, research indicates that those who report a felony conviction on their job application have far less success on the job market than similarly qualified and carefully matched applicants who do not report a felony conviction.²⁵ In Washington State, persons who have been convicted of a felony offense are also unable to obtain restoration of their voting rights until all of their LFOs have been paid.²⁶ As a result, an estimated 3.6 percent of the adult state population, and 17.2 percent of all adult African-American men living in Washington State, were disenfranchised at the end of 2004.²⁷

In short, the collateral consequences of criminal conviction and incarceration enhance economic and social disadvantage among the convicted and exacerbate the many challenges associated with making a successful transition to a stable and non-criminal life. There is also evidence that the collateral consequences of criminal conviction and incarceration adversely affect families and communities.²⁸ For example, incarceration increases the likelihood of divorce and separation, leaving many families more economically disadvantaged and unstable.²⁹ Moreover, the lost income that results from felony conviction affects entire families, including

²⁴ Hagan and Dinovizer 1999; Manza and Uggen 2006; Mauer and Chesney-Lind 2002; Travis, McBride and Soloman 2005; Travis and Petersilia 2001; Western and McLanahan 2000; Western 2006.

²⁵ Pager 2003, 2005, 2007.

²⁶ ACLU 2004; Manza and Uggen 2006.

²⁷ Manza and Uggen 2006, Table A3.3. In March 2006, a Washington State Superior Court ruled that the state’s denial of the right to vote to ex-felons who are unable to pay their LFOs in their entirety violates the Equal Protection Clause of the 14th Amendment. However, in *Madison et al v. State of Washington* the Washington State Supreme Court disagreed, ruling that as long as all felons were treated in the same manner the law could not be considered biased against the poor. *Madison v. Washington*, 78598-8, July 26, 2007.

²⁸ Braman 2002; Bernstein 2005; Clear et al. 2001; Clear et al. 2003; Uggen, Manza and Thompson 2006; Western 2006.

²⁹ Braman 2002; Bernstein 2005; Western 2006.

spouses and children.³⁰ Recent studies also indicate that the collateral consequences of conviction and incarceration increase recidivism, thereby impacting the broader community. For example, felony conviction increases joblessness and reduces earnings, both of which are associated with recidivism.³¹ Similarly, having a criminal record renders the search for affordable housing more difficult; felons without stable housing are more likely to re-offend than those with housing.³²

In sum, a growing body of research suggests that felony conviction and incarceration have significant collateral consequences that adversely affect those convicted of crimes, their families, and their communities. There is also evidence that these adverse consequences increase the likelihood of recidivism.

LFOs and the Re-entry Process

Recognition of the unintended, adverse impact of conviction and incarceration on reintegration and recidivism has grown among state and federal policymakers seeking to facilitate the successful re-entry of people with criminal records. In Washington State, where an estimated 8,500 people return from prison to the community each year and approximately 25,900 are currently under community supervision by the Washington State Department of Corrections, Governor Christine Gregoire and the Legislature have undertaken a new effort to assess and enhance services aimed at facilitating reintegration and reducing recidivism among those

³⁰ Braman 2002; Bernstein 2005.

³¹ Urban Institute 2006; Western 2006.

³² Council of State Governments Justice Center n.d. Indeed, a recent study found that those who are found guilty of felony offenses but whose adjudication is withheld and therefore are not obligated to report their criminal conviction to prospective employers and others are less likely to re-offend than those whose conviction is not withheld (taking into account other factors associated with recidivism) (Chiricos et al. 2007.)

released from prison and community supervision.³³

Despite growing recognition of the difficulty and importance of the re-entry process, few studies have investigated the consequences of LFOs for that process. Although few existing studies of collateral consequences consider the impact of the financial debt that may result from criminal conviction,³⁴ research indicates that the ability of those with criminal histories to find and maintain employment, secure adequate incomes, obtain stable housing, and contribute emotionally and financially to their families is essential to their successful re-entry. It is therefore crucial to understand how LFOs affect these processes.

Research Questions

This study addresses three main research topics. First, the report describes the nature of LFO assessment in Washington State and analyzes how the monetary fees and fines imposed vary by conviction type, defendant characteristics, and jurisdiction. Second, the report assesses how LFOs affect the lives of those who possess them, and, in particular, how legal debt affects the re-entry process. Finally, the report considers whether the assessment of LFOs is consistent with key policy goals.

For the purposes of this study, LFOs are defined as the fines and fees persons convicted of felonies receive as a part of their criminal sentence. The mandatory \$500 Victim Penalty

³³ See, for example, ESSB 6157, effective July 22, 2007.

³⁴ In the past year, several other reports that focus on the assessment of LFOs in other states have been released (see Council of State Governments Justice Center 2007; Rosenthal and Weisman 2007; Rhode Island Family Life Center 2007).

Assessment is included in this category. Data regarding restitution is also included where appropriate. It is important to note that the LFOs assessed by Washington State Superior Courts and analyzed in this report are only one source of legal debt incurred by those convicted of criminal offenses. For example, the Washington State Department of Corrections charges inmates for the cost of their imprisonment, supervision and court-mandated tests. Many jails also charge a separate booking and operations fees. Municipal courts typically charge their own fees and fines.³⁵ Because unpaid child care obligations accumulate while confinement sentences are served, many offenders also owe significant amounts of child support upon their release from prison.³⁶ Unpaid LFOs assessed by Washington State courts are also subject to an interest rate of 12 percent.³⁷ In short, there are many sources of legal debt other than the fees and fines assessed by Washington State Superior Courts. Nonetheless, this report focuses exclusively on the fees, fines and, where appropriate, restitution orders assessed by Washington State Superior Courts. As a result, the findings presented in this report underestimate the magnitude of the legal financial obligations that flow from criminal conviction and understate their potential consequences.

Part I of this report provides an overview and analysis of LFO assessment in Washington State Superior Courts. The analysis draws upon data regarding the assessment of LFOs in all (3,366) Washington State Superior Court cases resulting in conviction that were sentenced in the first two months of 2004. Analysis of these data provides a sense of the typical LFO amounts

³⁵ Ruback et al. 2006.

³⁶ Rosenthal and Weissman 2007.

³⁷ LFOs ordered in criminal proceedings are subject to the greater of two interest rates: 12 percent or four points above the 26 week Treasury Bill rate. For at least the past decade, the greater of these two has been 12 percent (Washington State Senate Bill Report 2SHB 1359).

imposed, but also reveals significant variation in LFO assessment across defendants, cases and counties. To isolate the statistical impact of various factors, Part I presents the findings of a statistical regression analysis that identifies the factors that influence the assessment of fees and fines across cases and counties. Part II draws on data obtained by interviewing and surveying fifty individuals with LFOs to explore how LFOs affect the re-entry process. The conclusion summarizes the main findings, highlights remaining data omissions, considers whether the assessment of LFOs is consistent with key policy goals, and offers policy recommendations aimed at enhancing victim compensation and mitigating the extent to which LFOs interfere with the successful re-entry of Washington State residents living with a criminal conviction.

PART I. THE ASSESSMENT OF LEGAL FINANCIAL OBLIGATIONS BY WASHINGTON STATE SUPERIOR COURTS

This section of the report provides descriptive information about the assessment and collection of LFOs across Washington State. It also presents the results of a regression analysis that identifies the case, defendant and county characteristics that influence LFO assessment. The results presented are based on an analysis of all Washington State Superior Court cases sentenced in the first two months of 2004 (3,366 cases). This sample was drawn from the Washington State Sentencing Guidelines Commission database, which summarizes information entered from individual judgment and sentence forms submitted each month by every Superior Court in the state.³⁸ It is important to note that the dataset includes a sample of convictions rather than individuals. That is, the same individuals are included in the data set more than once if they were sentenced multiple times or convicted of multiple charges during the two-month sampling period.

The Washington State Sentencing Guidelines Commission (WSSCC) database includes information about defendants' race/ethnicity, gender, and age, as well as case characteristics, including: the offense type; SRA score, which measures the seriousness of the offense and the offender; the length and type of sentence; and the jurisdiction (county) in which the conviction occurred. Although some Hispanic/Latino defendants were identified as such in the WSSCC

³⁸ The Washington State Sentencing Guidelines Commission maintains a website with a searchable database of all adult felony cases sentenced through 2006 (<http://www.sgc.wa.gov/sgc/Search7a.asp?action=startup>). The advanced search function was used to identify the cases to be included. These data were then supplemented with AOC data and transferred to SPSS for data analysis.

database, some police departments and courts identify defendants by race only and (ignore ethnicity/Hispanicity). As a result, some Hispanic/Latino defendants were not classified as Hispanic in the WSSCC database. Preliminary data analysis indicated that defendants who were initially identified in the WSSCC database as Hispanic were assessed higher fees and fines than white defendants. This finding underscored the need to more accurately identify defendant ethnicity/Hispanicity.

Toward this end, Hispanic Surname Analysis was used to estimate the proportion of white, black, and other defendants who are Hispanic. This program utilizes the U.S. Census Spanish Surname database. A numeric value between 0 and 1 was assigned to all defendants not already coded as Hispanic. These numeric values are provided by the U.S. Census Department, and represent the probability that a given surname corresponds to persons who identified as Hispanic/Latino in the 1990 U.S. Census.³⁹ The list used to identify defendants of Hispanic origin contained 12,497 different Spanish surnames that are classified by the Census Bureau as “Heavily Hispanic.”⁴⁰ The re-coded court data were then supplemented with information provided by the Administrative Office of the Courts (AOC) regarding the LFOs (fees, fines and restitution orders) assessed for each conviction. Summary statistics regarding the demographic and legal characteristics of the defendants and convictions included in the sample are provided in Appendix B.

³⁹ See Perkins 1996; Word and Perkins 1993.

⁴⁰ It is possible that applying this methodology led to the misidentification of some defendants as Hispanic. It is also possible that some Hispanics remain unidentified as such, as many Hispanics do not have surnames that are on the list generated by the Census Bureau. However, by classifying only those with surnames considered to be “heavily Hispanic” we have presumably erred on the side of under-counting Hispanics.

Data Analysis and Results: Descriptive Statistics

Table 1 shows descriptive statistics regarding the median (typical) fee and fine amount assessed for felony convictions adjudicated in Washington State Superior Courts in the first two months of 2004. The median (typical) dollar value of the fees and fines assessed per felony conviction was \$1,110.⁴¹ The mean (average) fee and fine amount assessed was \$1,406. If restitution is also included, the median rises to \$1,347 per felony conviction, while the mean LFO assessment rises to \$2,540. Surprisingly, convictions involving (non-violent) drug charges were associated with higher median fine and fee amounts than convictions involving violent offenses (\$1,647 versus \$935).⁴²

The minimum and maximum LFO amounts shown in the far right columns of Table 1 show that wide variation in LFO assessment exists. The minimum fee and fine amount assessed for conviction of a single felony charge was \$500; the maximum was \$21,110.⁴³ If restitution is included, the maximum amount assessed rises to \$256,257. Even within particular offense categories, the dollar value of the fees and fines assessed varies by over 1000 percent. For drug convictions, for example, the dollar value of the assessed fees and fines ranged from \$500 to \$21,110.

⁴¹ Throughout this report, we provide both the median (typical) value and the mean (average) value. However, our discussion focuses on the median rather than mean LFO assessed. The median is the value that divides the sample distribution in half, and is less sensitive to extreme values than is the average (mean).

⁴² Because the AOC accounting sheets combine the fines and fees in one total figure, it is not possible to ascertain which fees and/or fines were assessed for each conviction.

⁴³ AOC records indicate that one defendant was assessed an LFO of zero dollars. However, given that the Victim Penalty Assessment fee is mandatory, we are assuming that this single entry of zero dollars was a recording error.

TABLE 1. FINES/FEES AND RESTITUTION ORDERS, WASHINGTON STATE SUPERIOR COURT CONVICTIONS 2004				
	Median	Mean	Minimum	Maximum
Violent Offenses (n=295)				
Fees & Fines	\$935	\$1,257	\$500	\$10,130
Restitution	0	\$4,187	0	\$254,165
Drug Offenses (n=1,111)				
Fees & Fines	\$1,647	\$1,923	\$500	\$21,110
Restitution	0	\$146	0	\$12,660
Other Offenses (n=1,960)				
Fees & Fines	\$1,010	\$1,134	\$500	\$11,960
Restitution	0	\$1,402	0	\$173,386
All Convictions (n=3,366)				
Fees & Fines	\$1,110	\$1,406	\$500	\$21,110
Restitution	0	\$1,232	0	\$254,165
Total LFO, All Offenses	\$1,347	\$2,540	\$500	\$256,257

Source: Washington State Sentencing Guidelines Commission and Administrative Office of the Courts (n= 3,366).

Table 2 summarizes data regarding the proportion of assessed LFOs that had been paid as of June 2007. These data show that none of the LFO dollar amount assessed in 2004 had been paid for over half of the convictions by 2007. Three years post-sentencing, less than 20 percent of the fees, fines, and restitution orders had been paid for roughly three quarters of the cases sentenced in the first two months of 2004. Of course, many of the defendants sentenced during the sampling period spent some of the intervening three year period in prison or jail; a minority of those sentenced in 2004 were still confined three years later. However, the median (typical) confinement sentence in the sample was five months per conviction. In short, many of those with felony convictions make no LFO payments in the 2-3 year period following completion of their confinement sentence.

TABLE 2. LFO REPAYMENT, WASHINGTON STATE SUPERIOR COURT CONVICTIONS 2004 – 2007				
Percent of Fees & Fines Paid	Percent of Convictions		Percent of Restitution Paid	Percent of Convictions
0%	52.8%		0%	49.5%
1-20%	24.4%		1-20%	22.2%
21-40%	5.5%		21-40%	5.1%
41-70%	4%		41-70%	7.3%
71-90%	1.4%		71-90%	1.4%
91-100%	11.9%		91-100%	14.5%
	100%			100%

Source: Washington State Sentencing Guidelines Commission and Administrative Office of the Courts (n= 3,366).

The dollar amount owed per conviction *increased* between 2004 and 2007. Specifically, the median fee and fine amount assessed in 2004 per conviction was \$1,110, but the median fee and fine balance owed three years later was \$1,288. This increase in the amount owed is attributable to two factors. First, as shown in Table 2, many of those who are assessed LFOs do not make substantial payments toward their legal debt, at least in the first three years after sentencing. In addition, LFOs are subject to interest (currently 12 percent annually) which increases the amount owed over time. As a result, even people who make small monthly LFO payments may see an increase in their legal debt.

The scenarios described in Table 3 show that the typical legal financial obligation for those convicted of a single felony offense increases over time even for those who make regular but small monthly payments. The figures shown in this table do not include financial obligations assessed by the Department of Corrections or local jails. Insofar as felony offenders are also

assessed fees for the cost of their incarceration and community supervision, these figures understate the extent of the legal debt that flows from an average felony conviction. Nonetheless, the results indicate that even those who make regular monthly payments of \$25 toward an average legal financial obligation will still possess legal debt after 30 years.

TABLE 3. AVERAGE AMOUNT OWED BY MONTHLY PAYMENT IN 5, 10, 15 AND 30 YEARS FOR AVERAGE LFO ASSESSED

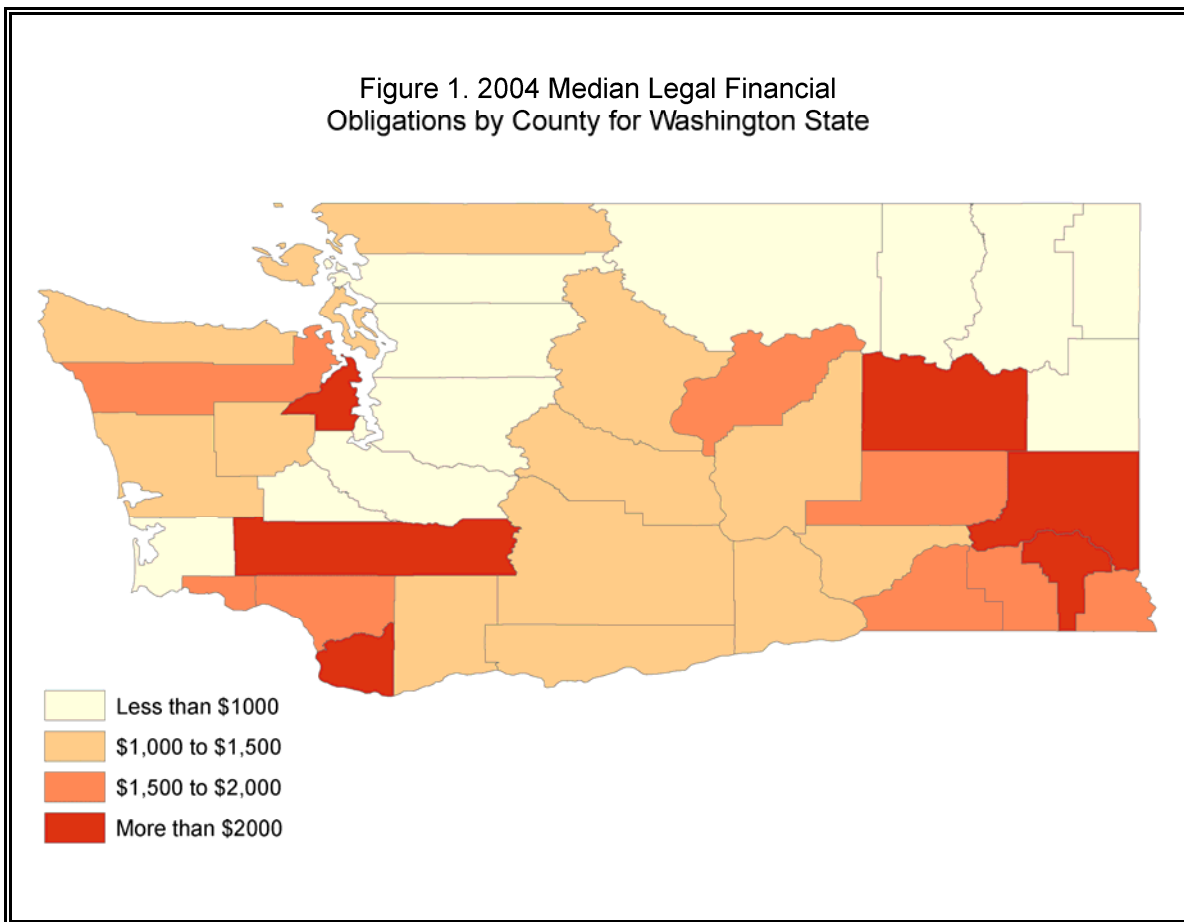
	Monthly Payment: \$10	Monthly Payment: \$25	Monthly Payment: \$50	Monthly Payment: \$100
Debt 5 years later	\$3,798	\$2,073	\$531	Paid in 30 months
Debt 10 years later	\$6,083	\$2,632	Paid in 72 months	0
Debt 15 years later	\$10,234	\$2,740	0	0
Debt 30 years later	\$56,362	\$3,938	0	0

Note: The average (mean) LFO amount assessed by Washington State Superior Courts in 2004 was \$2,540. These calculations assume the current interest rate of 12%.

In summary, the median fee and fine amount assessed per felony conviction was \$1,110. However, typical LFO assessments varied dramatically, from a low of \$500 to a high of \$21,110 (including just fees and fines). If restitution is included, the maximum LFO assessed was \$256,257. By June 2007, zero percent of the original LFOs assessed had been paid for over half of convictions adjudicated in the first two months of 2004, and the median fee and fine balance owed had grown to \$1,288. Even those who make regular payments of \$25 a month will be unable to pay off their legal debt after 30 years.

Analysis of the court data also indicates that LFO assessments vary significantly across

counties. That is, the median dollar value of the fees and fines assessed per conviction is far higher in some counties than others. At the low end, the median fee and fine amount assessed was \$600 in King County. By contrast, in Clark and Whitman counties, the median fee and fine amounts assessed were \$2,170 and \$7,049 respectively. Figure 1 illustrates this county-level variation. The underlying data are shown in shown in Table B3 in Appendix B.



It is important to note that county-level variation in LFO assessment exists even within particular offense categories. Convictions involving identical charges and defendants with

identical Sentencing Reform Act (SRA) scores may be assessed very different LFO amounts depending upon the county in which they were sentenced (see Table 4).

TABLE 4. COUNTY-LEVEL VARIATION IN WASHINGTON STATE SUPERIOR COURT LFO ASSESSMENT: EXAMPLES								
Charge Type	Charge	SRA Score	Sex	Race	Age	Adjudication Method	Fee & Fine	County
Drug	Delivery or Possession with Intent – Meth – 1st offense	8	Male	White	40	Guilty Plea	\$600	Pierce
Drug	Delivery or Possession with Intent – Meth – 1st offense	8	Male	White	48	Guilty Plea	\$6710	Lewis
Property	Residential Burglary	4	Male	Black	32	Guilty Plea	\$500	Spokane
Property	Residential Burglary	4	Male	Black	31	Guilty Plea	\$1970	Clark
Violent	Assault 2	4	Male	White	21	Guilty Plea	\$500	King
Violent	Assault 2	4	Male	White	37	Guilty Plea	\$2370	Kitsap

Source: Washington State Sentencing Guidelines Commission and Administrative Office of the Courts data (n=3,366).

As Table 4 shows, there is significant variation in the assessment of fees and fines even across cases with similar legal characteristics. For example, convictions involving the same drug

charge and identical SRA scores were assessed very different fees and fines in Pierce and Lewis counties (see the top two rows of Table 4). Thus, although legal characteristics such as SRA score may influence LFO assessment, county-level factors also appear to affect the assessment of LFOs across Washington State.

Explaining Variation in the Assessment of Legal Financial Obligations

The results of the regression analysis presented below identify the case, defendant, and county level factors that influence LFO assessment in Washington State Superior Courts. Some of this variation may be a result of legal differences across cases. Specifically, SRA scores, which measure seriousness of the offense and offender, may influence the assessment of fees and fines. But extra-legal defendant characteristics (gender, age or race/ethnicity) may also influence the LFO amount assessed. Similarly, extra-legal county-level characteristics, such as crime or poverty rates, may influence the assessment of LFOs. Each of these possibilities is explored below.

Regression analysis is used to measure the nature and strength of the relationship between each of several potential explanatory variables and the dependent variable (i.e. the dollar value of the fees and fines assessed).⁴⁴ The results of this analysis identify which of the explanatory variables included in the model are significantly⁴⁵ associated with the dependent variable *holding all other variables included the model constant*. In other words, if the regression

⁴⁴ Because it is lower bound at zero, the dependent variable was logged in this analysis.

⁴⁵ By convention, a statistical correlation is considered statistically significant if there is a less than five percent probability that it is the result of chance.

results indicate that Hispanicity is positively and significantly associated with median LFO assessment, this would mean that convictions associated with Hispanic defendants are assessed higher median fees and fines *after taking all other variables in the model, including SRA score and offense type, into account.*

Data Analysis

Table 5 lists the legal, defendant, and county-level variables that may be related to the assessment of LFOs. These factors were included in the regression analysis because they have been found by researchers to influence criminal justice outcomes. They include: case characteristics, including SRA score, offense type, and adjudication method; defendant characteristics, including age, gender and race/ethnicity; and county characteristics such as population size. The measure of each is shown on the right column in Table 5. A detailed description of these variables and their measurement is included in Appendix C.

TABLE 5. EXPLANATORY VARIABLES INCLUDED IN ANALYSIS	
Potential Explanatory Factors	Measure
Legal Characteristics	
Seriousness of Offense & Offender	SRA Score
Offense Type	Violent, Drug and Other Offense
Adjudication Method	Plea vs. Trial
Defendant Characteristics	
Age	Age
Gender	Gender
Race/Ethnicity	Race/Ethnicity
County Characteristics	
Crime Rates	Violent and Property Crime Rates
Demographic Factors	Population Size, Poverty Rate, Racial/ Ethnic Composition, Region
Criminal Justice System	Drug Arrest Rate, Percent of Population in Correctional Facilities, Legal Defense System
Political Culture	Voting Pattern
Budgetary Factors	Percent of Budget Spent on Law & Justice; Budget Surplus/Deficit

In order to control for, or take into account, defendant and county-level factors, and to identify which of these influence LFO assessment, the data were analyzed using a Hierarchical Linear Model (HLM). This method of analysis “nests” cases within groups (counties) to statistically isolate the impact of legal and defendant characteristics from the effects of county level factors. As a result, this methodology allows researchers to identify the legal and defendant characteristics that influence LFO assessment, regardless of the characteristics of the county in which that conviction occurred. It also allows researchers to identify the characteristics of counties that are significantly correlated with variation in the dollar value of the fees and fines assessed. While the results of the HLM regression analysis identify the legal and extra-legal factors that significantly influence LFO assessment and control for the effects of all of the variables included in the model, they do not reveal *how* each of the significant explanatory factors influence the assessment of LFOs.

Results

Table 6 identifies the legal, defendant, and county-level characteristics that are significantly associated with LFO assessment. Each of these is described below.

Case Characteristics. The results of the HLM analysis, which controls for all of the variables listed in Table 5, indicate the defendant's SRA score, the offense type, and adjudication method are all important factors in predicting LFO assessment. As might be expected, *convictions associated with higher SRA scores are assessed higher fees and fines* (controlling for all other factors included in the model). Insofar as the SRA score incorporates not only seriousness of the current offense but also the number and type of prior offenses, these results suggest that defendants receive an additional financial penalty for past behavior. Surprisingly, *convictions involving drug offenses are associated with higher LFOs than convictions involving violent crimes*. Finally, *convictions that result from a trial are associated with significantly higher fees and fines than convictions obtained through a guilty plea*.

Defendant Characteristics: Defendant characteristics also influence the assessment of LFOs. Specifically, *convictions involving Hispanic defendants were assessed significantly higher fees and fines than those involving white defendants even after taking all other factors included in the model.*⁴⁶ Defendant gender shows a significant effect on the fee and fine amount assessed. Specifically, *convictions involving male defendants are assessed higher fees and fines than those involving female defendants*.

⁴⁶ Conversely, convictions involving Asian defendants were assessed significantly lower fees and fines than those involving white defendants even after taking all other factors included in the model. However, because there were only 73 Asian defendants sentenced during the sampling period, this finding is less reliable than those pertaining to other ethnic differences and is therefore not highlighted in the discussion.

County-level Characteristics: The HLM results also identify four county-level variables that have a statistically significant influence on the assessment of LFOs. First, counties' per capita drug arrest rate significantly influences the assessment of fees and fines. That is, *the higher a county's drug arrest rate, the higher the median fee and fine amount assessed in that county* (controlling for all other factors included in the model). Second, the size of a county's population is significantly but negatively related to LFO assessment. That is, even after controlling for other county characteristics such as crime rates or budget surplus/deficit, as well as legal and defendant characteristics, *cases sentenced in less populated counties are assessed higher fees and fines than those sentenced in more populated counties*. Third, the violent crime rate is significantly and positively associated with LFOs: *cases sentenced in counties with higher violent crime rates are assessed comparatively high fees and fines*. Finally, *cases sentenced in counties that spend smaller fractions of their budget on law and justice are assessed significantly higher fees and fines*. (A detailed summary of the HLM results is presented in Appendix D).

TABLE 6. HLM RESULTS: SIGNIFICANT PREDICTORS OF ASSESSED FEES AND FINES		
Explanatory Variable	Statistical Significance of Correlation	Meaning of Correlation
Case Characteristics		
Offense Type	Very strong	Drug cases are assessed significantly higher fees & fines than violent cases
SRA Score	Strong	Cases with higher SRA scores are assessed significantly higher fees & fines
Adjudication Method	Strong	Cases that go to trial are assessed significantly higher fees & fines
Defendant Characteristics		
Race/ethnicity	Strong	Cases involving Hispanic defendants are assessed significantly higher fees & fines than cases involving whites
Gender	Strong	Cases involving male defendants are assessed significantly higher fees & fines
County Characteristics		
Population Size	Strong	Cases sentenced in counties with smaller populations are assessed significantly higher fees & fines
Drug Arrest Rate	Strong	Cases sentenced in counties with higher drug arrest rates are assessed significantly higher fees & fines
Violent Crime Rate	Strong	Cases sentenced in counties with higher violent crime rates are assessed significantly higher fees & fines
Percent of Budget Spent on Law & Justice	Strong	Cases sentenced in counties with higher violent crime rates are assessed significantly higher fees & fines

In summary, the results of the HLM regression analysis indicate that case characteristics, defendant characteristics and county level factors all influence the assessment of fees and fines. Only some of this variation is attributable to differences in seriousness of the offense and offender (SRA score).

Both the existence of variation (not attributable to legal differences across cases) in LFO assessment and some of the particular factors that influence LFO assessment raise policy

questions. For example, the regression analysis shows that ethnicity, and specifically, Hispanicity, influences the assessment of LFOs. Similarly, the gender of the defendant influences LFO assessment. Because the offense type and seriousness are included in the model, the impact of defendant gender and ethnicity on LFO assessment is not a function of differences in the types of crimes for which Hispanics and whites, or men and women, are convicted. Precisely why this is the case is not known. By statute, judges are allowed to consider defendants' present and future ability to pay in assessing costs (fees). However, defendant income and employment information are not included in the WSSGC data, this information was therefore not included in the statistical analysis. Theoretically, it is possible that the impact of ethnicity and gender on LFO assessment reflect the more fortuitous financial circumstances of Hispanic and male defendants. This hypothesis is more likely to account for the impact of gender on LFO assessment. Because women as a group have lower earnings than men, and are more likely to bear direct responsibility for children, it is conceivable that judges determine that female defendants are less able to pay than their male counterparts.⁴⁷ By contrast, Latino/Hispanic residents of Washington State are more likely to live in poverty than white residents. It is therefore unlikely that the assessment of higher fees and fines in cases involving Hispanic defendants reflects the fact that Hispanic defendants are in a better position to pay LFOs than white defendants.⁴⁸

The findings of the HLM regression analysis also indicate that convictions involving non-

⁴⁷ 2006 census data from the American Community Survey indicate that 9.5 percent of male Washington State residents, but 12.8 percent of female residents, had incomes that fell below the poverty line in the previous 12 months (see American Community Survey 2006, Table B17001).

⁴⁸ 2006 census data from the American Community Survey indicate that 9.5 percent of non-Hispanic whites, but 23.9 percent of Hispanics, had incomes that fell below the poverty line in the previous 12 months (see American Community Survey 2006, Tables B17020H and B17020I).

violent drug charges are assessed significantly higher fees and fines than convictions involving violent offenses. However, drug convictions are associated with shorter typical confinement sentences than violent crime convictions. It thus appears that LFO assessment is not necessarily consistent with the criteria that inform other aspects of Washington State sentencing policy. The results also indicate that defendants who go to trial pay for that decision financially. This finding, too, raises important policy and legal questions. On the one hand, assessing higher fees and fines for defendants who go to trial may be seen as appropriate given the fiscal costs associated with trial. On the other hand, this may be seen as an inappropriate “trial penalty” with dangerous implications for the exercise of constitutional rights. In either case, this finding should be understood in light of evidence that Washington State drug defendants who go to trial also receive longer confinement sentences than those who plead guilty.⁴⁹ Thus, it appears that drug defendants who go to trial are penalized more than once for their decision to exercise their right to a jury of their peers.⁵⁰ Finally, the results of the HLM analysis clearly indicate that defendants sentenced in less populous counties, in counties with higher drug arrest rates and violent crime rates, and in counties that spend smaller proportions of their budget on law and justice are assessed significantly higher LFOs. Geographic happenstance thus appears to significantly affect this particular sentencing outcome. This geographic variability arguably introduces a

⁴⁹ Engen and Steen (2000) analyzed Washington State Superior Court case data to determine whether and how sentencing reforms enacted in 1988 and 1990 affected sentencing outcomes for drug offenders. Their findings indicate that the impact of these reforms depended upon whether offenders plead guilty or are convicted at trial. During both time periods, sentencing reforms primarily resulted in more severe sentences for those convicted at trial.

⁵⁰ It should also be kept in mind that under state law, courts have the discretion not to assess fees that may apply in the event of a trial. In King County, for example, there is no correlation between adjudication method and LFOs assessed; those who exercise their right to a trial do not pay financially for doing so in King County. Thus, the fact that convictions that result from a trial are typically assessed higher fees and fines is not an inevitable consequence of the applicability of a greater number of fees in such cases.

questionable degree of arbitrariness into the criminal justice process.

While there is no evidence that the previously documented variation in the assessment of LFOs is the result of legally impermissible discretion, it is clear that *convicted defendants with similar legal histories and conviction charges are assessed very different fees and fines depending upon defendant gender and ethnicity, charge type, adjudication method, and the county in which the case is adjudicated and sentenced*. Thus, despite the fact that the Washington State Legislature has taken strong measures to reduce judicial discretion in the determination of confinement and supervision sentences, the assessment of LFOs remains highly variable even across similar cases. It is also noteworthy that the discretion exercised at the county and/or judicial level may have important implications for the capacity of state residents with criminal histories to obtain restoration of their civil rights.⁵¹

This section of the report has provided an overview of the nature of, and variation in, the assessment of LFOs by Washington State Superior Courts. The following section explores the consequences of LFOs for those who possess them and for the re-entry process.

⁵¹ In Washington State, voting and other civil rights may only be restored after all legal financial obligations have been paid (ACLU 2004; Manza and Uggen 2006; *Madison v. Washington*).

PART II. CONSEQUENCES OF LEGAL DEBT FOR THE RE-ENTRY PROCESS

This section of the report analyzes whether and how LFOs affect the lives of those who possess them, and more generally, how legal debt affects the reintegration process.

Data and Methods

This analysis is based primarily on fifty surveys and interviews with people who had at least one felony conviction from one or more of four Washington State counties (King, Pierce, Yakima, and Clark). These interviews were supplemented by informational interviews with at least one correctional officer and one defense attorney working in each of the four counties selected. Several county clerks were also interviewed for the study. The four counties were selected to maximize variation in LFO assessment and demographic composition. The interviews shed light on how legal debt affects the reintegration process, as well as the methods used in various counties to recoup that debt.

Respondents with LFOs were recruited through flyers posted in clerk, court and DOC offices, as well as through word of mouth. The demographic characteristics of those interviewed for this study are not identical to those convicted in Washington State Superior Courts as a whole. (Information regarding the demographic characteristics of the sample is provided in Appendix E). Due to the non-random nature of the sample, and because the interviews were conducted in four counties, the interview results may not capture the experience of persons convicted of felonies across Washington State. Nonetheless, the financial circumstances reported

by those interviewed were quite similar to those found in nationally representative surveys of persons with criminal histories. Because the interviews were conducted in four counties, we are unable to determine how frequently the collection tactics used in some counties are utilized across the state. Nonetheless, the fact that these practices (such as issuing warrants after just a short period of non-payment and re-incarcerating people for failure to make regular LFO payments) are authorized by statute suggests that they may also occur in many other Washington State counties.

Each interview began with a survey questionnaire to ensure that key background questions were consistently asked of all respondents. These questions focused on the respondent's legal, financial, social and family situation. After the surveys were administered, interviewers posed more open-ended questions designed to probe respondents' experiences with LFOs and to assess how their legal debt affected them. The open-ended portion of the interviews was digitally recorded and the recordings were transcribed for analyses.⁵² The main themes—recurring experiences and reactions—were then identified. The results of the interviews are described below.

⁵² The interview data were analyzed in the following manner. First, the transcriptions were coded by the two lead researchers for main themes, concepts and events. These are the themes that appeared frequently or seemed particularly salient to the interview subjects. Once the codes were created, memos on key themes were developed. Representative excerpts from the interviews were identified to illustrate and discuss these key themes. Contrary or diverging comments were also noted and allow us to highlight potential contradictions in informants' experiences or understandings.

Results

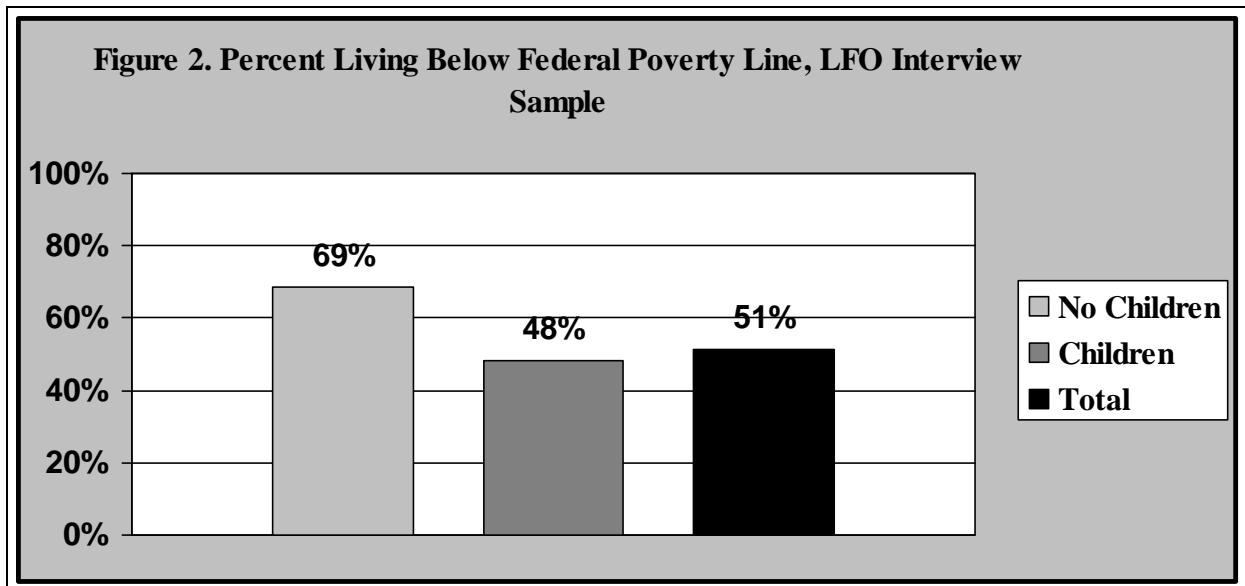
Four main themes emerged from the interviews. Listed in order of frequency and intensity of expression, these included: (1) The financial context and consequences of LFOs; (2) The criminal justice consequences of LFOs; (3) Concerns about the processes by which LFOs are assessed and collected; and (4) Concern about the loss of civil rights. Each of these themes is described below, and representative excerpts from the interviews are used to illustrate the ways in which it was expressed.

Financial Context and Consequences: Respondents in this study reported living under adverse financial circumstances (see Table 7). Only 48 percent of those interviewed were employed at the time of the interview. Just over one-quarter (26 percent) had less than a high school education and another 40 percent had only a high school diploma or a GED (General Equivalence Degree). In terms of housing, one-quarter (26 percent) of those interviewed were unstably housed (e.g. living in transitional housing or temporarily with a friend/family member) or were homeless. Over half (58 percent) were supporting children either by raising a child in their home or by providing child support payments. Most (60 percent) were under community supervision at the time of the interview, and all had previously been incarcerated.

TABLE 7. LFO INTERVIEW SAMPLE, SOCIAL AND FINANCIAL CHARACTERISTICS	
Employed (full or part time)	48%
Less than a high school education	26%
High school degree or GED only	40%
Unstably housed/homeless	26%
Supporting children	58%
On community supervision	60%
Formerly incarcerated	100%

Source: LFO Interview Sample, n=50.

Poverty rates for those included in our sample were estimated based on the income reported in the survey portion of the interview. These calculations take into account marital status, number of dependent children, and combined household income. The results indicate that over half (51.2 percent) of the individuals interviewed were living on incomes that fell below the federal poverty line at the time of the interview (Figure 2). (The federal poverty thresholds used in this analysis are shown in Appendix F).



Although the interview sample was not randomly drawn, the social and financial circumstances reported by those interviewed were quite similar to those found in national studies. Researchers have consistently found that most people convicted of felony crimes experience multiple forms of disadvantage that pre-date their criminal conviction. These include comparatively low levels of educational attainment, high rates of unemployment, and limited incomes.⁵³ For example, young male “prison and jail inmates earn significantly less at the time of their incarceration than other young men... with the same level of education.”⁵⁴ Nationally, nearly 60 percent of all jail inmates report pre-arrest incomes of under \$1000 a month.⁵⁵ Those sentenced to jail or prison across the country are also more likely to suffer from mental and/or physical health problems than the non-incarcerated.⁵⁶ For example, more than one-third (37 percent) of jail inmates report living with a physical or mental disability.⁵⁷ Finally, across the country, most of those who are incarcerated are parents of minor children. For example, a recent study found that roughly 70 percent of male state prison inmates aged 33 to 40 were fathers.⁵⁸ Approximately the same proportion of female prisoners are mothers of young children.⁵⁹ In sum, like those convicted of crimes nationally, the majority of those interviewed for this study experience significant social and economic disadvantage. Most are also parents of minor children. Although prisoners’ disadvantage typically exists prior to conviction, researchers have also found that that felony conviction and incarceration exacerbate these social and financial

⁵³ Pettit and Western 2004; Western 2006.

⁵⁴ Western 2006: 101.

⁵⁵ BJS 2004.

⁵⁶ Lurigio 2001.

⁵⁷ BJS 1998.

⁵⁸ Western 2006: 137.

⁵⁹ BJS 1999.

difficulties. That is, criminal conviction and incarceration render already difficult and precarious lives more challenging.

This theme was clearly articulated by those interviewed for this study, the majority of who live on quite limited incomes. A clear majority of those interviewed for this study reported that their difficult economic position became even more precarious as a result of their felony conviction. In particular, many indicated that they were unable to get a full-time or regular job because they had to report their felony conviction on job applications:

It [having a felony conviction] not only affects you financially, but it affects you on everything, I mean, you can't go get a job without telling your employer that you have a felony conviction. Almost every job, or every employer that you go to, does a background check now. And, when they do a background check, if you don't tell them in the beginning, you're automatically fired. But, if you tell them in the beginning, they have the right to not hire you.

I remember I applied for a job, I was looking for a part-time job, and the lady knew me, she said, oh, make sure you apply here, and when they saw my criminal history record they were like, we can't hire you, I'm sorry. Say I wanted to work for the city or someplace that had a 401k, I couldn't do it, even with my experience and, you know, I wouldn't be able to do it.

At the time of my conviction I was a carpenter, but prior to that I had been a technical writer earning very good money. I left that, knowing that I was going to make less money as a carpenter, but now that I have the LFOs I initially tried to go back into technical writing, and found that the corporate world was not about to hire anyone with a felony... They do criminal background checks, that's pretty standard, no matter what you're applying for these days.

The job that I used to do, I can't do it because I have a felony record... I was a metro driver. If I can't get on disability, I'll go get trained in something else, but

I'm 45 years old and I've been a driver since I was 24, so I don't really know anything else, so I've have to start all over again, get trained and I'm 45, and I'll be fifty, you know and I'm trying to start all over...

Many also noted that their felony conviction made it difficult for them to rent an apartment:

You can't rent - if I want to go rent a place in a crack neighborhood, I could probably do that. That's probably what I'm looking at, you know? But I don't want to do that. I don't want to live there; I shouldn't have to... not because I have a felony conviction.

I'd call places, apartment managers, and they'd say "No, we can't help you." You know, they look at a felony conviction as that – a felony conviction. They don't care what it's for. I've had people tell me that. We don't care. It's a felony conviction, we won't take you.

It [having a felony conviction] makes it harder for me to get an apartment. Yeah, I got an apartment right now, it's in, back in the neighborhood where's all the drug activity, and all kinds of, just bad stuff that I wanted to leave, but I couldn't get an apartment no place else. No place. They go back on my criminal history seven years. I'm like, seven years ago, ok well, here I am now. Can I have an opportunity? No.

As a result of their difficulty finding work and stable housing, many respondents described living in dire financial circumstances and being forced to make difficult financial choices:

Well, how are you going to get your life in order and pay your LFOs if you don't get off the street? If I want to take a shower it costs me \$3.75. But I can't afford \$3.75 a day.

At the time it was hard because I was on welfare as well... and then my grant was only like \$540, and still paying rent and utilities, so it [the LFO payment] hurt, and I had two kids at that time, so it just made it harder to pay for groceries and all of that for the kids.

Although a minority of those interviewed indicated that they were on relatively solid financial ground and that making payments toward their LFOs was not unduly burdensome, the vast majority of those interviewed did not find themselves in such fortuitous circumstances. For many of the interviewees, the challenges associated with poverty were compounded by significant health issues, family obligations, and difficulties in securing stable housing:

Everybody wants a piece of my disability check every month. I can't, I can't even afford to live on it, let alone if I take out everything that everybody wants. Here's what I told the DA, I said, just keep my check. I don't want it. That way, I'm not responsible; I don't have to pay nothing... Somebody's trashed my windshield on my truck. So here it's sitting out, I don't even have a windshield and this is November.... And I can't even get an apartment; I can't even afford Section 8. I got to live in this shelter.

One respondent living with AIDs reported that:

I live on \$600 and something dollars a month, it's a challenge, and then I have these other challenges in terms of eating. So it makes it hard, harder, to get through the month without getting sicker.

Living on small incomes and in difficult housing situations meant that making even small LFO payments was a significant burden for many of our respondents. Several described making difficult decisions about which bills to pay in the face of a financial shortfall each month:

I take it [the LFO payment] out of my social security check, it's part of my budget, so at the beginning of the month, I make my budget, I pay my rent, I pay my house fees, because there's a fee to pay at the house where I'm at, for toilet paper, laundry soap, stuff like that, and then I also put money, I get the money orders for paying my LFOs. But sometimes I don't have enough left over for food.

Well, just little things, I mean, \$25 [the LFO payment] can go a long ways, it can, it doesn't, but it can, so it took little things from my kids and stuff like that...

I got my Section 8 voucher...if I [got] a one-bedroom apartment, my part would only be \$216 a month, but I don't have \$216 a month. Cause I gotta pay \$50 a month on the LFOs. If I did pay the \$216, I couldn't feed myself, I couldn't pay LFOs and utilities.

\$10 doesn't sound like a lot, but it is a lot when you're living on \$300 a month.

As described above, respondents frequently reported they were simply unable to meet their household obligations and LFOs each month and thus were left with the difficult task of balancing their budgets and making ends meet. In attempting to resolve this dilemma, some reported borrowing from family, friends and lending institutions in order to make their LFO payments:

Well, luckily, before... because of my age, and before I was incarcerated, I had a long-standing employment, and I had fairly, actually really good credit, and even with being incarcerated, my score did not get damaged so badly, so much so that really right now I've actually been subsisting on my credit cards for the basic needs of life, and so then when I do find employment, knock on wood, that will be

one of the other things that I'll pay off.

A lot of the things that I have bills for are personal loans, people who help me to make it through the month. So I pay them back at the end of the month. For me, paying people [that I borrow from] is a priority more than it is paying these things [LFOs] that I have been paying for a long time. You live on the amount of money I live on; it just doesn't make it all the way to the end of the month.

Some respondents also expressed concern that because they were not able to make regular payments toward their LFOs, their debt would continue to accumulate and they would never be free of their LFOs:

I figured out that like all the funds I owed, going on the current payment plans, I figure out I'll be paying till I'm past 30 years old. And I've been doing it [paying] since I was 18.

With nothing to pay, you know, to put me in a situation where I'm supposed to pay, it's compounding it worse and worse, it's making it worse and worse. At this rate I'm gonna be in debt for the rest of my life.

My biggest question is, am I ever going to pay this amount off? At the rate I'm going now, I'll never pay it off. That amount now is about \$44,000. Because of the interest, and in spite of me paying the payments pretty religiously.

Respondents also reported that their debt had affected their credit rating, which had impaired their ability to find stable housing (already diminished as a result of their felony conviction):

I couldn't get an apartment. They just said your credit's no good and we don't want to rent to you. You're a liability, pretty much.

I'm having a hard time finding an apartment because I have bad credit from these LFOs.

It [legal debt] prevents me from getting my own apartment. So it's like, I'm still transitioning from uh, from incarceration, and um, right now, for me to get my own apartment, chances of it are zero to none. 'Cause I can't get past the credit check.

Many of those interviewed for this study stressed that their LFOs potentially affected family members, including children.⁶⁰ Given their limited financial resources, many respondents felt they had to prioritize their responsibility to their family before making payments towards their LFOs:

I have three kids, you know, and I have a house, and those things all have to come first. And so I get to my LFOs when I can. I have a car payment, and I have to have a car that gets me to work that's reliable, you know, so I can get to work, and so all these things add up. It's like, to have time for these LFOs, you know, I understand we're supposed to pay, I want to pay it back, you know, that's what the state deemed that I owe to the community, so I want to pay that back. But right now, I just can't.

Well, you know, like I said I have three girls, and two are in high school, so it

⁶⁰ Partners and spouses are also affected by lost income. According to several clerks interviewed for this study, spouses' wages are included when determining minimum monthly payments. In addition, if the spouse of an unemployed person with LFOs is working, clerks may garnish the working spouse's wages (up to 25 percent) as "community property interest."

[making LFO payments] would actually take away from them, cuz we do reduced lunch. So if I was to pay my fines every month, I wouldn't be able to pay for their reduced lunch. And then I would actually have to take off like \$150 off of my grocery, or the hygiene that I put into the house. Cuz everything's on a budget, we live on a budget. And so with that budget, especially with me being the head of household, I have to budget for everything... so I just can't pay my LFOs right now.

Well, it [paying the LFOs] affects me as far as I have other obligations like child support. Child support, and then I have a mortgage, and that's not even including insurance and taxes... So, you know, that's just the payment of the mortgage, then I got insurance, taxes, and then I have to do, like I said, I got child support and other household bills. You know, home phone service, trash service, got electricity, and water, and that's all separate. I got to pay all that stuff. Basically, it [the LFO] is a bill, a big bill on top of that. There just isn't enough for all of that.

Most respondents accepted the idea that they should be held accountable for the harm caused to society as a result of their past behavior, although most felt that they paid their debt to society by serving time. Still, many were receptive to the idea of making restitution either through payments or community service:

I think it is fair, I think that if you break the law like I did, there should be some um, consequences for my behavior, and so I'm trying, that's why I said, I'm trying to be responsible in other areas of my life too.

OK, I violated the law, and I did something that was not in sync with what general society does, but at the same time, I paid, and I'm still paying and paying, and so um, you know, I do a lot of other, community service type work. And I wish they could trade some of that for the money thing.

However, many also felt that the total amount assessed was unreasonable, and

particularly objected to the accrual of interest on their debt. Some respondents who nonetheless made an effort to pay off their LFOs felt the monthly payments expected of them were simply unrealistic:

She [the Community Corrections Officer] thinks that I'm in a position to pay them off, that I should do that. But I just got the job. I have, I have so many bills, just stacked up, I was living out of my car for like, like six months, living out of my car with three kids. I was hopping from family house to family house that didn't want you, and three kids, so I wasn't able to pay anything... .

And it's like clearing away the wreckage of my past. How do I start with that? I've got \$60,000 [in LFOs]. I mean, those are assets that some people have, you know, but I don't have that, I can't accumulate any assets, because of that [felony conviction], you know, being a barrier. So you make payments when you can... But like I said, I'll be paying for it for the rest of my life.

For some, the size of their legal debt was overwhelming and led them to simply ignore it entirely:

Cause in all reality there's no way I can pay it, so, I don't worry about it. If it came down to it, they put me in jail, I'd serve time to pay off the fines that would be fine with me, either way. I mean, it's impossible to pay. I only make \$180 a month anyway.

You know, there's no way I can pay it, so I don't even think about it, you know, one way or the other.

I mean, even if you have a normal job, you can't really gain no headway. I mean, the bottom line is if I go pay on it, and \$50 a month ain't covering it, and I'm still, you know I'm still toiling forward, then why would you want to pay on something

without seeing any deduction in the debt that you owe?

It would just be nice to get it to where you could see headway, to where you're not back-peddling to try to make your debt good, where you're not seeing no headway, then what's the sense of trying to pay on something, to where you're just constantly seeing yourself going backward. It's frustrating.

In a few cases, respondents reported that their legal debt created a disincentive for them to find work:

Cause as soon as I get off of DSHS, and I'm self-supporting, they will come in, each little outfit, and say, well we want this much, we want this much. They'll take it out of your check. And by that time, you were better off to stay on welfare.

I [filled out] an application for the Old Soldier's Home, I'm tempted to just go to the Old Soldier's Home and let the VA take care of me for the rest of my life... It's, it's like a retirement home for veterans, but even though I'm only 50, I can go there. I'm eligible to go there, let them take care of me... I don't want to give up, goin' to the Old Soldier's Home is kinda givin' up, you know, but I don't think I have a choice about it.

Well, [the LFOs make] it hard to maintain a normal job, because every time you turn around, you're going to get your checks garnished over something. If you ain't gonna make no headway, then why do it?

Although the interview protocol did not include questions about recidivism, several respondents indicated that LFOs may actually encourage them to return to crime:

Most of the people out here that have to pay fines ... Are going to go and break laws to get the money? I haven't done that, but I'm telling you, it's crossed my mind.

And my last PO, I asked her for a bus ticket to get to my appointments, she's like, oh, we don't do that anymore. It's like, oh, ok, I'm not supposed to do any crime, I'm not supposed to... and frankly, I mean, I'm not trying or wanting to do any crime, and I still can't quite commit myself to do prostitution, but I think about it sometimes... at least that way I could pay some of these damn fines.

Legal debt also limited some respondents' efforts to enhance their education or otherwise improve their occupational situation:

I got my undergraduate degree prior to my conviction. I would like to do graduate school. I have not yet looked into, uh, what the finances of that are going to be, but um, yeah, \$200 [in LFOs] a month is going to have quite an impact on whether or not I can go to school full-time, whether or not I can go to school at all.

Well, it, I've been a fisherman for a long time, and I've been a laborer, and now my truck driving, I can't do it no more. Because the state took my license away. I'm in noncompliance because I can't pay, and I can't go to a program 'cause I'd have to pay for that too.

In sum, the majority of those interviewed for this study, like those with felony convictions more generally, live on very limited incomes. Although most were likely poor prior to their incarceration, their criminal conviction made securing work and stable housing even more difficult. Some also reported that efforts to improve their educational or occupational situation were rendered still more challenging by their debt, poor credit, and criminal record.⁶¹ In this context, the idea of avoiding work or returning to criminal activity appeared to some to be a rational course of action.

⁶¹ Several clerks interviewed for the study also reported that employers generally dislike hiring those whose wages are garnished because of the cumbersome bureaucratic processes garnishment entails.

As a result of their dire financial circumstances, most of those interviewed reported that making even small LFO payments was quite difficult. Making these payments also limited respondents' ability to assume responsibility for their children and other dependents, a dilemma that led some to not make regular LFO payments. Indeed, many reported that they prioritized other financial obligations, particularly taking care of family members, over their LFOs, even if that meant risking re-incarceration. In some cases, LFOs so overwhelmed respondents that they chose to ignore their legal debt entirely. Many of those who did not make regular payments toward their LFOs became embroiled in the criminal justice system as a result.

Criminal Justice Consequences: Many of those interviewed for this study did not make regular LFO payments, a practice that appears to be widespread among others convicted in Washington State Superior Courts (see Table 2). Failure to make regular LFO payments meant that some respondents continued to be ensnared in the criminal justice system long after they had completed the confinement sentence associated with their original felony conviction(s). Some of these individuals were still serving a community supervision sentence at the time of the interview, and reported that their failure to make regular LFO payments was the basis of a correctional violation, warrant, re-arrest and/or re-incarceration by the Department of Corrections:

Even if you miss a payment, then you get a probation violation. And that means like you go back to jail, you know, or they give you some, it depends on who your probation officer is... And so like, if, say I don't pay this much, they'll send something in the mail saying that if I don't make the payment then they'll issue a probation warrant out for my arrest.

Interviewer: *When you were on probation, did you ever get violated for*

nonpayment?

Respondent: *Mm-hmm. It happened a lot.*

Interviewer: *And what happened once you got violated?*

Respondent: *You go to jail!*

Interviewer: *You went to jail for that several times, it wasn't just that once?*

Respondent: *No, it's been a few times...*

They came to my house in Renton, telling me I didn't pay. I missed two payments. And they came to my house and I got 10 days for that. You must make the payments, that's a warrant if you don't. You get arrested and booked, you go upstairs. You come downstairs, they tell you you're doing 10 days for probation violation, and pay your fines, and before they leave they tell you again... they tell you to pay your fines.

Interviewer: *Have you ever had your CCO violate you for nonpayment?*

Respondent: *Yeah.*

Interviewer: *What happened?*

Respondent: *It was just another 60 days in jail.*

Respondents' reports of being violated by DOC officers solely for non-payment of LFOs are somewhat puzzling. According to DOC officials, the Department of Corrections no longer responds to failure to pay LFOs by issuing warrants or incarcerating violators unless failure to pay is accompanied by other violations of the conditions of supervision. Yet some of those interviewed for this study indicated that they had been violated by their correctional officer solely for non-payment. There appear to be four possible explanations for this discrepancy. First,

it may be that our respondents were describing incidents that took place prior to the shift in DOC policy. Second, it may be that the DOC's new policy has not been fully assimilated and implemented across all counties. Third, our respondents may have had other violations in addition to failure to pay, but did not realize, recall or report this. Fourth, respondents may have thought their CCO issued the warrant, but in fact the warrant was issued by the courts (which are authorized to issue warrants for any violation of any condition of sentence).⁶²

Some respondents reported that their LFOs increased if they were re-incarcerated as a result of non-payment while on community supervision:

I'm not getting released from county jail until I sign those papers that say yes, I will pay this amount, so what I'm doing there is setting myself up for violation. And so I go back to jail, and then I'm racked again, by the time I left I owed \$261 to the jail. Ok? Do you know when I went in I owed \$11. I stayed there one week, and by the time I checked out I owed \$261 and I didn't see the doctor, I didn't dare, I didn't dare see the doctor even though I needed medication and I had withdrawals from being on lithium... because that would cost me another \$10 for the doctor visit, it would cost me \$10 for each prescription they were issuing me for just the few days I was there. So they let me sit there and have withdrawals from the medication, you know rather than what was I supposed to do, and I still racked up \$261.

They told me that down when I first got my interview before the court to get the PO [Probation Officer], she told me that if you don't pay, they can re-arrest you, and then you pay for going through the process of them having to re-arrest you and incarcerate you... you pay for that too.

Other respondents reported that spending time in jail was a means of reducing or

⁶² In any event, the Department of Corrections is authorized under RCW 9.94A.634 to treat non-compliance with any condition of a criminal sentence as a violation of community supervision. Similarly, RCW 9.94A.740 and 9.94A.737 authorize the Department of Corrections to issue warrants for and sanction those who are alleged to have violated any condition or requirement of community custody. Thus, the experiences described by interviewees do appear to be inconsistent with current DOC policy, but do not appear to be inconsistent with statutory law.

eliminating debt (officially known as the “pay or stay” option):⁶³

And then you go in front of the judge, and they say, well you have a probation warrant, a no-bail warrant, because you didn't pay your fines... And then you say, well I can't pay, your honor, I'm not going to pay. I don't have the money to pay. He said, ok, 60 days. To wipe off your debt. You either pay, or you do 30-60 days to wipe off your debt. Depending on how much debt it is. A lot of times they'll wipe off your debt by going to jail. But you gotta tell them straight up that you're not going to pay.

I had three or four felony warrants for not complying, with uh, paying my fines, and not complying with some other rule, and I went and turned myself in, I could have either sat for 30 days or paid the \$300, so I paid the \$300, cause that's a long time to sit for \$300!

In summary, some respondents reported that failure to make regular LFO payments was treated as a violation of community supervision, and therefore triggered the issuance of a warrant, an arrest, and/or re-incarceration. In some of these instances, incarceration was reported to be a sanction for non-payment that in some cases increased their debt. In other cases, serving time in jail was reported to have been a means of reducing LFOs.⁶⁴

Criminal justice consequences for non-payment were not restricted to those still under

⁶³ A phone conversation with a Community Corrections Officer (CCO) in the county in which this respondent was convicted confirmed that this “pay or stay” option was frequently utilized. Under RCW 9.94A.634(3)(c) and (d), incarceration for non-payment of LFOs is permitted but “Before converting a defendant's legal financial obligations to jail time, for failure to make timely payments toward those obligations, the court must find that the defendant's failure to make payments was willful” (see also *State v. Curry*, 118 Wn.2d 911, 917-18, 829 P.2d 166 (1992)). Similarly, the U.S. Supreme Court has ruled that debtors cannot be imprisoned for failure to pay if they are indigent and non-payment is therefore not willful (*Bearden v. Georgia* 461 U.S. 660 (1983)).

⁶⁴ RCW 10.82.030 specifies that if a person is solely incarcerated for non-payment, then a financial credit is applied towards one's LFO. However, if someone is re-incarcerated for non-payment *and* additional DOC violations, the credit does not have to be applied. This may account for the different experiences reported by the interviewees who were re-incarcerated while on community supervision. Moreover, some jails assess their own fees to cover the costs of booking, confinement and services. Thus, a person may reduce court or DOC debt by serving time in jail, but increase their financial obligation to the jail at the same time.

correctional supervision. Some respondents no longer under DOC supervision reported that the courts had issued a bench warrant for their arrest as a result of their failure to make regular LFO payments.⁶⁵ In some counties, this appears to be a rare practice, reserved for cases involving long-term non-payment of restitution. In other counties, however, respondents suggested that falling behind just a month or two on fees and fines was enough to trigger a warrant:

In 2001 the judge locked me up for nonpayment for the \$60,000 fine. He said, clearly you have an I don't care attitude, as though you're not going to pay anything, so I'm going to give you the weekend in jail to think about what you're going to pay for the rest of your life. So he put me in jail for the weekend.

Interviewer: *Have they ever picked you up for nonpayment?*

Respondent: *Oh yeah, they came right to my door in the middle of the night.*

Interviewer: *And what happened then?*

Respondent: *Oh, well they were real nice to me, they came and knocked on the door, they let me get my shoes and socks on.... They said you haven't made payments so you're under arrest, so they take you on down there and you spend a few days there before you go see the judge.*

Interviewer: *So in that instance, how long had it been since you made a payment?*

Respondent: *Oh, like a month. A month, yeah. See, being arrested, when you get arrested for not making payments, they, it's automatically, it's \$300 or 30 days in jail. But the bad thing about it is you pay \$300 that goes toward your fine, but you spend 30 days in jail it don't go toward nothing... Yeah, 30 days in jail or \$300. If you have money in your wallet right there, usually the judge will let you go. But if you uh, but the thing of it is, it's a rip-off of the tax payers, because the tax payer has got to pay to keep you in there.*

⁶⁵ Under RCW 9.94A.760, "If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section."

Thus, in at least some Washington State counties, bench warrants are routinely and quickly issued for non-payment of LFOs.⁶⁶ It is unclear from these accounts whether the “pay or stay” option is used to punish non-payment or to reduce LFOs.⁶⁷ In either case, respondents reported that fear of being sanctioned for non-payment led them to hide from the authorities:

Well I was paying \$20 [a month] until I lost my job and I decided to just cut and run on these people, and then they caught up with me, and I just, he [the CCO] wanted me to send \$20 or \$40 a month, I said, Ted, the money's not there! So I'm on the run again.

Interviewer: *Have you ever had a CCO violate you for nonpayment of your LFO?*

Respondent: *Um, no, not yet, but I'm scared to call him right now. He might take my survey money. I'm layin' low right now.*

In sum, the majority of respondents interviewed were unable to make regular payments toward their LFOs. Many of those in this situation reported that their failure to make regular LFO payments meant they were subject to (re)arrest and (re) incarceration. Even if not arrested, the issuance of a bench warrant can have important consequences, including the loss of federal benefits. Indeed, federal welfare law prohibits states from providing TANF, Supplemental Security Income (SSI), public and federally-assisted housing, and Food Stamps to individuals

⁶⁶ Respondents' claims that bench warrants are often issued even after short term non-payment in some counties was generally confirmed by clerks interviewed for this study.

⁶⁷ Under RCW 10.82.030, if a person is imprisoned for non-payment of fines or fees, “The amount of such fines and costs owing shall be the whole of such fines and costs reduced by the amount of any portion thereof paid, and an amount established by the county legislative authority for every day the defendant performs labor as provided in RCW 10.82.040, and a lesser amount established by the county legislative authority for every day the defendant does not perform such labor while imprisoned.”

who are “fleeing felons” (i.e., have a bench warrant stemming from a felony conviction) or are in violation of a condition of probation or parole.⁶⁸ Although some respondents reported that they were able to reduce their legal debt by serving time in jail, others reported that their legal debt increased as a result of their re-incarceration. The threat of criminal justice intervention created an incentive for those who had not made regular payments to hide from the authorities.

Concerns about Assessment and Collection Processes: Regardless of whether they made regular payments toward their LFOs, many respondents reported that the rules governing the imposition and collection of LFOs were unclear. As a result, many interviewees were confused about their legal obligations and rights. This lack of clarity was reported to exist at every stage of the process, starting with the assessment of LFOs:

The largest thing is the absolute uncertainty and mystery that swirls around LFOs... I came out of court, out of my sentencing with about \$1800 in court fees.... And at that time I knew that there was some sort of mysterious hearing way down the road that I had at that point already waived my rights to attend, uh, that would set down my restitution. Um, so, and I... you know, I was distracted enough, I was going to jail in three weeks, so I didn't know what that restitution amount was going to be... Later down the road I received a judgment in the mail that said I now owed \$41,000 for uh, restitution. And that's all I was told.

Where do they get that amount of \$2100? Where did that come from? As far as I know, that's just, I had a court-appointed attorney, that was like \$600, and the rest was like victim's fees and assessment fees and everything. There was a family member that was involved with this. So I have to pay a family member who was involved in this incident. And that's kind of confusing to me as to why I would have to pay a victim's assessment fee that's like \$500 and pay the victim too. And

⁶⁸ 42 U.S.C. § 608 (a)(9)(A)(ii); Szymendera 2005. The Social Security Administration's Office of Inspector General matches “wanted persons files provided by the participating law enforcement agency against SSA's computer files of individuals receiving Title XVI payments, Title II benefits and/or serving as representative payees” in order to ensure that benefits are stopped in such cases (See <http://www.ssa.gov:80/oig/investigations/fugitivefelon/fugitivefelon.htm>).

I don't understand... where that comes from, and then all these other fines and stuff like this, I don't know where, how they get that figure of \$2100.

Respondents also reported they were not informed or aware of the potential financial consequences of conviction when they opted to plead guilty:

And I didn't really understand anything about the criminal justice system. But that's what the attorney explained to me, that if I did the plea then I wouldn't do that much time, you know, supposedly... But, after looking at it, I knew that my victim's compensation fee was only \$500, but I never realized that the \$20,000... I didn't realize the cost was going to be \$20,000 later.

Some respondents were particularly upset to learn that they had been charged a fee for the defense attorney they were told would be provided for them because they were indigent:

When a person is arrested, they say that if you don't have the money to afford an attorney, one will be provided for you. They don't say that at the time of sentencing, that you're going to have to pay a court cost, attorney's fees, so on and so forth etc., and it's like at the end of it you're like well wait a minute, if I couldn't afford an attorney at the beginning, how can I afford the attorney now! And it's like, that part just has always evaded me, it's like, this doesn't make sense! I mean if one is going to be provided, well provide one! It's just that part of it I've never understood, and it's just like, you know, ok, so you can't afford an attorney, then what's going to change while you're in jail? While you're incarcerated you're not making any money.

They say you get a free lawyer cause your indigent and then they charge you \$750 to pay for your lawyer.

The process by which monthly payments amounts were determined was also unclear to

many of those interviewed:⁶⁹

Interviewer: *So they didn't ask you how much you can pay each month?*

Respondent: *No, it comes in the mail, and you open it up, and it says you owe \$50, a little envelope thing and you put the money in it and ship it off to them.*

Interviewer: *And did they set a minimum monthly payment for you?*

Respondent: *Yeah, that's already been set up. That's \$50.*

Interviewer: *Who determined that amount?*

Respondent: *I have no idea.*

Interviewers: *Did anybody ask you how much can you pay, or negotiate with you?*

Respondent: *No, this is just what it is.*

Many of those interviewed also reported that their efforts to negotiate their monthly payment amounts were unsuccessful:

I called because once I got laid off, I called them to try to tell them that I'm getting laid off and I really won't have the money to send in and can we work out something else, but the lady said no. She said, "Because you already have a warrant for your arrest." I said. "For what?" "Because you only been sending \$10 and you were supposed to send \$65 a month."

⁶⁹ Under RCW 9.94A.760, monthly payments are to reflect consideration of the convicted person's financial circumstances: "In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department."

I've been trying to get it changed from \$100 to anything a month, you know, to anything less than \$100 would be reasonable. You know, and the only way I can go change that, I mean I went to the desk, where you go set up your restitution, and they said well we need a \$300 deposit. How are you going to pay a deposit on restitution? I said well I can't pay this deposit. I can't even pay \$100 a month, how can I change it? Well you gotta talk to the judge. How do I talk to the judge? You got to go to court. How do I go to court? You got to not pay your fines to go to court. So I got to risk going to jail to talk to the judge and tell him that I can't afford to pay this much a month? And what if I go to court and he says you didn't pay your fines this month, you're going to jail for two years?⁷⁰

Approximately half of those interviewed for this study reported that they were receiving monthly statements, which made it easier to keep track of their legal financial obligations. However, the remainder reported they did not receive monthly statements, which led to uncertainty about how much they owed:⁷¹

So there's no like system by which you can, you know, easily access your payments, see if your money's being handled correctly, and uh, you can't get an answer when you go in and you ask... you know, initially I was obsessed with whether this would be on my credit report. I had no idea, couldn't get an answer. Except for, well if we decide if we're going to send it to collections or your credit report, then it'll show up. Oh, ok, well what's the basis for that? Well, if we decide.... You know, there are no guidelines to really follow as far as that goes, and as I said, ten years down the road I have no idea if this amount is going to be transferred to a civil judgment and what that's going to entail...

Respondent: *Yeah, I don't know [how much I owe]. I just, I think when I got in trouble with it, they told me I would have a \$500 fine.*

Interviewer: *You've never gotten a statement in the mail?*

⁷⁰ This individual reportedly had received a suspended sentence, and feared that non-payment might have triggered the imposition of the full, two year sentence.

⁷¹ Although the AOC sends monthly statements to all of those who owe LFOs, high rates of residential turnover among those with felony convictions appear to undermine these efforts.

Respondent: *No, no statement, never paid nothing.*

Interviewer: *Did your CCO tell you about it when you were on supervision?*

Respondent: *No, never told me nothing about it, or anything, that's pretty much why I haven't paid, nobody said nothing, so you know, I didn't think I really still had to pay it or something, because I know sometimes if you don't pay your fine they come and get you and put you in jail. But I didn't hear nothin' about it.*

Interviewer: *Do you know how much you owe?*

Respondent: *No, because at the time I was pregnant, and I think I got them waived, I didn't have to pay them at that time. So I think that's why I was a little confused about it.*

Interviewer: *So you thought they were gone, and then you found out later they didn't go away?*

Respondent: *Yeah. Right. And so I got off probation and everything, so I just assumed I was done. And no one told me that I still owe this money. It wasn't till it got sent to the collection agency that I found out.*

Interviewer: *So you were saying, it sounds like you don't know exactly how much you owe, but it's still in the thousands.*

Respondent: *I don't have a clue.*

Interviewer: *You don't get any monthly statements?*

Respondent: *No. I get arrested. And then they tell me.*

The process by which one might petition for remission (debt relief) or a certificate of discharge after paying all of one's LFOs was also unclear to many:

Interviewer: *So you said that you're trying to get it [the conviction] expunged?*

Respondent: *Yeah.*

Interviewer: *How are you doing that?*

Respondent: *Well, right now I just been going on-line and looking at some of the sites that explain the process, but it's in, it's in court-speak, you know, and so it's not, it's not real easy to translate. But I can read and so I'm trying to work my way through it. There was an article on an organization that was working with people to do that, and I saw a flyer and um, I haven't been able to find them again, because I wasn't able to make it to the session that they did...*

I used to dabble in the law library when I was locked up and stuff, and we found this thing that said if you pay on your LFOs for one year, and you do it without missing any payments, they would, the court could just drop the whole thing.... But they don't honor that either. I don't know how to get them to honor that.

Respondent: *Because I didn't know that I still owed the money, and then, even now it's frustrating, because then once I paid it, I didn't know that I still had to, to get this certificate of discharge, it was now up to me. And I'm still a little upset about that.*

Interviewer: *How did you learn about what you had to do?*

Respondent: *Um, just my own research on the internet and stuff...*

Interviewer: *And what do you have to do to get a certificate of discharge?*

Respondent: *I had to... I went yesterday and got the paper that says I satisfied my judgment. And um, I have to contact the judge that sentenced me, and I guess find out when he's available to see me or something and have him sign the certificate of discharge. It's a lot of work.*

In sum, respondents described a profound sense of uncertainty about the rules governing assessment and collection of their LFOs. Many reported that they had no input in the determination of their monthly payment. About half reported that they did not receive monthly statements. Many also expressed frustration with what they perceived as a convoluted and impenetrable set of rules and institutions that manage LFOs.

Concern about the Loss of Civil Rights: For the majority of respondents, financial concerns and the desire to extricate themselves from the criminal justice system were reported to be more pressing concerns than the re-establishment of civil rights. For a minority of respondents, however, the fact that they are unable to restore their civil rights until they paid off their legal debt entirely was quite upsetting and contributed to their sense of ostracism and alienation:

It [not being able to vote] is one piece of a much larger feeling of not being permitted to participate in society that I'm supposed to be adjusting to again.

The thing that really hurts me is not having the ability to vote. So that's the reason I'm pursuing the expungement, because for me, just being involved and active politically, it's something that I really value, and I don't have that right to vote.

I would love to vote. I would love to work on a campaign, you know? I would love to be involved in my community. Right now, I have to realize that I can't, because of what I did. But that hurts, that hurts a lot.

That's really messed up that we can't vote. It makes me feel less of an American, that's what we have, is our right to vote.

Thus, in addition to the added financial stress, concern about on-going criminal justice entanglement, and frustration with LFO assessment and collection processes, a minority of those interviewed experienced the loss of their civil rights as an additional penalty, one with a great deal of symbolic and psychic importance. Nationally, there is some evidence that restoration of voting rights aids reintegration and reduces recidivism.⁷²

⁷² Uggen and Manza 2006.

Interview Themes: Summary

To understand how LFOs affect people living with felony convictions and impact their capacity to establish stable and productive lives, fifty people with at least one felony conviction from one of four Washington State counties were interviewed. These interview respondents consistently reported that LFOs make it even more challenging for them to “re-enter” mainstream society and establish stable and productive lives, for a number of reasons.

First, if paid, LFOs reduced respondents’ already quite limited income. Researchers have consistently found that most people with felony convictions are poor prior to their conviction.⁷³ Upon release from jail or prison, they are further disadvantaged in the labor market by their felony conviction, which also places constraints on their ability to secure stable employment and housing.⁷⁴ Incarceration also significantly reduces the already-limited earnings potential of the convicted.⁷⁵ These difficulties, widely reported in national surveys, were also described by the majority of those interviewed for this study. Specifically, most reported that their criminal record adversely impacted their capacity to find stable work and housing. LFOs were reported to exacerbate these difficulties in a number of ways: by reducing already limited incomes; by adversely affecting credit ratings (checked by many potential employers and apartment managers); and by extending criminal justice supervision and sanctions for those who did not make regular LFO payments. It is therefore unsurprising that many respondents were unable or unwilling to make regular LFO payments. Indeed, researchers have found that income level is

⁷³ BJS 1998; BJS 2004; Western 2006.

⁷⁴ Kerley, Benson, and Cullen 2004; Pager 2003, 2005, 2007.

⁷⁵ Western 2006.

the most important predictor of whether people pay their LFOs.⁷⁶

Non-payment, in turn, was reported to render those with felony convictions and legal debt vulnerable to additional sanctions, including worsened credit, the loss of civil rights, and, most importantly, continued involvement in the criminal justice system. It is important to note that inability to pay also prevents people who have otherwise completed their sentence from receiving a certificate of discharge and applying to expunge (i.e. discharge) their criminal conviction. As a result, their conviction remains on their record, which has important financial implications that further reduce their capacity to pay their LFOs.

Although LFOs are intended, in part, to offset the fiscal costs of criminal behavior, sanctioning non-payment appears to lead to a significant expenditure of criminal justice resources, at least in some counties. While some of those who were re-incarcerated for non-payment reported that they were able to reduce their legal debt by serving time in jail, others reported that their legal debt increased as a result of their re-incarceration. Respondents also expressed significant confusion and frustration with the institutions that assess and collect legal debt, and with the rules that govern that process. As a result of all of these factors, many reported that their legal debt caused considerable anxiety and stress. In addition, the interview findings provide reason to suspect that legal debt creates counter-productive incentives; for example, to stay on welfare rather than work, or to run from authorities in order to avoid criminal justice sanction.

The results of the interview portion of this study thus indicate that adding LFOs to the many considerable challenges associated with re-entering society renders that process

⁷⁶ Ruback et al. 2006.

significantly more difficult. In particular, respondents reported that their ability to survive and to fulfill their family obligations was precarious, and that having both a felony conviction and LFOs made stabilizing or improving their occupational and educational situation even more challenging. Thus, the interview results suggest that the requirement that those convicted of crimes pay significant fees, fines and restitution orders lies in tension with state and local efforts to encourage successful re-entry and stabilization after conviction. LFOs thus have significant consequences, many of which appear to hinder rather than facilitate the re-entry process. These consequences not only affect those who have been convicted of crimes, but their families and communities as well. The continued impoverishment of those with LFOs also fails to serve crime victims awaiting restitution.

The following section of the report summarizes this study's empirical findings, considers their policy implications, and offers policy recommendations intended to minimize the adverse impact of LFOs on the re-entry process while maximizing the likelihood that crime victims will receive compensation for the monetary costs associated with their victimization.

PART III. SUMMARY OF FINDINGS AND RECOMMENDATIONS

This section of the report briefly summarizes the empirical findings, identifies questions that may be answered through additional research, and offers policy recommendations aimed at mitigating the adverse consequences of the assessment of LFOs.

LFO Assessment in Washington State Superior Courts

Statistical analysis of Washington State Superior Court conviction data indicates that assessment of LFOs in Washington State is characterized by a high degree of variability. With a few exceptions (particularly the Victim Penalty Assessment), Washington State Superior Courts exercise some discretion in determining whether to assess potentially applicable fees and fines. The results of the analysis of 3,366 Washington State Superior Courts felony convictions adjudicated in January and February 2004 indicate that the exercise of this discretion led to significant variation in the assessment of fees and fines. Specifically, the dollar value of assessed fees and fines varied from a low of \$500 to a high of \$21,110 per conviction. If restitution is included, the maximum LFO assessed was \$256,257 for a single conviction.

It is important to note that these figures do not capture the entirety of the legal debt possessed by many Washington State residents living with a criminal conviction. The fines and fees assessed by Washington State Superior Courts and analyzed in this report are only one source of legal debt incurred by those convicted of criminal offenses, including local jail and the Department of Corrections. While the convictions included in the database were associated with

defendants who typically had less than one prior felony conviction, these same defendants also typically had four other prior non-felony convictions. In short, there are many sources of legal debt other than the fees and fines imposed by Washington State Superior Courts, and many of those convicted of felonies in Washington State have had other court convictions. For this reason, the findings presented in this report understate the magnitude of the LFOs possessed by Washington State residents with criminal histories.

HLM (regression) analysis was used to identify the case, defendant and county-level factors that predict variation in the assessment of LFOs. The results of this analysis indicate that certain case, defendant and county characteristics all affect the assessment of fees and fines. In particular, higher SRA scores, drug charges, and going to trial are associated with statistically significantly higher fees and fines. The assessment of fees and fines also appears to be influenced by defendant characteristics: Hispanic defendants are assessed significantly higher fees and fines than white defendants, and male defendants are assessed significantly higher fees and fines than female defendants. Finally, county characteristics significantly influence the assessment of fees and fines. In particular, less populous counties, counties with higher drug arrest and violent crime rates, and counties that spend smaller fractions of their budget on law and justice assess significantly higher median (typical) fees and fines. Thus, extra-legal factors as well as case characteristics influence the assessment of LFOs in Washington State.

At one level, some of the variation in LFO assessment is a function of the number of fees and fines that *may* be assessed in certain kinds of cases. For example, drug offenders may be assessed certain fees and fines that do not apply to other kinds of offenders. Similarly, defendants who go to trial are subject to certain fees that defendants who plead guilty by

definition avoid (see Table A1 in Appendix A). At first glance, then, it seems that the greater number of *potentially* applicable fees and fines explains the correlation between drug charges and going to trial, on the one hand, and LFO assessments, on the other. Yet the fees and fines that *may* apply in drug cases and cases that go to trial are not mandatory and are not consistently imposed. As a result, drug cases and cases adjudicated at trial are not assessed higher fees and fines in all counties. In King County, for example, convictions involving violent offenses are assessed higher average fees and fines than convictions involving drug charges, and convictions that result from a trial are not assessed significantly higher fees and fines than convictions that result from a guilty plea.

The Impact of LFOs on the Re-Entry Process

To explore whether and how LFOs affect the individuals who possess them and their efforts to re-enter society, fifty individuals with felony convictions from one of four Washington State counties were surveyed and interviewed. Like felons across the United States, many of those interviewed for this study reported living on quite limited incomes; over half of those interviewed have incomes that fall under federal poverty guidelines. The majority were also financially supporting minor children. Consequently, those interviewed for this study reported living in quite difficult financial circumstances, and often reported prioritizing rent, utilities, food and childcare over making their minimum monthly LFO payments. Not surprisingly, the evidence indicates that non-payment is fairly common, both among those interviewed for the study and those sentenced in all Washington State Superior Courts in 2004.

Some of those who failed to make regular LFO payments indicated that they became ensnared in the criminal justice system as a result. Indeed, it appears that non-payment not uncommonly leads to the issuance of a warrant, re-arrest, and re-incarceration in some Washington State counties. Many of those interviewed expressed uncertainty and frustration with LFO assessment and collections processes, and some articulated particular sadness and regret regarding the loss of their civil rights.

In short, the interview findings suggest that LFOs exacerbate the many difficulties associated with the re-entry process. A substantial body of evidence indicates that even without LFOs, this process is difficult: both social disadvantage and the stigma of a criminal conviction make finding stable work and housing quite difficult. Interviews with persons with both felony convictions and legal debt indicate that LFOs added to these difficulties by reducing income and worsening credit ratings, both of which make it more difficult to secure stable housing. LFOs also hindered people's efforts to improve their education and occupational situations, and created incentives to avoid work, to return to crime, and/or to hide from the authorities. Perhaps most strikingly, the inability to make regular payments toward their legal debt led many of those interviewed to have warrants issued for their arrest, and be arrested and jailed either as a penalty for non-payment or as a means of reducing their debt.

Notably, researchers have found that each of these consequences — reduced earnings and employment, difficulties finding stable housing, and short-term jail stays — are associated with recidivism. Although the data analyzed for this study do not allow us to directly examine whether LFO assessment contributes to recidivism, the interview results clearly indicate that LFOs have adverse consequences for those who possess them. Notably, these consequences have

been shown by researchers to be important predictors of repeat offending. It is thus quite possible that the assessment of LFOs contributes to recidivism.

Policy Analysis

The 1981 Washington State Sentencing Reform Act identifies the goals of legislation that guide the assessment of LFOs as follows:

The purpose of this act is to create a system that: (1) Assists the courts in sentencing felony offenders regarding the offenders' LFOs; (2) holds offenders accountable to victims, counties, cities, the state, municipalities, and society for the assessed costs associated with their crimes; and (3) provides remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior (RCW 9.94A.760).

The first of these goals is the creation of a system that assists the courts in sentencing offenders. The data needed to empirically evaluate whether such assistance has been rendered are not presently available. In order to empirically assess whether the legislation accomplishes this aim, investigators would need to survey and/or interview a sample of Washington State Superior Court judges to determine whether the legislation is considered to be of assistance.

However, to the extent that achieving uniformity in the assessment of LFOs is implicit in this goal, the evidence suggests that consistency has not been achieved. Although the mandatory \$500 Victim Penalty Assessment appears to be assessed for all felony convictions in all counties, there is significant variation in the imposition of other fees and fines (and in the collection methods utilized). The extent of this variation is striking given legislative efforts to reduce variation in confinement and supervision sentences. In addition, some of the factors that appear

to influence LFO assessment raise important policy, ethical and legal questions. In particular, the fact that cases involving Hispanic defendants, drug charges, and trials are assessed significantly higher fees and fines may not be anticipated or desired by policymakers. Similarly, the fact that defendants convicted of identical charges with identical SRA scores will be assessed very different LFOs depending upon the county in which they are sentenced raises important policy issues. Although this discretion is exercised at the county and/or judicial level, it has implications for felons' capacity to restore civil rights that are potentially exercised at the federal, state, and local levels.

The second stated aim of the legislation that regulates the assessment of LFOs is to "hold offenders accountable to victims, counties, cities, the state, municipalities, and society for the costs associated with their crimes" (RCW 9.94A.760). The evidence is mixed on this point. On the one hand, offenders are being held accountable in the sense that they are receiving an economic penalty for the crime(s) for which they were convicted. On the other hand, the most individuals with LFOs are delinquent in their LFO payments and, as a result of their poverty, are likely to remain so. Variation in delinquency likely reflects the different financial situations of those who are assessed LFOs, as well as county-level variation in LFO assessment and collection methods. As a result of these and possibly other factors, average annual LFO dollars collected per open account receivable varies significantly across counties, from a low of \$28.40 in Yakima to a high of \$498.35 in San Juan County.⁷⁷ In short, the financial consequences associated with conviction vary substantially, even across similar cases. There is also considerable variation in the consequences of non-payment. It thus appears that the assessment of LFOs holds some of

⁷⁷ Washington Association of County Officials 2006, Table 7.

those convicted of crimes far more accountable than others.

The third legislative goal is to “provide remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior.” Again, the evidence is mixed on this point. Despite widespread delinquency in LFO payments, the revenues generated by the assessment and collection of LFOs are significant. In 2006, over \$27 million in fees, fines and restitution orders were collected by Washington State counties.⁷⁸ These funds are distributed among crime victims, counties, and the state. In 2006, the bulk of these funds (57 percent) were recouped by counties; crime victims and the state received smaller fractions (25.9 percent and 19 percent, respectively).⁷⁹ Thus, at first glance, it appears that significant funds are being recouped to offset the fiscal costs associated with crime and the operation of the criminal justice system.

However, these collection figures do not take into account the direct and indirect costs associated with the collection of LFOs. Direct collection costs – such as the cost of mailing monthly LFO statements and the employment of additional county clerks who work solely or primarily on LFO collection – include \$3 million in state funds. Individual counties supplement these state funds in order to support clerks’ collection efforts.⁸⁰ Some counties also have specific courts established for the management of LFO non-payment. In short, states and counties incur many direct costs associated with administering and collecting LFOs. In addition to these direct costs, LFO collection entails indirect costs – such as court and law enforcement costs associated with identifying and processing individuals for non-payment, the cost of adjudicating such cases,

⁷⁸ Washington Association of County Officials 2006, Table 13.

⁷⁹ Ibid.

⁸⁰ For example King County has seven full time employees who work specifically on the collection of LFOs.

the cost of jailing those who fail to make regular payments, and so forth – that are difficult to enumerate. Although these indirect costs are difficult to quantify, they may nonetheless be significant. Evidence that incarceration is used in some counties as a sanction for non-payment but as an alternative means of reducing LFOs is of particular concern, and underscores the need to acquire additional information regarding these practices.

In sum, although significant LFO funds are collected each year, these funds are shared by many entities, including crime victims, states, and counties. In addition, there are many direct and indirect costs associated with the collection of these funds. It is not clear whether the revenues generated through the collection of LFOs are greater than the expenditures required to recoup those funds. Determining whether revenues collected are greater than the costs of collecting those revenues would require additional data collection. Specifically, assessing direct collection costs would necessitate the acquisition of county-level budget data regarding direct outlays (such as the cost of employing additional clerks) dedicated to LFO collection. Calculating the indirect costs associated with LFO collection (including the allocation of law enforcement personnel to the apprehension of persons for non-payment, the cost of adjudicating these cases, and the costs of incarcerating those determined to be delinquent in their LFO payments) would also be important to such an analysis, but may not be feasible.

In short, it is not clear that the state and county governments are defraying significant criminal justice costs by assessing and collecting LFOs, as the data needed to make this determination are not currently available. However, even if the assessment of LFOs does generate revenues that are greater than the expenditures required to collect financial penalties, it remains the case that LFO recoupment funds are quite small in comparison to overall criminal

justice costs. In 2006, for example, the LFO funds collected and allocated to the counties were equivalent to an average of 1.3 percent of Washington State county criminal justice budgets.⁸¹ The benefits of collecting this relatively small pool of funds must be weighed against both the resources involved in collecting those funds and the adverse consequences of LFOs for the re-entry process.

Moreover, it is unclear that crime victims benefit from the existing system. Recall that three years post-sentencing, zero percent of the restitution ordered had been paid in over half the cases for which it was ordered. Less than 20 percent of the restitution orders were paid for roughly three quarters of the cases for which restitution was ordered. Thus, although the idea of restitution is attractive for many reasons, there is evidence that timely restitution payments are actually received by a relatively small proportion of crime victims.

In sum, it is unclear that the goals of the legislation that regulates the assessment of LFOs are being met. Although all offenders are assessed LFOs, there is significant variation in the magnitude of these financial obligations, as well as in collection methods, payment rates, and the consequences of non-payment. Thus, while all of those convicted of felonies in Washington State do appear to be assessed a minimum of \$500 in LFOs, and are in this sense held accountable, the magnitude of the fees and fines assessed, and consequences of this debt, vary significantly. Moreover, it is not clear that the revenues generated by LFO payments are greater than the costs of collecting LFOs, or that counties, crime victims or the state receive meaningful compensation for the monetary costs associated with criminal behavior.

As was discussed previously, the empirical analysis presented in this study also suggests

⁸¹ Washington Association of County Officials 2006.

that the current administration of legal financial obligations in Washington State is inconsistent with another important policy objective, namely, reducing criminal justice costs and recidivism by promoting the successful re-entry of those completing their criminal sentence. Interviews with persons who possess legal debt indicate that LFOs exacerbate the many difficulties associated with the re-entry process. This in turn has many negative repercussions for the individuals with criminal convictions and their families, including children. It therefore appears that the legislative effort to hold offenders financially accountable for their past criminal behavior reduces the likelihood that those with criminal histories are able to successfully reintegrate themselves into society. Insofar as legal debt stemming from LFOs makes it more difficult for people to find stable housing, improve their occupational and education situation, establish a livable income, improve their credit ratings, disentangle themselves from the criminal justice system, expunge or discharge their conviction, and re-establish their voting rights, it may also increase repeat offending.

Moreover, the data analysis identifies a number of important legal and ethical issues, including the impact of Hispanicity, the existence of a financial drug and trial “penalty”, and the existence of significant geographic variation in the assessment of LFOs. The assessment of LFOs is thus influenced by many factors other than the seriousness of the offense, and the financial penalties associated with criminal conviction vary significantly depending upon the county in which one is sentenced. This geographic variation introduces an unwarranted degree of arbitrariness and capriciousness into the Washington State criminal justice system. This variation also has important consequences for the ability of Washington State residents to restore their voting rights.

Several additional concerns about processual issues have emerged in the course of this research project:

(1) Defendants may be assessed a fee for the cost of the legal representation that is provided for them by the state upon a showing of indigence. In some counties, defendants may be assessed this fee twice, once by the courts, and again by the Office of Assigned Counsel/Public Defense.

(2) Those who exercise their right to a trial are financially penalized for doing so. It seems unlikely that defendants are aware of this potential trial penalty and therefore cannot take it into account when deciding whether to exercise their right to a trial.

(3) In some cases, defendants appear to be unaware/uninformed of the potential financial consequences of a decision to plead guilty and therefore may base that decision on incomplete information.

(4) The process by which present and future ability to pay is determined by the courts, and monthly payment obligations set by the courts and/or clerks, appears not to be based on clear guidelines and, in some cases, to be standardized rather than based on an assessment of the particular circumstances faced by defendants.

Policy Recommendations

In light of these findings and concerns, we offer the following policy recommendations. These recommendations are guided by four main goals: minimizing the extent to which LFOs prevent reintegration and fuel recidivism; minimizing unwarranted variation in the assessment

and collection of LFOs; prioritizing victim restitution and community service; and streamlining and simplifying the LFO process in order to reduce uncertainty and confusion.

(1) Place a moratorium on the assessment of all LFOs other than restitution orders and the currently mandatory \$500 Victim Penalty Assessment fee until the concerns identified are adequately addressed. We also recommend that neither of these LFOs be subject to interest.

Streamlining LFOs in this manner offers several advantages. First, and most importantly, eliminating LFOs other than restitution and the VPA fee would eliminate the more discretionary and variable fees and fines, thereby eliminating variation associated with factors such as defendant ethnicity, adjudication method, conviction type, and county characteristics. Judges would no longer be obligated to determine defendants' present and future ability to pay. Although this proposal might reduce the revenues recouped, this may or may not be the case, and it is also likely to reduce state and county level expenditures devoted to the collection of LFOs. Moreover, insofar as persons may be more likely to make LFO payments when those payments are perceived as manageable and legitimate, streamlining LFOs in this manner may increase revenues available to crime victims and crime victim advocates.⁸² Indeed, the majority of those we interviewed accepted the premise that they should be held accountable for their past behavior and particularly endorsed the idea of restitution.

(2) Adopt a broader and more flexible conception of accountability that allows

⁸² Prior research has found that people with criminal records are more likely to pay their LFO's when they comprise a small share of their income. Moreover, debtors are more likely to make regular payments when they understand how their financial penalties were determined; how the money is used; and when the money is used for victim compensation (Ruback et al, 2006).

indigent defendants to convert monetary LFOs to community service obligations and/or the provision of services for the persons directly harmed by their prior criminal behavior.

A broader and more flexible conception of accountability would accomplish several goals. First, it would allow for the recognition that the primary obligation of those who have been convicted of a crime is to establish crime-free, productive lives, and to contribute emotionally and financially to their families and children. Holding persons with criminal convictions financially accountable for their past criminal behavior may interfere with these goals. Therefore, allowing those who possess LFOs but are indigent to “pay back” through community service work and/or service on behalf of crime victims would increase the likelihood that accountability would be achieved in practice, and reduce the likelihood that people with LFOs and their family members will remain trapped in poverty. It would also reduce the likelihood that LFOs contribute to recidivism, thereby reducing the number of crime victims

(3) Adopt legislation that automatically restores the civil rights of Washington State residents with a felony completion upon completion of their confinement sentence.

We agree with the many criminologists who have argued that the denial of voting rights following the completion of sentence of confinement serves no clear penological purpose and is an impediment to reintegration and rehabilitation.⁸³ We also believe that predicating the restoration of civil rights on the elimination of legal debt constitutes a particular burden, and

⁸³ See En Banc Brief Submitted on Behalf of Certain Criminologists as Amicus Curiae in Support of Appellants and in Support of Reversal, submitted to the U.S. Court of Appeals for the Second Circuit, Available online at http://www.naacpldf.org/content/pdf/muntaqim/Criminologists_En_Banc_Amicus_Brief.pdf

obstacle to reintegration, for the poor. We therefore recommend that policymakers adopt legislation that restores the civil rights of those who are no longer in total confinement.

(4) Create a statewide database that would consolidate information about legal debt from all counties and all sources, including municipal, superior, and district courts as well as the Department of Corrections.

This “centralized cashiering” system would eliminate some of the informational difficulties reported by those interviewed for this study, and has the potential to reduce collection costs. Although the monthly statements currently generated and sent by the AOC are useful, high rates of residential mobility (linked to difficulties in establishing stable housing) among persons with criminal convictions mean that some individuals do not receive such statements. A consolidated database that could be accessed by those with LFOs and relevant others (such as DOC personnel) would enable parties to identify all sources of legal debt for particular individuals.

Recommendations for Future Research

Collection and analysis of the following data would make it possible to address additional questions pertaining to the assessment and consequences of LFOs. These include:

(1) Detailed information regarding the assessment and accumulation of legal debt from all sources for a sample of individuals with criminal convictions would allow for a more comprehensive assessment of the extent of legal debt and its accumulation over the life course. These data would include municipal and federal fines and fees, DOC fees, as well as superior

court fees, fines, and restitution orders. In conjunction with criminal history information, such data would also enable researchers to determine whether legal debt is a predictor of recidivism.

(2) Under RCW 9.94A.760, monthly payments are to reflect consideration of the convicted person's financial circumstances. The interview data collected for this study suggest the procedures used to make assessments of defendant's present and future ability to pay are highly variable and possibly unreliable. Additional inquiry is needed to ascertain how courts make these determinations in the absence of clear guidelines from the legislature, and whether these processes can explain the impact of Hispanicity on the assessment of LFOs.

(3) Additional information regarding the sanctioning of individuals for non-payment across Washington State is needed to determine whether that sanctioning is conducted in a manner that is consistent with state law. Additional research to identify the costs associated with this practice is also needed. In particular, additional information regarding the use of incarceration as both a sanction for non-payment and a means of reducing legal debt is lacking.

(4) County-level budget figures regarding the direct and, if possible, indirect costs associated with the collection of LFOs would allow researchers to determine whether the expenditures associated with the collection of LFOs are greater than the revenues generated by LFO payments.

REFERENCES

- American Civil Liberties Union (ACLU). 2004. *Restoring the Right to Vote in Washington*. <http://www.aclu-wa.org/detail.cfm?id=239>
- Austin, James. 2001. "Prisoner Re-entry: Current Trends, Practices and Issues." *Crime and Delinquency*, 47(3):314-334.
- Beck, Allen. April 2000. "State and Federal Prisoners Returning to the Community: Findings from the Bureau of Justice Statistics." Paper presented at the *First Re-entry Courts Initiative Cluster Meeting*, Washington D.C.
- Bernstein, Nell. 2005. *All Alone in the World: Children of the Incarcerated*. New York: The New Press.
- Braman, Donald. 2002. "The Impact of Incarceration on Families." Chapter 7 in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, Mauer and Chesney-Lind, editors. New York: The New Press.
- Bureau of Justice Statistics. 1998. *Profile of Jail Inmates 1996*. Washington D.C.: U.S. Department of Justice.
- Bureau of Justice Statistics. 1999. *Women Offenders*. Washington D.C.: U.S. Department of Justice.
- Bureau of Justice Statistics. 2004. *Profile of Jail Inmates 2002*. Washington D.C.: U.S. Department of Justice.
- Bureau of Justice Statistics. n.d. *Adult Correctional Populations*. Washington D.C.: U.S. Department of Justice. <http://www.ojp.usdoj.gov/bjs/glance/corr2.htm>.
- Bureau of Justice Statistics. 2006. "Prison and Jail Inmates at Midyear 2005." Washington D.C.: U.S. Department of Justice.
- Bushway, Shawn D. and Anne P. Morrison. 2001. "Judging Judicial Discretion: Legal Factors and Racial Discrimination in Sentencing." 35, 4:733-764.
- Chiricos, Ted, Kelle Barrick, William Bales, Stephanie Bontrager. 2007. "The Labeling of Convicted Felons and its Consequences for Recidivism." *Criminology* 45, 3:547-571.
- Clear, Todd R., Dina R. Rose and Judith Ryder. 2001. "Incarceration and the Community: The Problem of Removing and Returning Offenders." *Crime and Delinquency*, 47, 3:335-351.

Clear, Todd R., Dina R. Rose, Elin Waring and Kristen Scully. 2003. "Coercive Mobility and Crime: A Preliminary Examination of Concentrated Incarceration and Social Disorganization." *Justice Quarterly*: 20, 1:33-64.

Council of State Governments Justice Center. n.d. *Financial Obligations Project: Overview*. New York: New York.

Council of State Governments. 2005. *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community*. New York: Council of State Governments, Re-Entry Policy Council.

Council of State Governments Justice Center. 2007. *Repaying Debts*. New York: New York.

Durose, Matthew R. and Patrick A. Langan. 2005. *State Court Sentencing of Convicted Felons, 2004*. Washington D.C.: Department of Justice, Bureau of Justice Statistics.

Engen, Rodney L. and Sara Steen. 2000. "The Power to Punish: Discretion and Sentencing Reform in the War on Drugs." *American Journal of Sociology* 105, 5:1357-95.

Glaze, Lauren E. and Thomas Bonczar. 2006. *Probation and Parole in the United States, 2005*. Washington D.C.: Department of Justice, Bureau of Justice Statistics.

Hagan, John and Juleigh Petty Coleman. 2001. "Returning Captives of the American War on Drugs: Issues of Community and Family Re-entry." *Crime and Delinquency*, 47, 3: 352-367.

Hagan, John and Ronit Dinovitzer. 1999 "Collateral Consequences of Imprisonment for Children, Communities and Prisoners." *Crime and Justice* 26: 121-162.

Harrison, Lana. 2001. "The Revolving Prison Door for Drug-Involved Offenders: Challenges and Opportunities." *Crime and Delinquency*, 47, 3: 462-485.

Harrison, Paige and Allen Beck. 2003. *Prisoners in 2002*. Washington D.C.: U.S. Department of Justice, Bureau of Justice Statistics.

Helms, Ronald and David Jacobs. 2002. "The Political Context of Sentencing: An Analysis of Community and Individual Determinants." *Social Forces* 81, 2:577-604.

Langan, Patrick A. and Helen A. Graziadei. 1995. *Felony Sentences in State Courts, 1992*. Washington D.C.: Department of Justice, Bureau of Justice Statistics.

Lurigio, Arthur. 2001. "Effective Services for Parolees with Mental Illness." *Crime and Delinquency*, 47, 3: 446-461.

Manza, Jeff and Christopher Uggen. 2006. *Locked Out: Felon Disenfranchisement and American*

Democracy. New York: Oxford University Press.

Mauer, Marc and Meda Chesney-Lind, eds. 2003. *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*. New York: The New Press.

Mauer, Marc and Ryan S. King. 2007. *Uneven Justice: State Rates of Incarceration by Race and Ethnicity*. Washington D.C.: The Sentencing Project.

Pager, Devah. 2003. "The Mark of a Criminal Record." *American Journal of Sociology* 108: 937-975.

_____. 2005. "Walking the Talk: What Employers Say Versus What They Do." *American Sociological Review* 70, 3: 355-380.

_____. 2007. *Marked: Race, Crime and Finding Work in an Era of Mass Incarceration*. Chicago: University of Chicago Press.

Patillo, Mary, David Weiman, and Bruce Western, eds. 2004. *Imprisoning America: The Social Effects of Mass Incarceration*. New York: Russell Sage Foundation.

Pettit, Becky and Bruce Western. 2004. "Mass Imprisonment and the Life Course: Race and Class Inequality in U.S. Incarceration." *American Sociological Review* 69:151-69.

PEW Center on the States. 2008. "One in 100: Behind Bars in America 2008." <http://www.pewcenteronthestates.org/uploadedFiles/One%20in%20100.pdf>

Pierce County. 2003. *Performance Audits*. <http://www.co.pierce.wa.us/xml/abtus/plans/perf-audit/reports/April17Briefing.pdf>

Rhode Island Family Life Center. 2007. *Court Debt and Related Incarceration in Rhode Island*. Providence, Rhode Island.

Rosenthal, Alan and Marsha Weissman. 2007. *Sentencing for Dollars: The Financial Consequences of a Criminal Conviction*. Syracuse, New York: Center for Community Alternatives, Justice Strategies.

Ruback, Barry, and Mark Bergstrom. 2006. "Economic Sanctions in Criminal Justice: Purposes, Effects, and Implications." *Criminal Justice and Behavior* 33, 2: 242-273.

Ruback, Barry R., Stacy N. Hoskins, Alison C. Cares and Ben Feldmeyer. 2006. "Perception and Payment of Economic Sanctions: A Survey of Offenders." *Federal Probation* 73, 3: 26-31.

Ruback, R. Barry, Jennifer N. Shaffer, and Melissa A. Logue. 2004. "The Imposition and Effects of Restitution in Four Pennsylvania Counties: Effects of Size of County and Specialized

Collection Units." *Crime & Delinquency* 50: 168 - 188.

Shepherd, Joanna M. 2002. "Police, Prosecutors, Criminals, and Determinant Sentencing: The Truth About Truth-In-Sentencing Laws." *Journal of Law and Economics* XLV: 509-533.

Steffensmeier, Darrell and Stephen Demuth. 2000. "Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who is Punished More Harshly?" *American Sociological Review* 65: 705-729.

_____. 2001. "Ethnicity and Judges' Sentencing Decisions in Pennsylvania: Hispanic-Black-White Comparisons." *Criminology* 39:145-178.

Szymendera, Scott. 2005. *CRS Report for Congress: Social Service Administration: Suspension of Benefits for Fugitive Felons*. December 7th, 2005.

Tonry, Michael. 1995. *Malign Neglect*. New York: Oxford University Press.

Travis, Jeremy and Joan Petersilia. 2001. "Re-entry Reconsidered: A New Look at an Old Question." *Crime and Delinquency* 47: 291-313.

Travis, Jeremy and Michelle Waul, eds. 2004. *Prisoners Once Removed: The Impact of Incarceration and Re-entry on Children, Families and Communities*. Washington, DC: Urban Institute Press.

Uggen, Christopher and Jeff Manza. 2006. *Locked Out: Felon Disenfranchisement and American Democracy*. New York: Oxford University Press.

Uggen, Christopher, Jeff Manza and Melissa Thompson. 2006. "Citizenship, Democracy and the Civic Reintegration of Criminal Offenders." *Annals of the American Association of Political Science Studies* 605: 281-310.

Urban Institute. 2006. *Understanding the Challenges of Prisoner Re-entry: Research Findings from the Urban Institute's Prisoner Re-entry Portfolio*. The Urban Institute Justice Policy Center.

Washington State Association of County Officials. 2006. *2006 Report to the Washington State Legislature on the Fiscal Impact of ESSB 5990*. The Washington Association of County Officials, for the Washington State Association of County Clerks, December 2006.

Washington State Senate Bill Report 2 SHB 1359.

Weidner, Robert R. and Richard S. Frase. 2001. "A County-level Comparison of the Propensity to Sentence Felons to Prison." *International Journal of Comparative Criminology* 1, 1: 1-22.

Weidner, Robert R. and Richard S. Frase. 2003. "Legal and Extralegal Determinants of Inter-

county Differences in Prison Use." *Criminal Justice Policy Review* 14, 3: 377-400.

Western, Bruce. 2006. *Punishment and Inequality in America*. New York: Russell Sage Foundation.

Western, Bruce and Sara McLanahan. 2000. "Fathers in Fragile Families: The Impact of Incarceration on Family Formation. In G.L. Fox (ed.) *Families and Crime*. London: Oxford University Press.

Western, Bruce and Becky Pettit. 2005. "Black-White Wage Inequality, Employment Rates, and Incarceration." *American Journal of Sociology* 111:553–578.

APPENDIX A

WASHINGTON STATE SUPERIOR COURT LEGAL FINANCIAL OBLIGATIONS

TABLE A1. ALLOWABLE WASHINGTON STATE SUPERIOR COURT FINANCIAL OBLIGATIONS			
Obligation Type	Amount Specified	Applicable Cases	RCW
Payments to Victims			
Victim Penalty Assessment	\$500	All felony convictions	7.68.035
Restitution	Up to twice the offender's gain or victim's loss	Felony convictions involving injury to person or loss of property	9.94A.753
Fees/Costs Assessed at Conviction³			
Bench Warrant*	\$100	Bench warrant issued	10.01.160
Filing/Clerk's Fee*	\$200	All felony convictions	36.18.020
Court appointed attorney fee	Not specified	Defense attorney provided by state	9.94A.030
Deferred Prosecution*	\$150	Prosecution deferred	10.01.160
Crime Lab Analysis Fee	\$100	Lab work performed	43.43.690
DNA Database Fee	\$100	DNA entered into database	43.43.754
Jury Fee	\$125 6 person /\$250 12 person	Cases adjudicated at jury trial	10.46.190
Inter-Local Drug Fund	Variable ⁴	Most felony drug convictions	69.50.401
Incarceration Costs*	\$50 per prison/ \$100 per jail day	Convictions resulting in confinement sentence; cost of pre-trial supervision	9.94A.760
Emergency Response	Actual Costs	Vehicular assault and homicide	38.52.430
Extradition Costs	Actual Costs	Extradition involved	9.95.210
Extension of Judgment Fee	\$200	Judgment extended after 10 years	6.17.020
Fines			
VUCSA Fine	\$1,000/\$2,000	Drug Convictions	69.50.430
Domestic Violence Penalty	Up to \$100	Domestic violence convictions	10.99.080
Other fines	Not specified	All	9.94A.550

*Indicates that the fee may be imposed absent conviction. Notes: Clark Counties' Superior Court Fee Schedule also lists witness fees, although the RCWs cited do not make explicit reference to these (see <http://www.clark.wa.gov/courts/clerk/fee-schedule.html#2>). This table lists only LFOs that may be assessed by Washington State Superior Courts; other fees assessed by clerks, sheriffs, jails, municipal courts, district courts, and the Department of Correction are not shown here. Under RCW 69.50.430, persons convicted of VUCSA (drug) violations "shall be fined one thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court. On a second or subsequent conviction for violation of any of the laws listed in subsection (1) of this section, the person shall be fined two thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court."

APPENDIX B

CHARACTERISTICS OF FELONS SENTENCED IN WASHINGTON STATE

Table B1 provides information regarding the demographic characteristics of felons sentenced in Washington State. According to data provided by the WSSGC, the majority of convictions sentenced in Washington State Superior Courts in the first two months of 2004 involved white defendants (72 percent). Smaller proportions of sentenced felons were black (13 percent), Latino/Hispanic (five percent), or of “other” race or ethnicity (five percent). It should be noted, however, that Hispanics may be identified by race in some counties. To correct for this, Hispanic Surname Analysis was used to identify those with likely Hispanic lineage. As a result, the proportion of defendants coded as Hispanic rose to 11 percent, while the proportion of defendants classified as white declined to 68 percent. The majority of the defendants sentenced during this time period were male (81 percent). The median age of defendants was 33 years.

Race/Ethnicity	
Black	13%
White	68%
Latino/Hispanic	11%
Native American	2%
Asian/Pacific Islander	2%
"Other"	4%
Gender	
Male	81%
Female	19%
Age (median)	33 years

Source: Washington State Sentencing Guidelines Commission and Administrative Office of the Courts (n=3,366).

Table B2 summarizes the legal characteristics of the cases included in our sample, including the distribution of case types, typical (median) and average (mean) number of prior offenses, confinement sentence length, and SRA score. The bulk of the cases included in the sample were non-violent (91 percent). One-third (33 percent) of the cases sentenced involved drug charges. Defendants convicted of drug and violent charges typically had no prior felony convictions; those convicted on other types of charges typically had one prior felony conviction. Among those sentenced to confinement, the median sentence for violent convictions was 18 months in prison; the median sentence for those convicted of other kinds of charges was four months. The typical SRA score (on a scale from 0- 15) was four for the violent offenses, one for the drug convictions, and two for the other non-violent offenses.

TABLE B2. LEGAL CHARACTERISTICS OF SENTENCED FELONS, WASHINGTON STATE SUPERIOR COURTS				
	Violent Cases	Drug Cases	Other Cases	All Cases
Distribution of Cases	9%	33%	58.2%	100%
Prior Felony Convictions	Median: 0 Mean: 1.3	Median: 0 Mean: 1.5	Median: 1 Mean: 1.9	Median: 1 Mean: 1.7
Other Court Convictions	Median: 2 Mean: 4	Median: 4 Mean: 6.4	Median: 3 Mean: 6.3	Median: 3 Mean: 6.1
SRA Score*	Median: 4 Mean: 6.1	Median: 1 Mean: 2.3	Median: 2 Mean: 2.3	Median: 2 Mean: 2.7
Confinement Sentence Length	Median: 18 Mean: 48.5	Median: 3.7 Mean: 9.4	Median: 4 Mean: 10.2	Median: 4.8 Mean: 13.3

*SRA refers to the seriousness score and is determined by the seriousness level of the offense and the number of prior criminal convictions.
Source: Washington State Guideline Commission and Administrative Office of the Courts (n=3,366).

Table B3 shows the median (typical) and mean (average) dollar value of the fees and fines assessed in the Washington State Superior Court case sample.

TABLE B3. MEDIAN AND MEAN FEES & FINES BY COUNTY			
County	Number of Cases	Median Fee & Fine	Mean Fee & Fine
Adams	16	\$1,577	\$1,847
Asotin	34	\$1,891	\$2,248
Benton	130	\$1,347	\$1,702
Chelan	56	\$1,110	\$1,342
Clallam	42	\$1,018	\$1,122
Clark	258	\$2,072	\$2,511
Columbia	2	\$1,810	\$1,810
Cowlitz	158	\$1,620	\$1,650
Douglas	28	\$1,660	\$1,677
Ferry	5	\$710	\$710
Franklin	34	\$1,276	\$1,867
Garfield	6	\$3,160	\$5,602
Grant	76	\$1,100	\$1,212
Grays Harbor	67	\$1,309	\$1,711
Island	32	\$1,127	\$1,393
Jefferson	9	\$1,810	\$1,837
King	515	\$600	\$600
Kitsap	143	\$2,270	\$2,375
Kittitas	19	\$1,310	\$1,531
Klickitat	20	\$1,457	\$1,668
Lewis	118	\$2,338	\$2,852
Lincoln	4	\$4,033	\$3,719
Mason	39	\$1,292	\$1,484
Okanogan	39	\$981	\$1,246
Pacific	16	\$960	\$1,241
Pend Oreille	2	\$710	\$710
Pierce	558	\$935	\$1,050
San Juan	4	\$1,435	\$1,836
Skagit	45	\$810	\$909
Skamania	7	\$1,460	\$2,016
Snohomish	190	\$600	\$814
Spokane	173	\$710	\$951
Stevens	24	\$860	\$1,043
Thurston	191	\$960	\$1,111
Wahkiakum	2	\$1,613	\$1,613
Walla Walla	33	\$1,507	\$1,783
Whatcom	74	\$1,110	\$1,646
Whitman	5	\$2,710	\$3,398
Yakima	192	\$1,310	\$1,832
Washington State	3,366	\$1,110	\$1,406

APPENDIX C

VARIABLES AND MEASURES UTILIZED

The dependent variable in the regression analysis was the total (logged) dollar value of the fees and fines assessed at the time of sentencing per conviction. This information was taken from summary accounting sheets provided by the AOC and associated with each criminal conviction included in the Washington State Sentencing Guidelines Commission database. All explanatory (i.e. independent) variables were selected based on prior studies of sentencing outcomes. For example, some studies have found that defendant characteristics such as race/ethnicity, gender, age, and criminal history influence sentencing outcomes.⁸⁴ Similarly, previous studies have found county-level variables such as crime rates, demographic composition, the unemployment rate, and region to be significant predictors of criminal justice outcomes.⁸⁵

Individual level variables included in the database obtained from the Washington State Sentencing Guideline Commission. County-level crime rates for the year 2004 were obtained through the Uniform Crime Reports.⁸⁶ Demographic measures were compiled from U.S. Census Bureau data; the population estimates and poverty rate data are from 2004, the race/ethnicity and gender figures from 2005.⁸⁷ Region (East and West) was constructed using the Cascade Mountain Range as the geographic dividing line. Information regarding whether counties had a public defender or appointed counsel system was obtained from *The Washington Defender Association*

⁸⁴ See, for example Bushway and Piehl 2001; Helms and Jacobs 2002; Steffensmeir and Demuth 2000.

⁸⁵ Frase and Weidner 2001, 2004; Helms and Jacobs 2002; Shepherd 2002.

⁸⁶ <http://www.ofm.wa.gov/criminaljustice/cjdatabook/default.asp>

⁸⁷ U.S. Census Bureau, State and County Quick Facts <http://quickfacts.census.gov/qfd/states/53/53077.html>.

website.⁸⁸ Voting information is based on the 2000 Presidential election outcomes and was taken from the “The Federal Elections Project.”⁸⁹ County budget data came from the Washington State Auditor, Local Government Financial Reporting System.⁹⁰

⁸⁸ Data available online at <http://www.defensenet.org/resources/pdoffices.htm>

⁸⁹ David Lublin and D. Stephen Voss. 2001. "Federal Elections Project." American University, Washington, DC and the University of Kentucky, Lexington, KY.

⁹⁰ Available online at <http://www.sao.wa.gov/applications/lgfrs/>

APPENDIX D

HIERARCHICAL LINEAR MODEL: RESULTS

TABLE D1. HLM REGRESSION RESULTS, DEPENDENT VARIABLE: LOGGED FINES & FEES

	Coef.	Std. Error	P-value	Reference Category (compared to)
Case and Individual Level Variables				
SRA **	0.016	0.007	0.025	
Age	-0.000	0.001	0.842	
Gender **	0.037	0.011	0.001	females
Drug Offense***	0.337	0.089	0.000	violent
Other Non-violent Offenses	-0.007	0.029	0.800	violent
Trial **	0.279	0.108	0.010	Guilty plea
Race*				
Hispanic*	0.048	0.025	0.050	white
African American	-0.014	0.026	0.602	white
Asian*	-0.039	0.019	0.048	white
Other	-0.013	0.039	0.744	white
Native American	-0.028	0.040	0.481	white
County Level Variables				
Population '04 ***	-0.007	0.001	0.000	
% black, Native American or Hispanic	-0.003	0.004	0.439	
Median Income	0.000	0.000	0.287	
% living below poverty	0.013	0.044	0.778	
Public Defender System	-0.188	0.144	0.204	
% of pop. in correctional institution	-0.038	0.031	0.238	
Political Orientation	0.006	0.004	0.128	
# of violent crimes per 1000 people**	0.112	0.039	0.009	
# of property crimes per 1000 people	-0.002	0.003	0.620	
# of drug arrests per 1000 people **	0.062	0.019	0.005	
% of county budget deficit/surplus	0.001	0.004	0.681	
% of county budget spent on L&J**	-0.022	0.008	0.012	
n=3,366				

* significant at $\alpha = .10$ ** significant at $\alpha = .05$ *** significant at $\alpha = .001$

Statistically significant coefficients in the HLM regression analysis should be interpreted

as percent changes because the dependent variable (that is, the total dollar value of assessed fines and fees) is logged. The results indicate that drug convictions carried fines and fees that were on average 34 percent higher than those associated with violent convictions. Going to trial raised fine and fee assessment by 27.9 percent. For each additional point scored on SRA, the total amount of fines and fees assessed increased by 1.6 percent. Ethnicity is also a significant predictor of fine and fee assessment. Specifically, defendants of Hispanic ethnicity were assessed 4.8% higher fines and fees than non-Hispanic whites. The results also indicate that gender plays a salient role in the amount of fines and fees assessed: male defendants were assessed 3.7 percent higher fees and fines than females.

Several county level factors also have significant impact on LFO assessment. According to the HLM results, a population increase of 100,000 people was correlated with a 7 percent decrease in fines and fee assessment. That is, even after controlling for both defendant and other county characteristics, more populous counties imposed smaller fines and fees. The violent crime and drug arrest rates also impacted the fines and fees assessed in a county. Specifically, an additional violent crime or drug arrest per 1,000 residents was associated with an increase of 11.2 percent and 6.2 percent (respectively). Finally, the proportion of the budget a county devotes to law and justice impacts the assessment of fees and fines. Specifically, for each 1 percent increase in the proportion of the budget spent on law and justice, fine and fee assessment decreased by 2.2 percent.

APPENDIX E

INTERVIEW SAMPLE CHARACTERISTICS

Table E1 summarizes the demographic characteristics of the interview sample. Compared with those sentenced in Washington State Superior Courts and superior courts across the country in 2004, the interview sample included a larger share of black respondents (52 percent versus 13 percent of defendants sentenced in Washington State courts and 36 percent of those sentenced across the country). The gender distribution was nearly identical in all three samples. The typical age of those included in the interview sample was greater than the age of those sentenced in Washington State Superior Courts and U.S. felony courts, presumably because the interview sample included people whose conviction occurred both recently and in the distant past.

TABLE E1. DEMOGRAPHIC CHARACTERISTICS OF LFO INTERVIEW SAMPLE, DEFENDANTS SENTENCED IN WASHINGTON STATE SUPERIOR COURTS AND U.S. FELONS			
	LFO Interview Sample	WA State Felons (2004)	U.S. Felons (2004)
Race/Ethnicity			
Black	52%	13%	36%
White	36%	72%	59%
Other	12%	5%	3%
Gender			
Male	82%	81%	82%
Female	18%	19%	18%
Age (median)	37	31	32

Sources: State felon statistics based on authors' analysis Washington State Sentencing Guidelines Commission and Administrative Office of the Courts. National data includes those convicted of felonies in state superior courts across the United States and were taken from the U.S. Dept. of Justice, Bureau of Justice Statistics. National Judicial Reporting Program, 2004.

Note: Whereas the Washington State court data is a sample of convictions, the national data is a sample of individuals.

APPENDIX F

FEDERAL POVERTY THRESHOLDS

Number of children	Single/Divorced	Married/Co-Habiting
0	\$10,488	\$13,500
1	\$13,896	\$13,896
2	\$16,242	\$20,444
3	\$20,516	\$24,054
4	\$23,691	\$26,938
5	\$26,434	\$30,172

Source: U.S. Census Bureau poverty thresholds, available online www.census.gov/hhes/www/poverty/threshold/thresh06.html.

This Research Report on the assessment and consequences of legal financial obligations in Washington State courts was commissioned by the Washington State Minority and Justice Commission and its Research Sub-committee. The research was conducted and this report was written by Dr. Katherine A. Beckett, Ph. D., Associate Professor, and Dr. Alexes M. Harris, Ph. D., Assistant Professor, Department of Sociology, University of Washington, and Ms. Heather Evans, Research Assistant, Department of Sociology, University of Washington.

WASHINGTON STATE MINORITY AND JUSTICE COMMISSION

MEMBERS

Justice Charles W. Johnson
Co-chair, Washington State Supreme Court

Justice Charles Z. Smith (retired)
Co-chair, Washington State Supreme Court

Jeffrey A. Beaver
Attorney at Law
Graham and Dunn

Judge LeRoy McCullough
King County Superior Court

Professor Robert C. Boruchowitz
Seattle University School of Law

Judge James M. Murphy (retired)
Judicial Mediation Group

Ms. Myrna I. Contreras
Attorney at Law
Contreras Law Offices

Judge Vance W. Peterson
Spokane County District Court

Judge Deborah D. Fleck
King County Superior Court

Professor Ada Shen-Jaffe
Seattle University School of Law

Ms. Bonnie J. Glenn
Deputy Chief of Staff
King County Prosecutor's Office

Jeffrey C. Sullivan
Chief of the Criminal Division
United States Department of Justice

Judge Richard A. Jones
United States District Court
Western District of Washington

Judge Greg D. Sypolt
Spokane County Superior Court

Judge Kenneth H. Kato (retired)
Court of Appeals

Ms. Brenda E. Williams
Tribal Court Public Defense Clinic
University of Washington School of Law

Dean Sandra E. Madrid, Ph.D.
Students and Community Development
University of Washington School of Law

Judge Mary I. Yu
King County Superior Court

Judge Dennis D. Yule
Superior Court of Benton-Franklin Counties

WASHINGTON STATE MINORITY AND JUSTICE COMMISSION

TECHNICAL SUPPORT MEMBERS

Professor Bryan L. Adamson
Associate Professor of Law
Seattle University School of Law

Ms. Amalia C. Maestas
Office of Legal Counsel
Muckleshoot Indian Tribe

Alexander A. Baehr
Partner, Labor & Employment Group
Dorsey & Whitney LLP

Ms. Denise C. Marti
Attorney at Law

Ms. Ann E. Benson
Directing Attorney, Immigration Project
Washington Defender Association

Judge Richard F. McDermott, Jr.
King County Superior Court

Judge Donald J. Horowitz (retired)
Access to Justice Technology
Bill of Rights Committee
Washington State Access to Justice Board

Ms. Rosa M. Melendez
Regional Director
Community Relations Service
United States Department of Justice

Uriel Iñiguez
Executive Director
State of Washington
Commission on Hispanic Affairs

Ms. Karen W. Murray
Attorney at Law
Associated Counsel for the Accused

Ms. Yemi Fleming Jackson
Corporate Counsel
T-Mobile USA, Inc.

Ms. Carllene M. Placide
Partner, Labor & Employment Group
Dorsey & Whitney LLP

Eric A. Jones
Attorney and Counselor at Law
Emmaus Consulting PLLC

Ms. P. Diane Schneider
Senior Conciliation Specialist
Community Relations Service
United States Department of Justice

Judge Douglas W. Luna
Central Council Tlingit and
Haida Indian Tribes of Alaska

Ms. Nancy K. Scott
County Clerk
Skagit County Superior Court

Judge Vicki J. Toyohara
Office of Administrative Hearings
Employment Securities Subdivision

