

Poor offenders must be asked if they can afford to pay fines, state Supreme Court says

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Justices cite concerns over courts that impose fines and fees on poor defendants, saying it impedes their ability to re-enter society and adds to recidivism. Courts are to strongly consider waiving fines for indigent defendants, the justices instructed.

By [Mike Carter](#)

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The state Supreme Court, citing the burden imposed on poor defendants by uncollectable court fees and fines, has reiterated that judges must ask about a defendant's ability to pay so-called "legal financial obligations" (LFO), and not impose them if they can't be paid.

The justices found the state's LFO system "carries problematic consequences" for poor offenders, can impede their ability to re-enter society and can contribute to recidivism.

The high court [sent two cases back](#) to Pierce County for resentencing based on findings that sentencing judges, at the prosecutor's request, imposed costs, fees and fines of more than \$3,300 in one instance and \$2,200 in another without first determining whether either man could pay.

The justices said state law requires such an inquiry but cited "significant disparities" in its application as one reason for issuing the ruling. Indeed, the court went out of its way to address the subject, deciding to take the appeal on an issue not initially raised by the men's attorneys.

The justices instructed the courts to strongly consider waiving fines for indigent defendants.

LFOs are imposed to cover such costs as victim-impact fees, and the costs of the courts' resources, extradition and legal fees. They can amount to several thousand dollars and are imposed in addition to restitution.

Jennifer Dobson, the attorney in the case, said LFOs have routinely been used in Washington without an inquiry and that judges routinely impose "boilerplate" fines at prosecutors' request. Thursday's ruling, she said, makes it clear that is no longer acceptable.

"I argued that is has been a legal fiction," Dobson said. "This ruling will change that."

John Sheeran, the chief of the Criminal Division at the Pierce County Prosecutor's Office, expects a spike in appeals from defendants who have been given LFOs. He also said the issue may not be dead, because there is lower-court case law that some costs are mandated regardless of ability to pay.

"The court is sending a very, very clear message that judges have a duty to inquire into the ability of a defendant to pay fines and court costs before they are imposed," said Vanessa Hernandez, a staff attorney for the American Civil Liberties Union (ACLU) of Washington, which filed a supporting "friend of the court" brief in Dobson's case.

The justices cited [a 2010 study](#) by the national ACLU that looked at LFOs in five states, including Washington. It found serious problems, including incidents where [people have been jailed](#) for not being able to pay court-imposed fines.

Considering recent news out of Ferguson, Mo., where the Department of Justice found the courts were being used to raise revenue on the backs of minorities and the poor, the practice of routinely imposing LFOs in Washington "causes us deep concerns," the court said.

Justice Barbara Madsen, writing for the majority, found "Significant disparities ... exist in the administration of the LFOs in Washington.

"For example, drug-related offenses, offenses resulting in trial, Latino defendants, and male defendants all receive disproportionately high LFO penalties," Madsen pointed out.

“Additionally, counties with smaller populations, higher violent crime rates, and smaller proportions of their budgets spent on law and justice assess higher LFO penalties than other Washington counties.”

The Washington ACLU and Columbia Legal Services followed the national ACLU report with a [February 2014 report](#) focused on Washington, concluding that in some instances LFOs in Washington create a modern-day “debtor’s prison” and that they disproportionately punish poor offenders.

The justices found the inability to pay outstanding fines makes it harder for impoverished offenders once they leave prison and try to re-enter society, and can contribute to recidivism.

Even offenders who attempt to pay minimal amounts find themselves saddled with mounting debt because interest can reach 12 percent. The court noted that, on average, a person who can pay just \$25 a month toward his or her fines will owe more 10 years after conviction than he or she did when the fines were imposed.

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