

No. 38514-7-II

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**IN THE COURT OF APPEALS**  
**OF THE STATE OF WASHINGTON**  
**DIVISION TWO**

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**State of Washington,**

**Plaintiff/Respondent,**

**v.**

**Keith Nash,**

**Defendant/Appellant.**

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**Amici Curiae Brief of the Washington Defender Association,  
American Civil Liberties Union of Washington, and Columbia Legal  
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## **I. INTEREST OF AMICI CURIAE**

The interest of Amici in the current matter is set forth in Amici's Motion for Leave to File Amici Curiae Memorandum, filed herewith.

## **II. ISSUES ADDRESSED BY AMICI**

1. Whether courts must apply a "manifest hardship" test in determining whether remission of costs is appropriate.
2. Whether due process safeguards apply at a remission hearings.
3. Whether due process requires a meaningful examination of whether LFOs impose a manifest hardship.

## **III. STATEMENT OF THE CASE**

All persons convicted of felonies in Washington are assessed legal financial obligations (LFOs). RCW 9.94A.760. Certain fees are mandatory (see, e.g., RCW 7.68.035); all other LFOs are discretionary.<sup>1</sup> LFO debts quickly escalate because they accrue interest at 12% per annum from the date of imposition. RCW 10.82.090; RCW 4.56.110(4). Interest accrues during the term of incarceration, even though those who are incarcerated have no meaningful ability to pay. RCW 10.82.090.

Once LFOs are imposed, there are only limited ways in which a

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<sup>1</sup> Many courts routinely impose more than the mandatory minimum amount of LFOs. A 2008 study found that the median (typical) value of fees and fines assessed per felony conviction in 2004 was \$1,110 and that the mean (average) fee and fine amount assessed was \$1,406. Katherine A. Beckett, et al, Washington State Minority and Justice Comm'n, The Assessment of Legal Financial Obligations in Washington State 19 (2008), attached as Appendix A. This same study found that, three years post-sentencing, less than 20% of LFOs had been paid in roughly three quarters of the studied cases. Id. at 20.

person with LFOs can seek relief from debt.<sup>2</sup> One such way is for a debtor to move for a remission of costs. RCW 10.01.160. So long as the person is not in contumacious default of his or her LFOs, “the court may remit all or part of the amount due in costs or modify the method of payment” of LFOs where “the amount due will impose manifest hardship on the defendant or the defendant’s immediate family.” RCW 10.01.160(4).

Appellant Nash was ordered to pay \$3,976 in LFOs, the majority of which are costs subject to remission (no restitution was ordered). Appellant’s Opening Brief (AOB) at 3; State’s Response Brief (RB) at 1. With interest accruing at 12% per annum from the date of his sentencing, Mr. Nash’s LFOs have now exceeded \$8,000. AOB at 8.

Homeless and unemployed following his release from prison, Mr. Nash filed a pro se motion to waive or terminate his LFOs. AOB at 6. The hearing Mr. Nash was afforded was extraordinarily brief, taking up just over four pages of transcript. RP at 3-6. Mr. Nash conveyed to the court that he was homeless, unemployed, and had medical issues. Id. at 4. The court asked one question confirming his unemployment. Id. at 5. The court did not inquire further regarding Mr. Nash’s medical or mental

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<sup>2</sup> LFOs may not be discharged through bankruptcy. State v. Cunningham, 116 Wn. App. 946, 948, 69 P.3d 358 (2003) (citing 11 U.S.C. § 523(a)(7)). Under certain circumstances, a court may waive or reduce LFO interest. RCW 10.82.090. Although the case at bar focuses on the separate process of moving for a remission of costs allowed under RCW 10.01.160 rather than a reduction or waiver of interest, the due process protections articulated herein apply to all proceedings related to LFOs. See infra § IV.B.

health problems, homeless status, or any other facts related to the claimed hardship. Id. at 3-6. Nor did the court inquire into Mr. Nash's ability to engage in an alternative method of payment, such as community service. Id. With this dearth of evidence, the court acknowledged Mr. Nash's current financial difficulties but reasoned that the facts presented did not mean his "circumstances won't change sometime in the future." RP 6-7. The court then denied Mr. Nash's motion. Id.

With that motion resolved, the court proceeded to hear additional motions filed by Mr. Nash. During those deliberations, Mr. Nash was finally given an opportunity to relay to the court that he was having difficulty finding employment due to employers having a "zero tolerance policy" for sex offenders. Id. at 18. He further explained to the court that he is a disabled veteran, which he referenced in regard to his difficulties finding employment. Id. at 7; see also id. at 9 ("I'm physically disabled"); id. at 18 ("my disability really affects me"; referencing working with the Veterans Administration to obtain social security benefits). He also attempted to describe his efforts to seek mental health treatment and public benefits. Id. at 9-10 (describing an inability to obtain treatment and remarking that he "wasn't mentally fit to be able to obtain some kind of remedies for a steady income"); id. at 12 (describing an attempt to seek treatment). Had the court made an inquiry from the bench during the

hearing on Mr. Nash’s remission motion, it could have considered these details and requested further information.<sup>3</sup> It may have, for instance, inquired as to the extent of Mr. Nash’s income, and learned that he survived off of no more than \$127 in food stamps and had no other money. See Appendix B. It also may have learned that he had two dependent, minor children. Id. Instead, the court decided the motion for remission based on almost no information at all.

#### **IV. ARGUMENT**

##### **A. “Manifest Hardship” Is the Proper Test at a Remission Hearing**

##### **1. Trial Courts Need Clarification of the Standard at Remission Hearings**

RCW 10.01.160 plainly states that the test to be employed by a court when considering whether to remit LFO costs: whether the LFO debt causes a “manifest hardship” on the movant or his or her immediate family. However, this case and the results of a survey conducted by Amici Washington Defender Association (WDA) make clear that there is confusion in the lower courts regarding which test should be applied at which stage of LFO proceedings.

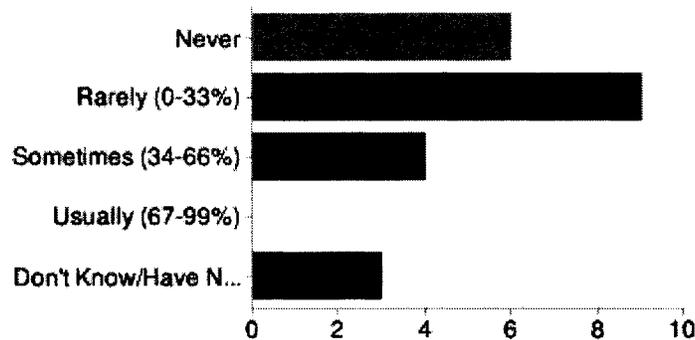
In this case, the lower court applied a “future likelihood” test at

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<sup>3</sup> The State did not dispute the information provided by Mr. Nash. Rather, the prosecutor acknowledged that it was difficult for sex offenders to obtain education and training and surmised that she could “think of some [job], you know, construction or holding onto a road sign or something or flaggers, whatever they are called.” RP at 16-17.

Mr. Nash’s remission hearing, rather than the manifest hardship test required by RCW 10.01.160. In anticipation of this brief, WDA surveyed indigent defenders, generating responses from sixteen jurisdictions, including Washington’s most populous counties. Almost 70% of the responding attorneys reported that their courts rarely if ever reduce or waive LFO payments post-conviction, and no attorneys reported that this was a usual occurrence.

Is your court willing to reduce/waive payments post-conviction?



Source: WDA survey of members regarding LFO enforcement

The results of the WDA survey suggest that the lower courts are not applying the proper test in remission hearings. The likelihood that a manifest hardship exists in a significant number of cases is borne out in the results of a 2008 study conducted by the University of Washington for the Washington State Minority and Justice Commission. Beckett, supra note 1. The study documented significant reentry barriers faced by those owing LFOs and their families. As detailed in the report:

[L]egal 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 ... it may also increase repeat offending.

Id. at 74. A survey conducted as part of the study shows the deleterious effect LFOs have on individuals and their families. Less than half of those surveyed were employed and reported that their efforts to find employment were significantly hampered by their criminal records. Id. at 30, 32-33. Over a quarter of those surveyed were living in unstable housing or were homeless. Id. at 30, 33-34. People are forced to choose between paying their LFO debt and paying for things like access to a shower while homeless or rent and groceries for their families. Id. at 34.

## **2. There Is a Distinct Test for Each Type of LFO Hearing**

Given the high likelihood that LFO debt does create manifest hardship, the infrequency by which the lower courts grant remission, and the example provided by this case, there appears to be confusion in the lower courts regarding the standard to employ at a remission hearing. Therefore, Amici take this opportunity to detail which test is applicable at the three types of LFO proceedings: sentencing, revocation, and remission.

Sentencing: When the decision of whether to impose LFOs is made

at sentencing, the court is directed that it “shall not order a defendant to pay costs unless the defendant is or will be able to pay them,” taking into account “the financial resources of the defendant and the nature of the burden that payment of costs will impose.” RCW 10.01.160(3).

Therefore, at sentencing, the court may consider whether there is a future likelihood that the defendant’s indigency will end, allowing him or her to pay LFOs.<sup>4</sup> Fuller v. Oregon, 417 U.S. 40, 45, 94 S.Ct. 2116 (1974); State v. Barklind, 87 Wn.2d 814, 817, 557 P.2d 314 (1977).

Revocation: When the state moves to revoke a defendant’s community custody for failure to pay LFOs, the court is directed to “inquire into the reasons for the failure to pay.” Bearden v. Georgia, 461 U.S. 660, 672, 103 S.Ct. 2064 (1983); see also State v. Nason, --- P.3d ---, 2010 WL 2306426 (June 10, 2010); Barklind, 87 Wn.2d at 817. If the

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<sup>4</sup> As with remission hearings, the WDA survey reveals problems related to the application of this test at sentencing. Over half of the responding attorneys reported that indigent clients were sentenced to LFOs despite evidence showing that a future ability to pay is unlikely.

Further, one of the Sentencing Reform Act’s goals is to ensure that offenders who commit similar crimes and have similar criminal histories receive equivalent sentences. Washington State Sentencing Guidelines Comm’n, Adult Sentencing Manual, I-vii (2008), [http://www.sgc.wa.gov/PUBS/Adult\\_Manual/Manual\\_2008\\_Section\\_1.pdf](http://www.sgc.wa.gov/PUBS/Adult_Manual/Manual_2008_Section_1.pdf); RCW 9.94A.010(1)-(3). Despite this goal, LFOs vary greatly by “gender and ethnicity, charge type, adjudication method, and the county in which the case is adjudicated and sentenced.” See Beckett, supra note 1 at 32. For example, the median fines and fees per conviction in King County is \$600, while Clark and Whitman Counties assessed penalties of \$2,170 and \$7,049 respectively. Id. at 22-24. Offenders with identical SRA scores and identical convictions received LFOs ranging from \$600 in King County to \$6,170 in Lewis County. Similarly-situated offenders from Spokane County and Clark County received LFOs of \$500 and \$1,970 respectively. Id. at 24. What was intended to be a system where people who commit similar offenses are treated equally instead has resulted in wide disparities that bear no rational connection to the offender’s conduct. Id. at 69.

person's failure to pay is willful, probation may be revoked; if it is not, "the court must consider alternate measures of punishment other than imprisonment."<sup>5</sup> Bearden, 461 U.S. at 672.

Remission: When an individual with LFOs files a motion seeking remission, the appropriate inquiry is whether the LFOs have resulted in a "manifest hardship" to the movant or his or her family. RCW 10.01.160(4). As detailed in Fuller and its progeny, this is a separate inquiry from the "future likelihood" test employed at sentencing. As the Fuller Court explained, at sentencing the court may impose a "conditional obligation" to pay LFOs based upon the future likelihood of being able to make such payments. 417 U.S. at 46. Subsequently, "the obligation to repay the State accrues only to those who later acquire the means to do so without hardship." Id.<sup>6</sup>; see also Barklind, 87 Wn.2d at 817.<sup>7</sup> In other words, "[t]hose who remain indigent or for whom repayment would work 'manifest hardship' are forever exempt from any obligation to repay."

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<sup>5</sup> Again, the WDA survey reveals concerning information regarding the lower court's analysis at revocation hearings, particularly in certain jurisdictions. While defenders practicing in Whatcom and King Counties report that courts rarely, if ever, incarcerate defendants for failure to pay LFOs, public defenders practicing in Pierce, Spokane and San Juan Counties report that incarceration is frequent, if not automatic.

<sup>6</sup> Following Fuller, the Oregon court explicitly declared that the remission statute at issue in Fuller (which is practically identical to RCW 10.01.160) required a manifest hardship analysis and that the test employed at sentencing to decide whether LFOs should be part of a sentence was "inapposite by its terms." Hernandez-Reyes v. Lampert, 178 Or. App. 76, 80-81, 35 P.3d 1066 (2001).

<sup>7</sup> Cf. State v. Blank, 131 Wn.2d 230, 253, 930 P.2d 1213 (1997) (analyzing RCW 10.73.160(4) regarding remission of appellate costs and explaining that the consideration of remission requires a manifest hardship test based on the circumstances of the movant at the time of the remission motion).

Fuller, 417 U.S. at 53.

The lower court erred by applying the test for sentencing a defendant to LFOs (which allows the court to look to “future likelihood” of ability to pay) rather than the test for determining manifest hardship (which requires the court to look at an individual’s actual and current financial situation). See Barklind, 87 Wn.2d at 817 (“The trial court order specifically allows the defendant to petition the court to adjust the amount of any installment or the total amount due to fit his changing financial situation.”).<sup>8</sup> See also Fuller, 417 U.S. at 54 (upholding Oregon’s LFO statute because it is “tailored to impose an obligation only upon those with a foreseeable ability to meet it, and to enforce that obligation only against those who actually become able to meet it without hardship”).

In short, the U.S. Supreme Court, Washington Supreme Court and Washington’s statutes are all aligned: the appropriate test at a remission hearing is manifest hardship to the movant or his or her family. Mr. Nash’s case demonstrates the need for this court to again enunciate and make clear the correct standards to apply in remission hearings.

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<sup>8</sup> The State argues that the “future likelihood” test was properly applied by the lower court. RB at 21. However, in doing so, the State cites to the very language in Barklind in which the court describes the application of that test at sentencing, and the current financial situation inquiry at remission. The State further confounds the three separate inquiries by relying at times on cases involving sentencing considerations (e.g., RB at 15 (citing State v. Mayer, 120 Wn. App. 720, 86 P.3d 217 (2004)), or involving revocation hearings (e.g., RB at 14 (citing State v. Woodward, 116 Wn. App. 697, 67 P.3d 530 (2003)); *id.* at 15 (citing State v. Gropper, 76 Wn.App. 882, 888 P.2d 1211 (1995)).

**B. Due Process Safeguards Apply at Remission Hearings**

In analyzing whether a manifest hardship exists, due process protections must be afforded. It is a bedrock principle of American law that due process requires adequate and meaningful process at all stages of criminal proceedings, both before and after conviction. See, e.g., Ake v. Oklahoma, 470 U.S. 68, 76, 105 S.Ct. 1087 (1985) (listing line of pretrial and post-trial criminal and quasi-criminal cases in which the Court ruled that due process required meaningful procedure); Gagnon v. Scarpelli, 411 U.S. 778, 781, 93 S.Ct. 1756 (1973) (parole processes are not part of a trial-level criminal prosecution but still require due process protections). This includes proceedings related to LFOs. See, e.g., Bearden, 461 U.S. at 666 n.8 (the due process clause applies to revocation proceedings).

In its response, the State argues that due process need not apply to remission hearings because the hearing is not initiated by the State. RB at 4, 8-12, 20. In fact, longstanding U.S. Supreme Court precedent requires the application of due process protections even where the defendant—rather than the State—initiates post-conviction proceedings. See, e.g., Griffin v. Illinois, 351 U.S. 12, 18, 76 S.Ct. 585 (1956) (due process applies to post-conviction appeal initiated by defendant).

While the State may try to distinguish this precedent by parsing out criminal appeals from remission hearings, the case for due process

protections in the remissions process is even stronger than for appellate review. The Court has found that due process protections apply to appellate review because, though such review is not constitutionally required, it had become “an integral part” of the trial system. Id. at 18 (appellate review is integral, and “[c]onsequently at all stages of the proceedings the Due Process and Equal Protection Clauses protect persons like petitioners from invidious discriminations”).

Remission hearings, in contrast, are not just integral, but constitutionally required where a state chooses to impose LFOs. Washington’s LFO sentencing and collection system is constitutional only because it provides an opportunity for a defendant to petition the court for remission. Blank, 131 Wn.2d at 244 (“A statute which imposes an obligation to pay the costs of court appointed counsel... which lacks any procedure to request a court for remission of payment violates due process.”); State v. Campbell, 84 Wn. App. 596, 600-601, 929 P.2d 1175 (1997) (analyzing the constitutionality of the system under Wash. Const. art. I, § 17). Therefore, while the State could eliminate remission hearings by eliminating the imposition of LFOs, so long as the State does impose LFOs, remission hearings must be offered. Fuller, 417 U.S. 44-46, 53 n.12; Smith v. Whatcom County Dist. Court, 147 Wn.2d 98, 111-12, 52 P.3d 485 (2002); Blank, 131 Wn.2d at 241-242; Campbell, 84 Wn.App. at

600-601. As such, due process protections must be afforded in remission hearings. See Griffin, 351 U.S. at 18.

**C. Due Process Requires a Meaningful Examination of Whether LFOs Impose a Manifest Hardship**

The touchstone of due process is fundamental fairness. Gagnon, 411 U.S. at 790. As such, a remission hearing only comports with due process if the hearing is meaningful. See, e.g., Burns v. United States, 501 U.S. 129, 137-138, 111 S.Ct. 2182 (1991) (“Notwithstanding the absence of express statutory language, this Court has readily construed statutes that authorize deprivations of liberty or property to require that the Government give affected individuals *both* notice *and* a meaningful opportunity to be heard.”) (emphasis in original); Ake, 470 U.S. at 77 (“Meaningful access to justice has been the consistent theme of” the Supreme Court’s due process cases).

The consideration of what safeguards are required to ensure remission hearings are in keeping with due process is a matter of first impression in this court, but a similar analysis has been undertaken in the revocation context. See, e.g., Bearden, 461 U.S. at 672; Smith, 147 Wn.2d at 492; Campbell, 84 Wn.App. at 601-602. While the standard employed in a revocation hearing is different from a remission hearing, see supra § IV.A.2, the procedures established in revocation cases provide guidance to

this court with respect to the timing of a remission hearing, the scope of the inquiry, the manner in which evidence is developed, and the options for relief if a manifest hardship is established.

### **1. Timing of a Remission Hearing**

A defendant owing LFOs consisting of non-restitution fees and costs may petition the sentencing court for remission at any time, so long as the movant is not in contumacious default of payment. RCW 10.01.160(4). Contrary to the State's suggestion (RB at 4, 8-12, 20), a defendant need not wait until the State is trying to jail him for non-payment to have a remedy from LFO payments he is unable to make.

Rather, a movant must be able to seek relief when a manifest hardship develops. For example, a change in the health of the movant or a family member could significantly and adversely affect the movant's ability to handle LFO debt. See Beckett, supra note 1 at 34 (for interviewees with LFO debt, "the challenges associated with poverty were compounded by significant health issues, family obligations, and difficulties in securing stable housing"). When circumstances arise that place people living in poverty on the edge of surviving or not, the availability of a remission hearing is critically important.

### **2. Scope of the Manifest Hardship Inquiry**

Regarding the scope of the inquiry, the court may look to the three-

part test utilized to analyze a defendant's failure to pay in the revocation context. Bearden, 461 U.S. at 672. In a revocation hearing a court must consider "ability to pay, bona fide efforts to acquire the resources to pay, and, if necessary, alternative measures other than imprisonment." Smith, 147 Wn.2d at 112. The first two prongs, which relate to the movant's current financial status, are equally relevant in the remission context, as they shed light on the level of hardship experienced by the movant and his or her family. These two prongs establish whether the inability to pay is due to indigency and an inability to readily obtain adequate funds through reasonable efforts. Bearden, 461 U.S. at 688.

The third prong, however, is inapposite in remission hearings, as imprisonment is not at issue. Instead, the relevant inquiry should be the effect the LFO burden has on the individual or his or her family to determine whether a manifest hardship exists.<sup>9</sup>

### **3. Manner in which Evidence Is Developed for the Court's Consideration**

The manner in which evidence is developed for the court's consideration is also a critical issue. It is in the interest of both the State and the movant to ensure that there is accurate fact finding to ensure that the movant is not forced further into poverty and that the State is not

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<sup>9</sup> For example, evidence that paying an LFO would make it untenable to pay necessary items such as child support, medical bills, or rent directly relate to the question of whether a manifest hardship exists.

“unnecessarily interrupting a successful effort at rehabilitation nor imprudently prejudicing the safety of the community.”<sup>10</sup> Gagnon, 411 U.S. at 785. Therefore, in this subsection Amici address the form of evidence, how evidence is generated for consideration, and the necessity that the evidence be sound.

With respect to the form of the evidence, the testimony of the movant may be sufficient, without an extensive or formal documentary record. See, e.g., Gagnon, 411 U.S. at 786 (noting that evidence could be presented through documents *or* witnesses); Campbell, 84 Wn.App. at 598 (basing revocation decision on statements by the LFO debtor regarding his monthly income and expenses).

Regarding the manner in which evidence is generated, it is incumbent upon the court to inquire from the bench and engage in additional fact finding to ensure the court has a full understanding of the movant’s circumstances. See Nason, --- P.3d---, 2010 WL 2306426 at \*4 (“Although the offender carries the burden, due process still imposes a duty on the court to inquire into the offender’s ability to pay.”); Smith, 147 Wash. 2d at 112 (placing the burden on the defendant “does not

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<sup>10</sup> According to the Washington State Minority and Justice Commission study, “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.” Beckett, supra note 1 at 12.

eliminate the court's duty to inquire"); Campbell, 84 Wn.App. at 601-602 (noting that "fact finding from the bench is probably warranted in low income cases"). The duty of the court to make an inquiry exists even though in a remission hearing (unlike in a revocation hearing) the movant has the burden to establish that a manifest hardship exists. See, e.g., Bearden, 461 U.S. at 672; Smith, 147 Wn.2d at 492.

The importance of an inquiry by the court is amplified in cases where the movant, like Mr. Nash, has difficulty expressing the factual basis for his manifest hardship. See RP at 4-21. Despite indications from Mr. Nash that should have prompted an inquiry from the bench regarding his physical and mental health problems, difficulty obtaining employment, and homelessness, the court did not inquire regarding his ability to pay, whether he had made bona fide efforts to seek resources, or the effect LFOs had on his or his family's well-being. Had the court made an attempt to flesh out whether a hardship did exist, the results of the remission hearing may have been quite different. The facts the court might have elicited did, after all, lead this court to find that Mr. Nash is indigent.

Although the extent to which the court must engage in an inquiry may vary from case to case depending upon the individual movant's abilities, see Gagnon, 411 U.S. at 779, it is likely that some questioning from the bench will be required to ensure an adequate basis for the court's

determination. According to the Department of Corrections, only 18% of offenders have a high school degree, only 47% have GED certificates, and only a small fraction test above the 9th grade level. Washington State Dep't of Corr., The DOC Re-Entry Initiative: Smart on Crime, at 4 (2006).<sup>11</sup> Additionally, many defendants struggle with mental health and substance abuse problems. Id. at 5. Absent pro bono assistance, movants for remission undoubtedly will appear before the court pro se, and may have difficulty presenting facts for the court's consideration. See Gagnon, 411 U.S. at 787. To ensure a proper basis for consideration, an inquiry from the bench will be necessary in most cases.

Finally, with regard to the need for the evidence before the court to be sound, it is critical that the court not consider nor engage in speculation. See Bearden, 461 U.S. at 673 (noting that the court commenting on "the availability of odd jobs such as lawn-mowing" did not equate to a finding that the individual had not made bona fide efforts toward employment). In this case, the State engaged in just such conjecture in commenting that Mr. Nash, a man recently released from a years-long prison term and with a felony child rape conviction on his record, with physical disabilities and possible mental illness, should be

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<sup>11</sup> Available at <http://www.doc.wa.gov/aboutdoc/docs/reentrywhitepaper.pdf>. See also RB at 19 n.4 (citing a Department of Justice report confirming the large percentage of criminal defendants who are indigent).

able to find employment in a construction or flagging job. RP at 16-17. The State produced no actual evidence of the availability of such a job at all (particularly in the current difficult economic environment), or specifically the availability of such a job for Mr. Nash.<sup>12</sup> Id. While the State certainly may introduce *evidence* to contradict allegations of a hardship, a prosecutor's off-hand speculation certainly does not equate to the fundamental fairness standards of due process.

#### 4. Nature of the Remedy

Where a court does find that a manifest hardship exists, "the court may remit all or part of the amount due in costs or modify the method of payment." RCW 10.01.160(4). As such, in addition to remission, "the sentencing court could extend the time for making payments ... or direct that the probationer perform some form of labor or public service in lieu of the fine." Bearden, 461 U.S. at 672.

If the court were to decide to extend the time for making payments or alter the monthly amount due, it should do so only after consideration

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<sup>12</sup> The State continues to engage in speculation in its response. It speculates that Mr. Nash must have had the ability to pay his LFOs because the prosecutor did not think he looked disabled, thought he showed some skill in writing his legal papers, and because he took a bus. RB at 16, 23-24. The practice of speculating about means defendants could use to pay their LFOs is not limited to Lewis County. For example, in a case out of Spokane County, the prosecutor asserted, "you can collect aluminum cans in order to pay your LFOs," even though it would require collection of over 300,000 cans to satisfy the defendant's LFO debt. State v. Nason, 146 Wn. App. 744, 192 P.3d 386 (2008), reversed in part, --- P.3d ---, 2010 WL 2306426 (June 10, 2010).

of the effect such a change would have on the ability of the movant to eventually eliminate his or her LFO debt. The Washington State Minority and Justice Commission study found that, given the accrual of interest at 12% per annum, even a regular \$25 payment each month over a 30 year period toward an average LFO debt<sup>13</sup> would result in an individual having nearly \$3,000 dollars more in additional debt than when the LFOs were assessed. Beckett, supra note 1 at 17-18. A monthly payment of \$10 per month over 30 years on the same amount would result in nearly \$55,000 in additional debt. Id. This problem regarding interest accrual does not apply where the court orders full or partial remission or allows a movant to engage in community service as a means of reducing his or her debt.

## V. CONCLUSION

As set forth above, the proper test courts must employ in remission hearings is whether legal financial obligations create a manifest hardship on the movant or his or her family. Due process applies to remission hearings and requires that the hearing and consideration of manifest hardship be meaningful.

To ensure remission hearings meet that standard, lower courts must allow a meaningful opportunity for the movant to be heard. First,

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<sup>13</sup> The average LFO debt of \$1,110 was calculated by including just fees and fines and excluding restitution and other costs assessed for costs of incarceration and community supervision. Beckett, supra note 1 at 17-18.

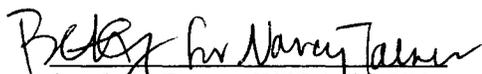
remission hearings must be available to any movant experiencing hardship resulting from LFO debt. Second, the court must analyze the movant's current ability to pay, bona fide efforts to secure resources to pay, and the effect the LFO burden has on the movant and his or her family. Third, the court must allow both testimonial and documentary evidence at the hearing, make its own fact finding inquiry from the bench that is sufficient to ensure a reasonable basis for its finding, and disallow speculation and conjecture. Finally, where the court finds that a manifest hardship does exist, the court may fully or partially reduce the imposed costs, change the terms of the LFO payments, or allow the movant to reduce the debt through community service. In determining the appropriate remedy, the court should consider the effect the remedy will have on the movant's ability to progress toward freedom from LFO debt. It is by engaging in these meaningful processes, that due process will be satisfied.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of June, 2010.

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# **APPENDIX A**

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

Report prepared for the Washington State Minority and Justice Commission

August 1, 2008

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## **ACKNOWLEDGEMENTS**

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## **EXECUTIVE SUMMARY**

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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 that are 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."<sup>1</sup> 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 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 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.

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<sup>1</sup> RCW 9.94A.760(4).

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 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.<sup>2</sup> The long term nature of the legal debt also prevents many with LFOs from applying to have their criminal record sealed, which in turn perpetuates their economic disadvantage.<sup>3</sup>

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.<sup>4</sup> 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

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<sup>2</sup> Chiricos et al 2007; Council of State Governments 2005; Urban Institute 2006.

<sup>3</sup> 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 (RCW9.94A.640).

<sup>4</sup> 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>).

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 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 turns 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.<sup>5</sup>

In summary, the evidence indicates that the assessment of LFOs holds some of those 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 legitimate<sup>6</sup>, 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.

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<sup>5</sup> 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).

<sup>6</sup> 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 the completion of sentence of confinement serves no clear penological purpose and is an impediment to rehabilitation and may increase recidivism.<sup>7</sup> We also believe that predicating 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.

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<sup>7</sup> See Uggen and Manza 2006; En Banc Brief Submitted on Behalf of Certain Criminologists as Amici 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](http://www.naacpldf.org/content/pdf/muntaqim/Criminologists_En_Banc_Amicus_Brief.pdf)

- 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

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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.<sup>8</sup> 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.”<sup>9</sup> The assessment of only one of these fees and fines – the \$500 Victim Penalty Assessment – is mandatory for all felony convictions.<sup>10</sup> 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.<sup>11</sup> Fines may be imposed at the courts’ discretion within certain guidelines.<sup>12</sup> Under statute, courts also require those whose criminal offense had monetary consequences for victims to pay restitution to victims unless extraordinary circumstances exist.<sup>13</sup> 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 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.”<sup>14</sup>

This report draws on a number of data sources to analyze patterns and variation in the

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<sup>8</sup> 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.”

<sup>9</sup> RCW 9.94A.760.

<sup>10</sup> RCW 7.68.035.

<sup>11</sup> RCW 10.01.160 (3).

<sup>12</sup> 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.

<sup>13</sup> RCW 9.94A.753.

<sup>14</sup> RCW 9.94A.760(4).

assessment of LFOs across 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 U.S. 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.<sup>15</sup> 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.<sup>16</sup> Since 1986, the number of felons sentenced in state courts has increased by over 240%.<sup>17</sup> Although Washington State's incarceration rate is lower than the national average,<sup>18</sup> 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.<sup>19</sup> Washington State's community supervision rate (2,155 per 100,000 residents in 2005) is among the highest in the nation.<sup>20</sup> By 2004, over one million adults were sentenced for a felony conviction in the state courts each year.<sup>21</sup> As a result, unprecedented numbers of

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<sup>15</sup> PEW Center on the States 2008.

<sup>16</sup> Bureau of Justice Statistics n.d

<sup>17</sup> Langan and Graziadei 1995; Durose and Langan 2005.

<sup>18</sup> 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).

<sup>19</sup> Washington State Institute for Public Policy 2003, Table 1.

<sup>20</sup> Glaze and Bonczar 2006.

<sup>21</sup> Durose and Langan 2005.

U.S. residents have a criminal conviction on their record.<sup>22</sup>

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.<sup>23</sup> 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 occupational attainment, employment prospects, income, and family life.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup>

In short, the collateral consequences of criminal conviction and incarceration enhance economic and social disadvantage among the convicted and exacerbate the many

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<sup>22</sup> 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).

<sup>23</sup> New York State Bar Association 2006.

<sup>24</sup> 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.

<sup>25</sup> Pager 2003, 2005, 2007.

<sup>26</sup> ACLU 2004; Manza and Uggen 2006.

<sup>27</sup> 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 14<sup>th</sup> 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.

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.<sup>28</sup> For example, incarceration increases the likelihood of divorce and separation, leaving many families more economically disadvantaged and unstable.<sup>29</sup> Moreover, the lost income that results from felony conviction affects entire families, including spouses and children.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup>

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

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

<sup>29</sup> Braman 2002; Bernstein 2005; Western 2006.

<sup>30</sup> Braman 2002; Bernstein 2005.

<sup>31</sup> Urban Institute 2006; Western 2006.

<sup>32</sup> 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.)

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 released from prison and community supervision.<sup>33</sup>

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,<sup>34</sup> 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 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

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<sup>33</sup> See, for example, ESSB 6157, effective July 22, 2007.

<sup>34</sup> 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).

operations fees. Municipal courts typically charge their own fees and fines.<sup>35</sup> 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.<sup>36</sup> Unpaid LFOs assessed by Washington State courts are also subject to an interest rate of 12 percent.<sup>37</sup> 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 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.

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<sup>35</sup> Ruback et al 2006.

<sup>36</sup> Rosenthal and Weissman 2007.

<sup>37</sup> 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.)

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

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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.<sup>38</sup> 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 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.

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<sup>38</sup> 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.

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.<sup>39</sup> 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.”<sup>40</sup> 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.

#### **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.<sup>41</sup> 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).<sup>42</sup>

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<sup>39</sup> See Perkins 1996; Word and Perkins 1993.

<sup>40</sup> 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.

<sup>41</sup> 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).

<sup>42</sup> 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.

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.<sup>43</sup> 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.

	<b>Median</b>	<b>Mean</b>	<b>Minimum</b>	<b>Maximum</b>
<b>Violent Offenses (n=295)</b>				
Fees & Fines	\$935	\$1,257	\$500	\$10,130
Restitution	0	\$4,187	0	\$254,165
<b>Drug Offenses (n=111)</b>				
Fees & Fines	\$1,647	\$1,923	\$500	\$21,110
Restitution	0	\$146	0	\$12,660
<b>Other Offenses (n=100)</b>				
Fees & Fines	\$1,010	\$1,134	\$500	\$11,960
Restitution	0	\$1,402	0	\$173,386
<b>All Convictions (n=366)</b>				
Fees & Fines	\$1,110	\$1,406	\$500	\$21,110
Restitution	0	\$1,232	0	\$254,165

Source: Washington State Guideline 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

<sup>43</sup> 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.

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.

<b>TABLE 2. LFO REPAYMENT, WASHINGTON STATE SUPERIOR COURT CONVICTIONS 2004 – 2007</b>				
<b>Percent of Fees &amp; Fines Paid</b>	<b>Percent of Convictions</b>		<b>Percent of Restitution Paid</b>	<b>Percent of Convictions</b>
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 Guideline 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.

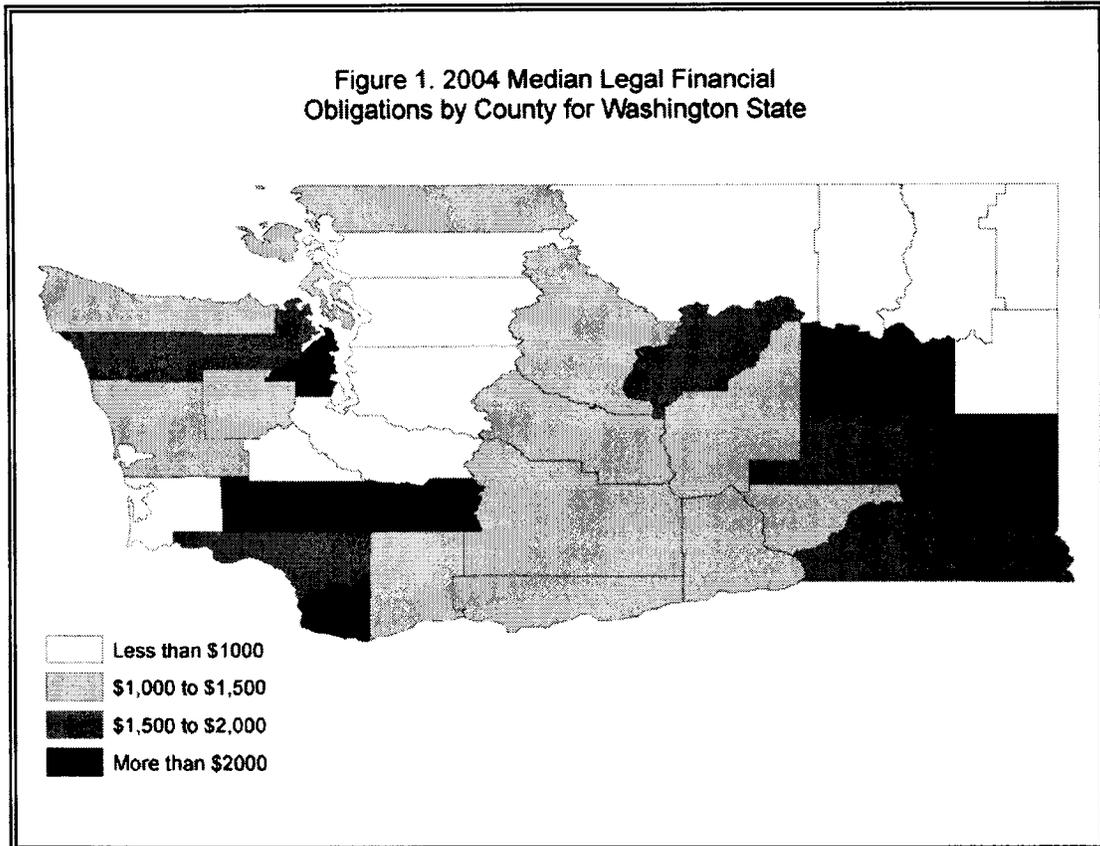
	<b>Monthly Payment: \$10</b>	<b>Monthly Payment: \$25</b>	<b>Monthly Payment: \$50</b>	<b>Monthly Payment: \$100</b>
Debt 5 years later	\$3,798	\$2,073	\$531	Paid in 30 months
Debt 10 years later	\$6,083	\$2,632	Paid in 72 months	0
Debt 15 years later	\$10,234	\$2,740	0	0
Debt 30 years later	\$56,362	\$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 – 1 <sup>st</sup> offense	8	Male	White	40	Guilty Plea	\$600	Pierce
Drug	Delivery or Possession with Intent – Meth – 1 <sup>st</sup> 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

Source: Washington State Guideline 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).<sup>44</sup> The results of this analysis identify which of the explanatory variables included in the model are significantly<sup>45</sup> associated with the dependent variable *holding all other variables included the model constant*. In other words, if the regression 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

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

<sup>45</sup> 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.

in Table 5. A detailed description of these variables and their measurement is included in Appendix C.

<b>TABLE 5. EXPLANATORY VARIABLES INCLUDED IN ANALYSIS</b>	
<b>Potential Explanatory Factors</b>	<b>Measure</b>
<b>Legal Characteristics</b>	
Seriousness of Offense & Offender	SRA Score
Offense Type	Violent, Drug and Other Offense
Adjudication Method	Plea vs. Trial
<b>Defendant Characteristics</b>	
Age	Age
Gender	Gender
Race/Ethnicity	Race/Ethnicity
<b>County Characteristics</b>	
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*.<sup>46</sup> 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*.

**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,

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<sup>46</sup> 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.

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
<b>Case Characteristics</b>		
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
<b>Defendant Characteristics</b>		
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
<b>County Characteristics</b>		
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.<sup>47</sup> 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.<sup>48</sup>

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

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<sup>47</sup> 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).

<sup>48</sup> 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).

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.<sup>49</sup> 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.<sup>50</sup> 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 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

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<sup>49</sup> 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.

<sup>50</sup> 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.

capacity of state residents with criminal histories to obtain restoration of their civil rights.<sup>51</sup>

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.

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<sup>51</sup> 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.<sup>52</sup> The main themes—recurring experiences and reactions—were then identified. The results of the interviews are described below.

## **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

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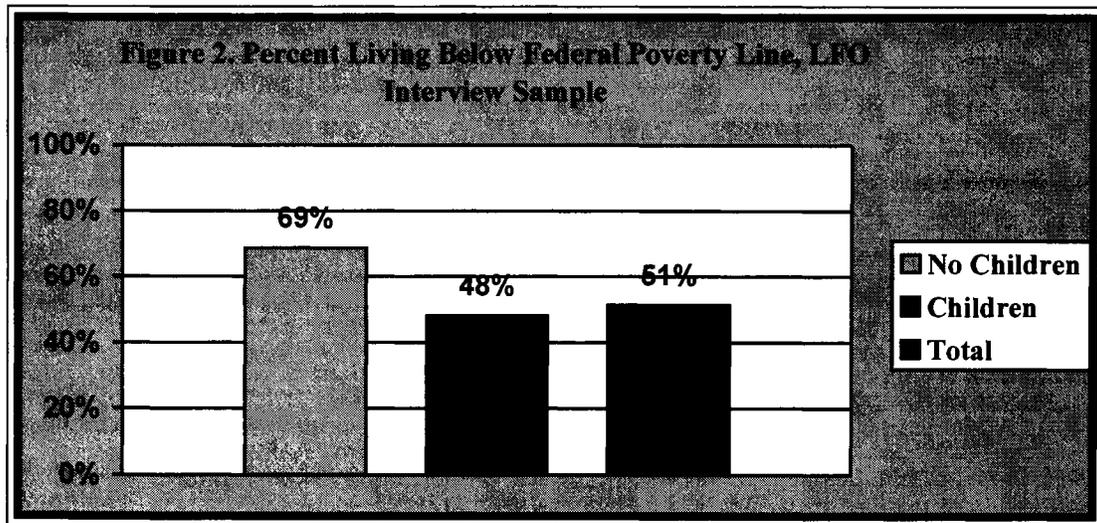
<sup>52</sup> The interview data were analyzed in the following manner. First, the transcriptions were coded by the two lead researchers for main themes, concepts and events. These are the themes that appeared frequently or seemed particularly salient to the interview subjects. Once the codes were created, 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.

incarcerated.

<b>TABLE 7. LFO INTERVIEW SAMPLE, SOCIAL AND FINANCIAL CHARACTERISTICS</b>	
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.<sup>53</sup> 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.”<sup>54</sup> Nationally, nearly 60 percent of all jail inmates report pre-arrest incomes of under \$1000 a month.<sup>55</sup> 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.<sup>56</sup> For example, more than one-third (37 percent) of jail inmates report living with a physical or mental disability.<sup>57</sup> 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.<sup>58</sup> Approximately the same proportion of female prisoners are mothers of young children.<sup>59</sup> 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 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 whom 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-

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<sup>53</sup> Pettit and Western 2004; Western 2006.

<sup>54</sup> Western 2006: 101.

<sup>55</sup> BJS 2004.

<sup>56</sup> Lurigio 2001.

<sup>57</sup> BJS 1998.

<sup>58</sup> Western 2006: 137.

<sup>59</sup> BJS 1999.

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.*

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*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.*

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*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.*

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*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.*

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*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.*

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*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.*

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*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.*

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*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...*

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*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.*

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*\$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.*

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*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.*

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*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.*

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*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.<sup>60</sup> 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.*

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<sup>60</sup> 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%) as "community property interest."

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

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*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.*

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*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... .*

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*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.*

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*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.*

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*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?*

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*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.*

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*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.*

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*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.*

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*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.*

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*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.<sup>61</sup> In this context, the idea of avoiding work or returning to criminal activity appeared to some to be a rational course of action.

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

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<sup>61</sup> 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.

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.*

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**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...*

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*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.*

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**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).<sup>62</sup>

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.*

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<sup>62</sup> 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.

*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 eliminating debt (officially known as the “pay or stay” option):<sup>63</sup>

*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.<sup>64</sup>

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<sup>63</sup> 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)).

<sup>64</sup> 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.

Criminal justice consequences for non-payment were not restricted to those still under 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.<sup>65</sup> 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.*

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**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.*

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<sup>65</sup> 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.<sup>66</sup> It is unclear from these accounts whether the “pay or stay” option is used to punish non-payment or to reduce LFOs.<sup>67</sup> 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 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.<sup>68</sup> Although some respondents reported that they were able to reduce

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<sup>66</sup> 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.

<sup>67</sup> 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.”

<sup>68</sup> 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

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 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:

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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>).

*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.*

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*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:<sup>69</sup>

***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?*

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<sup>69</sup> 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."

**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."*

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*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?<sup>70</sup>*

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

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

obligations. However, the remainder reported they did not receive monthly statements, which led to uncertainty about how much they owed:<sup>71</sup>

*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...*

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**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?*

**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.*

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**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?*

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<sup>71</sup> 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:** 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.

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**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...

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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.

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**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.*

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*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.*

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*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.*

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*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.<sup>72</sup>

### **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.<sup>73</sup> 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.<sup>74</sup> Incarceration also significantly reduces the already-limited earnings potential of the convicted.<sup>75</sup> 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

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<sup>72</sup> Uggen and Manza 2006.

<sup>73</sup> BJS 1998; BJS 2004; Western 2006.

<sup>74</sup> Kerley, Benson, and Cullen 2004; Pager 2003, 205, 2007.

<sup>75</sup> Western 2006.

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 the most important predictor of whether people pay their LFOs.<sup>76</sup>

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 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

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<sup>76</sup> Ruback et al 2006.

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**

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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.<sup>77</sup> In short, the financial consequences associated with conviction vary substantially, even across similar cases. There is also considerable variation in the

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<sup>77</sup> Washington Association of County Officials 2006, Table 7.

consequences of non-payment. It thus appears that the assessment of LFOs holds some of 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.<sup>78</sup> 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).<sup>79</sup> 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.<sup>80</sup> 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, 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

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<sup>78</sup> Washington Association of County Officials 2006, Table 13.

<sup>79</sup> Ibid.

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

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.<sup>81</sup> 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.

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<sup>81</sup> Washington Association of County Officials 2006.

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 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.<sup>82</sup> Indeed, the majority of those we interviewed

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<sup>82</sup> 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

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 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.<sup>83</sup> We also believe that

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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).

<sup>83</sup> See En Banc Brief Submitted on Behalf of Certain Criminologists as Amici 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](http://www.naacpldf.org/content/pdf/muntaqim/Criminologists_En_Banc_Amicus_Brief.pdf)

predicating the restoration of civil rights on the elimination of legal debt constitutes a particular burden, and 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.

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**APPENDIX A. WASHINGTON STATE SUPERIOR COURT LEGAL  
FINANCIAL OBLIGATIONS**

<b>TABLE A1. ALLOWABLE WASHINGTON STATE SUPERIOR COURT FINANCIAL OBLIGATIONS</b>			
Obligation Type	Amount Specified	Applicable Cases	RCW
<b>Penalties to Victims</b>			
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
<b>Fees/Costs Assessed at Conviction*</b>			
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 <sup>4</sup>	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	Vehicle 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
<b>Fines</b>			
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.

<b>TABLE B1. DEMOGRAPHIC CHARACTERISTICS OF SENTENCED FELONS, WASHINGTON STATE SUPERIOR COURTS</b>	
<b>Race/Ethnicity</b>	
Black	13%
White	68%
Latino/Hispanic	11%
Native American	2%
Asian/Pacific Islander	2%
"Other"	4%
<b>Gender</b>	
Male	81%
Female	19%
<b>Age (median)</b>	<b>33 years</b>

Source: Washington State Guideline 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.

	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.

<b>TABLE B3. MEDIAN AND MEAN FEES &amp; FINES BY COUNTY</b>			
<b>County</b>	<b>Number of Cases</b>	<b>Median Fee &amp; Fine</b>	<b>Mean Fee &amp; Fine</b>
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
<b>Washington State</b>	<b>3,366</b>	<b>\$1,110</b>	<b>\$1,406</b>

## 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.<sup>84</sup> 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.<sup>85</sup>

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.<sup>86</sup> 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.<sup>87</sup> 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* website.<sup>88</sup> Voting information is based on the 2000 Presidential election outcomes and was taken from the "The Federal Elections Project."<sup>89</sup> County budget data came from the Washington State Auditor, Local Government Financial Reporting System.<sup>90</sup>

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

<sup>85</sup> Frase and Weidner 2001, 2004; Helms and Jacobs 2002; Shepherd 2002.

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

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

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

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

<sup>90</sup> 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)
<b>Case and Individual Level Variables</b>				
SRA **	<b>0.016</b>	0.007	0.025	
Age	-0.000	0.001	0.842	
Gender **	<b>0.037</b>	0.011	0.001	females
Drug Offense***	<b>0.337</b>	0.089	0.000	violent
Other Non-violent Offenses	-0.007	0.029	0.800	violent
Trial **	<b>0.279</b>	0.108	0.010	Guilty plea
Race*				
Hispanic*	<b>0.048</b>	0.025	0.050	white
African American	-0.014	0.026	0.602	white
Asian*	<b>-0.039</b>	0.019	0.048	white
Other	-0.013	0.039	0.744	white
Native American	-0.028	0.040	0.481	white
<b>County Level Variables</b>				
Population '04 ***	<b>-0.007</b>	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**	<b>0.112</b>	0.039	0.009	
# of property crimes per 1000 people	-0.002	0.003	0.620	
# of drug arrests per 1000 people **	<b>0.062</b>	0.019	0.005	
% of county budget deficit/surplus	0.001	0.004	0.681	
% of county budget spent on L&J**	<b>-0.022</b>	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.

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

Sources: State felon statistics based on authors' analysis Washington State Guideline 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](http://www.census.gov/hhes/www/poverty/threshold/thresh06.html)

## **APPENDIX B**

Received & Filed  
LEWIS COUNTY, WASH  
Superior Court

OCT - 1 2008

Kathy A. Brack, Clerk  
By \_\_\_\_\_  
Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR LEWIS COUNTY

---

STATE OF WASHINGTON, ) Superior Court No. 98-1-00932-7  
Plaintiff, )  
 )  
v. ) MOTION AND DECLARATION  
 ) FOR ORDER AUTHORIZING THE  
 ) DEFENDANT TO SEEK REVIEW  
KEITH L. NASH, ) AT PUBLIC EXPENSE AND  
Defendant. ) PROVIDING FOR APPOINTMENT OF  
 ) ATTORNEY ON APPEAL

---

A. MOTION

COMES NOW the defendant and moves the Court for an order allowing the defendant to seek review at public expense and providing for appointment of attorney on appeal. This motion is based on RAP 2.2(a)(1) and is supported by the following declaration.

DATED this 29<sup>th</sup> day of September, 2008

Keith L. NASH Pro-Se

Attorney for Defendant

MOTION AND DECLARATION FOR  
ORDER AUTHORIZING THE DEFENDANT TO  
SEEK REVIEW AT PUBLIC EXPENSE AND  
PROVIDING FOR APPOINTMENT  
OF ATTORNEY ON APPEAL

**B. DECLARATION**

I was tried and convicted of Second Degree Rape before the Honorable Judge Draper. A judgment and sentence was entered in this matter on March 24, 1998. I desire to appeal the conviction and the judgment imposed. I believe that the appeal has merit and is not frivolous and make the following assignments of error: Court Abuse of Discretion, Ineffective Assistance of Counsel, Insufficient Evidence, Withholding Exculpatory Evidence, Denial Access to Court.

I have previously been found to be indigent. The following declaration provides information as to my current financial status:

- 1.) That I am the defendant in the above-captioned cause;
- 2.) That I do/do not own any real estate (if so, appraised value is approximately \$ 0.00 and rental income is \$ 0.00.);
- 3.) That I do/do not own any stocks, bonds, or notes (if so, value is approximately \$ 0.00.);
- 4.) That I am/am not the beneficiary of a trust account or accounts (if so, income therefrom is approximately \$ 0.00.);
- 5.) That I own the following motor vehicles or other substantial items of personal property:

ITEM	VALUE/AMOUNT OWED ON ITEM
<u>Not Applicable</u>	<u>N/A</u>
_____	_____
_____	_____

- 6.) That I do/do not have income from interest or dividends (if so, amount is approximately \$ 0.00);
- 7.) That I have approximately \$ 0.00 in checking account(s), \$ 0.00 in savings account(s), and \$ 0.00 in cash.);

MOTION AND DECLARATION FOR ORDER AUTHORIZING THE DEFENDANT TO SEEK REVIEW AT PUBLIC EXPENSE AND PROVIDING FOR APPOINTMENT OF ATTORNEY ON APPEAL

8.) That I am/am not married (if so, my spouse's name and address is:

Not Applicable

9.) That the following persons are dependent on me for their support:

NAME	RELATIONSHIP	AGE
<u>Kisharra Nash</u>	<u>Daughter</u>	<u>10</u>
<u>Lyric Nash</u>	<u>Daughter</u>	<u>11</u>
_____	_____	_____
_____	_____	_____

10.) That I have the following substantial debts or expenses:

NAME	AMOUNT OWED	MONTHLY PAYMENT
<u>Acute Care</u>	<u>\$192.00</u>	<u>What ever available</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

11.) That I am personally receiving public assistance from the following sources (or was until I was incarcerated):

AGENCY OR PROGRAM	AMOUNT OF ASSISTANCE
<u>(D&amp;S) Food Stamps</u>	<u>\$172.00 per month</u>
_____	_____
_____	_____

12.) That I am/am not employed (if so, take-home pay is approximately \$0.00 per month.);

13.) That I have no substantial income other than what is set forth above;

MOTION AND DECLARATION FOR  
ORDER AUTHORIZING THE DEFENDANT TO  
SEEK REVIEW AT PUBLIC EXPENSE AND  
PROVIDING FOR APPOINTMENT  
OF ATTORNEY ON APPEAL

14.) Other circumstances affecting my financial position include:

1) Homeless, 2) Disabled Veteran, 3) Medical Dept,  
4) Unemployed

15.) I authorize the court to obtain verification information regarding my financial status from banks, employers, or other individuals or institutions, if appropriate.

16.) That I will immediately report to the Court any change in my financial status which materially affects the Court's finding of indigency.

17.) I certify that review is being sought in good faith. I designate the following parts of the record which are necessary for review:

<input type="checkbox"/>	Pre-trial hearing	Date(s): <u>January</u> , 1999
		Judge(s): <u>Honorable Judge Draper</u>
<input type="checkbox"/>	Trial, excluding	Date(s): <u>February</u> , 1999
		Judge(s): <u>Honorable Judge Draper</u>
<input type="checkbox"/>	Post-trial hearing	Date(s): <u>January</u> , 2001
		Judge(s): <u>Court of Appeal Panel</u>
<input type="checkbox"/>	Sentencing hearing(s)	Date(s): <u>March 24</u> , 1999
		Judge(s): <u>Honorable Judge Draper</u>
<input checked="" type="checkbox"/>	Other: <u>Collateral Challenge</u>	Date(s): <u>September 17</u> , 2008
		Judge(s): <u>Honorable Judge Lawler</u>

18.) That the foregoing is a true and correct statement of my financial position to the best of my knowledge and belief.

MOTION AND DECLARATION FOR  
ORDER AUTHORIZING THE DEFENDANT TO  
SEEK REVIEW AT PUBLIC EXPENSE AND  
PROVIDING FOR APPOINTMENT  
OF ATTORNEY ON APPEAL

For the foregoing reasons, I request the Court to authorize me to seek review at public expense, including, but not limited to, all filing fees, attorney's fees, preparation of briefs, and preparation of verbatim report of proceedings as set forth in the accompanying order of indigency, and the preparation of necessary clerk's papers.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED in Vancouver, Washington this 29<sup>th</sup> day of September  
2008.

Keith R. Nash

FILED  
COURT OF APPEALS  
10 JUN 25 PM 1:05  
STATE OF WASHINGTON  
BY [Signature]  
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,  
  
Plaintiff/ Respondent,  
vs.  
KEITH NASH,  
  
Defendant/ Appellant.

No. 38514-7-II  
CERTIFICATE OF SERVICE

BETH A. COLGAN declares as follows:

I certify that on June 24, 2010, I caused to be served one copy of:

- Cover Letter
- Certificate of Service
- Motion to File Amici Curiae Brief of the Washington Defender Association, American Civil Liberties Union of Washington, and Columbia Legal Services
- Amici Curiae Brief of the Washington Defender Association, American Civil Liberties Union of Washington, and Columbia Legal Services

These documents were served by regular first class mail, postage prepaid, upon the parties to this action at the addresses listed below:

1 Eric Broman  
Nielsen, Broman & Koch, PLLC  
2 1908 East Madison  
Seattle, WA 98122

3  
4 Lori Ellen Smith  
Deputy Prosecuting Attorney  
Lewis County Prosecutor's Office  
5 345 W. Main Street, 2<sup>nd</sup> Floor  
Chehalis, WA 98532-1900

6  
7 Travis Stearns  
Deputy Director, WDA  
110 Prefontaine Pl. S., Suite 610  
8 Seattle, WA 98104

9 Sarah Dunne  
Nancy Talner  
10 ACLU of Washington Foundation  
705 Second Avenue, Suite 300  
11 Seattle, WA 98104

12  
13 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS  
TRUE.

14 Executed at Seattle, Washington on June 24, 2010.

15  
16   
17 \_\_\_\_\_  
18 BETH A. COLGAN, WSBA #30520