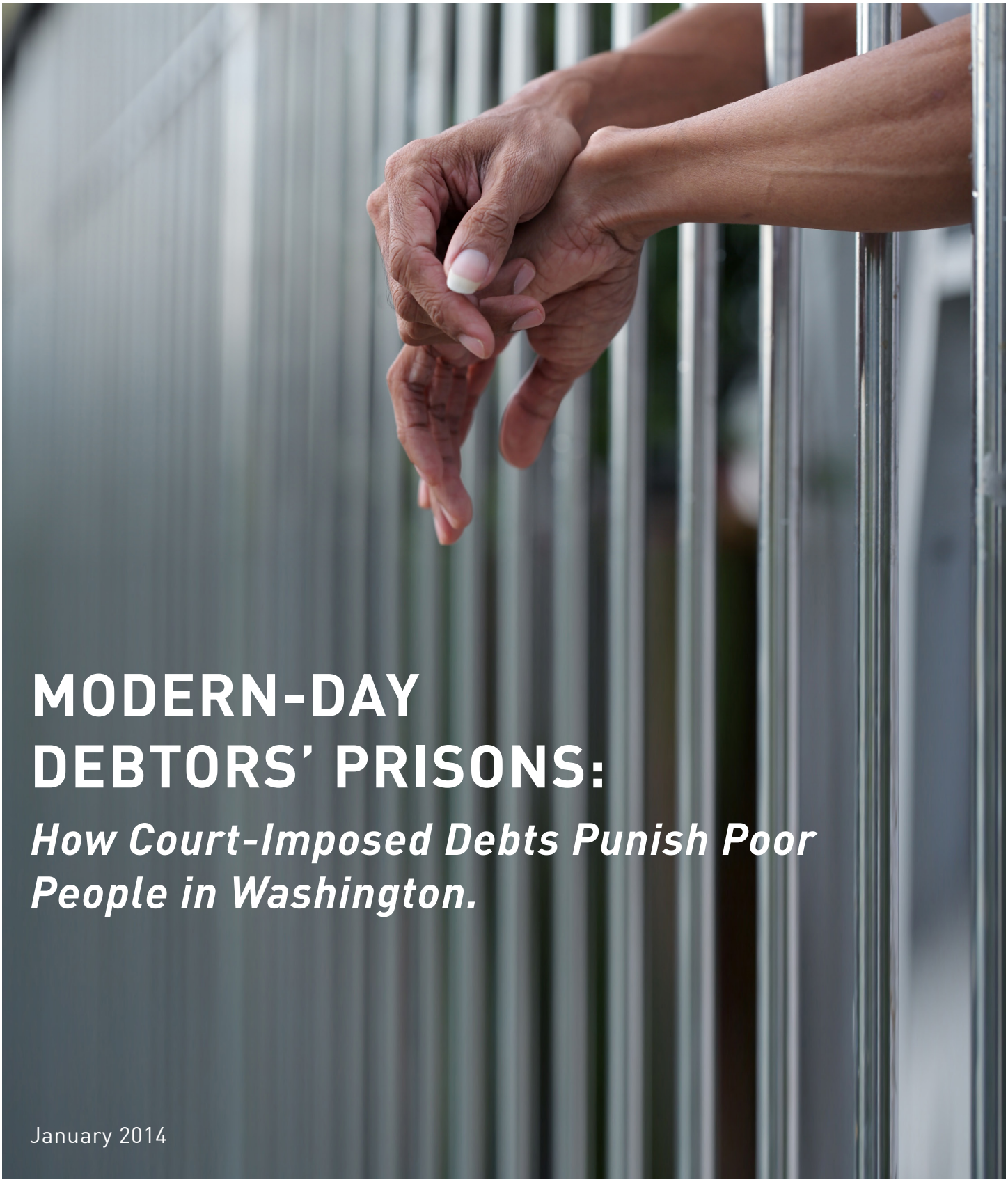

MODERN-DAY DEBTORS' PRISONS:

How Court-Imposed Debts Punish Poor People in Washington.

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ACLU
AMERICAN CIVIL LIBERTIES UNION of WASHINGTON

Columbia Legal Services
Working for Justice Since 1967

INTRODUCTION

Persons charged with and convicted of crimes are overwhelmingly poor.[1] According to the Washington Office of Public Defense, 80-90% of people charged with felonies are found to be indigent by the courts. The majority of people who are incarcerated lack a high school diploma, have below-average literacy levels,[2] and have few job opportunities.[3] So it is not surprising that up to 60 percent of former inmates remain unemployed one year after release from prison.[4] Without adequate education and employment, persons with criminal convictions often struggle to pay for even the most basic of necessities – food, rent, utilities, childcare, and transportation.

In Washington state, these individuals may be pushed deeper into poverty by court-imposed debt. For people with criminal convictions, government practices should seek to increase the likelihood of their successfully re-entering the community. Yet court-imposed debt presents a major barrier.[5]

Nearly every person convicted in a Washington court receives a bill for Legal Financial Obligations at sentencing.[6] Known more commonly as LFOs, these include the fees, fines, costs, and restitution imposed by the court on top of a criminal sentence.[7] The average amount of LFOs imposed in a felony case is $2540. After imposition, LFOs increase rapidly due to a high interest rate and other ongoing costs. Those who cannot afford to pay often face a demoralizing cycle of court hearings, contempt charges, and arrest warrants.

The result of imposing excessive LFOs is a counterproductive system that punishes people for their poverty and harms lives yet brings little benefit to government or society. Washington's policies for imposing and collecting LFOs even result in some poor people being locked up in jail because they cannot afford to pay debts – a modern version of the despised debtors' prison.

Regardless of the rationale behind imposing LFOs on persons convicted of crimes, in practice this system places severe, long-lasting burdens on persons living in poverty. Furthermore, there are few checks and balances in place to protect indigent defendants and debtors from unfair collection and enforcement practices that fail to take into account an individual's current financial situation, as required by law.

Under these circumstances, no one wins. Impoverished persons suffer because LFOs keep them tied to the criminal justice system, often obstructing housing and employment opportunities and preventing them from rebuilding their lives. Children may be separated from their mothers and fathers who are jailed for non-payment, and households break up. The public does not benefit, as there are significant costs incurred in collecting and sanctioning persons who are too poor to pay LFOs. And incarcerating indigent defendants neither deters crime nor serves a rehabilitative purpose. The funds used to jail people for non-payment would be better used on alternatives to incarceration, community outreach and education, and anti-poverty efforts.

CONSIDER THESE FACTS:

- ***Many courts routinely impose LFOs without considering whether a person is able to pay them.*** People convicted of crimes in Washington are ordered to pay high amounts of fines, fees, and court costs. In superior court, the average LFO is

$2340 per case. Yet in Benton County and elsewhere, courts regularly fail to consider an individual's ability to pay, as is required by state law.

- ***LFOs can amount to a lifetime sentence.*** After it is imposed, an LFO debt can grow quickly – due to a 12% interest rate and added collection fees of $100 per year. A person making $20 payments per month on an average case may be unable to pay off his LFO debt even after decades of regular payment.

- ***People who are unable to pay can end up behind bars.*** Unlike with private debts, courts have the power to incarcerate debtors for non-payment of LFOs. LFOs cannot be discharged in bankruptcy and many never expire.

- ***In Benton County, approximately 20% of people booked into county jail are serving time because of non-payment of legal system debts.*** Even though the state and federal constitutions and case law require courts to consider a person's ability to pay before sanctioning him for non-payment, some counties routinely incarcerate people for non-payment.

- ***To avoid incarceration, impoverished Washington residents are forced to choose between meeting their basic needs and paying for LFOs.*** Some Washington counties require individuals to transfer public payments for subsistence to pay for LFO debt, even though those benefits cannot lawfully be garnished or attached to pay other debt.

This report spotlights LFO practices throughout the state, in the hope that the courts and legislature will reexamine and reform existing policies. Focusing on four counties, we document problems with LFO practices, and profile individuals who have been impacted. Finally, we recommend alternative practices that jurisdictions can employ and policies that state lawmakers should enact to create a better LFO system in Washington state. These changes will ensure that LFOs are imposed and collected in conformance with state and federal law, hold accountable those who can afford to pay, increase payments of restitution to victims, and reduce unnecessary barriers for poor people seeking to reenter society.

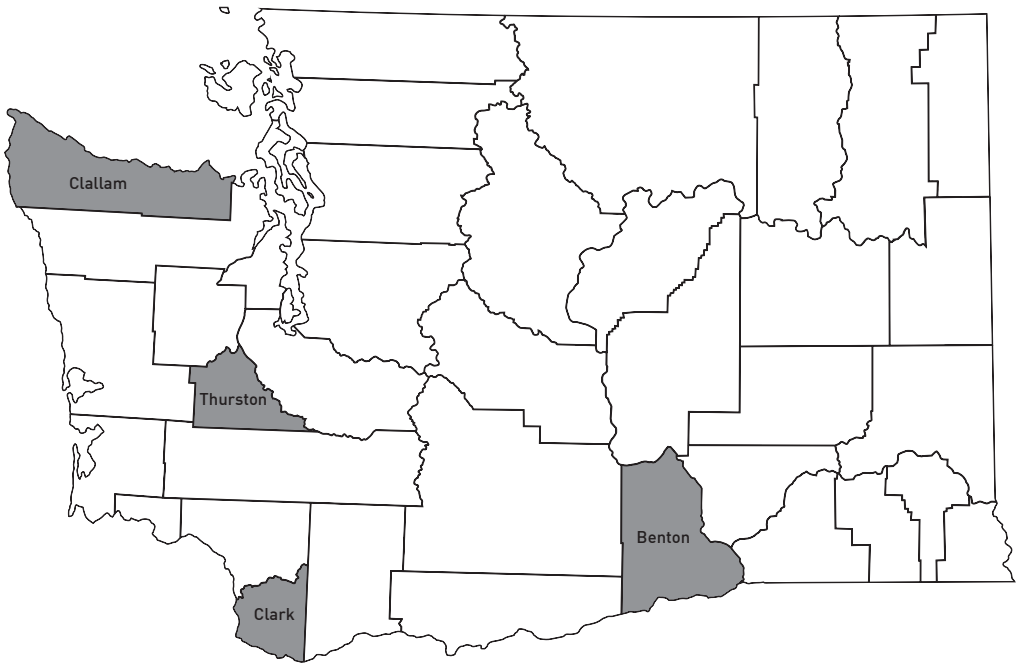
I. OUR INVESTIGATION

The ACLU of Washington (ACLU) and **Columbia Legal Services** (CLS) have increasingly heard from impoverished individuals struggling with LFOs. Some are currently incarcerated for failing to pay LFOs; others are trying to make payments and find ways to access relief and avoid sanctions. While we have heard from low-income individuals throughout the state, complaints about practices in a few areas stand out.

This past spring the ACLU and CLS launched an investigation into LFO policies and practices in Washington state. We sought to determine how courts in different jurisdictions impose and collect LFOs from people with scant resources. We conducted court observations, reviewed court records, and interviewed debtors, attorneys, and community members in **Benton, Clark, Clallam, and Thurston Counties**. This investigation provided firsthand evidence of the impact LFOs have on Washington residents, their families, and our communities.

Our investigation uncovered problems in each county, including the following:

- Courts impose discretionary LFOs (including court costs) without considering a person's present or future ability to pay.
- While state law says restitution payments to victims should take precedence, county clerks' offices garner annual LFO collection fees prior to paying out restitution to victims.
- The state's excessive interest rate for LFOs exacerbates problems, creating insurmountable debt for already impoverished people.
- Courts require that persons use public assistance for basic needs to pay off LFOs.
- Courts incarcerate persons for nonpayment even when they are destitute and unable to pay.



II. SQUEEZING BLOOD FROM A TURNIP

LFO Policies and Practices Result in Debt That Keeps People in Poverty

Most of the individuals we spoke with explained that they would like nothing more than to satisfy their LFOs. Yet, those who cannot afford to immediately pay LFOs find themselves face ever-increasing debt. This begins at sentencing, where courts often impose LFOs without considering the defendant's poverty. From this point, the debt quickly increases due to usurious interest rates and the imposition of annual collections fees. As a result, even those who make regular payments are unable to fully pay off LFOs. They remain tethered to the criminal justice system for decades.

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Imposition of LFOs

Superior courts are empowered to impose over 20 different LFOs, including the costs of using public defense,[8] fees for requesting a jury trial,[9] criminal filing fees,[10] and the costs incurred by the county or city for serving a warrant.[11] Some LFOs are mandatory, and a court must impose them regardless of a defendant's poverty. Mandatory LFOs include the $500 Victim Penalty Assessment (VPA) and the $100 DNA database fee.[12] But most LFOs are not mandatory, and judges have wide discretion to impose or waive them.

Before ordering that a defendant pay discretionary court costs, state law requires the court to take into account the financial resources of the defendant and the nature of the burden imposed by LFOs.[13] In addition, if a court finds that the defendant is indigent and does not have the current or future ability to pay costs, courts are permitted to waive all or part of the non-mandatory LFOs.[14]

Unfortunately, courts often fail to inquire into a defendant's ability to pay before imposing LFOs. Even where they do inquire, there is no standard or methodology to determine whether someone has the ability to pay. The result is wide disparities in the amount of LFOs imposed in different jurisdictions throughout the state. For example, in some counties, an indigent individual receives only the mandatory LFOs, while in other counties, including all of those we investigated, an indigent defendant routinely receives a score of discretionary LFOs that he or she will never be able to pay.

Interest and Collection Fees

An impoverished person's situation only gets worse after LFOs are imposed due to the interest rate that accrues on LFO debts regardless of an individual's ability to pay. By law, superior court-ordered debt begins to accrue interest from the date of imposition at the exorbitant rate of 12% per year.[15] District and municipal court LFOs may also accrue 12% interest if the case is assigned to a collections agency and placed in collection status.[16] The 12% rate is almost twice the current rate for interest in some civil cases, such as personal injury cases.[17]

Giving first priority to the collection fee runs contrary to state law ... Nevertheless, taking collection fees first appears widespread.

Furthermore, LFOs accrue interest during the entire period of incarceration, when individuals are earning little or nothing. The interest rate disproportionately impacts low-income persons, because those with the financial

means to pay their LFOs quickly can avoid the long-term effects of interest accrual.

Court collection fees add to escalating LFO debts. Court clerks in the jurisdiction where the LFOs were imposed are responsible for monitoring and collecting LFOs.[18] Superior court clerks are authorized to charge individuals up to $100 annually for collection of outstanding LFOs.[19] Many clerks collect this fee every year on every open LFO account. Even worse, many superior court clerks extract the collection fee from individuals' monthly payments before distributing payments to other LFOs.[20] For example, if a person pays only $150 a year towards LFOs, the clerk will first deduct the $100 collection fee before applying the remaining $50 to restitution, fines, and court costs.

Court collection fees add to escalating LFO debts.

Giving first priority to the collection fee runs contrary to state law, which prioritizes restitution to victims over all other financial obligations. By law, "[u]pon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court."[21] Nevertheless, taking the collection fee first appears widespread.[22]

Clark County provides a good example of the problems that result from the high interest rate and the imposition of both discretionary and annual collection fees on poor defendants.[23] In Clark County, the courts routinely impose discretionary LFOs without considering a defendant's ability to pay them. For example, virtually every defendant in Clark County Superior Court is ordered to pay a minimum of $800 for the cost of his or her public defender. When both mandatory and discretionary LFOs are taken into account, the median LFO amount ordered in a single case in Clark County Superior Court is $2170.[24] Every year, this amount accrues 12% interest and the court clerk imposes a $100 annual collection fee per open account.[25] Yet, on average, the county clerk collects only $117.08 per year per account. Therefore, in the average case, a person owing LFOs in Clark County is barely able to pay the collection fee over the course of a year and makes hardly a dent in the underlying LFO balance.

III. TAKING FROM PETER TO PAY PAUL

Washington Courts Require People to Pay LFOs from Payments for Basic Needs or Honoring Their Right to Counsel

Individuals who owe LFOs are often forced to make payments from funds necessary to meet their basic needs. This problem is particularly acute when a person's only income comes from public benefits, such as Temporary Assistance to Needy Families (TANF) or Social Security Disability Insurance (SSDI). These programs have been established to help the most vulnerable meet their basic needs, such as food, housing, and child care. Yet, because failure to pay LFOs can result in jail time or other sanctions, recipients of public assistance often feel that they have no choice but to turn their payments for necessities over to the courts, to the detriment of their families or own well-being.

In Washington, people whose only income comes from public assistance are the very definition of poor. They live well below the poverty level. Under state law and court rules, persons who receive needs-based public benefits are

entitled to the assistance of a public defender in a criminal case and to have all filing fees waived in a civil case.[26] Furthermore, because the recipients depend on these payments for basic needs, public benefits generally cannot be garnished or attached in order to pay creditors.[27]

... recipients of public assistance often feel that they have no choice but to turn their payments for necessities over to the courts, to the detriment of their families or own well-being.

Nevertheless, we observed judges and court clerks in a number of counties ordering and allowing individuals to pay LFOs (including court costs) from public payments for basic needs. Most court clerks request specific information about a person's eligibility for needs-based assistance, and then count these funds as income when setting payment plans. This practice occurs in Thurston County, which includes the state capital, Olympia. Even after public defenders successfully fought to protect two individuals from being forced to pay public benefits to LFOs, courts in Thurston County have not changed their policy. Courts will also sanction those known to subsist on needs-based assistance if they fail to pay LFOs. This is unlawful, as federal statutes prevent these payments from being garnished or seized. The practice forces people to choose between meeting their basic needs and avoiding court sanctions.

IV. TURNING A BLIND EYE TO FAIRNESS

Courts Jail People Without Considering Their Ability to Pay

Individuals unable to pay their LFOs may face an array of court sanctions, including being locked up.[28] In Benton County, our investigation revealed that approximately 20% of the people in custody on any given day are being sanctioned for non-payment of LFOs.[29] While Benton County provides the most extreme example of this practice, other counties in Washington also incarcerate debtors for non-payment.[30]

Debtors' prisons are illegal. In *Bearden v. Georgia* (1983), the United States Supreme Court held that a person cannot be incarcerated for failing to pay his criminal debt if his failure to pay was due solely to his poverty.[31] Therefore, before a court can order jail time for failing to pay criminal debt, it must first inquire into the defendant's ability to pay.[32] The court should inquire into a defendant's financial resources, reasonable expenses, and good-faith effort to acquire the money to pay.[33] A defendant cannot be incarcerated unless, considering those factors, he has the ability to pay but refuses to do so.

Benton County superior and district courts regularly fail to consider ability to pay, and instead aggressively use incarceration as a collections tool.

Despite this clear guidance, both Benton County superior and district courts regularly fail to consider ability to pay, and instead aggressively use incarceration as a collections tool. How does this happen? First, Benton County imposes a wide variety of discretionary LFOs without considering defendants' ability to pay. Payment plans are set according to the amount owed, not an individual's financial circumstances. Then, people who cannot pay the full monthly amount required

are ordered to appear at a failure to pay hearing.[34] Both the district and superior courts hold these hearings weekly, processing up to a hundred individuals in an hour or two. Those who fail to appear have warrants issued for their arrest, and are ordered to pay a $100 fee per warrant issued, which is added to existing LFOs. Those who appear are rushed through a truncated process designed to force payment.

In Benton County District Court, the judge is the primary collection officer. At the failure to pay hearing, if a person has not previously missed payments, he is typically allowed to "restart" his payment plan. Occasionally, the court will lower monthly payments, although the court's stated policy is to require a minimum of $25 per month. If the court refuses to restart, the person is ordered to pay the entire amount owing or report to work crew.

Benton County's work crew program is a form of partial custody supervised by a community corrections officer.[35] People on work crew perform manual labor for 9-10 hours, 4 days a week, and earn $80 credit against fines per day. Therefore, a person ordered to work off $800 in fines would need to participate in work crew for 10 days. Work crew participants are required to pay $5 per day up front in order to participate. So, a person ordered to work crew for 10 days would need to pay $50 to participate. For the indigent, the cost of participating in work crew is prohibitive. In addition, people who have previously failed to report, or who have been convicted of certain offenses, are not eligible for work crew.

One individual became seriously ill while participating in work crew, did not report, was charged with "escape," and then jailed for non-payment.

A person who cannot complete work crew, or who is not eligible to participate, is ordered to jail. For example, the ACLU spoke with one individual who became seriously ill while participating in work crew, did not report, was charged with "escape," and then jailed for non-payment. People who cannot complete work crew are ordered to "sit out" their fines, earning $50 of credit per day spent in jail.[36] So, a person ordered to sit out $1000 in fines will spend 20 days in jail. Benton County's debtor's prisons result in extremely long sentences, and often individuals end up spending more time in jail for nonpayment of fines and fees than they did for the underlying offense. Benton County charges $68.59 a day to incarcerate someone.[37]

In Benton County Superior Court, the process similarly disregards the Constitution and case law. At superior court failure-to-pay-fine hearings, the court clerks informally negotiate "pay or appear" agreements with individuals (meaning they must either "pay" the amount owed or "appear" before the court). These agreements are signed without the assistance of counsel, and debtors are told that they can avoid jail time by signing them. People usually agree to pay the entire amount owing, often in very short amounts of time—weeks, or even days. In fact, in signing these agreements, individuals "admit" that their previous failure to pay is willful and intentional.

The courts accept these agreements without inquiring as to whether the defendant can actually afford to pay, and non-compliance almost inevitably results in incarceration. People do not earn any credit against superior court LFOs if they are sentenced to jail for non-payments. They leave owing as much as they did upon entrance into jail, plus interest that accrued during that time.[38]

In both district and superior courts, there is little or no inquiry into the reasons for non-payment. At no point in the district court process did we see the court (1) advise people that ability to pay is a crucial issue; (2) inquire into

a defendant's actual financial resources and expenses; (3) consider waiving or reducing any LFOs due to manifest hardship; or (4) consider any alternatives to incarceration besides work crew, which is not a viable alternative for the indigent, because participants must pay $20 per week to participate. And while some superior court judges advised people that ability to pay is a crucial issue, many individuals facing incarceration had already signed pay or appear agreements and "admitted" that they had the ability to pay. The end result was regular incarceration for non-payment, even for those clearly without the means to pay.

... judges order incarceration for non-payment when debtors were homeless, unemployed, or had mental health or addiction issues preventing them from gaining employment.

ACLU and CLS attorneys observed both district and superior court judges order incarceration for non-payment when debtors were homeless, unemployed, or had mental health or addiction issues preventing them from gaining employment. We also observed the district court order incarceration of single parents supporting young children and people whose only income was public assistance.

This system is costly, both for the government and individuals. The Benton County Jail charges $68.59 to incarcerate a person for one day. It costs $125,000 per year to run a work crew of 8-12 individuals. These figures don't account for the salaries of clerks who staff collections units, judicial time for collections hearings, and the costs of issuing and serving warrants for non-payment. It is clear that Benton County and its cities are spending hundreds of thousands of dollars every year on the LFO collections.

Nor do most individuals in Benton County, or other counties, have the assistance of lawers to protect their rights. Defendants who face the possibility of jail time because of non-payment have the right to a court-appointed attorney.[40] Yet, in the hearings observed by ACLU and CLS attorneys, defendants were not told that they had the right to counsel. Most often, the judge said something along the lines of, "I'm inclined to order jail time. Do you want to talk to an attorney before I do that?" This informal statement is not enough to inform people of their rights.[41] Most of the people serving time for non-payment did not understand that they had the right to an attorney, that their ability to pay their LFOs was a crucial issue, or that an attorney could help them make arguments to avoid jail time.

This system does not magically make indigent people able to pay LFOs. Instead, people incarcerated for non-payment lose their housing, jobs, and other opportunities to productively reenter society. As the following profiles illustrate, the impact on individuals and their families is severe.

V. PROFILES

VIRGINIA DICKERSON

Virginia Dickerson was in and out of the criminal justice system from 1997-2009 on drug and driving-related charges. Since then, she's made major steps toward turning her life around. She's been sober for the past 32 months, is living in stable housing, has created a parenting plan for her child, and is working full-time as a server in a restaurant. She also is active in community groups and mentors at-risk youth.

> ***"I've done my time...it seems it doesn't matter if I've tried to pay or if I can't pay. If I miss a month or can't make a full payment, I'll get a warrant and go to jail. I'm trapped."***

Still, Virginia lives under constant pressure due to LFOs. Between 2010 and 2011, Virginia was ordered to pay the Benton County Superior Court over $5000 in fines and penalties plus $1920 in court costs and attorney's fees because of two drug-related convictions. She was also ordered to pay the Benton County District Court $525 in fines and $593 in court costs and fees for a possession of marijuana conviction in 2011. Since Virginia was released from prison 9 months ago after serving her time, she's been trying hard to pay her fines, but feels like the collections systems set people up for failure. "When I got out of prison, I was supposed to start paying $50 a month to the 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. So, I went to the District Court to ask for an extension on paying my fines. They denied me. I couldn't get them to reconsider my payment plan until after I'd already failed to pay the full amount for several months."

Virginia is currently required to pay $35 a month to the district court and an additional $40 per month to Superior Court. She's managed to keep up with her District Court payments so far,

but hasn't been able to pay the full amount to Superior Court each month. "Sometimes, I have to choose between paying for transportation to my job, or paying for food and paying the full amount on my LFOs." Because of this, Virginia lives in constant fear that she will have a warrant issued for her arrest or be incarcerated. "I've been locked up in the past for not paying court fines. It didn't matter that I was homeless at the time. The very clear message was that I needed to pay exactly what I was ordered, or I would go to jail. And I didn't have the money – so I went to jail."

Now, even making her best efforts to pay, Virginia feels that she will never be able to get out from under her court-imposed debt. "My superior court fines are collecting 12% interest and it just keeps growing. I'd love to pay extra every month, but I just can't. I make minimum wage and by the time I pay my fines, rent, food, phone bill, transportation to work, and the costs of getting my license reinstated, there's nothing left."

Virginia takes responsibility for her past, and she's doing her best to try to rebuild her life. "I understand that I made choices in my life that landed me where I am today. But I've done my time. If I'm paying what I can, that should be acceptable. But it seems it doesn't matter if I've tried to pay or if I can't pay. If I miss a month or can't make a full payment, I'll get a warrant and go to jail. I'm trapped."

VIRGINIA DICKERSON BY THE NUMBERS

Original amount owed to the Benton County Superior Court..... **$6,920.00**

Interest accrued since December 2010..... **$2,124.41**

Estimated time to full payment of principal..... **14.75 years**
(assuming $40/month payment and 12% interest)

Estimated time to payment of principal & interest.. **28.25 years**

David Ramirez hasn't been convicted of a crime in 10 years, but the LFOs from his one felony case continue to haunt him. In 2003, David pled guilty to one count of residential burglary after he entered his ex-wife's home without permission. He was ordered to pay $2144 in restitution and over $1147 in penalties and costs. "I wasn't making much money at the time, maybe earning about $10 an hour. I also had to pay $500 per month in child support. So money was very, very tight."

> ***"I've had judges tell me that they don't care what my other obligations are, LFOs come first. First before anything. First before food and shelter."***

For years, David has been under constant pressure to pay his LFOs in full or face incarceration. "If you miss payments, they can issue a warrant for your arrest," David explained. "To get the warrant removed, you have to pay the entire amount you owe, plus an extra $100 warrant fee." For example, when David had a warrant issued in 2008, he was told that he needed pay $800 to get it removed. He said, "I didn't have that kind of money, and they wouldn't take a partial payment. So I basically lived in fear of arrest for a year until a lawyer in my church agreed to help me negotiate a lower payment to quash the warrant." David was unemployed and dependent on public assistance at the time, but after 6 months, he was able to borrow enough money to quash the warrant. Once the warrant was removed, David was able to get back on a payment plan, and he's been paying regularly since. David is still paying $30 per month towards LFOs despite the fact that he's been raising 4 children and his family's sole income is public assistance. He's been unable to get back to work in his former field because of medical problems, so his family relies entirely on about $400 from temporary assistance to needy families and food stamps.

The family's budget is tight, and David often has

to choose between meeting his family's needs and paying his fines. "Sometimes, I have to choose between paying the electricity bill and paying LFOs, or between buying my kid a winter coat and paying LFOs. The message the courts have sent to me over and over again is that if I don't pay in full every month, I'll go to jail and I'll lose everything. I've had judges tell me that they don't care what my other obligations are, LFOs come first. First before food and shelter. It doesn't matter what my family suffers, so long as the court gets paid." Even more frustrating for David, all that he owes at this point is interest. "I have a balance of $1838.74, and that's exactly what I owe in interest. It's discouraging to keep paying and see that interest amount grow. It's exhausting." Still, David remains hopeful, for himself and his kids. "I believe in America, you know? I love this country. I want to start a business and provide for my family. My kids are straight A students, and I want them to go to college. But right now, I feel like the fines keep me from getting up and breathing and being the person I want to be."

DAVID RAMIREZ BY THE NUMBERS

Original amount owed..... **$4,291**
Added debt for warrants and interest.....**$2,138.74**
- Warrant fees: $300
- Interest: $1838.74

Percentage of subsistence payments diverted to court-imposed debts/month.....**6.3%**

In 2012, Angela Albers spent 21 days in jail because she was unable to pay fines and court costs related to misdemeanor convictions from 2008 and 2010. "My difficulties all started in 2008 when I got a ticket for failing to stop at a stop sign," Angela said. "At the time, I was going through a divorce and I forgot to pay the ticket. My license was suspended without my knowledge." Angela was pulled over and charged twice with driving with a license suspended (DWLS), a misdemeanor. One of those times, police found a pipe in her car and charged her with possession of drug paraphernalia. She was convicted again for DWLS in 2010. All told, Angela was ordered to pay the district court $1550 in fines and $1399 in court costs and attorney's fees.

> ***"I was getting $126 a week from unemployment. It wasn't even enough to pay for rent and food, much less fines. I tried to talk to the clerk and explain my situation, but the clerk just told me that I had to pay the $100 per month the court ordered."***

Angela was expected to begin making monthly payments of $90 immediately. But without a job, she couldn't make the payments. "I was looking for work every day, but wasn't able to find it. I missed payments for three months, and then the court issued a warrant for my arrest. Right after the warrant was issued, I found a job and sent a friend to pay $160 from my first paycheck. But the clerk wouldn't take my money. She said I had to pay the entire amount I was behind, plus $200 in warrant fees. That was almost $500 and I didn't have that kind of money." Angela turned herself in a few months later; after being jailed, she was able to get her payments restarted after she explained to the court that she'd found a job. But she fell behind again. "I was making minimum wage and a huge portion of my check was going to pay child support. Once I paid for rent and food, some months I couldn't make the full payments on fines."

Still, Angela made LFO payments when she could. She succeeded in completely paying off one case and made significant progress on another. But then, she lost her job and couldn't find another one. "I was getting $126 a week

from unemployment. It wasn't even enough to pay for rent and food, much less fines. I tried to talk to the clerk and explain my situation. But the clerk just told me that I had to pay the $100 per month the court ordered."

In 2012, the court ordered Angela to work off the balance of her fines. "I begged to have my fines restarted, or to have payment delayed until I could get another job. But the judge refused." Angela says that no one asked her about her income and expenses, and the court refused to restart her fines even after she explained that she was unemployed. "I wasn't even aware that my financial situation mattered. The judge told me that I had restarted my fines for the last time and that the cases were too old. The only options were to pay off my fines in full, work them off, or go to jail."

Angela served 91 hours on the county work crew, cleaning debris out of the river and weeding on public property. She was forced to pay $20 a week just to participate in work crew. Unfortunately, she was removed from the work crew after a negative urine analysis and was forced to jail for 21 days, earning $50 against her fines per day in jail. "I lost everything. I couldn't make my rent payments and I lost my home. I had to move out of state to live with friends. I couldn't see my children and it interrupted my relationship with them."

Angela takes full responsibility for the mistakes she's made. "I don't make any excuses for my past behavior, and I understand that paying a fine is part of the punishment. But it feels like a vicious cycle. The court and clerks don't try to work with you or recognize when you're trying your best. The more time you're there, the more warrants they issue, the more money you have to pay. And if you can't pay the exact amount they want, even if you could pay something, they judge you as a deadbeat before you even walk into the courtroom. You're done before you even open your mouth."

ANGELA ALBERS BY THE NUMBERS

Total owed to Benton County District Court.....**$2949**
- Fines: $1559
- Court Costs: $1399

Total paid to the court.....**$1490**

Estimated cost the city spent on collection.....**$1740**
- 21 days in jail: $1344
- 9 days of work crew: $300

Estimated net loss by the government.....**$250**

D.J.

In May 2010, D.J. was ordered to pay over $3000 in LFOs. His sole source of income is SSDI, benefits that the federal government provides to persons with disabilities who have limited income and resources. The court initially ordered D.J. to pay $25 per month towards his LFOs; however D.J. does not always have the financial resources to pay this amount. Therefore, he is ordered to appear before the court to explain his failure to pay or arrested for non-compliance and brought before the court if he does not appear.

In early 2012, the Thurston County Clerk's office discovered that D.J. would be receiving back payments of SSDI totaling almost $2000. The court then ordered D.J. to pay the full $2000 to his LFOs. D.J. refused to make the entire payment, and was appointed a public defender, Patrick O'Connor, who challenged the order. The court agreed with Mr. O'Connor that the SSDI payments could not be garnished or attached to pay LFOs.

Unfortunately, the order only applied to D.J. for a particular review period. D.J. continues to live in poverty and worries constantly about being arrested for non-payment of LFOs. He must also attend regular review hearings to prove that his failure to pay is due to poverty. By June 2013, the court again ordered him to pay $25 per month towards his LFOs despite no change in his financial circumstances. Furthermore, the county has continued to issue warrants for non-payment, and D.J. has been jailed while awaiting court hearings to explain his failure to pay. Equally troubling is the fact that the court has ordered D.J. to pay a $100 warrant service fee, which is added to his existing LFOs.

In addition, the court did not adopt a policy barring the use of needs-based benefits to pay for LFOs. Without a change in court policy, judges in Thurston County continue to order individuals to pay LFOs using public benefits. In fact, the Thurston County public defenders recently challenged another court order requiring an individual to use Veteran's Affairs benefits to pay LFOs. If there is a silver lining to this case, it is that the public defenders in Thurston County are recognizing and addressing LFO practices that unfairly burden poor individuals.

ANONYMOUS

Anonymous was recently released from Benton County jail after sitting out his fines for over two months. The 26-year-old Kennewick resident has struggled with addiction issues since he was about 16 years old. When he was 18, he was convicted of being a minor in possession of alcohol and of consuming alcohol. The court ordered him to pay $2076 in fines, fees, and court costs. Even though Anonymous had no income, he was put on a payment plan and ordered to pay $50 a month.

Anonymous applied for dozens of jobs, but without a high school diploma, finding a job was tough. He was homeless and had trouble meeting his basic needs. "I wanted to pay my court fines," he said. "But I couldn't even start until I found a job." Struggling to find work, and battling addiction, Anonymous missed court dates to explain why

he hadn't paid. The court then issued warrants for his arrest. Once the warrants were issued, Anonymous couldn't get rid of them without paying a $100 fee per warrant.

He was arrested twice for not paying his fines. Anonymous explained, "Both times, I went to the judge and said that I couldn't pay them. I tried to explain that I didn't have a job, but that I was trying hard to find one. I was basically homeless." The first time, the judge let Anonymous restart his payment plan. The second time, he was also allowed to restart. "But," Anonymous said, "the judge told me this was my last chance. If I couldn't pay my fines every month, I would have to sit them out in jail."

> ***"It seems like the only thing the matters to the court is money. I want to pay my fines, but it doesn't make sense to have me sit in jail if I could be working and getting the money to pay them."***

In 2013, Anonymous was ordered to pay $2376 or report to work crew. Two months later, Anonymous finally found a job in May of 2013, working the night shift at a fast food restaurant and making minimum wage. He got one paycheck, and paid $350 in rent for clean and sober housing. The rest of the money went to food and paying for transportation to work. Then, police officers showed up at his workplace to arrest him for failure to pay his court fines. He spent the weekend in jail, and then appeared before a judge. Anonymous tried to tell the judge that he had a job and could start making payments after his next paycheck came through. But the judge stated that court policy was to allow only two restarts.

The judge ordered Anonymous to pay $2376 that day or serve 47 days in jail. He was also sentenced to an additional 10 days in jail as a punishment for not showing up to court hearings. Anonymous said "The judge made it seem like it would be better for me – just sit it out and get it over with, right? But I lost everything. I lost my job. I lost everything I owned. I left jail with just the clothes on my back."

Anonymous was released from prison with a voucher for one month's housing, and he's trying to find work again. His old job won't take him back after his arrest. He's hoping to enroll in an apprenticeship program, to learn to be an electrician. That dream, though, is on hold. Apprenticeship programs cost money, and Anonymous still owes $750 to the courts. He knows that if he can't pay those fines, he will likely end up back in jail.

Anonymous knows that he's made mistakes, but he doesn't understand how the county benefits from jailing him when he cannot pay fines. "It seems like the only thing that matters to the court is money. I want to pay my fines, but it doesn't make any sense to have me sit in jail if I could be working and getting the money to pay them."

ANONYMOUS BY THE NUMBERS

Total owed to Benton County	**$3130**
Total paid	**$0**
Estimated cost of incarceration 57 days @ $68.59/day	**$3909.63**

VI. RECOMMENDATIONS FOR REFORM

Our research and observations confirmed that LFOs are a major barrier to re-entering society for impoverished persons with criminal convictions. State laws and local court practices punish persons for being poor and unable to meet their obligations – despite the requirements of case law, statutes, and the state and federal constitutions. We believe there is a better method for imposing and collecting LFOs, one that ensures that all persons receive LFOs that are commensurate with their ability to pay and that maintains accountability for those who have the means to pay yet choose not to make payments.

It should be public policy throughout Washington state that no one is jailed or faces other legal sanctions simply because he or she is impoverished and unable to pay debts. The poor should not face harsher punishment than the rich, and incarceration should not be a tool to force payment from those already struggling to survive.

It should be public policy throughout Washington state that no one is jailed … because he or she is impoverished and unable to pay debts.

To ensure that Washington's LFO systems advance these values, we offer the following specific recommendations. These recommendations will not only relieve indigent persons of unnecessary burdens stemming from LFOs but also could save counties valuable resources.

STATEWIDE POLICY RECOMMENDATIONS

1) Establish a standard for imposing discretionary LFOs and setting payment schedules: Although courts are required to consider ability to pay when imposing discretionary costs, setting monthly payment schedules and determining whether sanctions are appropriate, no definition of ability to pay currently exists. This leads to subjective interpretations of ability to pay and thus wide disparities from county to county in the imposition and enforcement of LFOs. The state should establish clear criteria for determining ability to pay, building upon existing structures that determine whether a person qualifies for a public defender. The result would be a uniform standard that is applied equally to all persons facing the imposition of LFOs or sanctions for failing to pay LFOs.

2) Establish clear processes for waiver of all LFOs: Judges should have the discretion to waive both mandatory and non-mandatory LFOs when payment of the amounts would result in hardship to the individual or his family. Defense attorneys should advocate for waiver of LFOs whenever there is reason to believe that imposition will cause hardship. There should be a clear process to apply for such a waiver, and the court should be required to consider waiver whenever contemplating sanctions for non-payment.

3) End use of payments for necessities to pay for LFOs: Persons who receive state and federal benefits have already been deemed by the government to be indigent and in need of assistance to meet basic

needs. The receipt of benefits should be considered a per se finding of inability to pay, and the legislature should prohibit transfer or assignment of public payments for basic needs to pay off LFOs, particularly discretionary court costs.

4) Eliminate the current 12% interest rate on LFOs: Eliminating the interest rate will ensure manageable debt that individuals can budget for and eventually pay off. This will encourage regular payment and prevent LFOs from being needlessly punitive.

5) Eliminate clerks' collection fees, or at minimum change the point at which they can be collected: Clerks' fees directly impact both victims and debtors. If clerks'collections fees are eliminated, victims will be paid more promptly and defendants will not see their LFO debt continue to escalate. At the very minimum, policymakers could require that the collection fee be paid out only after restitution has been fully paid.

6) Require clerks to expand reporting requirements: County clerks are required to provide an annual report to the Washington State Legislature on the amounts of LFOs they collect for superior court cases.[39] Unfortunately, this report does not account for the costs expended to collect LFOs, including staff time, court time, jail costs, and law enforcement costs. The State Legislature should require clerks to provide a more accurate reporting of LFO collections by including the costs of collection in the annual report.

RECOMMENDATIONS TO THE COURTS

1) Establish a court rule to guide inquiries into ability to pay: The criteria and process for determining ability to pay vary significantly throughout the state. The Washington Supreme Court should develop specific guidance for judges on determining ability to pay, and explain when the inquiry should occur. This will ensure consistency and reduce the likelihood of erroneous finding of ability to pay.

2) Ensure that individuals know their rights whenever appearing in court or signing an order to be entered with the court for LFO collections. Our investigation found that most courts offered the assistance of counsel only at the very end of the collection process, once the court had already determined that the failure to pay was willful and was determined to incarcerate. Assistance of counsel or other procedural protections at an earlier stage in the process can help to ensure that persons are advised and informed of their rights and responsibilities. The courts should also develop forms or other informational sheets to make sure that individuals understand that ability to pay is a crucial issue, are informed about mechanisms for seeking relief, and are aware of their right to counsel.

We hope that the jurisdictions named in this report, as well as others throughout Washington, carefully examine this report and implement changes that will end excessive imposition of LFOs and the use of debtors' prisons, and will guarantee that LFOs are imposed, collected, and enforced reasonably and in accordance with the law. ■

REFERENCES

[1]See Alicia Bannon, Mitali Nagrecha & Rebekah Diller, "Criminal Justice Debt: A Barrier to Reentry," Brennan Center for Justice (2010) at 4; see also Washington Office of Public Defense, Update on Criteria and Standards for Determining and Verifying Indigency (2007) (stating that between 80 and 90% of those charged with felonies in the United States qualify for indigent defense).

[2]See Bannon, et. al, supra n. 3 (nearly 65% of those incarcerated in the U.S. did not receive a high school diploma; 70% function at the lowest literacy levels).

[3]See Devah Pager et al, Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records (2009) (finding that people with criminal history are half as likely to receive a follow up interview as people with similar skills and education but no criminal history).

[4]See Bannon, et. al, supra n.3.

[5]See Beckett and Harris, supra n. 1.

[6]See Katherine Beckett, Alexes Harris, & Heather Evans, "The Assessment and Consequences of Legal Financial Obligations in Washington State," Washington State Minority and Justice Commission (Aug. 2008).

[7]RCW 9.94A.760.

[8]RCW 9.94A.030(30)

[9]RCWs 10.01.160; 10.46.190; 36.18.016.

[10]RCW 36.18.020(2)(h).

[11]RCW 10.01.160.

[12]See RCW 7.68.035 (VPA); 43.43.7541 (DNA). The VPA is imposed regardless of whether the crime involved a victim. The DNA database fee is also collected whenever a defendant is convicted of a felony, regardless of whether the state has already collected his DNA.

[13]See RCW 10.01.160(3); see also State v. Bertrand, 165 Wn.App. 393, 404 (2011).

[14]See, e.g., RCW 9.94B.040; 10.01.160(4); 10.73.160.

[15]See RCW 10.82.090; 4.56.110(4); 19.52.020. Interest is simple, meaning it accrues every year.

[16]See RCW 3.62.020(5), 040.

[17]As of Nov. 11 2013, many civil judgments accrue 5.25% interest. See RCW 4.56.110 (3)(b) (interest on civil judgments 2% above the federal reserve's prime rate); Federal Reserve Bank, Daily Interest Rates, available at http://www.federalreserve.gov/releases/h15/ (last visited Nov. 11, 2013) (setting federal bank prime loan rate at 3.25%)

[18]RCW 9.94A.760 (8); RCW 9.94A.753(4).

[19]RCW 36.18.016(29); RCW 9.94A.780.

[20]Washington Association of County Officials (WACO), "Ninth Annual Report to the Legislature on the Collection

of Court Ordered Legal Financial Obligations by County Clerks as Required by Senate Bill 5990, Chapter 379, Laws of 2003," Feb. 5, 2013, at 4.
[21]RCW 9.94A.760(1) (emphasis added).

[22]See WACO Report, supra n.20, at 4 ("To supplement the funding available to support this work, many clerks assess a statutory collection fee of up to $100 per year.").

[23]We note that Clark County's practices in this regard are not unusual. Similar practices appeared in every other county that we investigated, and it is likely that they exist statewide.

[24]Beckett and Harris, supra n. 1, at 90.

[25]See WACO Report, supra n. 20 at Table 8.

[26]See RCW 10.101.010(3) (defining people receiving TANF, food stamps, veteran's disability benefits and SSI as indigent for the purpose of obtaining a public defender); General Rule 34(3)(A) (defining people receiving such benefits as indigent and entitled to waiver of filing fees); Jafar v. Webb, 177 Wn. 2d 520 (2013) (holding that GR 34 requires a total waiver of all civil filing fees for indigent people, and rejecting trial court's attempt to require partial fee payment over time).

[27]See, e.g., 42 U.S.C. § 407(a) (SSI and SSDI exempt from garnishment); 42 U.S.C. § 1383(d)(1) (same); 38 U.S.C. § 5301 (benefits administered by the Veterans Administration exempt from garnishment).

[28]See RCW 9.94B.040(3)(a)(i); RCW 10.01.180.

[29]This estimate is based upon the ACLU and CLS's review of jail rosters and court records between May and October. People who are in custody for non-payment of district court fines are listed as "sitting out fines" and we simply calculated the number of those individuals. To estimate how many people are in custody for non-payment of superior court fines, we identified those individuals who were listed on the jail roster as having "non-compliance with the conditions of sentence." To weed out those whose non-compliance was not LFO-related, we reviewed court records to identify those people who, before reporting to jail, were ordered to pay a specific amount to LFOs or serve time in jail. Together, the numbers for those sanctions for non-payment of district and superior court LFOs averaged about 20% of the jail's daily inmate roster.

[30]See Jody Lawrence-Turner, "Debt to Society," The Spokesman-Review, May 24, 2009 (Stating that on any given day, up to 200 of the estimated 1,200 people incarcerated in Spokane County's two correctional facilities are there for failing to pay LFOs; see also State v. Nason, 168 Wn. 2d 936 (2010) (discussing and ruling unconstitutional Spokane's former policy requiring people who hadn't paid LFOs to report to jail without a hearing). Our investigation revealed that Clark, Clallam and Thurston counties also incarcerate individuals for non-payment of LFOs.

[31]Bearden v. Georgia, 461 U.S. 660 (1983). See also WA Const. Art. 1, § 17 ("There shall be no imprisonment for debt, except in cases of absconding debtors.").

[32]See Bearden, supra n. 31 at 674 (stating that the lower court violated fundamental fairness by sentencing a person to prison for failure to pay without considering the reasons for inability to pay or the propriety of reducing the fine or extending time for payments).

[33]See Bearden, supra n. 31. See also State v. Bower, 64 Wn. App. 227, 233, 823 P.2d 1171 (Div. 1, 1992).

[34]Court records indicate that some individuals have warrants issued even if they haven't missed a hearing. This seems to happen when a person has several open LFO accounts and has previously had a warrant issued.

[35]This estimate is based upon the ACLU and CLS's review of jail rosters and court records between May and October. People who are in custody for non-payment of district court fines are listed as "sitting out fines" and we simply calculated the number of those individuals. Those individuals accounted for about 25% of the people serving time for district court cases. To estimate how many people are in custody for non-

payment of superior court fines, we identified those individuals who were listed on the jail roster as having "non-compliance with the conditions of sentence." To weed out those whose non-compliance was not LFO related, we reviewed court records to identify those people who, before reporting to jail, were ordered to pay a specific amount to LFOs or serve time in jail. Together, the numbers for those sanctions for non-payment of district and superior court LFOs averaged about 20% of the jail's daily inmate roster.

[36]See RCW 10.01.180 (requiring credit against LFO balance for days served in jail on account of non-payment of district court fines). The Benton County jail also offers a "trustee" program, in which inmates serving a jail term work 12 hour shifts. Trustees earn $80 per day against LFOs, allowing many to shorten their stays.

[37]See Kristen Kraemer, Paying District Court Fines with Jail Time Debated in Benton County, Tri-City Herald (Nov. 4, 2013).

[38]See Nason, supra n. 30, 168 Wn.2d at 947.

[39]RCW 36.23.110

[40]See State v. Stone, 165 Wn. App 796, 814 (2012)

[41]A person cannot give up their right to counsel unless waiver is "knowing, intelligent, and voluntary." See Stone, supra n. 40. This is a high standard, and the burden of proving voluntary waiver is on the State.

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