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# Tackling Criminal Justice Debt:

## An Overview of Efforts by Restricted and Unrestricted Civil Legal Aid Programs to End Practices that Unjustly Target the Poor

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The American criminal justice system has a history of using debt as a tool to criminalize and punish poverty. Debtors' prisons, convict leasing, and criminal records have been used to penalize the poor and prevent them from escaping the grasp of the criminal justice system. While in theory many of these practices have been barred or outlawed, in reality we live in an era when the use of criminal debt-related policies and practices has been expanded, resulting in further marginalization of the poor and the growth of mass incarceration.<sup>1</sup> These policies and practices affect all poor communities and persons with criminal convictions, and, as with everything criminal justice-related, they are also highly racialized and thus have especially devastating impact on communities of color.

The proliferation of criminal justice debt and its effects flew under the radar in the legal community for years. Excepting from a few forward-thinking researchers and advocates, very little attention was given to this issue through the end of the last decade.<sup>2</sup> Although individuals and communities had been experiencing the harsh consequenc-

es of criminal debt and spoke about its harms, their voices often went unheard. Only recently has it become an issue that has received mainstream interest and the attention of lawyers, policymakers, and the media. For instance, the U.S. Department of Justice and the Obama administration began weighing in on this issue in 2015, coordinated a national convening on the topic, and issued a "dear colleague" letter offering direction on how criminal justice debts should be imposed and enforced.<sup>3</sup>

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The attention is warranted and long overdue. For individuals with criminal convictions, the debt acts as a significant barrier to successful community reentry and access to economic and social opportunities. But surprisingly, in many circumstances, individuals may be saddled with such debt even without a criminal conviction. Mere contact with

law enforcement or the criminal justice system, by being arrested and charged, is all that is required before the obligation to repay a debt is created. Acquittal or the dropping of charges often has no bearing on whether the debt will be imposed or waived. And, in many cases, noncriminal activity—for example, simple infractions—is all that is required to initiate the debt.

Regardless of how such debt is imposed, in most cases criminal debt is a cruel and

devastating form of punishment, especially for those with little or no ability to pay. For the poor, satisfying the debt is often impossible, especially where the debt accrues interest and is subject to added costs and surcharges, causing balances to skyrocket and become even more unpayable. Furthermore, courts may not (or often are not required to) consider a defendant's ability to pay before imposing the debt, leaving poor debtors (who, in many cases, should have never received

1 See *Bearden v. Georgia*, 461 U.S. 660 (1983); *Fuller v. Oregon*, 417 U.S. 40 (1974); *James v. Strange*, 407 U.S. 128 (1972).

2 See, e.g., KATHERINE A. BECKETT ET AL., WASHINGTON STATE MINORITY AND JUSTICE COMMISSION, THE ASSESSMENT AND CONSEQUENCES OF LEGAL FINANCIAL OBLIGATIONS IN WASHINGTON STATE (2008).

3 See [Letter from Vanita Gupta \(Principal Deputy Assistant Attorney General, Civil Rights Division, U.S. Department of Justice\) & Lisa Foster \(Director, Office for Access to Justice, U.S. Department of Justice\) to Colleagues](#) (March 14, 2016).

the debt in the first place) with amounts owed that are in no way proportional to their income (or lack thereof) or reflective of their capacity to pay. Adding to the problem is that the requirement to pay is sometimes a condition of a sentence or probation, meaning that failure to pay can result in an arrest warrant, arrest, and incarceration. And while in theory there are constitutional protections against debtors' prisons, in practice these protections are regularly ignored, leading to the incarceration of persons who fail to pay solely because of their indigence. Moreover, in many places, the court's jurisdiction to collect and enforce nonpayment of the debt may last for decades, or even a lifetime, long after a person was last charged or convicted of an offense or received an infraction.<sup>4</sup>

Compounding the problem, the debt and its effects do not occur in isolation but are far-reaching and cumulative. Often an individual has not only multiple criminal justice debts but also many other non-criminal-related debts that cannot be paid. This in turn limits access to such necessities for financial stability as housing, employment, credit, education, health care, and transportation. Even improvements, such as a better job, are hindered by the debt, since improved earnings may be subject to garnishment or other forms of civil collection if the person still cannot pay after meeting basic living expenses. Similarly the person may be under the constant threat—perceived or real—of further incarceration or other punishment for nonpayment. Often lost in the discussion of criminal debt are the consequences that extend beyond the debtor. That is, the debt can harm the children and families of debtors within a community

<sup>4</sup> See, e.g., [WASH. REV. CODE § 9.94A.760](#) (2011) (authorizing court's jurisdiction to collect legal financial obligations until debt is paid in full).

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## Civil legal aid has an important role to play in curbing criminal justice debt and its far-reaching effects on the poor and communities of color.

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and contribute to further concentration of poverty and social marginalization.

Civil legal aid—working in collaboration with and taking direction from affected persons and communities—has an important role to play in curbing criminal justice debt and its far-reaching effects on the poor and communities of color. Several civil legal aid programs throughout the country—both programs funded by the Legal Services Corporation (LSC) and unrestricted programs—are engaged in such work. An increasingly strong network of advocates regularly interacts to discuss common issues, share best practices, and raise awareness within the legal community about criminal justice debt's impact on the poor. Here we highlight some of these common issues and responses and detail the work that has been done on criminal debt in our states of practice—Iowa and Washington—to inform work elsewhere and offer approaches that advocates may be able to use in their jurisdictions.

### A Brief Overview: Indigence Enhances Court Debt Balances

Criminal justice debt is commonly misperceived as simply “fines,” a term of art that refers to a financial obligation imposed solely for punitive purposes. However, as state budgets tightened during the last recession, fees have been increased to cover costs to the justice system. This burden has fallen especially hard on those low-income litigants who, due to poverty rather than culpability, are subject to higher balances, higher fees, and the specter of incarceration for their inability to pay.

Low-income litigants face a system where fees and costs can result in serious financial burdens that their nonindigent counterparts do not experience. For example, higher bail leads to longer jail stays, and this leads to an accumulation of pretrial detention fees. Also, in 45 states as well as in federal criminal proceedings, low-income people often have to repay the state some or all of the costs of their appointed defense attorney. Often this can be the actual cost of defense, and in a majority of states such cost may be imposed even in an acquittal or dismissal. In addition, many jurisdictions assess collection fees and interest, which multiply balances already increased by jail fees, probation, and defense costs. Many jurisdictions do not require any of these fees to be based on an indigent's actual ability to pay. Even in states where the amounts imposed are theoretically limited by the ability to pay, the required financial analyses are often done inconsistently or with a boilerplate approach that does not adequately ascertain the litigant's actual financial condition.

Criminal justice debt subjects debtors to collection methods far beyond those available to private creditors. Although the U.S. Supreme Court unequivocally held that no one could be incarcerated for sheer inability to repay court debt, indigents continue to be routinely jailed throughout the nation solely because they are poor.<sup>5</sup> Suspension of licenses and vehicle registrations leads to an entrenchment of poverty and often a cyclical imposition of yet more criminal justice debt due to

<sup>5</sup> See *Bearden*, 461 U.S. 660.

further criminal proceedings for driving without authorization. Debtors are subject to garnishment, as well as automatic processes such as offset of tax refunds and public benefits. In many jurisdictions, payment of court debt is often a precondition for expungement or certificates of good conduct, and thus such critical tools for ameliorating the collateral effects of criminal convictions are put out of reach of the people who need them the most.

Private collection agencies are becoming involved in the collection of court debt, leading to the rise of major industry players.<sup>6</sup> Just as concerning is the trend toward turning prosecutors and law enforcement into debt collectors, often by creating incentives that can conflict with the dispassionate administration of justice. In its report on events in Ferguson, Missouri, a Justice Department report found that court debt had become so integral for funding the functions of various municipalities surrounding the St. Louis area that courts focused far more on revenue generation than on justice.<sup>7</sup> In Texas police officers have been authorized to carry mobile credit and debit card readers in their vehicles.<sup>8</sup> In Iowa prosecutors and sheriffs electing to serve as debt collectors have by statute a direct pecuniary interest in the collection and assessment of court debt, potentially creating tension between commitment to the administration of justice and realities of increased revenue generation.

In light of the apparent shift of the purpose behind court debt, from punishment and restoration of victims to revenue gener-

ation for basic governmental functions, a whole host of previously unavailable constitutional remedies have become relevant. The Supreme Court cases of *James v. Strange* and *Fuller v. Oregon* can be read to stand for the principle that where indigents owe the state for services rendered simply by virtue of their own indigence, equal protection requires that they be accorded rough parity with private judgment debtors.<sup>9</sup> These cases may form the basis of equal protection challenges to automatic processes such as setoff of refunds and benefits. These cases and their progeny create powerful arguments for the applicability of consumer

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protection laws such as bankruptcy and debtor's exemption laws. The increasing use of private collection companies creates the additional possibility of the partial application of the Fair Debt Collection Practices Act to the extent that if the underlying obligations can be considered payment for services rendered, they may constitute a "debt" pursuant to the Act.<sup>10</sup>

Because indigence lies at the core of criminal justice debt issues, many of the solutions have been focused on how criminal debt affects indigent populations—how they acquire it and how it is collected. This is true in Iowa and Washington and nationally.

### State-Specific Advocacy: Iowa and Washington

The problems surrounding criminal justice debt cannot be solved through one particular form of advocacy or by one particular group. Instead a multifaceted approach is required, with various stakeholder involvement. Here we present a snapshot of how criminal justice debt is being curbed in Iowa and Washington and legal aid's involvement in efforts to curb criminal justice debt.

**Iowa Legal Aid's Work to Combat the Excesses of Court Debt Collection.** Iowa's state budget in 2009 felt the crunch of the Great Recession, and collecting debt owed

to the state became a higher priority. Iowa Legal Aid, a statewide, LSC-funded legal services firm, began seeing more clients who were facing eviction and other legal consequences due to the diversion of large parts of their income—sometimes as much as 81 percent of gross wages—through garnishment for criminal justice debt. Iowa Legal Aid staff began to question whether such diversion complied with laws protecting debtors in postjudgment collection procedures, notably in the application of debtor's exemptions and the procedural right to raise those exemptions. Debtor's exemptions did in fact apply to criminal justice debt garnishments, and the first of Iowa Legal Aid's successes in this area was establishing this right.

Since those initial cases, Iowa Legal Aid has incorporated advocacy on behalf of criminal justice debtors as part of its consumer law practice. Iowa Legal Aid

6 See, e.g., [Blake Ellis & Melanie Hicken, \*The Debt Collector Doing Government Dirty Work\*](#), CNN Money (Feb. 17, 2015) (debtors subjected to threatening notices, phone calls, and delegation of authority over payment plans to private contractors).

7 See [U.S. DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION, \*INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT\*](#) (March 4, 2015).

8 See [Hady Mawajdeh, \*New License Plate Reader Could Make Texas Cops Debt Collectors, Too\*](#), TEXAS STANDARD (Feb. 2, 2016).

9 See *Fuller*, 417 U.S. 40; *James*, 407 U.S. 128.

10 For an in-depth treatment of the applicability of consumer law remedies to criminal justice debt problems, see [ABBY SHAFROTH ET AL., NATIONAL CONSUMER LAW CENTER, \*CONFRONTING CRIMINAL JUSTICE DEBT: A GUIDE FOR LITIGATION\*](#) (Sept. 2016).

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represents clients with criminal justice debt issues in garnishments, state and federal offset challenges, bankruptcies, Fair Debt Collection Practices Act claims, contempt of court, expungement matters, driver's license and vehicle registration suspensions, and in some cases challenges to the imposition of the underlying debt itself. Recently Iowa Legal Aid has begun to move into the area of remission hearings and plaintiff suits targeting the debt collection methods of bail bondsmen. Direct representation in these cases has simply become another area in which Iowa Legal Aid's consumer law practice works.

Through this direct services work, Iowa Legal Aid has achieved systemic change:

- Until 2014 much of the outstanding criminal justice debt in Iowa was collected via "administrative levy" by the state Department of Revenue. This process, an alternative to judicial garnishment, had been used for the collection of taxes or child support, and it incorporated few procedural protections. Notices misinformed debtors as to their rights to a hearing or to raise debtor's exemptions, and telephone hearing procedures did not pass basic statutory and constitutional muster. Through a series of cases, Iowa Legal Aid successfully challenged notice and hearing procedures used in these administrative levies, resulting in notices that accurately informed debtors of their hearing rights and the possibility of exempting some or all of their property from administrative levy.
- In 2010 the Iowa Supreme Court issued an administrative order that required

all payment plans to be structured so that the entire debt could be paid off within two years. Because these plans did not take into account the ability to pay, this "two-year rule" resulted in payment plans that were doomed to fail and send debtors directly into the harsh collection methods for debt deemed to be delinquent. Through commentary on a final court rule to replace the administrative order, Iowa Legal Aid convinced the court to remove the "two-year rule."

- A substantial portion of the criminal justice debt in Iowa is derived from cases where all charges are dismissed or the defendant is acquitted or from cases that are civil or juvenile. Much of the debt in these cases, often in the form of potentially thousands of dollars in indigent defense reimbursement, was often assessed without any reasonable ability-to-pay factor or any judicial process whatsoever. In a series of actions, including a settlement of a case before the Iowa Court of Appeals (In Re Flowlers), Iowa Legal Aid strengthened processes for assessment of debt in these cases, leading to the erasure of debt, along with refunds and removal of judgment liens, for hundreds of clients.
- In 2015 Iowa Legal Aid entered with the State of Iowa into a settlement that resulted in the removal of debt related to civil, juvenile, and dismissed or acquitted criminal cases from the systems that hold up licensure and vehicle registration.

These successes have been important first steps in establishing basic principles of law, but the struggle is by no means

over. Iowa Legal Aid continues to work on many fronts to alleviate the effects of court debt on people in poverty.

**Ability-to-Pay Hearings.** Although Iowa has some good case law on ability to pay, both at the imposition and collection stages, the reality is that the right to an ability-to-pay hearing is often ignored. This problem illustrates the critical need for civil legal aid in this area; without counsel, enforcement of the right to a hearing can be so difficult as to render positive systemic changes meaningless through disuse.

**Remission.** Some defendants in Iowa can use limited "remission" procedures, which allow the defendants to reduce, on the basis of financial hardship, their criminal justice debt burden. Although debtors can invoke a right to counsel immediately after disposition of the initial proceeding, if a debtor fails to invoke the right to counsel or experiences a change in economic circumstances later, the debtor is not entitled to counsel. This particular justice gap is an area where civil legal aid can bring its corollary experience of raising economic hardship arguments in other contexts to achieve real and lasting benefits for clients.

**Separation of Powers.** Iowa's complicated debt collection system allows prosecutors to elect to serve as debt collectors, in return for which they can divert some of what is collected from the state to local government. If they collect over a certain threshold, some of the money is diverted directly to the prosecutor's office itself. In at least one Iowa county, this collection authority has been delegated to the county sheriff. The blurring of the lines between revenue generation and law enforcement may create problems that run afoul of separation of powers.

**Expungement.** Iowa's limited expungement system generally requires payment of criminal justice debt before expungement can be granted. In a case involving repayment of several thousand dollars of indigent defense fees, Iowa Legal Aid has successfully challenged this statute on equal protection grounds at the district court level. However, the underlying issue has yet to be globally resolved.

**Racial Justice.** Iowa has been at or near the top of the per capita rate for incarceration of African Americans for the last several years. As in Ferguson, the dynamics of mass incarceration and systemic bias are implicated in how the collection of criminal justice debt is enforced. Iowa Legal Aid continues to search for compelling ways to tell this part of the story and gather data that would show the exact contours of bias as it relates to criminal justice debt.

Iowa Legal Aid continues to expand both systemic and everyday work in the area of criminal justice debt collection. Intake on these issues in 2017 will be augmented by an endeavor of Iowa Legal Aid's Racial Equity Committee—"Expungement and Employment Barriers Clinics" held in communities that are shown to have the highest disparities for African Americans in the rate of poverty, unemployment, and housing barriers. A major focus of the clinics' services will be streamlining and triaging clients who have criminal justice debt problems so that the clinics can serve larger numbers more efficiently, collect data, and perceive new patterns.

**Working on Criminal Justice Debt in Washington.** Many of the problems that saddle the poor with unnecessary and unpayable debts stem from Washington's complex criminal justice debt system. For instance, in Washington interest accrues

on legal financial obligations imposed for felony offenses at a rate of 12 percent per year from the date of judgment.<sup>11</sup> This means interest accrues during the entire period of incarceration, when a person has little or nothing to reduce the debt (and in most cases having nothing before or after incarceration). As a result, persons leaving prison often owe several times the amount of legal financial obligations that were ordered at sentencing. Washington also has a number of mandatory legal financial obligations that the legislature has enacted. These legal financial obligations—which are not unique to Washington—divest the courts of any discretion to consider a defendant's ability to pay at sentencing.<sup>12</sup> For superior court defendants in most counties, these mandatory costs yield a debt of at least \$800 per conviction.<sup>13</sup> And while discretionary legal financial obligations may be waived upon a finding of indigence, the lack of proper inquiries into ability to pay leads to widespread imposition of waivable legal financial obligations being imposed on indigent defendants.

Furthermore, because each court has wide latitude to interpret laws regarding imposition and enforcement of legal financial obligations, practices vary widely from jurisdiction to jurisdiction and in some cases from judge to judge. This discretion can lead to vastly different interpretations of key concepts such as "ability to pay," "indigence," "manifest

hardship," and "willful failure to pay." Poor defendants, who constitute the vast majority of defendants coming through Washington's courts, disparately suffer the harm of these varying interpretations.<sup>14</sup>

Because of its many problems, Washington has been highlighted in a number of local and national reports as having a broken legal financial obligation system, specifically in how its laws and practices apply to poor defendants.<sup>15</sup> In recent years, legal aid has been involved in efforts to fix these and other problems with Washington's system of legal financial obligations.

**Court Rule.** The Washington Supreme Court recently amended a court rule that hampered indigent defendants' ability to escape appellate costs. Courts in Washington can impose appellate costs on a convicted defendant without consideration of the defendant's ability to pay.<sup>16</sup> Prior to the amendment of the rule, appellate courts often imposed anywhere from \$3,000 to \$5,000 in costs on an indigent defendant who was not successful on appeal. Given that further challenges to the constitutionality of the statute's failure to require consideration of ability to pay were likely to be unsuccessful, advocates moved to amend the rule on appellate costs, which stated that costs must be awarded to the party that substantially prevails on

11 See *WASH. REV. CODE § 10.82.090* (2015). Debts imposed in courts of limited jurisdiction may accrue interest at this rate if the account is turned over to collections (see, e.g., *WASH. REV. CODE §§ 3.62.020* (2012), *3.62.040* (2012)). In Washington the term "legal financial obligations" describes debts imposed as part of a criminal conviction (see *WASH. REV. CODE §§ 9.94A.030* (2016); *36.110.020* (1995)).

12 See *State v. Lundy*, 308 P.3d 755 (Wash. Ct. App. 2013).

13 See *WASH. REV. CODE § 7.68.035* (2015) (mandatory \$500 victim penalty assessment per conviction); *id.* [§ 43.43.7541](#) (2015) (mandatory \$100 DNA collection fee for every sentence imposed); *id.* [§ 36.18.020\(2\)\(h\)](#) (2015) (mandatory \$200 criminal filing fee upon conviction or plea of guilty).

14 Approximately 80 percent to 90 percent of persons charged with felonies in Washington State superior courts qualify for indigent defense under *WASH. REV. CODE § 10.101.010* (2011) (see *Washington State Office of Public Defense, Determining and Verifying Indigency for Public Defense* 19 (Jan. 6, 2014)).

15 See, e.g., ALEXIS HARRIS, *A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR* (2016); Sarah Alexander et al., *American Civil Liberties Union, In for a Penny: The Rise of America's New Debtors' Prisons* (Oct. 2010); *American Civil Liberties Union of Washington & Columbia Legal Services, Modern-Day Debtors' Prisons: The Ways Court-Imposed Debts Punish People for Being Poor* (Feb. 2014); Roopal Patel & Meghna Philip, *Brennan Center for Justice, Criminal Justice Debt: A Toolkit for Action* (2012).

16 See *WASH. REV. CODE § 10.73.160* (2015).

review.<sup>17</sup> The Washington Supreme Court convened an appellate-cost workgroup, and this workgroup proposed changes in the rule. The Washington Appellate Project submitted proposed language allowing for the court to consider ability to pay, and a number of groups submitted comments supporting the change. In January 2017 the court entered an order adopting amended language stating that (1) the commissioner will award costs to the substantially prevailing party unless the commissioner or clerk finds that the defendant lacks the ability to pay, and (2) a finding of indigence attaches throughout the appeal unless the commissioner or clerk can show by a preponderance of the evidence that the appellant's financial situation has substantially changed since the initial finding of indigence.<sup>18</sup> Because of the large amounts of appellate costs previously imposed on indigent defendants, this amendment has the potential to create significant change.

**Litigation.** In Washington litigation has been a valuable tool for advancing reform of legal financial obligations, and two recent Washington Supreme Court cases in particular have increased protections of indigent defendants ordered to pay costs. The first is *State v. Blazina* on ability to pay discretionary costs.<sup>19</sup> Under Washington's general cost-recoupment statute, the sentencing court must consider whether the defendant "is or will be able to pay" costs before imposing them.<sup>20</sup> However, in many jurisdictions throughout Washington, this requirement did not result in a meaningful inquiry. This approach was challenged, and the Washington Supreme Court held that the inquiry required under the statute must

be individualized and that the sentencing court must take into account a number of factors including the defendant's other debts (even restitution) and term of incarceration in finding whether the defendant has the ability to pay costs.<sup>21</sup> To make this determination, trial courts should use

financial obligations.<sup>25</sup> The Washington Supreme Court held that the district court failed to consider or apply the "manifest hardship" standard and, citing *Blazina*, held that courts should follow General Rule 34 in determining whether a defendant met the manifest hardship standard.<sup>26</sup> It also held

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Washington's General Rule 34 on waiver of civil filing fees. The Washington Supreme Court stated, "[I]f someone does meet the [Rule] 34 standard for indigency, courts should seriously question that person's ability to pay [legal financial obligations]."<sup>22</sup>

The other decision is *City of Richland v. Wakefield*.<sup>23</sup> In *Wakefield* lawyers from Northwest Justice Project, an LSC-funded legal aid program in Washington, represented an indigent woman seeking remission of costs imposed on her at sentencing. In Washington a defendant who is ordered to pay discretionary costs may at any time petition the court for a waiver of those costs, and the court may waive them upon a finding of "manifest hardship."<sup>24</sup> The defendant sought remission and submitted evidence that she was a homeless mother of four with a permanent disability and that her sole source of income was social security disability. Furthermore, an expert testified that her income was inadequate to meet her basic needs. Nonetheless, the district court judge denied her motion for remission and ordered her to pay \$15 per month toward her outstanding legal

that the court's ordering of a \$15 monthly payment obligation, when appellant's only source of income was social security disability, violated the antiattachment provision of the Social Security Act.<sup>27</sup>

Litigation has also taken on debtors' prisons in Washington. Recently the ACLU of Washington settled a class action lawsuit in an Eastern Washington county that had an unconstitutional system for collecting criminal debts, including the regular jailing of indigent defendants who failed to pay.<sup>28</sup>

**Policy Reform.** Since the late 2000s, proposed state legislation has sought to change legal financial obligation laws in Washington. The legislature passed H.B. 1517 in 2009. It provisionally restored voting rights to persons who are convicted of felonies and still owe legal financial obligations.<sup>29</sup> Before the law, persons with felony convictions were barred from restoration of their voting rights until all conditions of sentence, including payment of legal financial obligations, were satis-

17 See *State v. Blank*, 930 P.2d 1213 (Wash. 1997) (finding no constitutional duty for court to consider defendant's ability to pay prior to imposing costs).

18 WASH. R. APP. P. 14.2.

19 *State v. Blazina*, 344 P.3d 680 (2015).

20 WASH. REV. CODE § 10.01160(3) (2015).

21 *Blazina*, 344 P.3d at 685.

22 *Id.* See WASH. GEN. R. 34.

23 *City of Richland v. Wakefield*, 380 P.3d 459 (Wash. 2016).

24 WASH. REV. CODE § 10.01160(4).

25 *Wakefield*, 380 P.3d at 460.

26 *Id.* at 464.

27 *Id.* at 465–66.

28 See *Settlement Agreement, Fuentes v. Benton County*, No. 15-2-02976-1 (Yakima Super. Ct. June 1, 2016).

29 See H.B. 1517, 2009–10 Leg. (Wash. 2009) (codified at Wash. Rev. Code § 29A.08.520 (2013)).

fied.<sup>30</sup> Now these individuals' rights are provisionally restored if payment of legal financial obligations is the only outstanding condition of the sentence. Additionally, in 2011, unrestricted legal aid programs and other legal and community advocates worked to secure passage of a bill that facilitated obtaining relief from interest on certain legal financial obligations.<sup>31</sup>

However, since then advocates, including legal aid attorneys, have recognized that these changes were helpful but did not necessarily get at the root problems of legal financial obligations and their impact on the poor. Advocates are seeking comprehensive reform of legal financial obligations in Washington to improve the interest rate, ambiguous or nonexistent definitions of terms such as "indigence" and "ability to pay," the lack of alternatives to payment, and the mandatory nature of some legal financial obligations. Obtaining such reform has been a challenge; however, due to increasing outreach and education by the legal aid community and the organizing and advocacy of grassroots community organizations and persons harmed by legal financial obligations, this effort has gained momentum. While a bill has not yet passed the full legislature, bills passed nearly unanimously in the State House for the past three years. Passage of comprehensive statewide policy reform will not by itself fix the problem; however, it would continue to move reform in the right direction when coupled with each of the other tactics that are necessary to effectuate change.

Significant policy efforts are happening on the local level as well. For example,

through the leadership of unrestricted civil legal aid organizations, Seattle unanimously passed a reentry resolution in December 2015.<sup>32</sup> Among other aims, the resolution inventories the imposition and collection of criminal justice debt in the Seattle Municipal Court. The data will be used to recommend reentry policy and programming that will remove barriers to reentry and decrease recidivism in Seattle.

**Education and Outreach.** Education and outreach are critical to criminal debt reform and elimination and have been used in Washington. For example, since 2011, Columbia Legal Services has operated a reentry legal clinic that gives brief counsel and advice to persons with legal financial obligations. The clinic came about due to concerns in various communities about the lack of access to attorneys to learn about legal financial obligations and whether they could be challenged under the law. While educating affected community members about legal financial obligations, the clinic has expanded access to relief for individuals who qualify under current law.

Advocates have conducted media campaigns. For example, in 2014, Columbia Legal Services and the ACLU of Washington coauthored a report highlighting the major problems with legal financial obligations in Washington.<sup>33</sup> And, for the past several years, the Washington Minority and Justice Commission, with the assistance of legal aid attorneys, has published legal bench cards on legal financial obligations for both superior court judges and judges in courts of limited jurisdiction.

## National and Cross-State Collaboration

State and federal agencies are each working and at the same time collaborating on criminal justice debt. The impact criminal justice debt has on reentry, recidivism, and economic justice has become an issue of significant concern to federal agencies such as the Justice Department, as well as to state courts, in recent years. Legal aid organizations have also developed more strategic workgroups, published helpful toolkits, and dedicated conferences and conference sessions to find ways to decrease, remit, and remove criminal justice debt around the country. These efforts have educated and even persuaded both legal aid and non-legal-aid attorneys to join in policy and litigation advocacy in their respective states.

**U.S. Department of Justice Grant.** The Justice Department's Bureau of Justice Assistance awarded five state-level jurisdictions—Judicial Council of California, Judiciary Courts of the State of Louisiana, Texas Office of Court Administration, Missouri Office of State Courts Administration, and Washington Minority and Justice Commission of the Washington State Courts—with The Price of Justice: Rethinking the Consequences of Justice Fines and Fees grant in September 2016.<sup>34</sup> This grant gives each state approximately \$500,000 to carry out a proposal to tackle the imposition of criminal justice debt on those with an inability to pay and to reduce or eliminate unnecessary confinement for failure to pay legal financial obligations. For example, in Washington the Minority and Justice Commission led by Washington Supreme Court Justice Mary Yu appointed

30 See *Madison v. State*, 163 P.3d 757 (Wash. 2007) (en banc).

31 See *S.B. 5423*, 2011–12 Leg. (2011) (codified at WASH. REV. CODE § 10.82.090).

32 See *City of Seattle Res. 31637* (2015).

33 See American Civil Liberties Union of Washington & Columbia Legal Services, *supra* note 15.

34 See *Press Release, U.S. Attorney's Office, Western District of Washington, Washington One of Five States Selected for "Price of Justice" Grant* (Sept. 27, 2016).

a stakeholder consortium of judges, public defenders, prosecutors, court clerks, legal aid advocates, community members, formerly justice-involved individuals, victims' advocates, researchers, scholars, and even technology companies from around the state for the grant project. The stakeholder consortium members are tasked with gathering data on the collection and cost of collecting criminal justice debt, producing a comprehensive report, and developing a calculator for judges around the state to use when determining an individual's ability to pay. Although each state's approach is different, the Bureau of Justice Assistance offers technical help to all grantees to support their work and ensure success.

**Cross-State Collaborative Efforts.** Among legal aid programs, efforts to collaborate and take on criminal justice debt issues across states and disciplines increased in 2016. The Southern Poverty Law Center convened advocates from around the country at the Economic Justice in the Courts Litigation and Advocacy Summit to discuss, among other subjects, the economic status of persons affected by the criminal justice system and funding of the courts on the backs of the poor. The National Consumer Law Center—in partnership with Harvard Law School, Columbia Legal Services, and Iowa Legal Aid—published three treatises in its “Confronting Criminal Justice Debt: A Comprehensive Project for Reform” initiative.<sup>35</sup> These publications aimed to introduce consumer law advocates to criminal justice debt challenges and offer tools for them to use with clients. The National Consumer Law Center also dedicated a few sessions at its annual

Consumer Rights Litigation Conference to the topic of criminal justice debt.

National legal aid consortiums such as the Legal Impact Network and the Committee on Regional Training use their networks to host cross-state webinars and training sessions for legal aid advocates to deepen the conversation around criminal justice debt as well as increase and encourage advocacy among restricted and unrestricted programs.<sup>36</sup>

These are just a few of many ongoing efforts to untangle the web of financially penalizing the poor. The recent increase in attention and deliberate multistate and multiagency steps toward fixing the injustices posed by criminal justice debt are encouraging to the legal aid community and must continue through efforts by civil legal aid organizations, both those with unrestricted funding and those without.

Civil legal aid programs in Iowa and Washington are, of course, not the only places where legal organizations are zealously advocating in this area. The national ACLU and its affiliates, the Southern Poverty Law Center, the Institute for Justice, Civil Rights Corps, the U.S. Department of Justice, and many others have made extremely important contributions to this critical area of advocacy in both litigation and policy. Many others, including several legal aid organizations funded by the Legal Services Corporation, have begun examining the role they can play in advancing this work. As efforts continue to push forward, one thing is clear: the need for

civil legal assistance in this area cannot be understated. We all have a role to play.

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<sup>35</sup> See [National Consumer Law Center, Confronting Criminal Justice Debt: A Comprehensive Project for Reform](#) (2016).

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<sup>36</sup> See [Committee on Regional Training, Welcome to CORT](#) (2017); [Sargent Shriver National Center on Poverty Law, Legal Impact Network](#) (n.d.).