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The Burden of Court Debt on Washingtonians

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Introduction

Across the country, many people involved in the criminal legal system have low incomes and large court debt burdens, and Washingtonians are no exception to this injustice. Most people who are caught in the system struggle to pay the fines, fees, and other legal financial obligations (LFOs) they are ordered to pay at sentencing, which can amount to hundreds or thousands of dollars for a single conviction. When someone cannot pay their LFOs, they face a range of serious consequences, including jail time. This research brief from the Vera Institute of Justice (Vera) uses LFO data from Washington's Administrative Office of the Courts (AOC) to explore assessment and payment patterns within Washington's criminal courts and offers recommendations for legislative action that could provide relief for Washingtonians burdened by court debt.

Key Takeaways from Vera's Analysis

- At least 78 percent of people with LFO debt meet the state's indigency standard, yet courts routinely impose fines and fees at conviction averaging \$695 for misdemeanor cases and \$1,302 for felony cases.
- Despite the serious repercussions for nonpayment, very little debt is repaid within four years of assessment. At the case level, only 44 percent of LFOs are paid on misdemeanor cases and only 8 percent are paid on felony cases, on average.
- Only 39 percent of people assessed fines and fees on a misdemeanor charge fully repay their debt obligations within four years of assessment. For those with felony cases, only 6 percent of people make full payment within four years.
- People who qualify for a public defender experience greater difficulty paying what they owe as compared to people with a private attorney.

A Heavy Burden: Court Debt and Consequences

Washington Defender Association recently published a series of stories from people impacted by the state's harmful system of legal financial obligations.¹ One person shared that they owed more than \$10,000 in court fines and fees, and another mentioned they had to take out a loan in order to pay off their court debt. A different person stated that they were faced with the unfair choice between feeding their children and paying rent or paying their fines so they wouldn't be taken to jail and lose custody of their children. Another person shared that they expect to be in debt for the rest of their life trying to pay off their LFOs.

Unfortunately, these stories are not isolated or unique. Nearly every person convicted in a Washington court faces the heavy burden of court debt.² The vast majority of Washingtonians with criminal cases—as many as 90 percent—meet the indigency standard, indicating that they have limited or no ability to repay their court debt.³ People with court debt are more likely to already be burdened by other types of debt, making it even more difficult for them to free themselves of the financial burden of LFOs. For example, a national survey found that those who owe court fines and fees were almost twice as likely than others to have student loan debt, 1.5

times more likely to have credit card debt, and nearly three times as likely to have medical debt.⁴ And, as a result of the ongoing COVID-19 public health crisis, the debt burden on this group is only expected to worsen.⁵

When people cannot afford to address their criminal justice debt obligations, they face significant legal consequences. In Washington, the courts are empowered to issue a warrant of arrest to compel appearance or payment of outstanding LFOs.⁶ The state's criminal code also permits incarceration as a tool for enforcing payment. Although jail time is meant to be reserved for people who willfully refuse to pay, it has been found that courts often incarcerate people for simply being too poor to pay.⁷

Additionally, there are long-term financial consequences associated with nonpayment of LFOs. Fines, fees, and other costs can amount to thousands of dollars, and because Washington still allows the accrual of a 12 percent annual interest rate on unpaid restitution, this debt can continue to grow over time, even if the person makes regular payments toward the amount that they owe.⁸ Unpaid LFOs can lead to depressed credit ratings for people who owe this debt, and the state can garnish people's wages, tax credits, and other sources of income.⁹ And the longer that people carry this debt, the more likely the debt is to be referred outside of the courts to a private collections agency, which comes with other costs—as much as 50 percent of the total amount owed.¹⁰

Beyond the debt itself, the time and resources associated with attending court appearances and hearings for failure-to-pay warrants can impact a person's ability to access or maintain stable employment, leading to a greater likelihood of continued indebtedness. One study by Alexis Harris, a leading researcher on monetary sanctions, found that legal debt led to lost income, fewer occupational opportunities, and increased housing instability for people with LFOs.¹¹

Additional studies suggest that the inability to pay financial sanctions can also cause health issues related to the stress associated with debt and create strain on family relationships.¹² Another dimension of this impact is that owing court debt not only leads to families having to go without certain things and having to choose between competing financial responsibilities, but also has a longer term impact on generational wealth by preventing lower-income communities and communities of color from developing that wealth as compared to others.¹³ And, in the bigger picture, LFOs exacerbate class exploitation, racism, and ableism both within and outside of the legal system.¹⁴ LFOs, which operate as financial sanctions, exist within a larger system of punishment in which those with political power label and codify certain behaviors as criminal, guided by dominant cultural, racial, and economic structures, which criminalize the behavior of those outside of the white middle and upper classes, namely people of color, people with disabilities, and people experiencing poverty or homelessness.¹⁵

Vera's Study: Most Washingtonians Cannot Afford Court Debt

Methodology

Vera received case-level records for all criminal convictions in Washington's courts of limited jurisdiction (CLJs, comprising district and municipal courts) and superior courts during fiscal years (FYs) 2016 and 2017 wherein a fine, fee, or other LFO was imposed. These records were

furnished by the Washington State Administrative Office of the Courts (AOC) and Seattle Municipal Court (SMC) and include data for nearly all 61 district courts, 109 municipal courts, and 39 superior courts across the state. In cleaning the raw records in preparation for analysis, researchers excluded a large portion of the information, retaining data for 7 percent of the original set of records.¹⁶ Notably, only conviction-related fines and fees are captured in the final data sample. Because pre- and post-conviction LFO assessments are not included in Vera’s analysis, total assessment amounts outlined here are actually an underestimate of the total debt burden that people in Washington’s courts face.¹⁷ Additionally, cases involving a sentence of more than one year were excluded from the analysis, minimizing the impact of long periods of incarceration on the ability to pay court-imposed debts. The final sample included 54,683 unique dockets (52,675 for the CLJs and 1,908 for the superior courts). See the technical appendix to this brief for more information about the sample data, its limitations, and the related implications.

Washington’s Criminal Courts

Courts of limited jurisdiction: Each of Washington’s 39 counties houses a district court. These are courts of limited jurisdiction that handle primarily misdemeanor and traffic violations. Some of Washington’s cities have municipal courts, which are courts of limited jurisdiction that maintain authority over traffic and misdemeanor cases that originate within city limits, as well as local ordinance violations.

Superior courts: Each of Washington’s 39 counties houses a superior court, which is a trial court of general jurisdiction. Superior courts hear civil and criminal matters, including felony, probate, and family law cases.

Findings

Vera’s analysis reveals that even four years after LFOs are assessed, very little of the total amount owed is paid (see Figure 1). In the CLJs, the average assessment is \$695, and the average amount paid per case after four years is about 44 percent of the total assessment amount. In the superior courts, the average assessment is \$1,302, and the average percentage paid after four years is only 8 percent of the total amount assessed.

Figure 1

Average FY16–17 LFO assessments and payments (within four years) in Washington’s CLJs and superior courts



It is worth noting that about half of this average assessment amount comprises fees that are statutorily mandated. Courts impose a victim penalty assessment, also known as the “VPA fee,” in the amount of \$250 for misdemeanor convictions or \$500 for felony convictions, as well as a \$100 DNA collection fee.¹⁸

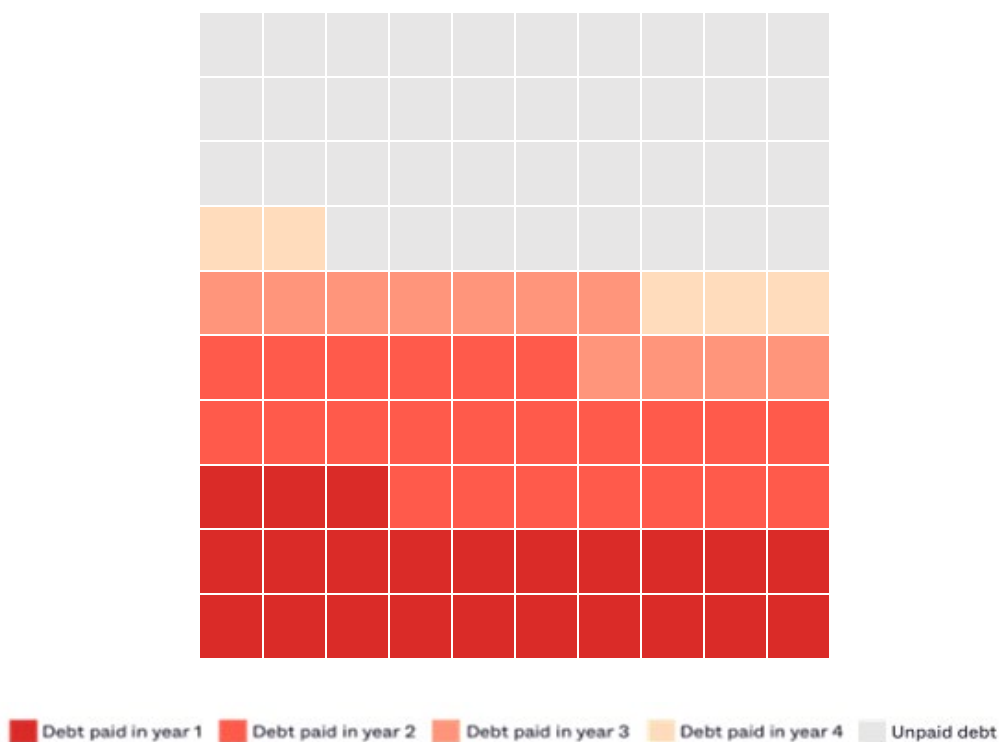
Very few people fully satisfy their LFO debt within a four-year time period. In the CLJs, only 39 percent of people repay their LFOs in full, whereas in the superior courts, just 6 percent do. Such low rates of payment suggest that this debt is or will become uncollectible.

Payment patterns demonstrate that the likelihood that unpaid court debt will be settled decreases substantially over time. For example, of debt that was assessed during fiscal years 2016 and 2017, the majority is paid in the first and second years following assessment, and by year four only very little of the debt is paid down. As demonstrated in Figure 2, of the total debt assessed in FYs 2016 and 2017, 23 percent was paid in year one after assessment, another 23 percent was paid in year two, 11 percent was paid in year three, and only 5 percent was paid in year four.

Figure 2

Payments made toward debt assessed in the CLJs during FY16–17

Each square represents one percentage point of the overall assessment amount



In the superior courts, payments do not appear to plateau after a threshold point in the way that they do in the CLJs. However, the sum of all payments combined in years one through four are strikingly low: 1.37 percent of all debt assessed during FYs 2016 and 2017 was repaid in year one, 3.11 percent in year two, 2.51 percent in year three, and 2.75 percent in year four, amounting to just 10 percent of all assessments imposed by the courts (see Figure 3). Note that

the increase in payments during year two after assessment is likely the result of people who are sentenced in superior courts also receiving carceral sentences in addition to owing LFOs. That is, the population represented in the superior court sample analyzed here could have been incarcerated for up to a year after judgment and sentencing, meaning that they would only be able to start making payments toward their LFOs after being released, which would have occurred during year two. This highlights how, when people are charged fines and fees in addition to being incarcerated, owing court debt serves as an additional form of punishment. Even when a person has already served their sentence, LFO debt becomes an added hurdle, interfering with that person’s ability to successfully rebuild their life.

Across all of the criminal courts, for people who make full payment toward their LFOs within four years, the most common day on which full payment is achieved is day zero, or the day on which LFOs are assessed. Additionally, the likelihood that debt will be satisfied generally diminishes as time goes on, peaking at around year one after assessment and dropping off significantly at around year two (see Figure 4). This is true across all cases in both the CLJs and the superior courts. Indeed, the share of people who make full payment on day zero (4 percent) is equal to the share of people who make full payment throughout the entirety of year three.

Figure 3

Total FY16–17 LFO assessments compared to payments in the superior courts over the course of four years

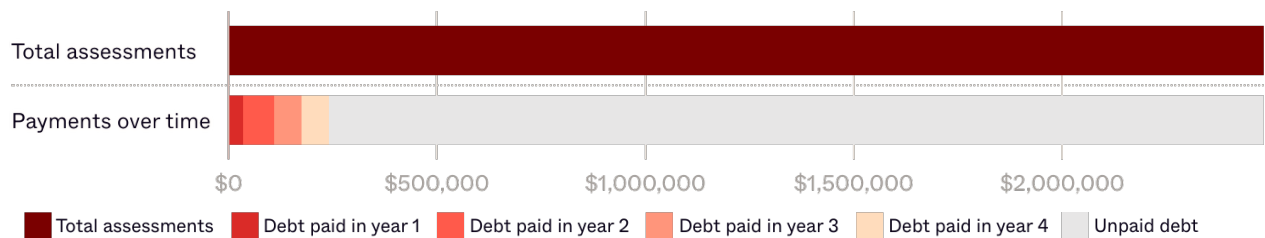
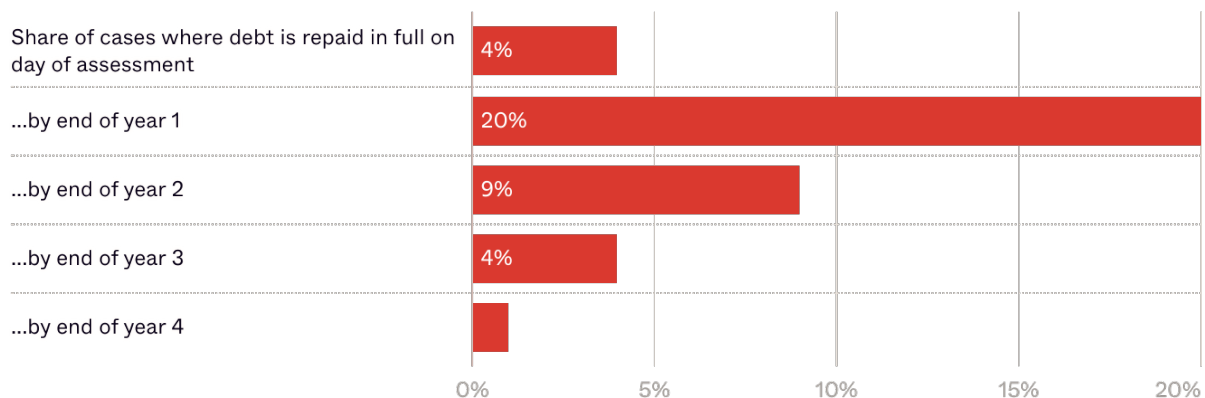


Figure 4

Share of cases in which debt is repaid in full, sorted by the number of days or years until LFO debt is fully satisfied (CLJ and superior courts combined)



Vera also found that people represented by public defenders, a proxy for experiencing poverty, had lower LFO payment rates and longer periods of carrying unpaid court debt. This was true

even if the person was assessed a lower amount in LFOs to begin with or if the person paid their debt in installments using a payment plan.

Taken together, this evidence suggests that fee reductions and prolonging the period of enforcement to give people more time to pay their LFOs are unlikely to solve the challenges many people face when trying to pay down their debt. Further, these fines and fees act as a form of excessive punishment on those who do not have the financial means to pay them right away. All in all, these findings underscore that most Washingtonians with LFOs cannot afford to pay them and will continue to be destabilized by the burden of criminal justice debt unless additional steps are taken to reduce this burden.

Discussion

Vera's findings highlight the abysmal outlook for LFO repayment and underscore the significance of the manifest impacts that long-term court debt has on people living in Washington. People with low or no incomes in Washington State overwhelmingly face the burden of this debt, meaning that the harms associated with nonpayment of LFOs are shouldered by those who are already navigating poverty and indebtedness. If data from 2016 and 2017 demonstrate the difficulties people have had with addressing their debt obligations to the court, one can expect that the economic challenges brought on by the COVID-19 pandemic will have exacerbated the debt burden. What's more, because this analysis involves only fines and fees assigned at conviction, the average assessments summarized in this brief are an underestimate of the total array or scope of debt that many people navigating Washington's criminal courts face.

Recent legislation made some important strides in amending Washington's criminal code to alleviate the burden of fines and fees on people in the legal system. Among other key reforms, HB 1412 gave judges the discretion to waive certain fees assigned at conviction if the person qualifies as indigent, as well as strengthened protections for people with limited or no ability to pay that would prevent the court from renewing the period of enforcement on non-restitution LFO debt.¹⁹ Although the new law provides certain necessary relief for people burdened by LFO debt, much more work remains to eliminate unjust LFO laws.

Future legislation should focus on abolishing all fees assigned at conviction, as well as permitting waivers for people who already paid such fees or still owe them. Because the mandatory VPA and DNA collection fees alone make up about half of the average amount assessed at conviction, this reform should provide significant relief for people who are charged with or owe court debt. Reforms could also go further to restructure fines and restitution orders to account for ability to pay, and identifying new, equitable sources for funding the legal system would reduce harm to system-involved people. Together, these solutions would enable more people to move past their convictions and rebuild their lives.

Acknowledgments

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Credits

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An electronic version of this report is posted on Vera’s website at

<https://www.vera.org/publications/the-burden-of-court-debt-on-washingtonians>.

The Vera Institute of Justice is powered by hundreds of advocates, researchers, and policy experts working to transform the criminal legal and immigration systems until they’re fair for all. Founded in 1961 to advocate for alternatives to money bail in New York City, Vera is now a national organization that partners with impacted communities and government leaders for change. We develop just, antiracist solutions so that money doesn’t determine freedom; fewer people are in jails, prisons, and immigration detention; and everyone is treated with dignity. Vera’s headquarters is in Brooklyn, New York, with offices in Washington, DC, New Orleans, and Los Angeles.

For more information about this report, contact Maria Rafael, research associate, Fines and Fees Initiative, at mr Rafael@vera.org.

Endnotes

¹ Washington Defender Association, “State v. Blake: Stories from Those Impacted,” <https://perma.cc/G5TX-8P9F>. These stories are also accessible online at Washington Defender Association, “State v. Blake Resources for Everyone,” July 7, 2022, <https://defensenet.org/state-v-blake-resource-page/blake-resources-for-everyone/>. Select “State v. Blake: Stories from Those Impacted.”

² For a description of legal financial obligations resulting from conviction, see American Civil Liberties Union of Washington, “Questions and Answers about Legal Financial Obligations (LFOs),” <https://perma.cc/TA4N-SATB>.

³ Washington State Office of Public Defense, *2018 Status Report on Public Defense in Washington State* (Olympia, WA: Washington State Office of Public Defense, 2019), 14, <https://perma.cc/ZPT7-JGSX>. Wash. Rev. Code § 10.101.010(3) (a) through (c) indicates that a person is indigent if they receive certain types of public assistance, are involuntarily committed to a public mental health facility, or receive an annual income after taxes of 125 percent of the federal poverty level. Recent legislation concerning legal financial obligations that will go into effect on January 1, 2023 revised the definition of “indigent” to also apply when a person experiences homelessness or mental illness,

has recurring basic living costs that render the person without the ability to pay, or has other compelling circumstances that exist that demonstrate an inability to pay. See Washington House Bill 1412 2021-22, <https://app.leg.wa.gov/billsummary?BillNumber=1412&Year=2021&Initiative=false>.

⁴ Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2019, Featuring Supplemental Data from April 2020* (Washington, DC: Board of Governors of the Federal Reserve System, 2020), 10, <https://perma.cc/M2HG-3ZPR>.

⁵ Juliana Menasce Horowitz, Anna Brown, and Rachel Minkin, *A Year Into the Pandemic, Long-Term Financial Impact Weighs Heavily on Many Americans* (Washington, DC: Pew Research Center, 2021), <https://perma.cc/CD4T-78TS>; and Rakesh Kochhar and Stella Sechopoulos, *COVID-19 Pandemic Pinches Finances of America's Lower- and Middle-Income Families* (Washington, DC: Pew Research Center, 2022), <https://perma.cc/LW5F-SZ6H>.

⁶ Wash. Rev. Code § 10.01.180.

⁷ Wash. Rev. Code § 10.01.180; and ACLU of Washington and Columbia Legal Services, *Modern-Day Debtors' Prisons: The Ways Court-Imposed Debts Punish People for Being Poor* (Seattle: ACLU of Washington and Columbia Legal Services, 2014), 9, <https://www.aclu-wa.org/docs/modern-day-debtors-prisons-washington>.

⁸ Alexes Harris, Heather Evans, and Katherine Beckett, "Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States," *American Journal of Sociology* 115, no. 6 (2010), 1753-1799, 1759.

⁹ Alexes Harris, Beth Huebner, Karin Martin, et al., *Monetary Sanctions in the Criminal Justice System: A Review of Law and Policy in California, Georgia, Illinois, Minnesota, Missouri, New York, North Carolina, Texas, and Washington* (Houston: Laura and John Arnold Foundation, 2017), 15, <https://perma.cc/N58G-ST4J>.

¹⁰ David Keenan, "Legal Financial Obligations," in *2021: How Gender and Race Affect Justice Now* (Washington State Supreme Court, 2021), 781, <https://perma.cc/S3AW-S2QK>; Wash. Rev. Code § 19.16.500: 50 percent of total outstanding debt can be charged by collections agencies on total outstanding debt amounts up to \$100,000. For people with more than \$100,000 in total outstanding debt, 50 percent of the first \$100,000 can be charged, plus 35 percent of the amount over \$100,000 can be charged by a collection agency. Evan Walker and Andy Nicholas, *It's Time to Reform Washington's Harmful System of Fines and Fees* (Seattle: Washington State Budget & Policy Center, 2022), 5, <https://perma.cc/ZW26-J4DB>.

¹¹ Harris, Evans, and Beckett, "Drawing Blood from Stones," 1760.

¹² Cait Lang-Perez, *Health Impact Review of Proposed 3SHB 1412 (H-1955.3/22) Concerning legal financial obligations, 2022 Legislative Session* (Seattle: Washington State Board of Health, 2022), 22-23,

<https://perma.cc/4HV7-N2J5>; Michele Cadigan and Gabriela Kirk, "On Thin Ice: Bureaucratic Processes of Monetary Sanctions and Job Insecurity," *RSF: The Russell Sage Foundation Journal of the Social Sciences* 6, no. 1 (2020), 113-131, 114-116, <https://perma.cc/QUJ2-UR9H>; and Keenan, "Legal Financial Obligations," 803.

¹³ Kate K. O'Neill, Ian Kennedy, and Alexes Harris, "Debtors' Blocks: How Monetary Sanctions Make Between-neighborhood Racial and Economic Inequalities Worse," *Sociology of Race and Ethnicity* 8, no. 1 (2021), 43-61, 51-55.

¹⁴ Walker and Nicholas, *It's Time to Reform*, 4-5.

¹⁵ See generally Alec Karakatsanis, "The Punishment Bureaucracy: How to Think About 'Criminal Justice Reform'," *The Yale Law Journal Forum*, 128 (2019), 848-935, <https://perma.cc/G6SM-7WTR>; The Sentencing Project, *Report to the United Nations on Racial Disparities in the US Criminal Justice System* (Washington, DC: The Sentencing Project, 2018), <https://perma.cc/9TN2-KNEW>; David D. Cole, *No Equal Justice: Race and Class in the American Criminal Justice System* (New York: The New Press, 2012); and Jasmine E. Harris, "Reckoning with Race and Disability," *The Yale Law Journal Forum* 130 (2021), <https://perma.cc/7LG7-8FQD>.

¹⁶ Notably, researchers only included information for superior court cases in which the underlying charge was classified as "unranked" or cases with a term of community custody not to exceed one year. See Washington State Caseload Forecast Council, *2020 Washington State Adult Sentencing Guidelines Manual* (Olympia, WA: Washington State Caseload Forecast Council, 2020), <https://perma.cc/3G69-F3UF>. Because people with LFOs may also be incarcerated in addition to owing LFOs, narrowing the superior court data to just those cases where the person would be released within one year from judgment ensures that the LFO payment information we analyzed is not skewed by the length of the person's period of incarceration (which would likely prohibit timely payment of LFOs).

¹⁷ Pre- and post-conviction LFOs include surveillance and monitoring fees, restitution, probation fees, and interest on outstanding LFOs.

¹⁸ Wash. Rev. Code § 7.68.035; and Wash. Rev. Code § 43.43.7541.

¹⁹ Washington House Bill 1412 2021-22.