

# Chapter 15

## Legal Financial Obligations

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## I. Summary

Legal financial obligations (LFOs) have a long history in the United States, and their impact on individuals of different genders varies at different stages in the criminal legal system, from sentencing to reentry. LFOs find their roots in institutional racism, starting with convict leasing in the post-reconstruction South, and today they are levied at every level of trial court, throughout the United States. In Washington, trial courts fine individuals under criminal statutes, may require those individuals to pay the cost to prosecute and defend them, can charge them fees for such bureaucratic tasks as processing their DNA, may require forfeiture of assets, and can require individuals to pay restitution to victims.

While courts must sometimes ask whether an individual can actually afford to pay, many LFOs and certain fines are mandatory. For example, whether low-income or no-income, most people convicted of a felony will have to pay at least \$600. When a person is released from a period of incarceration, they can be punished and even returned to jail if they don't pay their LFOs. Those LFOs provide revenue to jurisdictions throughout Washington, many of which employ collection agencies—which then add surcharges—to collect LFO debt. As long as the debt remains, the LFO debtor stays under the court's jurisdiction; no matter their income or obligations, the court can require individuals to keep verifying their ability to pay. Thus, for many, LFOs are a life sentence.

While a great deal of LFO research exists, very little of that research examines the role gender plays in how LFOs are imposed and how individuals of different gender identities—binary and non-binary—are impacted by LFOs. Though this chapter refers to what little reported data there is regarding women and men, none of the data sources examined specified whether the binary gender references were to sex assigned at birth versus gender identity. Indeed, none of the twenty-five states that have provided data to the National Indexing Project on Fines and Fees collect information relating to gender. The data that is available suggests that men are sentenced to higher LFOs than women. However, significantly, the post-conviction LFO-related collateral consequences for women are substantial. Women reentering the community from a period of incarceration, many of whom are mothers, face tremendous obstacles in accessing employment, housing, healthcare, and public benefits. Moreover, women are often burdened with the LFOs of

individuals close to them. Overall, women may bear a disproportionate share of the post-conviction consequences flowing from LFOs. Given the paucity of LFO-related gender-specific data, more needs to be done to collect this information to allow conclusions beyond inferences and anecdotes.

In recent years, stakeholders have sought to reform how and how much Washington courts impose in LFOs. From legislation in 2018 eliminating the onerous 12% interest previously charged on non-restitution LFOs, to current efforts to provide more discretion to judges and more avenues for post-conviction LFO relief, advocates, judges, and legislators are making progress on LFO reform, though none of it is focused on gender disparities. With more data and more research, future reform efforts may be better-informed to address how LFOs impact individuals of various genders.

## II. LFOs Started in the Wake of the Civil War and Are Found Today Throughout the Criminal Legal System

LFOs have a long history in the United States, predating by decades the billions of dollars in legal debt many system-involved individuals face today. While fines have been a fixture of the U.S. legal system throughout the country's history, fees—i.e., LFOs not directly tied to a sanction available under a particular criminal statute—are a more recent phenomenon.<sup>1</sup>

For all of the Washington statutes allowing for imposition of LFOs, there is little in the way of a stated purpose for adding fines, fees, and costs to a sentence in a criminal case. The closest Washington law seems to come is this 1989 statement of purpose for legislation relating to the responsibility of individuals sentenced to the Washington State Department of Corrections: “The purpose of this act is to . . . hold[ ] offenders accountable to victims, counties, cities, the state, municipalities, and society for the assessed costs associated with their crimes; and . . . [to] provide[ ] remedies for an individual or other entities to recoup or at least defray a portion of the

<sup>1</sup> Claire Greenberg et al., *The Growing and Broad Nature of Legal Financial Obligations: Evidence from Alabama Court Records*, 48 CONN. L. REV. 1079, 1089 (2016), <https://www.sas.upenn.edu/~marcmere/workingpapers/AlabamaLFOs.pdf>.

loss associated with the costs of felonious behavior.”<sup>2</sup> This legislative statement of purpose is consistent with how many actors in the criminal legal system view LFOs—they are a way to hold an individual accountable to a victim and the community. As noted LFO researcher and author Professor Alexes Harris put it, many officials believe that LFOs allow individuals to “show remorse with every payment.”<sup>3</sup> Whether and to what extent LFOs effectively accomplish any of these purposes is discussed in more detail below.

LFOs have a long history of entanglement with institutional racism. With the end of slavery following the Civil War, convict leasing of Black Americans rose throughout the South. Though the Thirteenth Amendment prohibits slavery and involuntary servitude, there is an exception for “punishment for crime.”<sup>4</sup> As vagrancy laws proliferated, criminalizing simple unemployment, a jobless, formerly enslaved person could be incarcerated for their condition and forced to work without pay to make the community whole for the crime of having been unemployed in the first instance.<sup>5</sup> Having been convicted of vagrancy or another purported crime, Black Americans in the 1800s might be leased by governments to corporations which in turn paid the LFOs to the leasing officials, but paid the workers nothing.<sup>6</sup> Consequently, the criminalization of unemployment for Black Americans following the Civil War, the imposition of LFOs for these status crimes, and the system of convict leasing to pay the LFOs is sometimes characterized as a replacement for slavery<sup>7</sup> and a continued form of racial domination.<sup>8</sup>

LFO collection was historically a source of revenue as well, for example, to pay the salaries of judges and sheriffs,<sup>9</sup> and that is still sometimes the case today, despite the fact that it is unconstitutional for officials to have a financial stake in the outcome of matters they

<sup>2</sup> LAWS OF 1989, ch. 252, § 1.

<sup>3</sup> Juleyka Lantigua-Williams, *How Prison Debt Ensnares Offenders*, ATLANTIC (June 2, 2016), <https://www.theatlantic.com/politics/archive/2016/06/how-prison-debt-ensnares-offenders/484826/>.

<sup>4</sup> U.S. CONST. amend. XIII, § 1.

<sup>5</sup> James Gray Pope, *Mass Incarceration, Convict Leasing, and the Thirteenth Amendment: A Revisionist Account*, 94 N.Y.U. L. REV. 1465, 1479 (2019), <https://www.nyulawreview.org/wp-content/uploads/2019/12/NYULawReview-94-6-Pope.pdf>.

<sup>6</sup> Alexes Harris et al., *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 AM. J. SOCIO. 1753, 1758 (2010), <http://faculty.washington.edu/kbeckett/articles/AJS.pdf>.

<sup>7</sup> Pope, *supra* note 5.

<sup>8</sup> Harris et al., *supra* note 6.

<sup>9</sup> *Id.*

adjudicate.<sup>10</sup> Available data reflects that between 2000 and 2014, Washington courts at every level collected almost \$2 billion in LFOs, and yet still had another \$2.5 billion in outstanding LFO debt in nearly half a million open accounts.<sup>11</sup> As examples, in recent years, King County residents were estimated to owe more than half a billion dollars in legal financial obligations, while residents of Spokane County owed more than \$100 million.<sup>12</sup> According to a 2021 report from the Fines and Fees Justice Center, from available data, Washington had the highest amount of LFO debt per capita—\$426—of any state.<sup>13</sup>

While LFOs trace their history to slavery and the Jim Crow South, today they are found throughout the criminal legal system, and Washington is no exception.

### III. Washington Has a Robust LFO Regime that Can Keep LFO Debtors Tied to the Criminal Legal System for Life

Washington courts—from the smallest town to the largest county—have the obligation, and sometimes the discretion, to impose hundreds of different fines, fees, and costs, as well as restitution. In some cases, a court must determine whether someone can pay the LFO—and if they can't—it cannot be imposed. For many types of LFOs, it simply doesn't matter whether the person being sentenced can pay. For those sentenced to LFOs who cannot pay, they may end up in jail, have their LFO accounts sent to a collection agency, and may stay under the court's jurisdiction for life.

<sup>10</sup> *Tumey v. Ohio*, 273 U.S. 510, 532, 47 S. Ct. 437, 71 L. Ed. 749 (1927) (holding that it is a due process violation for an adjudicating official to have a pecuniary interest in the case outcome).

<sup>11</sup> Alexes Harris, *Fines/Fees Collected & Outstanding Between 2000-2014, WA* (2018) (unpublished presentation) (on file with author) (excludes Seattle Municipal Court); see also ALEXES HARRIS ET AL., *MONETARY SANCTIONS IN THE CRIMINAL JUSTICE SYSTEM* 203 (2017), <http://www.monetarysanctions.org/wp-content/uploads/2017/04/Monetary-Sanctions-Legal-Review-Final.pdf>; see also BRIANA HAMMONS, *FINES & FEES JUST. CTR., TIP OF THE ICEBERG: HOW MUCH CRIMINAL JUSTICE DEBT DOES THE U.S. REALLY HAVE?* 6 (2021), [https://finesandfeesjusticecenter.org/content/uploads/2021/04/Tip-of-the-Iceberg\\_Criminal\\_Justice\\_Debt\\_BH1.pdf](https://finesandfeesjusticecenter.org/content/uploads/2021/04/Tip-of-the-Iceberg_Criminal_Justice_Debt_BH1.pdf).

<sup>12</sup> Michael L. Vander Giessen, *Legislative Reforms for Washington State's Criminal Monetary Penalties*, 47 GONZAGA L. REV. 547, 574 (2012), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1981792](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1981792).

<sup>13</sup> HAMMONS, *supra* note 10, at 5.

## A. Relevant legal framework

Courts throughout Washington have the authority to impose LFOs. Judicial officers in Washington’s Superior Courts may order LFO payment “[w]henever a person is convicted in superior court.”<sup>14</sup>

Though available under hundreds of statutes and in amounts small and large, LFOs generally fall into four categories: fines, costs, fees, and restitution. Sometimes combined with costs, LFOs also include fees tied to specific tasks and entities. Washington statutes describe LFOs in various ways, but hew overall to these four buckets. For example, for purposes of LFO collection by state corrections officials, a “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 interlocal 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>15</sup>

### 1. Fines

Fines are a form of punishment, along with confinement.<sup>16</sup> The maximum fine for a class A felony (e.g., assault in the first degree<sup>17</sup>) under Washington law is \$50,000,<sup>18</sup> while the maximum fine for a gross misdemeanor (e.g., vehicle prowling in the second degree<sup>19</sup>) is \$5,000.<sup>20</sup>

<sup>14</sup> RCW 9.94A.760(1).

<sup>15</sup> RCW 9.94A.030(31); *see also* RCW 71.11.010(1).

<sup>16</sup> RCW 9A.20.021(1) (setting forth maximum sentences for individuals to “be punished by confinement or fine”).

<sup>17</sup> RCW 9A.36.011(2).

<sup>18</sup> RCW 9A.20.021(1)(a).

<sup>19</sup> RCW 9A.52.100(2).

<sup>20</sup> RCW 9A.20.021(2).

Unlike some other LFOs, fine imposition is generally<sup>21</sup> left to the discretion of the judicial officer.<sup>22</sup> Though Washington courts are urged to consider ability to pay when imposing fines, because a fine is not a court cost, the court is not required to inquire into the individual's financial status.<sup>23</sup>

## 2. Costs

Costs are generally "limited to expenses specially incurred by the state in prosecuting the defendant" and "cannot include expenses inherent in providing a constitutionally guaranteed jury trial."<sup>24</sup> Costs can include the entire lifecycle of a criminal case: the cost of being arrested,<sup>25</sup> being supervised before trial,<sup>26</sup> deferring trial,<sup>27</sup> being tried by a jury,<sup>28</sup> avoiding trial,<sup>29</sup> and being incarcerated.<sup>30</sup> If the individual is incarcerated in the Department of Corrections and sentenced to supervision in the community after a period of incarceration, the Department of Corrections can require the individual to pay costs associated with their own supervision.<sup>31</sup> Assessments are also available in courts of limited jurisdiction, which operate as a form of cost, in that, for example, they are imposed upon individuals "for services provided whenever the person is referred by the court to the misdemeanor probation department for evaluation or supervision services."<sup>32</sup> Some assessments are mandatory. For example, Superior Courts must impose a \$500

<sup>21</sup> A small number of fines are mandatory. *E.g.*, RCW 70A.15.3150(3) (minimum \$50,000 fine for certain Clean Air Act violations); RCW 46.61.5055(1)(a)(ii) (minimum \$350 fines for driving under the influence).

<sup>22</sup> *State v. Clark*, 191 Wn. App. 369, 375, 362 P.3d 309 (2015).

<sup>23</sup> *Id.* (holding that "the trial court is not required to conduct an inquiry into the defendant's ability to pay," but adding that the appellate court would "strongly urge trial judges to consider the defendant's ability to pay before imposing fines"). In contrast to Washington, under federal sentencing guidelines, fines are set out in a range, and courts do consider whether an individual has the ability to pay. U.S. SENT'G COMM'N, FEDERAL SENTENCING: THE BASICS 19 (2018), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/201811\\_fed-sentencing-basics.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/201811_fed-sentencing-basics.pdf).

<sup>24</sup> RCW 10.01.160(2).

<sup>25</sup> *Id.* ("Expenses incurred for serving of warrants for failure to appear . . . may be included in costs the court may require a defendant to pay.").

<sup>26</sup> RCW 10.01.160(2) (allowing for imposition of "[c]osts of administering . . . pretrial supervision").

<sup>27</sup> RCW 10.05.170 (allowing courts of limited jurisdiction to levy monthly assessments in deferred prosecution cases, typically where an individual can defer prosecution and upon satisfaction of certain conditions during the deferral period, they may eventually seek dismissal of the charge).

<sup>28</sup> RCW 10.46.190 ("Every person convicted of a crime . . . may be liable to all the costs of the proceedings against [them], including, when tried by a jury in the superior court . . . , a jury fee as provided for in civil actions.").

<sup>29</sup> RCW 10.01.160(2) (allowing for imposition of the cost of "administering a deferred prosecution").

<sup>30</sup> *Id.* ("In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration.").

<sup>31</sup> RCW 9.94A.780(1).

<sup>32</sup> RCW 10.64.120(1) (allowing courts of limited jurisdiction to levy up to \$100 per month in such assessments).



victim penalty assessment for every felony (\$250 for gross misdemeanors).<sup>33</sup> Monies collected from imposition of these assessments are not direct compensation to victims; rather, they are “for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes.”<sup>34</sup> Relatedly, courts of limited jurisdiction must impose a public safety and education assessment equal to 75% of fines imposed in a given case.<sup>35</sup>

### 3. Fees

Though fees are often spoken of interchangeably with costs, they do differ in kind and amount. While costs are ostensibly directly tied to the expenses of prosecuting an individual, fees are frequently add-on sums allocated to particular entities. For example, Washington law requires DNA collection from individuals convicted of certain crimes or categories of crimes.<sup>36</sup> The individual providing the DNA is charged \$100,<sup>37</sup> a portion of which goes to an account overseen by the Washington State Patrol,<sup>38</sup> which processes the DNA.<sup>39</sup> As another example, courts of limited jurisdiction may charge \$43 to each individual upon conviction.<sup>40</sup> For their part, county clerks are required by statute to collect a \$200 fee for their “official services” when an individual is convicted of a crime,<sup>41</sup> and “may impose an annual fee of up to one hundred dollars” “[f]or the collection of an adult offender’s unpaid legal financial obligations.”<sup>42</sup> There are many more fees under Washington law—too numerous to list here. The Washington Administrative Office of the Courts (AOC) maintains a list of many of these fees online for users of its Judicial Information System.<sup>43</sup>

<sup>33</sup> RCW 7.68.035(1)(a).

<sup>34</sup> RCW 7.68.035(4).

<sup>35</sup> RCW 3.62.090(1).

<sup>36</sup> RCW 43.43.754.

<sup>37</sup> RCW 43.43.7541.

<sup>38</sup> RCW 43.43.7532.

<sup>39</sup> *Crime & Forensic Laboratory Services*, WASH. STATE PATROL, <https://www.wsp.wa.gov/crime/crime-and-forensic-laboratory-services/>.

<sup>40</sup> RCW 3.62.085.

<sup>41</sup> RCW 36.18.020(2)(h).

<sup>42</sup> RCW 36.18.016(29).

<sup>43</sup> *JIS-Link Code Manual – Cost Fee Codes*, WASH. ADMIN. OFF. OF THE CTS., [https://www.courts.wa.gov/JisLink/index.cfm?fa=jislink.codeview&dir=clj\\_manual&file=costfee](https://www.courts.wa.gov/JisLink/index.cfm?fa=jislink.codeview&dir=clj_manual&file=costfee).

## 4. Direct restitution

Unlike costs paid for prosecution and fees paid to entities and agencies, restitution is considered payment of “damages”<sup>44</sup> directly to victims. The law requires that restitution be ordered in Superior Court<sup>45</sup> whenever there is a conviction for a crime “which result[ed] in injury to any person or damage to or loss of property.”<sup>46</sup> The damages must be somewhat concrete—“easily ascertainable”—and could include, for example, “expenses incurred for treatment for injury to persons, and lost wages resulting from injury.”<sup>47</sup> Whatever the courts ascertain, restitution can still be up to “double the amount of the offender’s gain or the victim’s loss.”<sup>48</sup> Significantly, courts must impose interest on restitution, which starts running from the moment sentence is imposed, even if the individual is heading to a lengthy prison stay.<sup>49</sup> The restitution interest rate is 12%,<sup>50</sup> among the highest in the nation.<sup>51</sup> Furthermore, unlike costs, a court cannot reduce the total amount of restitution imposed based on an individual’s inability to pay.<sup>52</sup>

## 5. Court have many ways to impose LFOs

Despite reform efforts in recent years, Washington law still provides numerous ways to impose LFOs, and courts impose millions of dollars in LFOs each year. The Revised Code of Washington includes hundreds of statutes allowing courts to impose fines. When the Washington State Supreme Court Minority and Justice Commission created an LFO calculator under a Department of Justice grant, volunteers poured through every statute containing a fine or fee to help build a tool to allow judicial officers to calculate LFOs and to understand when they must, can, or cannot

<sup>44</sup> RCW 9.94A.030(43).

<sup>45</sup> There is no general statute requiring restitution in cases in courts of limited jurisdiction. Courts of limited jurisdiction do have the authority to impose restitution. *Seattle v. Fuller*, 177 Wn.2d 263, 279, 300 P.3d 340 (2013).

<sup>46</sup> RCW 9.94A.753(5).

<sup>47</sup> RCW 9.94A.753(3).

<sup>48</sup> *Id.*

<sup>49</sup> RCW 10.82.090(1).

<sup>50</sup> RCW 4.56.110(6) (“[J]udgments shall bear interest from the date of entry at the maximum rate permitted under RCW 19.52.020.”); RCW 19.52.020 (“[A]ny rate of interest shall be legal so long as the rate of interest does not exceed the higher of . . . [t]welve percent per annum.”).

<sup>51</sup> *Washington One of Five States Selected for ‘Price of Justice’ Grant*, DEP’T OF JUST., U.S. ATTY’S OFF.: W. DIST. OF WASH. (Sept. 27, 2016), <https://www.justice.gov/usao-wdwa/pr/washington-one-five-states-selected-price-justice-grant>.

<sup>52</sup> RCW 9.94A.753(4).

be imposed. The calculator starts with the crime of abandoning a dependent person, and ends with work-permit violations, with many LFOs in between.<sup>53</sup> That it took a federal grant to build a calculator to assist judges with LFO imposition is a testament to how complicated the laws around LFOs are.

## 6. Courts sometimes have to determine who can afford to pay

The question of who can afford to pay and how courts determine this is found in a combination of statutes, court rules, and case law. When a statute prohibits a court from imposing an LFO on an “indigent” person, indigency is defined in statute to apply to, for example, persons receiving means-tested public benefits such as temporary assistance for needy families and individuals with annual incomes at or below 125% of the federal poverty level.<sup>54</sup> As to rules, courts also look to General Rule 34,<sup>55</sup> which provides a similar though somewhat broader indigency standard than statute, including a catchall provision where “other compelling circumstances exist that demonstrate an applicant’s inability to pay fees and/or surcharges.”<sup>56</sup> Apart from statutes and rules, courts assessing an individual’s ability to pay must “meaningfully inquire” into certain mandatory factors, such as the fact of the individual’s incarceration and other debts,<sup>57</sup> and must also consider certain “important factors,” such as employment history, income, assets, and living expenses.<sup>58</sup> The law was only changed in 2018 to prohibit courts from imposing discretionary costs upon those unable to pay;<sup>59</sup> such LFOs imposed before the change remain subject to collection.

In addition to an individual’s basic economic circumstances, Washington statutes and case law provide for consideration of an individual’s mental health, housing, and disability in LFO imposition. For example, before imposing LFOs upon a person with a mental health condition preventing the person from participating in gainful employment—other than restitution or a

<sup>53</sup> *LFO Calculator Project*, WASH. STATE SUP. CT’S MINORITY & JUST. COMM’N, <https://www.lfocalculator.org/>.

<sup>54</sup> RCW 10.101.010(3)(a)-(c).

<sup>55</sup> *State v. Ramirez*, 191 Wn.2d 732, 750, 426 P.3d 714 (2018).

<sup>56</sup> GR 34(a)(3)(A)-(D).

<sup>57</sup> *State v. Ramirez*, 191 Wn.2d 732, 750, 426 P.3d 714 (2018).

<sup>58</sup> *Id.*

<sup>59</sup> ENGROSSED SECOND SUBSTITUTE HB 1783, 65th Leg., Reg. Sess. (Wash. 2018) (HB 1783).

victim penalty assessment—a judge must first determine whether the person has the means to pay.<sup>60</sup> As another example, if a court determines that an individual has a mental illness or is experiencing homelessness, the individual is not in “willful contempt,” i.e., not willfully refusing to pay their LFOs, and thus a court in that situation could not punish someone for failing to pay their LFO debt.<sup>61</sup> Relatedly, the availability of Supplemental Social Security Income (SSI) and Social Security Disability Income (SSDI) to pay LFOs has been subject to litigation in Washington appellate courts in recent years. While courts may impose LFOs on an individual whose sole source of income is SSI or SSDI,<sup>62</sup> and a county clerk can require the individual to periodically verify their income status,<sup>63</sup> a court cannot actually order the individual to pay the LFOs from that source of income because attaching such federal benefits violates federal law.<sup>64</sup> Still, given that collecting authorities can require periodic reverification that the individual’s sole source of income is still SSI or SSDI, such verification could continue for life.<sup>65</sup>

## 7. Courts can punish those who don’t pay

Courts can jail a person for failing to pay LFOs, and the practice has varied throughout Washington. For example, if a court orders LFOs as part of a felony sentence and the person does not pay, the court can set a “show cause” hearing where the person must explain (i.e., show cause) why they “should not be punished for the noncompliance.”<sup>66</sup> That punishment might include jail,<sup>67</sup> work release, home detention, or some other alternative confinement.<sup>68</sup> Importantly, a court may not punish a person for failing to pay LFOs unless that nonpayment is “willful,” meaning the person can pay, but won’t,<sup>69</sup> and a court cannot punish nonpayment where

<sup>60</sup> RCW 9.94A.777.

<sup>61</sup> RCW 10.01.180(3)(c).

<sup>62</sup> *State v. Catling*, 193 Wn.2d 252, 256, 438 P.3d 1174 (2019).

<sup>63</sup> *State v. Conway*, 8 Wn. App. 2d 538, 550, 438 P.3d 1235 (2019).

<sup>64</sup> *City of Richland v. Wakefield*, 186 Wn.2d 596, 609, 380 P.3d 459 (2016).

<sup>65</sup> *State v. Catling*, 193 Wn.2d 252, 267, 438 P.3d 1174 (2019) (González, J., dissenting) (“Catling qualified for disability income more than 10 years ago and, given his medical condition, will likely remain on it for the rest of his life.”).

<sup>66</sup> RCW 9.94A.6333(3)(a).

<sup>67</sup> RCW 9.94A.633(1)(a).

<sup>68</sup> RCW 9.94A.633(1)(b).

<sup>69</sup> RCW 9.94A.6333(3)(c).

the person is experiencing homelessness or suffering from mental illness.<sup>70</sup> In practice, what precisely is willful as to non-payment can be elusive. As Professor Alexis Harris put it: A judge inquiring into someone’s resources and spending might ask, “How much did you pay for your manicure? How much for cigarettes?”<sup>71</sup>

Courts outside of the felony sentencing regime have similar powers under a contempt statute,<sup>72</sup> and, like the felony statute, courts in cases involving misdemeanors cannot punish those who lack the financial ability to pay<sup>73</sup> or are living unsheltered or have a mental illness.<sup>74</sup> The sanctions for nonpayment can be severe where a person is held in contempt. Among the punishments available to courts in LFO contempt proceedings is imposing one day in jail for every \$25 owed.<sup>75</sup> A 2014 study found that in one Washington county, an estimated 20% of jail inmates were incarcerated because of LFO nonpayment,<sup>76</sup> and still other counties regularly jailed individuals for nonpayment.<sup>77</sup>

## 8. Nonpayment means court jurisdiction for life

LFOs are frequently a life sentence. LFOs may follow an individual for life, because for any Superior Court conviction for an offense committed on or after July 1, 2000, “the court shall retain jurisdiction over the offender, for purposes of the offender’s compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime.”<sup>78</sup> So long as the individual has not paid all of their LFOs, they remain under the court’s jurisdiction, and so long as they remain under the court’s jurisdiction, a county clerk is authorized to continue to try to verify income and collect.<sup>79</sup> County clerks may

<sup>70</sup> RCW 9.94A.6333(3)(d).

<sup>71</sup> Casey Jaywork, *Paying Your Debt to Society (with 12 Percent Interest)*, SEATTLE WKLY. (June 8, 2016), <https://www.seattleweekly.com/news/paying-your-debt-to-society-with-12-percent-interest/>.

<sup>72</sup> RCW 10.01.180(1).

<sup>73</sup> RCW 10.01.180(3)(a).

<sup>74</sup> RCW 10.01.180(3)(c).

<sup>75</sup> RCW 10.01.180(4).

<sup>76</sup> AM. CIV. LIBERTIES UNION OF WASH. & COLUMBIA LEGAL SERVS., *MODERN-DAY DEBTORS’ PRISONS: THE WAYS COURT-IMPOSED DEBTS PUNISH PEOPLE FOR BEING POOR* 8 (2014), <https://www.aclu-wa.org/sites/default/files/media-legacy/attachments/Modern%20Day%20Debtor%27s%20Prison%20Final%20%283%29.pdf>.

<sup>77</sup> AM. CIV. LIBERTIES UNION OF WASH. & COLUMBIA LEGAL SERVS., *supra* note 76, at 8 n.31.

<sup>78</sup> RCW 9.94A.760(5).

<sup>79</sup> *Id.*

even seek normally confidential employment security records for purposes of collecting LFOs.<sup>80</sup> As an example of how long an LFO debtor might remain entangled with the criminal legal system, in a case addressing SSI and LFOs, the defendant had been receiving SSI benefits for 27 years;<sup>81</sup> in such a case, the individual would remain under the court’s jurisdiction and subject to income verification, even if they remained on SSI their entire life.

As part of their study, “Modern-Day Debtors’ Prisons: The Ways Court-Imposed Debts Punish People for Being Poor,”<sup>82</sup> the American Civil Liberties Union of Washington and Columbia Legal Services interviewed a number of individuals living with LFO debt, including Virginia Anderson. Virginia reported having nearly \$7,000 in original Superior Court debt, in addition to over \$1,000 in debt from LFOs in a court of limited jurisdiction.<sup>83</sup> Speaking about the burden of making monthly payments, Virginia said:

When I got out of prison, I was supposed to start paying \$50 a month to Benton County District Court and \$40 per month to Superior Court. But I couldn’t find a job. I was willing to do any work, but it’s really hard to get work with a felony record. . . . Sometimes, I have to choose between paying for transportation to my job or food and paying the full amount of my LFOs.<sup>84</sup>

The study authors estimated that—assuming she can keep making payments—it will take Virginia almost 30 years to pay off her LFOs.<sup>85</sup>

As Virginia’s story illustrates, a felony record is a barrier to securing employment, and that barrier can perpetuate the LFO life sentence. For example, individuals in Washington can ask a court to vacate convictions for certain felonies.<sup>86</sup> To get a conviction vacated, an individual must first obtain a certificate of discharge.<sup>87</sup> However, to obtain the certificate of discharge necessary to

<sup>80</sup> RCW 50.13.020(2) (“Information or records may be released by the employment security department when the release is . . . [r]equested by a county clerk for the purposes of RCW 9.94A.760.”).

<sup>81</sup> *State v. Conway*, 8 Wn. App. 2d 538, 542 (2019).

<sup>82</sup> AM. CIV. LIBERTIES UNION OF WASH. & COLUMBIA LEGAL SERVS., *supra* note 76.

<sup>83</sup> *Id.* at 11.

<sup>84</sup> *Id.* at 11-12.

<sup>85</sup> *Id.* at 12.

<sup>86</sup> RCW 9.94A.640(1).

<sup>87</sup> RCW 9.94A.640(1).

have the conviction vacated, an individual must first satisfy “all requirements of the sentence, including any and all legal financial obligations.”<sup>88</sup> Thus, in the case of someone like Virginia, the felony makes it harder to secure employment, the inability to secure employment makes it harder to pay the LFOs, the inability to pay the LFOs makes it impossible to obtain the certificate of discharge, and the inability to obtain the certificate of discharge makes it impossible to vacate the conviction preventing the employment necessary to pay the LFOs to begin with. See “Chapter 16: Gendered Consequences of Incarceration and Criminal Convictions, Particularly for Parents, Their Children, and Families” for more on the impacts of conviction on securing employment.

## B. Trends

### 1. Increasing types and amounts of LFO imposition

LFO imposition has grown significantly in the last two decades. For example, in a six-year period from 2006 to 2011, the number of court-ordered LFO accounts in Washington State grew by a third to nearly 500,000.<sup>89</sup> During that same time-period, in King County alone, nearly 20,000 new LFO accounts were opened annually.<sup>90</sup> By then, nearly ten percent of the King County adult population owed LFO debt totaling nearly \$1 billion.<sup>91</sup>

The average restitution balance per case across all of Washington’s courts is \$2,744.<sup>92</sup> The average interest owed per case in Washington is \$1,249.<sup>93</sup> In contrast to the amount of restitution and interest owed, the average interest paid per case is just \$18.<sup>94</sup> Despite the accumulation of millions of dollars of interest annually, for the years 2014-16, Washington’s entire Superior Court system applied,<sup>95</sup> on average, just \$93,000 per year towards interest on

<sup>88</sup> RCW 9.94A.637(1).

<sup>89</sup> HARRIS ET AL., MONETARY SANCTIONS IN THE CRIMINAL JUSTICE SYSTEM, *supra* note 11, at 203.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> County clerks are required to apply payments from defendants in the following order of priority: restitution to victims; restitution to insurance providers; crime victim penalties; and costs, fines, and other assessments. RCW 9.94A.760.

legal financial obligations, while applying nearly \$1,000,000 per year towards restitution principal.<sup>96</sup>

In contrast to the substantial amount of LFOs imposed, governments at every level collect relatively little. For example, one study found that from 2014 to 2016, Washington’s Superior Courts collected less than \$8 million in LFOs.<sup>97</sup> That same study found that Washington’s numerous courts of limited jurisdiction collected less than \$5 million during the same period, though that excluded data from the Seattle Municipal Court.<sup>98</sup> Moreover, in written testimony to the Washington State House of Representatives in February 2021, Professor Alexes Harris explained that from 2000 to 2014, just 30% of individuals paid off their victim penalty assessments, leaving \$170 million in outstanding assessments among nearly 200,000 people who owed an average of \$854 per person—just related to the victim penalty assessment.<sup>99</sup> In addition, because governments must expend resources to collect LFOs, the net collections may be even less than reported.<sup>100</sup>

## 2. Collection agency involvement.

Having imposed tens of millions of dollars in LFOs upon low-income individuals, and having received just a fraction of those millions in payments, some jurisdictions add to those debts by contracting with collection agencies. Washington’s Superior and courts of limited jurisdiction are allowed to contract with collection agencies to pursue LFO debt,<sup>101</sup> even for traffic infractions.<sup>102</sup> A county clerk contracting with a collection agency could then add a “reasonable fee . . . to the

<sup>96</sup> TIM FITZGERALD & JOEL MCCALLISTER, REPORT TO THE LEGAL FINANCIAL OBLIGATIONS STAKEHOLDER CONSORTIUM (May 30, 2018).

<sup>97</sup> TIM FITZGERALD & JOEL MCCALLISTER, SUBCOMMITTEE 3 FINDINGS, LEGAL FINANCIAL OBLIGATIONS STAKEHOLDER CONSORTIUM (2014-16 COLLECTIONS) (2018) (on file with author).

<sup>98</sup> *Id.*

<sup>99</sup> Hr’g on H.B. 1412 Before the H. Appropriations Comm., 67th Leg., Reg. Sess. (Wash. 2021) (statement of Professor Alexes Harris) (on file with author).

<sup>100</sup> Matthew Menendez et al., *The Steep Costs of Criminal Justice Fines and Fees*, BRENNAN CTR. FOR JUST. (Nov. 21, 2019), <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines> (“The high costs of collection and enforcement are excluded from most assessments, meaning that actual revenues from fees and fines are far lower than what legislators expect.”).

<sup>101</sup> RCW 36.18.190 (“Superior court clerks may contract with collection agencies under chapter 19.16 RCW or may use county collection services for the collection of unpaid court-ordered legal financial obligations.”); RCW 3.02.045(1) (“Courts of limited jurisdiction may use collection agencies. . .”).

<sup>102</sup> RCW 46.63.110)(6)(b).



outstanding debt for the collection agency fee incurred or to be incurred,” and that fee could be “up to fifty percent.”<sup>103</sup> An analysis of nearly eighty collection contracts among both Superior and courts of limited jurisdiction<sup>104</sup> in Washington found that almost half of those contracts imposed the statutory maximum collection fee.<sup>105</sup> In addition, collection agencies can charge LFO debtors for things like account setup and maintenance, convenience fees for payment, payment plan fees, and late fees.<sup>106</sup> Once levied, the LFO collection fee itself becomes LFO debt,<sup>107</sup> becoming essentially a fifth type of LFO in the form of a surcharge. A local jurisdiction can refer an LFO account to a collection agency after notice and just 30 days.<sup>108</sup> Consequently, once referred to a collection agency, an individual’s LFO debt can easily and quickly more than double.<sup>109</sup> In a recent appellate case, a collection agency opposed an LFO debtor’s efforts to remove the debt from collection, arguing that Washington courts lack such authority; the Court of Appeals rejected this argument and held that, under RCW 36.18.190, a Washington court “necessarily has the authority to reduce the amount of LFOs by removing an LFO account from a collection agency and thereby removing the collection agency fee from the LFO account.”<sup>110</sup>

### 3. LFOs as a revenue source

Even though Washington jurisdictions collect just a fraction of LFOs imposed, the revenue streams to various priorities are not insignificant. By statute, as counties receive Superior Court LFO payments, they’re applied proportionally in the following order: (1) to restitution to victims that have not been fully compensated from other sources; (2) to restitution to insurance or other sources with respect to a loss that has provided compensation to victims; (3) to crime victims’

<sup>103</sup> RCW 19.16.500(1)(b).

<sup>104</sup> Bryan L. Adamson, *Debt Bondage: How Private Collection Agencies Keep the Formerly Incarcerated Tethered to the Criminal Justice System*, 266 N.W. J. OF LAW & POL’Y 305, 336-37 (2020), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1201&context=njlsp> (listing the collection-fee percentages for several Washington Superior and courts of limited jurisdiction).

<sup>105</sup> *Id.*

<sup>106</sup> *See id.*

<sup>107</sup> RCW 19.16.500(4).

<sup>108</sup> RCW 19.16.500(2).

<sup>109</sup> Adamson, *supra* note 104.

<sup>110</sup> *State v. Gaines*, 16 Wn. App. 2d 52, 59-60, 479 P.3d 735 (2021).

assessments; and (4) to costs, fines, and other assessments required by law.<sup>111</sup> Washington’s AOC maintains a long list of LFOs and the varying percentage splits among numerous accounts.<sup>112</sup> Nationwide, at least 38 U.S. towns and cities receive more than ten percent of their annual revenue just from court fines and fees, with some jurisdictions depending on LFOs for nearly half of their annual revenue.<sup>113</sup>

While much of the discussion concerning LFOs focuses on imposition at sentencing and collection after a period of incarceration, LFO collection happens in prison as well. For example, the Department of Corrections is required to deduct 20% of the wages an individual earns in “correctional industries work programs” to satisfy LFOs.<sup>114</sup> Even money from family or friends sent to an incarcerated individual is garnished at 20%.<sup>115</sup> The Department of Corrections’ authority to collect LFOs in some instances is actually independent of the court, allowing the Department, for example, to garnish an individual’s prison wages to pay for the cost of incarceration, even where a court might have waived that cost.<sup>116</sup>

Though there are hundreds of LFOs available under Washington law, and a robust post-conviction collection and jurisdiction regime exists, data collection, particularly around gender, is still a challenge.

## IV. While Research is Scarce, LFOs Do Impact Women and Men Differently, at Sentencing and Post-Conviction

With the exception of a few small studies and the ability to make inferences from other criminal legal system data, there really isn’t any Washington LFO data and research specific to gender. The data and research that is available reflects that while men face higher LFOs at sentencing

<sup>111</sup> RCW 9.94A.760(2). The payment distribution priority is similar for courts of limited jurisdiction. RCW 10.01.170(2).

<sup>112</sup> *JIS-Link Code Manual – Cost Fee Codes*, *supra* note 43.

<sup>113</sup> PETER WAGNER & BERNADETTE RABUY, PRISON POL’Y INITIATIVE, FOLLOWING THE MONEY OF MASS INCARCERATION 2 (2017), <https://www.prisonpolicy.org/factsheets/money2017.pdf>.

<sup>114</sup> RCW 72.09.111(1)(a)(iv).

<sup>115</sup> RCW 72.09.480(2)(c).

<sup>116</sup> *In re Pierce*, 173 Wn.2d 372, 387, 268 P.3d 907 (2011).

than women, women face greater challenges following conviction, both for their own LFOs and those of others.

### A. Gender-specific LFO data is generally not being analyzed

While one can make some inferences concerning gender disparities from the general data concerning incarceration and LFOs, LFO data specific to gender either is not available or has not been analyzed. In fact, according to Christopher Albin-Lackey of the National Center for Access to Justice, which oversees the National Indexing Project on Fines and Fees, none of the 25 states the project has collected data from thus far collects and publishes data on gender in connection with legal financial obligations.<sup>117</sup>

Though currently available gender-specific LFO data is sparse, more may become available throughout 2021 and 2022. For example, the final report of the Washington State Supreme Court Minority and Justice Commission LFO Stakeholder Consortium may be issued in summer 2021.<sup>118</sup> In addition, Professor Alexes Harris and a team of researchers anticipate publishing several LFO-related articles in the Russell Sage Foundation Journal of the Social Sciences in 2022, including articles discussing how LFOs impact families and how, if at all, LFOs increase female incarceration.<sup>119</sup>

### B. Men may be sentenced to more LFOs in felony cases, and there are race and gender disparities in Washington's largest municipal court

What scant Washington research is available, reflect that at least at sentencing, men may face higher LFOs than women.<sup>120</sup> Indeed, Katherine Beckett and her co-authors found in 2008 that:

<sup>117</sup> E-mail from Christopher Albin-Lackey to author (Oct. 19, 2020, 07:54 PST) (on file with author); *see also* ALEKS KAJSTURA, PRISON POL'Y INITIATIVE, WOMEN'S MASS INCARCERATION: THE WHOLE PIE 2019 1, [https://www.prisonpolicy.org/factsheets/women\\_pie\\_chart\\_report\\_2019.pdf](https://www.prisonpolicy.org/factsheets/women_pie_chart_report_2019.pdf) ("The data needed to explain exactly what happened, when, and why does not yet exist, not least because the data on women has long been obscured by the larger scale of men's incarceration.").

<sup>118</sup> The author is a member of the LFO Stakeholder Consortium.

<sup>119</sup> Telephone Interview with Alexes Harris, Presidential Term Professor, Univ. of Wash., Dep't of Socio. (Mar. 2, 2021).

<sup>120</sup> KATHERINE A. BECKETT ET AL., WASH. STATE MINORITY & JUSTICE COMM'N, THE ASSESSMENT AND CONSEQUENCES OF LEGAL FINANCIAL OBLIGATIONS IN WASHINGTON STATE 28 (2008), [https://media.spokesman.com/documents/2009/05/study\\_LFOimpact.pdf](https://media.spokesman.com/documents/2009/05/study_LFOimpact.pdf).

(1) “[d]efendant gender shows a significant effect on the fee and fine amount assessed”; (2) specifically, “convictions involving male defendants are assessed higher fees and fines than those involving female defendants”<sup>121</sup>; and (3) “gender plays a salient role in the amount of fines and fees assessed,” where male defendants were “assessed 3.7 percent higher fees and fines than females.”<sup>122</sup> The authors hypothesized that, “[b]ecause 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>123</sup> See “Chapter 1: Gender and Financial Barriers to Accessing the Courts” for more information on income and pay gaps for women, and “Chapter 4: The Impact of Gender on Courtroom Participation and Legal Community Acceptance” for an analysis of the disproportionate share of childcare responsibilities born by women.

While the 2008 study found that men in felony cases were sentenced to slightly higher LFOs than women, a 2020 study focusing on the Seattle Municipal Court found that “Black men and [Black] women are more likely to be incarcerated than White men and women post receiving a fine or fee citation or sentence.”<sup>124</sup>

Furthermore, even if the 2008 study’s conclusion that men faced higher LFOs than women was correct, women may still face disproportionate pre- and post-incarceration LFO-related burdens. For example, Prison Policy Initiative Legal Director Aleks Kajstura has noted that “[a]voiding pre-trial incarceration is uniquely challenging for women,” concluding “that incarcerated women, who have lower incomes than incarcerated men, have an even harder time affording money bail.”<sup>125</sup> Women unable to secure pretrial release will necessarily also be unable to keep or seek employment while jailed, making them less able to pay LFOs if they are eventually convicted.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 94.

<sup>123</sup> *Id.* at 31.

<sup>124</sup> FRANK EDWARDS & ALEXES HARRIS, AN ANALYSIS OF COURT IMPOSED MONETARY SANCTIONS IN SEATTLE MUNICIPAL COURTS 2000-2017 26 (2020), <https://www.seattle.gov/Documents/Departments/CivilRights/SMC%20Monetary%20Sanctions%20Report%207.28.2020%20FINAL.pdf>.

<sup>125</sup> KAJSTURA, *supra* note 117, at 1.

### C. LFO-related collateral consequences may disproportionately affect women

Beyond simply presenting often insurmountable debt, LFOs may cause collateral consequences with respect to access to housing, employment, credit, education, and public benefits.<sup>126</sup> The incarceration rate for women in Washington increased by 200% between 1978 and 2015,<sup>127</sup> and the sheer number of women imprisoned in Washington grew eightfold between 1980 and 2016.<sup>128</sup> Though the men’s incarceration rate in Washington increased less during the same time-period,<sup>129</sup> the modest reduction in the annual men’s Washington prison population was “cancelled out by growth in the women’s population.”<sup>130</sup> Every year, Washington’s jails and prisons release over 60,000 women back to the community.<sup>131</sup> Low income among women and men is correlated with incarceration. Roughly, half of the individuals in Washington reentering the community from a period of incarceration earn less than \$20,000 per year, if they are employed at all.<sup>132</sup> One study found that women overall had a median pre-incarceration income that was 58% of that of non-incarcerated women, while similarly-situated men fare even worse at 48%.<sup>133</sup> The disparity was even greater when accounting for race; for example, the median income of pre-incarceration Black women was less than half that of non-incarcerated white women.<sup>134</sup> “See Chapter 11: Incarcerated Women in Washington” for more data on incarceration trends by gender.

<sup>126</sup> Bryan L. Adamson, *supra* note 104.

<sup>127</sup> Wendy Sawyer, *Washington Prison Incarceration Rates: Women*, PRISON POL’Y INITIATIVE (Jan. 2018), [https://www.prisonpolicy.org/graphs/WA\\_Women\\_Rates\\_1978\\_2015.html](https://www.prisonpolicy.org/graphs/WA_Women_Rates_1978_2015.html).

<sup>128</sup> AM. CIV. LIBERTIES UNION, *LOOKING INSIDE – A SMART JUSTICE PROFILE OF WASHINGTON’S PRISON SYSTEM 9* (2019), <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-WA.pdf>.

<sup>129</sup> Wendy Sawyer, *Washington Prison Incarceration Rates: Men*, PRISON POL’Y INITIATIVE (Jan. 2018), [https://www.prisonpolicy.org/graphs/WA\\_Men\\_Rates\\_1978\\_2015.html](https://www.prisonpolicy.org/graphs/WA_Men_Rates_1978_2015.html).

<sup>130</sup> Wendy Sawyer, *The Gender Divide: Tracking Women’s State Prison Growth*, PRISON POL’Y INITIATIVE (Jan. 9, 2018), [https://www.prisonpolicy.org/reports/women\\_overtime.html](https://www.prisonpolicy.org/reports/women_overtime.html).

<sup>131</sup> Wendy Sawyer, *Who’s Helping the 1.9 Million Women Released from Prisons and Jails Each Year?*, PRISON POL’Y INITIATIVE (July 19, 2019), <https://www.prisonpolicy.org/blog/2019/07/19/reentry/>.

<sup>132</sup> Mack Finkel, *New Data: Low Incomes – But High Fees – For People on Probation*, PRISON POL’Y INITIATIVE (Apr. 9, 2019), [https://www.prisonpolicy.org/blog/2019/04/09/probation\\_income/](https://www.prisonpolicy.org/blog/2019/04/09/probation_income/).

<sup>133</sup> Daniel Kopf & Bernadette Rabuy, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned*, PRISON POL’Y INITIATIVE (July 9, 2015), <https://www.prisonpolicy.org/reports/income.html>.

<sup>134</sup> *Id.*

## 1. LFOs impact women who head households

Nationwide, some 80% of women in jail are mothers.<sup>135</sup> The added burdens of LFOs on caregivers presents significant challenges, as highlighted in a report to the U.S. Commission on Civil Rights:

Panelists highlighted that women confront particular difficulties in paying fines and fees. In addition, women are often primary caregivers for their children and shoulder some or all the costs of arranging childcare, education and maintenance. As a result, many women are restricted in their choice of jobs to positions where an organization can accommodate childcare needs and/or provide flexibility in working hours. Some panelists reported that women may be forced to work multiple jobs in order to pay off LFOs as well as generate the income needed to provide for their families. Importantly, the consequences of non-payment can be especially damaging for women. The threat of being returned to jail on account of non-payment is likely to cause enormous turmoil for those with dependent children – more so, where children lack other caregivers.<sup>136</sup>

In addition, already facing barriers in accessing employment and housing, those reentering the community from jail or prison with LFOs may be unable to access public benefits. For example, where a court concludes that an individual has violated the terms of their supervision, the individual might be statutorily ineligible to receive Temporary Assistance to Needy Families (TANF)<sup>137</sup> or benefits from the Supplemental Nutrition Assistance Program.<sup>138</sup> Given that 83% of adult Washington TANF recipients were women in 2019,<sup>139</sup> and that some 80% of women in jail nationally are mothers,<sup>140</sup> LFOs can play an outsized role in determining whether women reentering the community from incarceration are able to access the income and benefits they need to support themselves and their families. See “Chapter 16: Gendered Consequences of

<sup>135</sup> KAJSTURA, *supra* note 117, at 1.

<sup>136</sup> U.S. COMM’N ON CIV. RIGHTS, A REPORT OF THE TENNESSEE ADVISORY COMM. TO THE U.S. COMM’N ON CIV. RIGHTS 18 (2019), <https://www.usccr.gov/pubs/2020/01-15-TN-LFO-Report.pdf>.

<sup>137</sup> 42 U.S.C. § 608(a)(9)(A)(ii).

<sup>138</sup> 7 U.S.C. § 2015(k)(1).

<sup>139</sup> U.S. DEP’T OF HEALTH & HUMAN SERVS., CHARACTERISTICS & FIN. CIRCUMSTANCES OF TANF RECIPIENTS FISCAL YEAR 24 (2019), <https://www.acf.hhs.gov/ofa/data/characteristics-and-financial-circumstances-tanf-recipients-fiscal-year-2019>.

<sup>140</sup> KAJSTURA, *supra* note 117, at 1.

Incarceration and Criminal Convictions, Particularly for Parents, Their Children, and Families” for an in-dept analysis of the impacts of incarceration on mothers and the consequences of incarceration and criminal convictions.

Behind all of the data are real families struggling under the weight of LFO balances often in the many thousands of dollars. Take the example of Maria, who became a single mother in her teens, found herself addicted to heroin, and was eventually convicted for check fraud and drug delivery.<sup>141</sup> Initially sentenced to pay \$4,000 in LFOs, earning \$9 per hour after release from incarceration, and trying to support two children, Maria’s LFO balance ballooned to \$13,000 before a collection agency began garnishing her wages.<sup>142</sup> In Maria’s own words:

My LFOs went to collections. I was more inclined to get gas to go to work or buy the kids food or whatever thing I was doing just to survive. It seems illogical to me, especially if you are going to prison, to add something to the end of that. We pay our costs, our way if you will, when you go to prison. You have to work 40 hours a week. Someone coming out, they don’t have money. It’s almost a guaranteed set up for failure.<sup>143</sup>

Facing collection and garnishment, Maria was paying \$500 per month toward her LFOs when she was interviewed.<sup>144</sup>

## 2. Women may be impacted by LFO debt belonging to others

Apart from addressing their and their children’s needs, women—particularly Black, Indigenous, and women of color—must often shoulder the LFO-related burdens of others close to them. As researchers Joshua Page, Victoria Piehowski, and Joe Soss concluded: “Just as men of color are disproportionately targeted for arrest and incarceration, women of color disproportionately shoulder the burdens of the criminal justice field’s financial takings.”<sup>145</sup> Additionally, a study by

<sup>141</sup> *Sentenced to Debt for Life in Washington State*, LIVING WITH CONVICTION, <https://www.livingwithconviction.org/#/maria-2/>.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> Joshua Page et al., *A Debt of Care: Commercial Bail and the Gendered Logic of Criminal Justice Predation*, 5 RUSSELL SAGE FOUND. J. SOC. SCIS. 152 (2019), <https://www.rsfjournal.org/content/rsfjss/5/1/150.full.pdf>.

Saneta deVuono-powell and others found that in 63% of cases family members of an incarcerated person paid for their court-related expenses, 83% of these family members were women, and Black women are more likely than other women to be related to an incarcerated person.<sup>146</sup> These findings are consistent with a report by Alabama Appleseed, which reported that “the burden of other people’s court debt falls most heavily on middle-aged African-American women.”<sup>147</sup>

From the research currently available, numerous studies reflect that women are paying LFO costs for others at a disproportionate rate.<sup>148</sup> Importantly, these studies describe the context within which individuals paying these fees for those close to them make this decision. As described by Katzenstein and Waller, “[i]t is often women footing the bill for a lot of things in prison.”<sup>149</sup> Katzenstein and Waller describe a pattern of gendered roles of court-associated fee payment, explaining: “[t]his system of seizure levies tariffs on the mother, grandmother, partner, sister, daughter, or friend (mostly women) of the incarcerated poor (mostly men) to subsidize the carceral state.”<sup>150</sup>

The decision to take on the responsibility of court-related fees for another person is notable given the potential negative consequences for the payee. Approximately half of the women bearing the court-related costs of an incarcerated individual are mothers.<sup>151</sup> However, mothers who assist individuals with incarceration fees often face a difficult choice, where some 65% of families reported “difficulty meeting basic needs as the result of a loved one’s incarceration.”<sup>152</sup>

<sup>146</sup> SANETA DEVUONO-POWELL ET AL., ELLA BAKER CTR., FORWARD TOGETHER, RSCH. ACTION DESIGN, WHO PAYS? THE TRUE COST OF INCARCERATION ON FAMILIES 9 (2015), <http://whopaysreport.org/who-pays-full-report/>.

<sup>147</sup> ALABAMA APPLESEED, UNDER PRESSURE: HOW FINES AND FEES HURT PEOPLE, UNDERMINE PUBLIC SAFETY, AND DRIVE ALABAMA’S RACIAL WEALTH DIVIDE 33 (2018).

<sup>148</sup> Mary Fainsod Katzenstein & Maureen R. Waller, *Taxing the Poor: Incarceration, Poverty, Governance, and the Seizure of Family Resources*, 13 PERSPS. ON POL. 638 (2015), <https://www.cambridge.org/core/journals/perspectives-on-politics/article/abs/taxing-the-poor-incarceration-poverty-governance-and-the-seizure-of-family-resources/74641000B52C03BF4DFCD2289302D380>; DEVUONO-POWELL ET AL., *supra* note 146, at 9; ALABAMA APPLESEED, *supra* note 147, at 33; Gina Clayton et al., *The Hidden Cost of Money Bail: How Money Bail Harms Black Women*, HARV. J. AFR. AM. PUB. POL’Y 59, 61 (2017), <https://search.proquest.com/openview/f6f6969be0d86776796d38c76724a77d/1/advanced>.

<sup>149</sup> Katzenstein & Waller, *supra* note 148.

<sup>150</sup> *Id.*

<sup>151</sup> DEVUONO-POWELL ET AL., *supra* note 146, at 14.

<sup>152</sup> *Id.* at 7.



Therefore, “[f]amilies are often forced to choose between supporting incarcerated loved ones and meeting the basic needs of family members who are outside.”<sup>153</sup>

The body of evidence exploring who pays LFOs specifically is still developing. However, there is a larger body of evidence already established focused on who pays justice system costs such as bail, visitation, and critical post-incarceration support such as stable housing and securing employment. This research finds that women are disproportionately likely to provide these forms of support and pay these fees.<sup>154</sup>

### 3. For most returning to the community from incarceration, LFOs remain, increase, and keep individuals in the system

After time in jail or prison, the potential LFO debt spiral can act to keep individuals in poverty and return them to jail. Bearing in mind that formerly-incarcerated women and men earn significantly less than their non-incarcerated peers,<sup>155</sup> consider the following scenario for an indigent Washington resident sentenced to 40 months in prison at the Monroe Correctional Complex in Snohomish County, a mandatory \$500 victim penalty assessment, a mandatory \$100 DNA collection fee, and \$1,000 in restitution:

- After 40 months in prison, the individual’s restitution will grow to \$1,400 at the current 12% restitution interest rate, plus the \$600 in non-restitution LFOs, for a total of \$2,000.
- Assuming the individual can find employment at all, and that the employment is full-time at Washington’s minimum wage of \$13.50 per hour, the individual would take home just under \$2,000 per month—significantly less than, for example, the self-sufficiency standard of \$3,066 per month in Snohomish County.<sup>156</sup>
- Assuming the individual could pay \$25 per month, it would take some seven years to pay off the \$2,000 owing upon release from prison, by which time the original amount would have doubled.

<sup>153</sup> *Id.* at 30.

<sup>154</sup> See “Chapter 16: Gendered Consequences of Incarceration and Criminal Convictions, Particularly for Parents, Their Children, and Families.”

<sup>155</sup> Kopf & Rabuy, *supra* note 133.

<sup>156</sup> WORKFORCE DEV. COUNCIL OF SEATTLE – KING CTY., THE SELF-SUFFICIENCY STANDARD FOR WASHINGTON STATE 2020 19 (2020), [http://www.selfsufficiencystandard.org/sites/default/files/selfsuff/docs/WA2020\\_SSS.pdf](http://www.selfsufficiencystandard.org/sites/default/files/selfsuff/docs/WA2020_SSS.pdf).

- However, assuming that, as is the case for many, the individual either cannot secure employment or misses a payment, the jurisdiction might contract with a collection agency to pursue payment,<sup>157</sup> or the individual might be returned to jail for non-payment if a court concludes the individual is able to pay but will not pay.
- A jurisdiction could add a “reasonable fee . . . to the outstanding debt for the collection agency fee incurred or to be incurred,” and that fee could be “up to fifty percent.”<sup>158</sup>
- Thus, assuming the individual’s account is sent to a collection agency, the original \$2,000 could potentially become \$3,000 upon assignment, in which case the individual might need 15 or more years to pay off the amount at \$25 per month, resulting in the original restitution amount more than quadrupling.
- During the 15 years it takes for the individual to pay off what was originally \$1,000 in restitution and \$600 in non-restitution LFOs, the court retains jurisdiction over the individual.<sup>159</sup>
- So long as the court has jurisdiction, the clerk is authorized to collect, including requiring the individual to periodically verify their income throughout the fifteen-year repayment period.<sup>160</sup>

Whether in Snohomish County or in any of Washington’s 39 counties, and in courts throughout the criminal legal system, LFOs can significantly impact individuals, and not just in pure dollar-for-dollar costs. Through interest and collection surcharges, LFOs can grow over time. One person’s LFOs can become another’s burden. These impacts vary according to gender, though more data and research are needed to assess and address these impacts. Reform is underway, but that reform is not aimed at gender disparities, strictly speaking.

<sup>157</sup> RCW 36.18.190.

<sup>158</sup> RCW 19.16.500(1)(b).

<sup>159</sup> RCW 9.94A.753(4) (“For an offense committed on or after July 1, 2000, the offender shall remain under the court’s jurisdiction until the obligation is completely satisfied, regardless of the statutory maximum for the crime.”); RCW 9.94A.760(5) (court retains jurisdiction so long as the legal financial obligation remains unsatisfied, regardless of the statutory maximum for the underlying offense).

<sup>160</sup> RCW 9.94A.753(4); RCW 9.94A.760(5).

## V. LFO Reforms Have Taken Place and Are Being Considered, Though None Specific to Gender

### A. Recent reform efforts

In 2018, the Washington State Legislature took a significant step in reforming LFO imposition when it passed a bill (HB 1783) changing several laws to eliminate interest on non-restitution LFOs and prohibit cost imposition upon indigent defendants.<sup>161</sup> While HB 1783 abolished interest accrual on non-restitution LFOs as of June 7, 2018,<sup>162</sup> and allows courts to waive any such interest accrued prior to that date, the waiver is not automatic; rather, individuals must petition a court.<sup>163</sup> Additionally, HB 1783 amended several statutes to prohibit cost imposition upon individuals determined to be indigent under statute.<sup>164</sup> HB 1783 also prohibits courts from, for example, jailing an individual for failing to pay LFOs, unless the individual is able to pay but refuses to do so.<sup>165</sup> Separately, HB 1783 provides that failure to pay an LFO is not willful contempt where the court determines that an individual is experiencing homelessness or has a mental illness.<sup>166</sup> In addition, HB 1783 prohibits courts from imposing a \$100 DNA collection fee on individuals when DNA has previously been collected.<sup>167</sup> HB 1783 has already allowed many individuals to obtain relief from LFOs, in some cases through specially-organized LFO “reconsideration days” in courts around Washington.<sup>168</sup> As discussed in more detail below, further reform is possible but challenging.

<sup>161</sup> ENGROSSED SECOND SUBSTITUTE HB 1783, 65th Leg., Reg. Sess. (Wash. 2018) (HB 1783).

<sup>162</sup> RCW 10.82.090(1).

<sup>163</sup> RCW 10.82.090(2)(a). As discussed *infra*, proposed Washington State Courts General Rule 39 would provide guidance to courts throughout Washington on streamlining processes for individuals to seek statutory interest waiver.

<sup>164</sup> RCW 10.01.160(3) (“The court shall not order a defendant to pay costs if the defendant at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c).”); RCW 10.46.190 (relating to jury costs); RCW 10.64.015; RCW 9.94A.760(1); RCW 3.62.085 (referring to the \$43 conviction fee in courts of limited jurisdiction); RCW 36.18.020(2)(h) (referring to the \$200 clerk’s fee).

<sup>165</sup> RCW 10.01.180(3)(a); RCW 9.94A.6333(3)(a).

<sup>166</sup> *E.g.*, RCW 10.01.180(3)(c).

<sup>167</sup> RCW 43.43.7541.

<sup>168</sup> Alexis Krell, ‘*This is a Big Day for Tacoma*’ – 1,000 Seek Relief from Pierce County Court Debt, NEWS TRIB. (Sept. 26, 2019), <https://www.thenewtribune.com/news/local/article235282562.html> (discussing an LFO reconsideration day in Pierce County); *see also* Andrew Binion, *Event Gives People a Chance to Get Out from Under Overwhelming Legal Debt*, KITSAP SUN (Apr. 11, 2019), [Gender & Justice Commission](https://www.kitsapsun.com/story/news/2019/04/10/judge-</a></p></div><div data-bbox=)

## B. Possible future reforms

The recommendations below address some of the most pressing needs identified in this chapter: ensuring courts do not impose LFOs on individuals who cannot afford to pay and do not issue warrants where a defendant has been ordered to appear and show cause concerning non-payment of LFOs, but fails to appear for the hearing; increasing and streamlining data collection and access so stakeholders will have a single place to access statewide LFO data; moving forward the Washington State Criminal Sentencing Task Force LFO recommendations; ensuring judges know that supervision fees can be waived at sentencing; ensuring that individuals sentenced to pay LFOs are aware early and often of what relief is available and how to seek that relief; simplifying LFO repayment; identifying alternative sources of funding for courts and victim services; and exploring solutions not directly related to LFOs that could alleviate gender disparities, such as addressing employment and income disparities.

### 1. Background on data collection needs and current work

Presently, researchers gather data primarily from the Washington AOC, and in some cases, local jurisdictions. In addition to the possible forthcoming reports discussed above,<sup>169</sup> there may be technology approaches to easing data access. For example, a team with Microsoft is currently working on a criminal justice equity tool; the tool presently incorporates sentencing data provided by the Washington Caseload Forecast Council, but might also be able to present LFO data.<sup>170</sup> Any analysis should first consider the reliability of the underlying data, e.g., the sources of that data and how it was collected in the first instance.<sup>171</sup>

On April 25, 2021 the Washington State budget provided funding for the Washington State Institute for Public Policy (WSIPP) “to study legal financial obligations.”<sup>172</sup> The scope of the LFO study includes some of the data gathering recommended above, though there is no provision for

[legal-debt-forgiveness-criminal-justice-reform-civil-survival/3429426002/](https://www.wa.gov/legislative-services/legislation/track/legislation-detail/legislation-detail/legislation-detail/legal-debt-forgiveness-criminal-justice-reform-civil-survival/3429426002/) (discussing an LFO reconsideration day in Kitsap County).

<sup>169</sup> *Supra* notes 118-119

<sup>170</sup> Videoconference Interview with Kim Gordon, Anthony Powers, & Kate Sigafos (Feb. 23, 2021).

<sup>171</sup> For example, see *TATIANA MASTERS ET AL., INCARCERATION OF WOMEN IN WASHINGTON STATE: MULTI-YEAR ANALYSIS OF FELONY DATA (2020)* for information on the limitations of Caseload Forecast Council data.

<sup>172</sup> ENGROSSED SUBSTITUTE SB 5092, at 468-69, 67th Leg., Reg. Sess. (Wash. 2021).

collecting or analyzing data specific to gender. The study would “explore”: (1) the amount of LFOs imposed over the last three years; (2) total outstanding LFOs; (3) total annual LFO collections; (4) LFO imposition statutes; (5) the percentage of the “judicial branch” budget supported by LFOs; (6) “programs” funded by LFOs; (7) how other states fund their court systems and whether other states use LFOs to fund courts; and (8) recommendations to the Washington State Legislature concerning “potential methods and processes to delink court related funding and other county and local funding from the collection of legal financial obligations and [how] to provide such funding through other means.”<sup>173</sup>

The budget authorization for the WSIPP LFO study provides that WSIPP “may solicit input” from a number of sources, including, in relevant part, Superior Court judges, persons formerly incarcerated and their advocates, academic researchers, persons with LFO expertise, and the Washington State Supreme Court Minority and Justice Commission.<sup>174</sup>

“An initial report” from WSIPP is due to the Legislature by December 1, 2021, and the final report is due December 1, 2022.<sup>175</sup>

## 2. Washington State Criminal Sentencing Task Force LFO recommendations

A bill (SSHB. 1412) was introduced in the Washington Legislature to codify many of the Criminal Sentencing Task Force’s LFO recommendations in the 2021-22 session.<sup>176</sup> With support from the Washington State Supreme Court Minority and Justice Commission, the Superior Court Judges’ Association, and others, SSHB 1412 was voted out of the House Civil Rights and Judiciary Committee and House Committee on Appropriations, the bill was not given a floor vote.<sup>177</sup>

<sup>173</sup> *Id.* at 468-69.

<sup>174</sup> *Id.* at 469.

<sup>175</sup> *Id.* at 469.

<sup>176</sup> SECOND SUBSTITUTE HB 1412, 67th Leg., Reg. Sess. (Wash. 2021) (SSHB 1412).

<sup>177</sup> *Bill History*, WASH. STATE LEG. <https://app.leg.wa.gov/billsummary?BillNumber=1412&Year=2021&Initiative=false> (last visited May 21, 2021).

In addition to the Criminal Sentencing Task Force LFO recommendations, Dismantle Poverty in Washington recently recommended reforming LFO laws, including, for example, eliminating fees charged in connection with payment plans—i.e., “pay to pay” fees.<sup>178</sup>

Though none of these LFO-related recommendations specifically address gender, the recommendations, if adopted into law, may impact individuals of various genders differently. For example, if data are correct reflecting that courts impose slightly more LFOs at sentencing on men than women,<sup>179</sup> then changes to LFO laws at sentencing may benefit men more than women. However, given that many of the recommendations focus on post-conviction relief, those recommendations, if made law, may disproportionately help women dealing with LFO-related collateral consequences, such as women paying others’ LFOs.<sup>180</sup>

### 3. Education concerning LFO relief at and after sentencing.

The standard form community custody Appendix H (Figure 1) used by Superior courts throughout Washington does not currently include a space for waiving supervision fees. While a sentencing judge in Superior Court can waive Department of Corrections supervision fees at sentencing,<sup>181</sup> the standard form community custody Appendix H<sup>182</sup> used by Superior Courts throughout Washington includes language requiring payment of supervision fees, without advising the court or individual being sentenced of the court’s ability to waive the fee. Washington Judges have indicated that clarifying this form would raise the visibility for judges so they are aware that this fee can be waived.

<sup>178</sup> DISMANTLE POVERTY IN WASH., BLUEPRINT FOR A JUST & EQUITABLE FUTURE – THE 10-YEAR PLAN TO DISMANTLE POVERTY IN WASHINGTON 42 (2020), <https://dismantlepovertyinwa.com/wp-content/uploads/2020/12/Final10yearPlan.pdf>.

<sup>179</sup> BECKETT ET AL., *supra* note 120, at 28.

<sup>180</sup> Page et al., *supra* note 145.

<sup>181</sup> RCW 9.94A.703(2)(d).

<sup>182</sup> *Judgment and Sentence Appendix H Community Custody*, WASH. ADMIN. OFF. OF THE CTS. (Oct. 2012), <https://www.kingcounty.gov/~media/courts/superior-court/docs/criminal/criminal-forms/9-judgment-and-sentence-appendix-h-community-custody-pdf-web.ashx?la=en>.

Figure 1. Standard Form Community Custody Appendix H

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No.
	)	
vs.	)	JUDGMENT AND SENTENCE
	)	APPENDIX H
	)	COMMUNITY CUSTODY
Defendant,	)	
	)	

The Defendant shall comply with the following conditions of community custody, effective as of the date of sentencing unless otherwise ordered by the court.

- 1) Report to and be available for contact with the assigned community corrections officer as directed;
- 2) Work at Department of Corrections-approved education, employment, and/or community restitution;
- 3) Not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- 4) Pay supervision fees as determined by the Department of Corrections;

#### 4. State general fund support for courts and victim services.

Decreasing dependence on LFOs to fund the courts and victim services requires identifying new ways to fund victim services, courts, and counties that reduce or eliminate LFO dependence. For example, testimony provided in the Washington State Legislature in February 2021 concerning an LFO reform bill noted that allowing for waiver of the victim penalty assessment would require a new fund to provide for victim services, and yet no such fund with an alternative revenue source was being proposed.<sup>183</sup> During that same hearing in the Legislature, a representative of the Washington Association of Counties summarized the funding issue from the county perspective, testifying:

If we look back in time we'll see that the legislature originally imposed LFOs to help fund the court system. And over time that has sort of fallen out of favor. And this is exemplified by the introduction of bills that sort of chip away at our ability to impose and collect LFOs. We really need to take a look at how we're going to

<sup>183</sup> Hr'g on HB 1412 Before the H. Appropriations Comm., 67th Leg., Reg. Sess. (Wash. 2021) (statement of Russell Brown, Wash. Ass'n of Prosecuting Att'ys).

continue to fund the court system if we're not going to have LFOs as an option that is sustainable.<sup>184</sup>

Considering that Washington counties and cities have supported more than 80% of the cost of the state's court system in recent years,<sup>185</sup> LFO reform efforts may need to account for new revenue sources if LFO imposition and collection is curtailed.

Any convening to assess the role of LFOs in funding courts and services should be able to leverage the WSIPP study described above,<sup>186</sup> which would study in relevant part the percentage of the judicial branch budget supported by LFOs, programs funded by LFOs, how other states fund their court systems and whether other states use LFOs to fund courts, and recommendations to the Washington State Legislature concerning potential methods and processes to delink court related funding and other county and local funding from the collection of legal financial obligations, as well as recommendations to provide such funding through other means.

## 5. Other potential reforms with implications for LFOs

While not directly related to LFOs, there are many areas for potential reform in the criminal legal system which may impact LFOs and gender disparities related to LFOs. For example, considering the income and employment disparities discussed earlier,<sup>187</sup> reforms relating to pretrial release (e.g., relating to cash bail and pretrial services) could help women maintain or seek employment while awaiting trial, increasing their ability to afford LFOs if later convicted. Other areas of reform could include greater resources (e.g., increased access to health, vocation, and education resources) while incarcerated, which would make those reentering the community better able to address their LFO debt, as well as more resources after reentry with respect to things such as access to employment, housing, and credit.

<sup>184</sup> Hr'g on HB 1412 Before the H. Appropriations Comm., 67th Leg., Reg. Sess. (Wash. 2021) (statement of Juliana Roe, Wash. State Ass'n of Ctys.).

<sup>185</sup> *Funding Our Courts: Finding a Balance*, WASH. ADMIN. OFF. OF THE CTS.  
[https://www.courts.wa.gov/programs\\_orgs/pos\\_jea/?fa=pos\\_jea.article1](https://www.courts.wa.gov/programs_orgs/pos_jea/?fa=pos_jea.article1).

<sup>186</sup> *Supra* note 176.

<sup>187</sup> Kopf & Rabuy, *supra* note 133.



## VI. Recommendations

- To facilitate a single place to access statewide LFO data, by December 2021, stakeholders should be convened<sup>188</sup> to: (1) assess what LFO data is currently available from each level of court; (2) assess what LFO data is not available; (3) assess how stakeholders (e.g., researchers) currently access available data; and (4) recommend ways to (i) fill in the missing data, and (ii) create a single portal for accessing statewide data. Any analysis should first consider the reliability of the underlying data, e.g., the sources of that data and how it was collected in the first instance. The data should include impact of LFO's by gender, race, and ethnicity as overlapping categories; it should also strive to include who is making the payments (i.e., the sentenced defendant or another family member).
- The Washington State Legislature recently named the Washington State Institute for Public Policy (WSIPP) as the justice system partner responsible “to study legal financial obligations,” and provided WSIPP with funding to do so. The scope of the LFO study includes some of the data gathering recommended above, though there is no provision for collecting or analyzing data specific to gender. WSIPP should consult with stakeholders, including the Gender and Justice Commission, immediately about conducting this study. The Gender and Justice Commission should (1) recommend to WSIPP that their data collection and analysis include gender and intersectionality with other demographics, and (2) offer the Gender and Justice Commission’s assistance with the study.
- To ensure that LFOs do not pose a barrier to completing a sentence, exiting the criminal legal system, and successfully reentering the community, the legislature should consider enacting the following Washington State Criminal Sentencing Task Force LFO recommendations:
  - Address interest on restitution:
    - Change current law to give judges the discretion to waive or suspend interest on restitution, rather than it being mandatory, based on a finding of current or likely future ability to pay.

<sup>188</sup> Such a convening is already being planned for September 2021, coordinated by the Administrative Office of the Court and co-chaired by Representative (and Gender Justice Study Advisory Committee member) Tarra Simmons and Judge David Keenan (author of this chapter).

- If restitution is imposed, allow accrual of interest to begin following release from the term of total confinement.
  - Lower the current 12% interest rate on restitution.
- Waive existing non-restitution interest.
- Victim Penalty Assessment (VPA):
  - Provide trial court judges with the discretion to reduce or waive the VPA upon a finding by the court that the defendant lacks the present and future ability to pay.
  - Provide trial court judges with the discretion to eliminate stacking of multiple VPAs (multiple VPAs imposed at same time) based on a finding that the defendant lacks the present and future ability to pay.
- Convene stakeholders to collaborate on legislation requiring, at a minimum, that Superior Courts means-test LFOs which are currently mandatory, including, for example, the victim penalty assessment.
- Convene stakeholders to study means-testing imposition of all LFOs in courts of limited jurisdiction, requiring a report and recommendations by November 2022.
- Convene stakeholders to propose draft revisions to CrR 3.4(d) and CrRLJ 3.4(d) concerning the necessity of an individual's presence at a hearing ordered solely to address LFO collection, and the advisability of issuing warrants when an individual fails to appear at such a hearing. Stakeholders should consider whether warrants should still be permitted where, for example, there is proof by a particular standard (e.g., preponderance) that the failure to pay is willful.
- Ask AOC to revise Appendix H of the Felony Judgment & Sentence Form (re Community Custody) to include a space for waiving supervision fees. While a sentencing judge in superior court can waive DOC supervision fees at sentencing, the standard form community custody Appendix H used by Superior courts throughout Washington includes language requiring payment of supervision fees, without advising the court or the defendant of the court's ability to waive the fee.
- Convene stakeholders to make recommendations concerning the use of collection agencies to collect LFO debt. Stakeholders should examine, at a minimum: (1) whether

LFOs should be exempt from referral to collection agencies; (2) whether to increase the minimum collection referral period (currently 30 days under RCW 19.16.500(2)); and (3) whether to reduce collection agency fees (currently up to 50% of the first \$100,000 under RCW 19.16.500(1)(b)).

- To ensure that LFOs do not pose barriers to completing a sentence, exiting the criminal legal system, and successfully reentering the community, and to stop dependence on LFO revenue to fund the courts and victim services, by mid-2022, convene stakeholders to: (1) assess what portion of court funding and victim services funding is supported by LFOs; (2) assess the impact of means-testing LFOs currently supporting court funding and victim services funding; (3) assess the economic and social impact of eliminating referral of debts to collection agencies; and (4) recommend alternative sources of funding for courts and victim services.