

## 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.