

## **Examining Legal Financial Obligations in Washington State**

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After criminal offenders are convicted of a crime, they must return to the court where a judge will determine their sentence. Sentencing often includes jail time, but it always includes monetary penalties, or Legal Financial Obligations (LFOs). There are many reasons these penalties are given, from restitution for the victims of criminal offenses, to providing government revenue and funding the court, to punishment for the offender. However, these fines, and the interest rates that come with them, often leave offenders with an enormous amount of debt. Debt that often go unpaid for a long time, either because the offender is incarcerated (where interest continues to accrue), or because they don't have the money to pay, or are only able to make minimum payments, which often do not even cover the cost of interest. These unpaid LFOs make the system of LFOs an unreliable source of government revenue and restitution. As state funding for courts in Washington State are relatively low compared to most other states (48<sup>th</sup> in state-level judicial funding according to DeLostrinos (p 5)), courts are primarily funded by the county or municipality that they're in; this includes money from LFO revenue. There are a lot of interests at stake when it comes to LFO sentencing and collection. Courts need to be funded, defendants want to be able to get on with their lives after interacting with the criminal justice system, and people deserve to have a criminal justice system that works for the benefit of society. This paper will demonstrate why the current system of LFO sentencing does an inadequate job at satisfying these interests, and what can be done about it.

To illustrate the history of criminal debt, let's use the example of debtor's prisons in the US. Debtors' prisons were abolished in the United States by Congress in 1833, and by 1849, individual states had them annulled. This meant that a person could not

be incarcerated because they owed money to a creditor. Since the mid-19<sup>th</sup> century, many court decisions strengthened those laws. Meanwhile, the justice system itself leaned toward a rehabilitative model of punishment, noted by indeterminate sentencing, where judges had broad discretion over sentence length. Even after sentencing, offenders were treated on a case-by-case basis regarding their time of release. There were critics of this style of sentencing on each side of the political aisle, though, with those on the right saying this could lead to sentences too lenient for the crimes committed and those on the left saying it would lead to judges making sentencing decisions based on things other than the crime committed, such as the race of the offender (Harris, p 75). So, in the 1980s, many states-imposed guidelines for sentencing, leading to a more fixed sentencing structure that continues today.

This broader change in sentencing style intersects with monetary punishments in that, at the same time fixed sentencing guidelines were being put in place, no procedures were being put in place regarding monetary penalties for offenders. Judges continue to have significant discretion regarding the types of LFOs and how much to be given to an offender, and according to a survey of State Judges conducted by Washington State Supreme Court Minority and Justice Commission, judges have a wide range of reasons they believe LFOs are imposed. From punishment and restitution, to funding the court, to just because it's the law (Electrinos, p 29).

Washington's system of LFOs is much more complicated than those three reasons. In fact, there are over 150 types of LFOs that can be given to defendants who are convicted of a crime. Some of these are often mandatory LFOs, meaning a defendant's ability to pay these fines and fees isn't considered when sentenced.

Mandatory LFOs for felonies in Washington State are: the Victim Penalty Assessment, DNA collection fee, restitution, and a crime-specific fine depending on what the offender is convicted of (Delostrinos p 18). All other fines that may be imposed are discretionary, meaning judges are able to determine many factors, including the ability to pay, before imposing them; examples of discretionary LFOs according to The Washington State Supreme Court Minority and Justice Commission include, clerk's fees, prosecution and jury fees, daily incarceration costs, and attorney's fees (MJC, p 11). Many of these discretionary costs are in place to assist with funding the court.

Judges' discretion is significant when determining whether or not a defendant has the ability to pay. There have been several supreme court cases (*Bearden v Georgia (1983)*, *Tate v Short (1971)*, and *Williams v Illinois (1970)* to name a few) that have determined that it is a violation of equal protection rights to lengthen a person's jail time based solely on whether or not someone has been able to pay their fines, and in one case, distinguished someone unable to pay, from someone who is able and willfully chooses not to. So a person can be placed or kept in jail for not paying fines, only if they were able to pay and did not. What these cases haven't determined is whether a defendant can be given LFOs in the first place, regardless of their current or future ability to pay them. The average felony conviction comes with hundreds of dollars worth of LFOs, which many defendants aren't, and will never be able to pay as 90% of those with LFOs for felony convictions and 60% of those with misdemeanors cannot (Budget and Policy, p 4). Adding to this, LFOs in the State of Washington have a mandatory annual interest rate of 12%, and if defendants don't pay fines, the court will contract out

the effort to collect LFOs to private collection agencies, who can significantly increase the amount of interest owed. The RCW states,

“The amount to be paid for collection services shall be left to the agreement of the governmental entity and its collection agency or agencies, but a contingent fee of up to fifty percent of the first one hundred thousand dollars of the unpaid debt per account and up to thirty-five percent of the unpaid debt over one hundred thousand dollars per account is reasonable (RCW 19.16.500).

So even modest initial monetary sanctions can skyrocket to become thousands of dollars in penalties and both the court, as well as private companies can benefit from those who are unable to pay. Punitive fines can not even be discharged through bankruptcy.

Washington State ranks near last in state judicial funding in the United States. The courts are primarily funded through local governments and revenue from LFOs. With prison populations rising over the last 40 years, funding the court system has become increasingly expensive. These increasing costs give incentives for judges to use their LFO discretion to extract as much as they can from defendants, and since people of color are more likely to interact with the criminal justice system as defendants, they are more likely to receive monetary sanctions, and they are the least able to pay. To add to this, families in which a parent has been incarcerated are more likely to already live in poverty, and a study done by the US Department of Justice has shown that 33% of those released from prison are unemployed a full four years later, and the median quarterly income after four years for those released is \$6,000, or, \$24,000 per year (Carson, p 1). While that median may be enough for some to make their minimum

monthly payments to the court, often, with interest rates, defendants still see their LFO obligations increase. Alexes Harris, a sociologist, and expert in the system of fines and fees, states in her book, *A Pound of Flesh*,

“On paper, a legal financial obligation is a sentence stipulating how much a criminal defendant owes the state as result of his or her involvement in the criminal justice system. Yet, in practice, an LFO is a form of punishment that levies an extra burden on poor defendants or people otherwise unable to pay it” (p 52).

This passage illustrates how the actual impacts of Legal financial obligations are different from the goals of the court, which are clearly stated in the RCW to,

- “Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- Promote respect for the law by providing punishment which is just;
- Be commensurate with the punishment imposed on others committing similar offenses;
- Protect the public;
- Offer the offender an opportunity to improve himself or herself;
- Make frugal use of the state's and local governments' resources; and
- Reduce the risk of reoffending by offenders in the community” (RCW 9.94A.010)

As an exercise, say a defendant, recently released from incarceration was able to quickly find a job. Say their total LFO obligation is 5,000 dollars, including restitution, and they are able to make a 50-dollar monthly payment. That’s 600 dollars per year

they are paying toward their debt. With an annual 100-dollar collection fee and a 12% annual interest rate, defendants at the end of the year would owe 5,040 dollars, 8% more than they owed initially. This debt is often carried with people for the rest of their lives (ACLU). Between 2014 and 2016, Washington Superior Courts imposed almost 131 million dollars in LFOs and collected less than 8 million (delostrinos p 53), that is about six percent of LFOs set.

Individuals involved in the criminal justice system as defendants often already begin at a disadvantage since they are more likely to live in poverty and less likely to find and retain employment long term. Adding debt that can last their entire lives keeps them involved with this system. There is also the issue of recidivism. People who have been in and are released from prison are likely to be arrested and go back. A 5-year study (2012-2017) of 34 states by the Bureau of Justice Statistics showed that 71% of released prisoners had been rearrested within five years of their release. If the defendant was rearrested in a different county than they were the previous time, they may owe LFOs in two separate jurisdictions, and may be forced to make separate payments in each county, since county court systems don't coordinate who owes penalties and where they are owed. This means that a defendant can be making monthly payments in one jurisdiction and therefore are able to pay their fine, but they cannot afford to make two payments and can be penalized (Interview with E. Walker 02/25/2022).

Where do LFO payments go? According to Washington State law,

“All non-restitution interest retained by the court shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to

the state treasurer for deposit in the judicial information system account...  
twenty-five percent to the county current expense fund, and twenty-five percent  
to the county current expense fund to fund local courts” (RCW 10.82.090)

So only 50 percent of non-restitution LFOs go to funding the court (county fund for local courts and judicial information system) and 50 percent are funds that don't have a specific purpose. These non-restitution LFOs are about 60 percent of all LFOs collected. The other 40 percent comes from restitution payments (DeLostrinos p 57), which go into victim funds to be paid directly to victims.

In Washington State, HB1412, a bill currently going through congress, hopes to give some relief to Washington residents experiencing the system of LFOs and to those who may in the future. Some of the components of this bill, if passed, according to the Washington State Budget and Policy Office are, getting rid of the Victim Penalty Assessment and DNA collection fee, giving courts the ability to waive interest for LFOs that are given, and giving “indigent” a broader definition, to include more reasons why defendants may not be able to pay LFOs (Walker, para 5).

Since Washington ranks near the bottom relative to other states in state funding for trial courts, the proposed bill, if passed, will create additional financial strain on the courts without a method of recouping the lost revenue from LFO reform. The Washington State budget and policy center has proposed several methods of recovering that lost funding. One is an additional 1.2% payroll tax on any Washington resident making over 150,000 dollars or more annually, generating 300 million in annual revenue. Another is increasing taxes on high-value real estate transactions, such as estate or excise taxes. These can also generate over 300 million dollars per year in

revenue. Lastly, increasing the property tax rate (currently cannot go over 1% per year) and allowing it to grow with Washington's inflation and population will also provide upwards of 300 million in revenue. In fact, the State of California has already passed a bill eliminating 23 different types of fines and fees, including fees for legal representation, parole supervision fees, and many administrative fees levied on defendants.

There have been court cases in recent years that have had significant effects regarding the rights of Washingtonians settled with LFO debt. One determining that driver's licenses couldn't be suspended due to unpaid fines. Another case determined it was unconstitutional to transfer a citizen's debt to a private collection agency if they do not have the ability to pay.

Individuals involved in the criminal justice system as defendants often already begin at a disadvantage since they are more likely to live in poverty and less likely to find and retain employment long term. Adding debt that can last their entire lives keeps them involved with this system. There is also the issue of recidivism. People who have been in and are released from prison are likely to be arrested and go back. A 5-year study (2012-2017) of 34 states by the Bureau of Justice Statistics showed that 71% of released prisoners had been rearrested within 5 years of their release (Durose, 2021, p.1). That rearrest comes with more LFOs and leads to increased debt

The system of Legal Financial Obligations is an example of when society does not benefit from the criminal justice system. If LFOs are used to fund the court, then the fact that only a fraction of imposed LFOs are ever paid, and only a portion of those paid goes to funding for courts, means that LFOs are not a dependable revenue source for

the court, and judges must impose LFOs that they know will never be paid in order to receive that fraction. But the money that the court doesn't receive doesn't just disappear, it winds up on the backs of people who are too poor to pay them.

The sentencing of LFOs can be a debilitating strain on individuals who interact with the criminal justice system. The US constitution states that people are not to be subjected to excessive fines and fees, and debtors' prisons were abolished centuries ago. Though people cannot be incarcerated due to their debt, debt with the courts can still cause incapacitation. It is more debtors' house arrest now than a debtors' prison, and with the increasing costs of courts and interest rates, those who cannot afford to pay LFOs can end up continuing to interact with the criminal justice system for their entire lives. LFO reform is necessary to give some breathing room to defendants and allow them to live their lives eventually unencumbered by the criminal justice system. LFO reform can also change the way the court is financed and give a certain and equitable revenue stream to the system, instead of funding the court through the dollars of those who cannot afford it. The proposed bill is a good start in LFO reform, and making these changes will alleviate some of the stress of LFOs, but there is still progress to be made on this front. For example, although those who cannot make regular LFO payments cannot have their debt transferred to private collection agencies, those who are able to make minimum payments, can still see their debt balloon over time with interest rates. However, if this process continues and progress continues being made, I believe that a more equitable system that benefits all residents can exist.

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