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Footing the Bill for Juvenile Justice: The Impacts of Legal Financial Obligations on Washington Youth

Tori Sullivan Lavoie*

We emphasize the incongruity of not allowing children to smoke, drink, vote, drive without restrictions, give blood, buy guns, and a range of other behaviors because of their well-recognized lack of maturity and judgment while simultaneously treating some of the most at-risk, neglected, and impaired children exactly the same as full-grown adults in the criminal justice system.

– Bryan Stevenson, *Just Mercy*¹

I. INTRODUCTION

Across the United States, young people who encounter the legal system are burdened with the heavy costs of their legal representation and subsequent sentencing.² State laws vary greatly in regard to the amount that a youth may be required to pay after their encounter with the juvenile legal system.³ Washington state has been praised by the media for its progressive attitude toward juvenile legal financial obligations (LFOs).⁴ However,

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¹ BRYAN STEVENSON, *JUST MERCY* 270 (Spiegel & Grau eds., 2014).

² POL'Y ADVOC. CLINIC, BERKELEY LAW, *MAKING FAMILIES PAY: THE HARMFUL, UNLAWFUL, AND COSTLY PRACTICE OF CHARGING JUVENILE ADMINISTRATIVE FEES IN CALIFORNIA* 23–24 (2017), <https://ssrn.com/abstract=2937534> [perma.cc/8MVZ-6TLL] [hereinafter *MAKING FAMILIES PAY*].

³ See generally JESSICA FEIERMAN ET AL., *DEBTOR'S PRISON FOR KIDS? THE HIGH COST OF FINES AND FEES IN THE JUVENILE JUSTICE SYSTEM* (2016), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf> [https://perma.cc/LCD7-953N].

⁴ Rianna Hidalgo, *Seal the Deal: New Law Gives Youth a Break*, REAL CHANGE (May 27, 2015), <https://www.realchangenews.org/2015/05/27/seal-deal-new-law-gives-youths-break> [https://perma.cc/EA8Z-T5MS].

Washington has the opportunity to erase juvenile LFOs from its laws entirely and be the first state in the nation to halt the practice of placing youth in debt as a form of punishment.⁵

LFOs play into the cyclical nature of incarceration for young people who lack financial resources.⁶ If the young person being sentenced comes from a family which financially supports them, paying off LFOs is merely an inconvenience; the family can mitigate the damages of their child's LFOs by simply writing a check.⁷ However, if the young person comes from a family which cannot or does not financially support them, the fines, fees, and other costs do not simply go away.⁸ The costs follow from youth into adulthood, accumulate interest, and burden young adults with consequences long after they have been charged and sentenced.⁹ For these reasons, juveniles should not be responsible for the costs of the legal system.

To remedy the injustice that disadvantages youth in Washington state, the state must abolish LFOs for all juvenile offenders by amending RCW 13.40.720,¹⁰ RCW 13.50.260,¹¹ and RCW 13.50.010.¹²

II. ROADMAP

This article will analyze and reflect upon Washington state's practices of implementing restitution based LFOs on youth and making restitution based LFO repayment a requirement for juvenile record sealing. Part III will introduce background information on LFOs. Subsection one will address the legal history of LFOs in Washington, and subsection two will highlight the impacts of juvenile LFOs on Washington youth. Part IV will propose a

⁵ FEIERMAN, *supra* note 3, at 5.

⁶ *See id.*

⁷ *Id.* at 9–10.

⁸ *See* WASH. REV. CODE § 13.40.190 (2015).

⁹ *Id.*

¹⁰ WASH. REV. CODE § 13.40.720 (2015).

¹¹ WASH. REV. CODE § 13.50.260 (2015).

¹² WASH. REV. CODE § 13.50.010 (2019).

solution for addressing juvenile LFOs in Washington state. Subsection one will examine Washington’s current statutory language and propose new language that will eliminate juvenile LFOs and their harmful impacts. Subsection two will examine support for the prohibition of juvenile LFOs in other jurisdictions. Lastly, subsection three will address the challenges and counterarguments regarding the abolition of juvenile LFOs in Washington State.

III. BACKGROUND

You can’t get a job or apartment because of your criminal record. The legal financial obligations (LFOs) ordered as part of your sentence remain unpaid, making matters worse. An employer’s or landlord’s background check shows not just your conviction, but that your case is still active because of the unpaid LFOs. And the unpaid LFOs have damaged your credit, making housing harder to find, even if you could afford the rent. Now there is a warrant for your arrest for the unpaid LFOs. If you are picked up and jailed, you will miss the job interview and mental health treatment appointment next week. If you remain in jail too long, you will lose your temporary housing. Then you could lose custody of your children.

– Judge Theresa Doyle, King County Superior Court¹³

The purpose of the Juvenile Justice and Delinquency Prevention Act (JJDP), reauthorized by the United States Congress in 2018, is “to support a continuum of evidence-based or promising programs . . . that are trauma informed, reflect the science of adolescent development, and are designed to meet the needs of at-risk youth and youth who come into contact with the justice system.”¹⁴ The Office of Juvenile Justice and Delinquency Prevention

¹³ Theresa Doyle, *Legal Financial Obligations: A Ball and Chain*, in 2015 MINORITY & JUSTICE COMMISSION ANNUAL REPORT 9–10 (2015), <https://www.courts.wa.gov/committee/pdf/2015MJCAnnualReport.pdf> [<https://perma.cc/78FX-2W2Y>].

¹⁴ OFF. OF JUV. JUST. & DELINQUENCY PREVENTION, JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT REAUTHORIZED 2018 3 (2019), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/jjdp-as->

(OJJDP)¹⁵ was established as a result of the original JJDP in 1974.¹⁶ The Act was implemented following the nationwide realization that treating youth as adults is ineffective and does not promote a just and beneficial criminal legal system.¹⁷ However, there are many ways that the juvenile legal system continues to treat young people as adults. Juvenile LFOs are a prime example of how the system continues to place adult burdens on adolescents in our communities.¹⁸

A Washington statute defines legal financial obligations as “a sum of money that is ordered by a superior court . . . which may include restitution to the victim, statutorily imposed crime victims’ compensation fees . . . , court costs, county or interlocal drug funds, court-appointed attorneys’ fees, and costs of defense, fines, and any other financial obligation.”¹⁹ For Washington youth, LFOs are more restricted than in other parts of the country.²⁰ As of 2015, Washington youth may only be required to pay DNA collection fees, criminal victim’s assessment penalty, and restitution, whereas other states may still require youth to pay fees for probation or supervision, evaluations and testing, costs of care, costs of court, criminal fines, and fees for record sealing or expungement.²¹ However, even under Washington’s restrictions on juvenile LFOs, youth may still be required by statute to pay certain fines, fees, and restitution.²² Restitution is “a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period

amended_0.pdf [https://perma.cc/A3DX-CDKG] [hereinafter JUVENILE JUSTICE PREVENTION ACT].

¹⁵ The Office of Juvenile Justice and Delinquency Prevention is an office within the United States Department of Justice. *About OJJDP*, OFF. OF JUV. JUST. & DELINQUENCY PREVENTION, <https://ojjdp.ojp.gov/about> [https://perma.cc/89GE-5KAP].

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See FEIERMAN, *supra* note 3, at 1, 4.

¹⁹ WASH. REV. CODE § 9.94A.030 (2020).

²⁰ Hidalgo, *supra* note 4.

²¹ See FEIERMAN, *supra* note 3, at 10–20; Hidalgo, *supra* note 4.

²² WASH. REV. CODE § 13.40.720 (2015).

of time as payment of damages.”²³ Non-restitution LFOs include all other fines and fees ordered by the court.²⁴

Washington State has been praised by a number of media outlets for having some of the most progressive juvenile laws in the United States.²⁵ Much of this praise came following Washington’s passage of House Bill 1481 (HB 1481) and its companion bill Senate Bill 5564 (SB 5564) in 2015.²⁶ Section 4 of HB 1481 establishes that “[c]ities, towns, and counties may not impose any legal financial obligations, fees, fines, or costs associated with juvenile offenses unless there is express statutory authority for those legal financial obligations, fees, fines, or costs.”²⁷

While Washington state seems to be leading the way to significant juvenile justice reform, there are many policy gaps that continue to impose weighty LFOs on juveniles across the state.²⁸ The operative word in House Bill (HB)1481 is “unless.” Juvenile LFOs are prohibited *unless* they are imposed statutorily.²⁹ Washington statutes continue to allow judges to impose fines, fees, and restitution on minors.³⁰ Additionally, there is no cap on the amount

²³ *Id.*

²⁴ *Legal Financial Obligations Collections Program*, KING CNTY. GOV’T, <https://www.kingcounty.gov/courts/clerk/programs/LFO.aspx> [https://perma.cc/9MN5-P2XU] [hereinafter *King County Collections Program*].

²⁵ See Sara Jean Green, ‘*Seismic Shift*’: *New Law Will Reduce Number of Juveniles Sent to Adult Court in Washington State*, SEATTLE TIMES (Apr. 2, 2018), <https://www.seattletimes.com/seattle-news/crime/seismic-shift-new-law-will-reduce-number-of-juveniles-sent-to-adult-court-in-washington/> [https://perma.cc/ZVE8-9CVC]; Hidalgo, *supra* note 4; Eric Scigliano, *State Supreme Court Ruling Seals Juvenile Records*, CROSSCUT (June 11, 2015), <https://crosscut.com/2015/06/state-supreme-court-seals-juvenile-records> [https://perma.cc/6LMP-7C9G]; Charlotte West, *In Washington State, This County Is Making Big Strides Toward Reforming Its Juvenile Justice System*, MIC (Apr. 13, 2018), <https://www.mic.com/articles/188876/in-washington-state-this-county-is-making-big-strides-toward-reforming-its-juvenile-justice-system> [https://perma.cc/L975-QCF9].

²⁶ Hidalgo, *supra* note 4.

²⁷ H.B. 1481, 64th Leg., 2015–2016 Reg. Sess. (Wash. 2015).

²⁸ Hidalgo, *supra* note 4.

²⁹ H.B. 1481, 64th Leg., 2015–2016 Reg. Sess. (Wash. 2015).

³⁰ WASH. REV. CODE § 13.40.720 (2015).

of restitution that may be assigned to youth.³¹ As a result, many young people in Washington continue to face overwhelming LFO penalties, particularly in the form of restitution.³²

Scholars have addressed the tremendous financial impacts that LFOs can have on youth and families, but financial impacts are merely the tip of the iceberg for youth in contact with the criminal legal system.³³ Under HB 1481, courts have the power to grant a motion to seal a juvenile’s record or dismiss a deferred disposition³⁴ if the juvenile “has either paid the full amount of restitution or has made a good faith effort to pay the full amount of restitution.”³⁵ Prior to the passage of HB 1481, the court only had the power to seal a juvenile’s record if the juvenile had actually paid the amount in full.³⁶

While this seems more favorable to young people, a “good faith effort to pay” still requires that the juvenile either:

- (i) paid the principal amount in full; (ii) made at least eighty percent of the value of full monthly payments within the period from disposition or deferred disposition until the time the amount of restitution owed is under review; or (iii) can show good cause why he or she paid an amount less than eighty percent of the value of full monthly payments.³⁷

Consequently, Washington state continues to hold juveniles financially accountable for their mistakes and impose monetary barriers on the juvenile record sealing process.³⁸ This practice of making juveniles’ record sealing contingent upon their ability to pay LFOs endangers life opportunities for

³¹ WASH. REV. CODE § 13.40.190 (2015).

³² WASH. REV. CODE § 13.50.260 (2015).

³³ MAKING FAMILIES PAY, *supra* note 2, at 9–10.

³⁴ Disposition is defined as “a final settlement or determination” by the court. *Disposition*, BLACK’S LAW DICTIONARY (11th ed. 2019).

³⁵ H.B. 1481, 64th Leg., 2015–2016 Reg. Sess. (Wash. 2015).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *See* WASH. REV. CODE § 13.50.260 (2015).

them in adulthood. As the Honorable Theresa Doyle stated in her open letter to the Minority and Justice Commission, “Unpaid LFOs may have substantial and long-lasting impacts on one’s personal life, including their ability to find a job and ability to obtain housing.”³⁹ Thus, Washington should end the practice of holding youth financially responsible through the use of LFOs and remove LFO repayment from the list of criteria for juvenile record sealing.

A. History of Legal Financial Obligations in Washington State

The American Civil Liberties Union (ACLU) of Washington defines legal financial obligations as “the fines, fees, costs and restitution imposed by the court on top of a criminal sentence.”⁴⁰ It is rare that an individual sentenced in Washington state makes it out of the courtroom without a bill for LFOs.⁴¹ These bills may contain a variety of charges, from the cost of jail to the cost of assigned counsel.⁴² According to Washington statute, RCW 9.94A.030, LFOs

may include restitution to the victim, statutorily imposed crime victims’ compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys’ fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the

³⁹ Doyle, *supra* note 13, at 9–10.

⁴⁰ *Questions and Answers About Legal Financial Obligations (LFOs)*, ACLU WASH., <https://www.aclu-wa.org/questions-and-answers-about-legal-financial-obligations-lfos> [<https://perma.cc/CAF6-9AUR>].

⁴¹ *Id.*

⁴² *Id.*

expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.⁴³

The money generated from LFOs goes toward paying for services such as the Victim Penalty Assessment, DNA database fees, and other costs that courts incur during their ordinary operations.⁴⁴ This is a crucial fact for individuals in Washington state to be aware of because the state does not impose an income tax on its residents.⁴⁵ States that collect income taxes use that revenue to pay for state services such as health care, education, and—most importantly here—law enforcement.⁴⁶ Without an income tax, Washington state chooses to finance its legal system “off the backs of those incarcerated,”⁴⁷ which includes Washington’s children. However, as this article will discuss in Part IV, LFOs are an ineffective tool for generating revenue, largely because so many individuals are unable to afford the payments.⁴⁸

Washington state’s first major LFO reform was in 2015 with the passage of HB 1481.⁴⁹ The bill focused on rewriting juvenile LFO statutes. HB 1481 removed juvenile penalty assessments and interest on juvenile LFOs, allowed juvenile record sealing so long as the individual made a “good faith effort” to pay back restitution in full, and permitted courts—with consent of the

⁴³ WASH. REV. CODE § 9.94A.030(31) (2020).

⁴⁴ *King County Collections Program*, *supra* note 24.

⁴⁵ David Rae, *The Seven States with No Income Taxes*, FORBES (Apr. 3, 2019), <https://www.forbes.com/sites/davidrae/2019/04/03/states-with-no-income-taxes/#699e895a1b1c> [<https://perma.cc/5B2U-MKU8>].

⁴⁶ Dan Caplinger, *The 10 Biggest Things Your Income Taxes Pay For*, BUS. INSIDER (Apr. 25, 2013), <https://www.businessinsider.com/biggest-things-your-income-taxes-pay-for-2013-4#7-law-enforcement-and-immigration-7> [<https://perma.cc/3P3K-C898>].

⁴⁷ Interview, Justice Yu, Washington State Supreme Court Justice, in Seattle, Wash. (May 29, 2019).

⁴⁸ See Matthew Dickman, *Should Crime Pay? A Critical Assessment of the Mandatory Victims Restitution Act of 1996*, 97 CAL. L. REV. 1687, 1697 (2009); see MAKING FAMILIES PAY, *supra* note 2, at 18.

⁴⁹ H. 64-1481, 2015 Reg. Sess., at 1 (Wash. 2015).

victim—to order community service in place of restitution for juveniles who cannot afford to pay restitution.⁵⁰

Community restitution is “compulsory service, without compensation, performed for the benefit of the community by the offender as punishment for committing an offense.”⁵¹ While community restitution may be preferred to monetary restitution, especially for youth that are unable to pay, there are still concerns regarding work hours for minors and interference with school.⁵² In a recent study that surveyed young adults who dropped out of high school, over twenty-five percent reported that financial responsibilities took precedent over school while another twenty percent reported that they were unable to work and attend school simultaneously.⁵³ Thus, the Washington state legislature should seriously consider the concern that required compulsory service hours may interfere with a student’s ability to keep up in school.

A month after HB 1481 was passed, the Washington State Supreme Court asserted in *State v. Blazina* that the legislature intended LFO orders to be determined on a case-by-case basis, rather than in a uniform manner, and that judges were required to consider the defendant’s financial circumstances when assigning LFOs.⁵⁴ The court went on to highlight the “problematic consequences” of the Washington LFO system, confronting the high interest rates—twelve percent—that kept offenders from escaping the confines of the criminal legal system and highlighting the detrimental impacts that LFOs had

⁵⁰ *Id.*

⁵¹ WASH. REV. CODE § 13.40.20 (2019).

⁵² *Id.*

⁵³ Jaleesa Bustamante, *High School Dropout Rate*, EDUCATIONDATA.ORG (Sept. 23, 2019), <https://educationdata.org/high-school-dropout-rate/> [<https://perma.cc/N7A9-8ZK2>].

⁵⁴ *See State v. Blazina*, 344 P.3d 680, 681 (Wash. 2015) (holding that trial courts, prior to imposing LFOs, have a statutory obligation to make individual inquiries into a defendant’s current and future ability to pay).

on all aspects of life, including employment, housing, and personal finances.⁵⁵

In response to *Blazina*, the Washington State Legislature passed two more bills regarding LFOs: HB 1390 and HB 1783. HB 1390 made a single change to juvenile LFO laws in Washington, reaffirming what was already addressed in HB 1481: that defendants and juvenile offenders may convert unpaid costs into community restitution hours if the individual is found to be “not in *willful* default.”⁵⁶ HB 1783 was passed in 2018 to address LFO laws but largely failed to update juvenile LFO laws to the same extent that it updated adult LFO laws.⁵⁷

Since the passage of these bills, discussions surrounding LFOs have been on the rise.⁵⁸ At the 2019 Access to Justice Conference hosted by the Alliance for Equal Justice in Spokane, Washington, four separate talks focused on LFOs.⁵⁹ Additionally, organizations such as Living With Conviction: Sentenced to Debt for Life have taken root in Washington, educating communities about LFOs and advocating for individuals who have been

⁵⁵ *Id.* at 684.

⁵⁶ H.B. 1390, 64th Leg., 2015–2016 Reg. Sess. (Wash. 2015) (enacted) (emphasis added).

⁵⁷ H. 65-1783, 2017–2018 Reg. Sess. (Wash. 2018) (eliminating, among other things, interest on nonrestitution portion of adult LFOs, allowing adults to apply for reduction or waiver of interest, prioritizing restitution payment over nonrestitution payment, preventing court from sanctioning unintentional failure to pay, and waiving DNA fees if the individual’s DNA previously existed in the database). The bill made it clear that the act was not retroactive; therefore, individuals will not be refunded or reimbursed for previous LFO payments. The only information added in regard to juvenile offenders reaffirmed what was provided in HB 1481 and HB 1390; juvenile offenders may be assigned community service in lieu of restitution in jurisdictions that have a community restitution program if monetary restitution would place hardship on the youth. To qualify, youth must be considered indigent under WASH. REV. CODE § 10.101.010(3)(a)–(c) (2011)).

⁵⁸ *See, e.g.*, 20th Access to Justice Conference Program, WASH. STATE BAR ASS’N (2019), http://wsba.vo.llnwd.net/v1/CLE%20Documents/Store/2019_ATJ-Conference_Program_Final.pdf [<https://perma.cc/LJ9M-EQCT>].

⁵⁹ *Id.*

involved in the legal system.⁶⁰ The increased discussion of LFOs demonstrates that, despite the passage of HB 1481, HB 1390, and HB 1783, LFOs continue to significantly impact adults and juveniles.

The complexity of LFOs and their devastating impact on adult and juvenile offenders prompted the Washington State Administrative Office of the Courts Minority Justice Commission (OCMJC) to create the “Washington State LFO Calculator” as part of a project titled *Price of Justice: Rethinking the Consequences of Justice Fines and Fees*.⁶¹ The project aims to provide resources for judges and raise awareness about LFOs in Washington.⁶² The calculator is easy to use; it prompts judges with fill-in-the-blank questions and drop-down menus to assist them in creating an informal payment plan based on the individual’s charges and their ability to pay.⁶³

For example, if an individual has been charged with Burglary I and Making or Having Burglary Tools, the judge can enter this information to determine that they owe \$800 in mandatory LFOs: \$100 for the DNA collection fee, \$500 for the victim penalty assessment, and \$200 for the criminal filing fee.⁶⁴ The calculator notifies users that discretionary LFOs (e.g. restitution, DOC supervision fees, crime lab fees, fees for court appointed attorneys, booking fees, costs of incarceration, and other fees) may be added by the court.⁶⁵ Judges may also provide the financial information of the individual to determine how much they will be required to pay each month and how many months it will take before the LFO payments are completed.⁶⁶ For example, the calculator will show that an individual making \$16,000 a year with the

⁶⁰ *About*, LIVING WITH CONVICTION: SENTENCED TO DEBT FOR LIFE IN WASHINGTON STATE, <https://www.livingwithconviction.org/about> [<https://perma.cc/5X9K-B8V9>] [hereinafter LIVING WITH CONVICTION].

⁶¹ As of February 2020, this software is still operating as a beta test. WASH. STATE LFO CALCULATOR, <https://www.lfocalculator.org> [<https://perma.cc/MCU3-UV9R>].

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

ability to pay \$25 per month will take nearly three years to pay off the mandatory LFOs, and longer if the court imposes any discretionary LFOs.⁶⁷ While the calculator serves as a useful tool for judges and individuals involved in the legal system, the mere fact that a service exists to calculate an individual's LFOs and create a payment plan based on household income underscores the point that LFOs impose financial hardship on low-income individuals.

B. Impact of Juvenile Legal Financial Obligations on Washington Youth

In 2016, over 13,300 youth were placed in detention across Washington state.⁶⁸ On average, Washington youth are confined for 9.9 days.⁶⁹ It costs, on average, \$262.48 to incarcerate a juvenile for a single day.⁷⁰ Using these figures, the average cost for incarcerating a juvenile offender is approximately \$2,598.55 without adding any additional fines and fees associated with juvenile court and detention. In general, the average LFO in Washington, when considering both felony and misdemeanor sentences for adults, is \$1,128.⁷¹ Although courts are supposed to consider a defendant's

⁶⁷ *Id.*

⁶⁸ DR. AMANDA B. GILMAN & RACHAEL SANFORD, WASH. STATE CTR. FOR CT. RSCH., WASHINGTON STATE JUVENILE DETENTION 2016 ANNUAL REPORT (2016), <https://www.courts.wa.gov/subsite/wscsr/docs/2016DetentionAnnualReport.pdf> [<https://perma.cc/L5GP-JCWD>].

⁶⁹ *Id.*

⁷⁰ JUST. POL'Y INST., STICKER SHOCK: CALCULATING THE FULL PRICE TAG FOR YOUTH INCARCERATION 11 (2014), http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf [<https://perma.cc/WQC8-ER7T>]. (“At the date of the correspondence, Washington institutions cost \$262.48 per day, and the annual cost was reported to be \$95,805. For group homes, the daily cost was reported to be \$230.98, and the annual costs were reported to be \$84,307. John Clayton, Assistant Secretary, Juvenile Justice and Rehabilitation Administration, email to author, August 5, 2014; Ken Moses, Budget Director, email to author, August 11, 2014”).

Id. at 44.

⁷¹ *Legislature Passes Bill to Bring Fairness to Washington's System of Legal Financial Obligations*, ACLU WASH. (Mar. 6, 2018), <https://www.aclu-wa.org/news/legislature->

ability to pay when assigning LFOs, many individuals who are unhoused or who rely on public assistance still face fines and fees that they are unable to satisfy.⁷²

While youth are better protected from burdensome LFOs than adults, youth are still required to foot the bill of juvenile detention.⁷³ In 2018, King County issued a 296 page report entitled “Road Map to Zero Youth Detention” in which the county stated its intent to eliminate juvenile detention through a public health and restorative justice based approach.⁷⁴ Despite King County’s professed dedication to ending youth detention, King County recently opened the King County Children and Family Justice Center—a \$242 million juvenile detention facility with the capacity to incarcerate over one hundred youth.⁷⁵ This serves as yet another example of how Washington state continues to implement progressive juvenile justice policy while simultaneously retaining “tough on crime” practices. The facility’s construction drew significant public backlash as the community pondered why such a significant amount of money could not have been funneled into public programs that seek to help youth rather than detain them.⁷⁶ In the context of juvenile LFOs, the facility’s construction raises questions about why the county burdens youth with LFOs to offset the cost of juvenile detention while it expends such a large amount of money to put youth behind bars.

passes-bill-bring-fairness-washington’s-system-legal-financial-obligations
[<https://perma.cc/4GQS-U7M9>].

⁷² *Id.*

⁷³ H.B. 1481, 64th Leg., 2015–2016 Reg. Sess. (Wash. 2015).

⁷⁴ KING CNTY., ROAD MAP TO ZERO YOUTH DETENTION (2018), <https://www.kingcounty.gov/depts/health/~media/depts/health/zero-youth-detention/documents/road-map-to-zero-youth-detention.ashx> [<https://perma.cc/9RXJ-MT65>].

⁷⁵ Hallie Golden, *Seattle Is on a Road Map to Zero Youth Detention—So Why Is it Opening a Huge New Prison?*, GUARDIAN (Dec. 23, 2019), <https://www.theguardian.com/us-news/2019/dec/23/seattle-youth-detention-opening-new-facility> [<https://perma.cc/6RYK-PFBH>].

⁷⁶ *Id.*

There are a myriad of ways that juvenile LFOs impact Washington youth. The following sections will examine the detrimental impacts that LFOs have on youth and families, the juvenile record sealing process, and the legal system writ large.

1. Impacts on Youth and Families

LFOs place financial strain on youth and can have a significant impact on their education opportunities. The courts should not condone laws that pressure youth into choosing work over school because of court assigned debt. While Washington youth may be authorized to work as young as fourteen years old, minors are limited in the type of work that they may perform and the hours that they may work.⁷⁷ Further, youth below the age of eighteen are required to attend school with few exceptions.⁷⁸ As a result, youth are significantly less likely to have the income required to pay off their LFOs. By prioritizing LFOs over education, courts increase the risk that youth will drop out of school as a result of financial strain.⁷⁹

Moreover, juvenile LFOs do not disappear simply because the child is unable to pay them; juvenile LFO debt extends into adulthood.⁸⁰ Though non-restitution based LFOs cannot accrue interest, LFOs still manage to grow in size as a result of collection fees that are tacked onto them.⁸¹ The legislature attempted to address this problem by modifying RCW 13.40.192, which states that individuals may petition the court for modification of their LFOs.⁸² However, the resulting process is unnecessarily burdensome: the youth must

⁷⁷ *How to Hire Minors*, WASH. STATE DEP'T OF LAB. & INDUS., <https://lni.wa.gov/workers-rights/youth-employment/how-to-hire-minors> [<https://perma.cc/XG6W-Q9FQ>].

⁷⁸ WASH. REV. CODE § 28A.225.010 (2017).

⁷⁹ Jaleesa Bustamante, *High School Dropout Rate*, EDUCATIONDATA.ORG (Sept. 23, 2019), <https://educationdata.org/high-school-dropout-rate/> [<https://perma.cc/N7A9-8ZK2>].

⁸⁰ WASH. REV. CODE § 13.40.190 (2015).

⁸¹ *King County Collections Program*, *supra* note 24.

⁸² WASH. REV. CODE § 13.40.192 (2015).

know that they can petition the court and must have the resources necessary to do so.⁸³ An indigent defendant is not automatically entitled to waiver or modification.⁸⁴ As noted above, courts often pass LFOs off to collection agencies who profit off of criminally-involved youths' debts.⁸⁵ These debts can turn into further legal problems down the road if they remain unpaid because collection agencies can, and do, file lawsuits over unpaid dues.⁸⁶ While debtors' prisons were abolished in 1833, collection agencies continue the practice of "punish[ing] debtors and terroriz[ing] them into paying even . . . when a debtor has no ability to pay."⁸⁷

Inability to pay LFOs is harmful not only to youth, but to their families as well.⁸⁸ When youth are unable to afford their LFO payments, parents are required to make the payments for their juvenile children.⁸⁹ As a result, LFOs cause tension for many families due to the financial burden and stress associated with paying off the fines and fees.⁹⁰ Many families are forced to take extraordinary measures to pay off their LFOs or the LFOs of their minor children.⁹¹ Those who are burdened by LFOs may take on multiple jobs, sell their assets, or file for bankruptcy as a result of the severe financial strain that comes from LFOs.⁹²

⁸³ *See id.*

⁸⁴ *Id.*

⁸⁵ Judith Fox, *Do We Have a Debt Collection Crisis? - Some Cautionary Tales of Debt Collection in Indiana*, 24 Loy. Consumer L. Rev. 355, 358 (2012); *Legal Financial Obligations*, WASHINGTON REENTRY GUIDE (Nov. 30, 2019, 4:30 PM), <http://wareentryguide.org/legal-financial-obligations/#does-non-payment-affect-my-credit-rating> [perma.cc/5VK7-CWKS].

⁸⁶ WASH. REV. CODE § 13.16.085 (1955); Fox, *supra* note 85, at 364.

⁸⁷ ACLU, *A POUND OF FLESH: THE CRIMINALIZATION OF PRIVATE DEBT 4* (2018), https://www.aclu.org/sites/default/files/field_document/022318-debtreport_0.pdf [https://perma.cc/N3JV-EBDK].

⁸⁸ FEIERMAN, *supra* note 3, at 5.

⁸⁹ *Id.*

⁹⁰ MAKING FAMILIES PAY, *supra* note 2, at 9–10.

⁹¹ *Id.* at 10.

⁹² *Id.*

According to a study regarding juvenile administration fees in California,⁹³ not only do juvenile LFOs place undue burdens on youth and families, but juvenile LFOs may actually increase the likelihood that youth will reoffend⁹⁴ (for comparative purposes, juvenile administrative fees in California are similar to non-restitution LFOs in Washington).⁹⁵ While the study did not establish a causal relationship between LFOs and re-offense, it is clear that placing financial strain on a young adult fails to address the underlying causes behind their offenses and is likely to further exacerbate the problems.⁹⁶ The Washington courts’ continued imposition of LFOs on juveniles conflicts directly with the Washington State Legislature’s goal of “help[ing] juveniles understand the consequences of their actions and the harm that those actions have caused others.”⁹⁷

Further, youth of color and youth from financially disadvantaged households are most at risk of sustaining long-term harms from juvenile LFOs.⁹⁸ Many jurisdictions across the United States use an “ability-to-pay” system in which courts examine an individual’s capability to pay LFOs prior to assigning them.⁹⁹ However, ability-to-pay has been criticized by multiple scholars for its ineffectiveness in actually protecting indigent individuals from being assigned LFOs that they cannot afford.¹⁰⁰ While ability-to-pay attempts to take individual circumstances into account, it fails to address the systemic inequalities of our legal system, such as racialized policing, racial

⁹³ “Juvenile administrative fees” are a type of LFO imposed on youth in California. *Id.* at 4.

⁹⁴ *Id.* at 13.

⁹⁵ WASH. REV. CODE § 9.94A.030 (2020); MAKING FAMILIES PAY, *supra* note 2, at 1.

⁹⁶ *Id.*

⁹⁷ S.B. 5564, 64th Leg., 2015–2016 Reg. Sess. (Wash. 2015).

⁹⁸ Sarah E. Redfield & Jason P. Nance, *American Bar Association: Joint Task Force on Reversing the School-to-Prison Pipeline*, 47 U. MEM. L. REV. 1, 9–10 (2016); MAKING FAMILIES PAY, *supra* note 2, at 12–13.

⁹⁹ Theresa Zhen, *(Color)Blind Reform: How Ability-to-Pay Determinations Are Inadequate to Transform a Racialized System of Penal Debt*, 43 N.Y.U. REV. L. & SOC. CHANGE 175, 186 (2019).

¹⁰⁰ *See generally id.*

stratification of wealth, and the compounding effects from prior violations.¹⁰¹ Without addressing these inequalities, the ability-to-pay system continues to disenfranchise persons of color through the implementation of LFOs.¹⁰²

While juvenile LFOs are detrimental to all youth, youth of color and financially disadvantaged youth bear the cost of the juvenile legal system at a disproportional rate. According to a 2007 study conducted by the U.S. Justice Department, Black youth only made up sixteen percent of the youth population in 2007, yet twenty-eight percent of juvenile arrests that year were made against Black youth.¹⁰³ The statistics continue to show a stark contrast between juvenile arrests of Black youth and youth of all other races.¹⁰⁴ In 2016, the Washington State Statistical Analysis Center reported that approximately half of all youth who were involved in the juvenile legal system for either a juvenile offense or a status offense were on free or reduced price lunch.¹⁰⁵ This number was higher for youth of color, particularly among American Indian/Native Alaskan, Black, and Hispanic/Latinx students.¹⁰⁶ These numbers demonstrate that youth of color—particularly youth of color who are also low-income—suffer the most as a result of systematic inequalities. Simultaneously, youth who come from low-income households are less likely to have the resources to pay off their legal financial obligations.

2. Impacts on Juvenile Record Sealing

One area that has remained largely unexplored by legal scholars is the impact that LFOs have on juvenile record sealing. In Washington, a juvenile may seal their juvenile record only after they have completed the terms and

¹⁰¹ *Id.* at 193.

¹⁰² *Id.*

¹⁰³ MICHELLE ALEXANDER, THE NEW JIM CROW 118 (2012) (citing Christopher Hartney & Fabiana Silva, *And Justice for Some: Differential Treatment of Youth of Color in the Justice System* (Washington, DC: National Council on Crime and Delinquency, 2007)).

¹⁰⁴ STEPHANIE CROSS, WASH. STAT. ANALYSIS CTR., JUVENILE JUSTICE STANDARDIZED REPORT 34 (2016).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

conditions of their disposition, including all restitution based LFOs.¹⁰⁷ The Washington Legislature has made admirable progress towards eliminating the barriers that youth with outstanding LFOs face when attempting to seal their records. SB 5564 added the following note to RCW 13.50.010 which sets the definitions pertinent to juvenile record sealing:¹⁰⁸

The legislature finds that requiring juvenile offenders to pay all legal financial obligations before being eligible to have a juvenile record administratively sealed disproportionately affects youth based on their socioeconomic status. Juveniles who cannot afford to pay their legal financial obligations cannot seal their juvenile records once they turn eighteen and oftentimes struggle to find employment. By eliminating most nonrestitution legal financial obligations for juveniles convicted of less serious crimes, juvenile offenders will be better able to find employment and focus on making restitution payments first to the actual victim. This legislation is intended to help juveniles understand the consequences of their actions and the harm that those actions have caused others without placing insurmountable burdens on juveniles attempting to become productive members of society.¹⁰⁹

While this is certainly a noteworthy update, it leaves one particularly harmful burden in place—requiring individuals to pay off all restitution based LFOs before they can move forward with the juvenile record sealing process.¹¹⁰

There is no statutory limit on the amount of restitution that a juvenile may be ordered to pay.¹¹¹ Rather, it is left to the discretion of the court to determine the amount of restitution that a juvenile owes, as well as the terms and conditions attached to the LFOs. Payment plans may be extended up to ten years.¹¹² This means that judges are responsible for determining the amount that youth can owe in restitution based LFOs and how long they have

¹⁰⁷ WASH. REV. CODE § 13.50.260 (2015).

¹⁰⁸ WASH. REV. CODE § 13.50.010 (2019).

¹⁰⁹ S.B. 5564, 64th Leg., 2015–2016 Reg. Sess. (Wash. 2015).

¹¹⁰ WASH. REV. CODE § 13.50.260 (2015).

¹¹¹ See WASH. REV. CODE § 13.

¹¹² WASH. REV. CODE § 13.40.190 (2015).

to repay their LFOs. These decisions, left entirely to judges' discretion, can tie financially disadvantaged youth, particularly youth of color who are at a higher risk of being assigned LFOs,¹¹³ to the juvenile justice system for ten years and prevent their records from being sealed while they struggle to pay back their debt.

With SB 5564, the Washington State Legislature signaled its intention to remove the burden LFOs impose on young people and disentangle the juvenile record sealing process from LFO payment. To fully realize that intention, the Washington State Legislature should eliminate restitution as a requirement to seal juvenile records. By imposing LFOs on youth and making repayment a requirement for juvenile record sealing, the state fails to promote the purpose of the Juvenile Justice and Delinquency Prevention Act or SB 5564—rehabilitating youth and restoring social welfare.¹¹⁴ LFOs are retributive and capitalistic in nature. To fulfill the Washington State Legislature's goal of "help[ing] juveniles," the legislature must completely end the practice of assigning LFOs to juveniles.¹¹⁵

IV. PRESCRIPTIVE ELEMENT

LFO policy is designed to fund the criminal justice system on the backs of the poor and racial minorities, perpetuating cycles of incarceration and poverty. It represents institutional discrimination and structural racism at their finest.

– Living with Conviction¹¹⁶

In a statutory note to RCW 13.50.010, the Washington State Legislature addressed the negative impact that LFOs have on youth, particularly when LFOs are used to prevent them from sealing their juvenile records.¹¹⁷ The

¹¹³ Zhen, *supra* note 99, at 180.

¹¹⁴ S.B. 5564, 64th Leg., 2015–2016 Reg. Sess. (Wash. 2015); JUVENILE JUSTICE PREVENTION ACT, *supra* note 14, at 3.

¹¹⁵ S.B. 5564, 64th Leg., 2015–2016 Reg. Sess. (Wash. 2015).

¹¹⁶ LIVING WITH CONVICTION, *supra* note 60.

¹¹⁷ WASH. REV. CODE § 13.50.010 (2019).

statutory note also announced that the legislative goal is “to help juveniles understand the consequences of their actions and the harm that those actions have caused others without placing insurmountable burdens on juveniles attempting to become productive members of society.”¹¹⁸ However, the statutory note has failed to prevent courts from imposing insurmountable burdens on juveniles. By statute, Washington courts may continue to impose LFOs on youth in the form of fines, fees, and restitution.¹¹⁹ The state legislature must do more than denounce non-restitution LFOs—it must rewrite statutes to remove juvenile LFOs from the books entirely.

For Washington state to fully commit to this goal, the state legislature must pass legislation prohibiting juvenile LFOs in all forms and remove LFO repayment, including restitution, from the list of criteria that allow individuals to seal their juvenile records.

This section will first make the case for ending the practice of imposing LFOs on juveniles in Washington. Next, it will examine the actions other state legislatures are taking on the issue of juvenile LFOs. Last, it will address potential counterarguments in favor of juvenile LFOs.

A. Washington’s Statutory Language on Juvenile LFOs

Drafting a bill to prohibit juvenile LFOs and remove LFO repayment from the list of criteria for juvenile record sealing will require the Washington State Legislature to examine and update statutes concerning juvenile LFOs. There are three primary statutes that the legislature must focus on: RCW 13.40.720,¹²⁰ RCW 13.50.260,¹²¹ and RCW 13.50.010.¹²²

First, the legislature should amend RCW 13.40.720 to expressly prohibit all LFOs for youth, including restitution. RCW 13.40.720 currently states,

¹¹⁸ *Id.*

¹¹⁹ H.B. 1481, 64th Leg., 2015–2016 Reg. Sess. (Wash. 2015).

¹²⁰ WASH. REV. CODE § 13.40.720 (2015).

¹²¹ WASH. REV. CODE § 13.50.260 (2015).

¹²² WASH. REV. CODE § 13.50.010 (2019).

“Cities, towns, and counties may not impose any legal financial obligations, fees, fines, or costs associated with juvenile offenses unless there is express statutory authority for those legal financial obligations, fees, fines, or costs.”¹²³ This statute should be amended to “Cities, towns, and counties may not impose any legal financial obligations, fees, fines, or costs associated with juvenile offenses, *including restitution.*” This amendment is necessary because youth and families are impacted by all LFOs, regardless of whether the LFOs are imposed as restitution.¹²⁴ The legal system’s purpose is frustrated when some families may write off their punishment in the form of a check while other families must choose between paying rent and paying for their child’s LFOs.¹²⁵ The impact of restitution is no exception to this harm.

Second, the legislature should amend RCW 13.50.260 to end full repayment of outstanding LFOs as a precondition for sealing juvenile records. RCW 13.50.260 outlines the criteria for sealing juvenile records.¹²⁶ The statute makes four separate references to restitution repayment.¹²⁷ Section 1(c)(ii) states that a court may enter a written order to seal a juvenile record if “[t]he respondent has completed the terms and conditions of disposition, including affirmative conditions *and has paid the full amount of restitution owing to the individual victim named in the restitution order, excluding restitution owed to any insurance provider authorized under Title 48 RCW.*”¹²⁸ This statute should be amended to “[t]he respondent has completed the terms and conditions of disposition.” Because the updated RCW 13.40.720 would prohibit courts from imposing LFOs on youth, given this updated RCW 13.50.260, LFOs would no longer be a part of the terms and conditions of the record sealing process. This change would have a

¹²³ WASH. REV. CODE § 13.40.720 (2015).

¹²⁴ MAKING FAMILIES PAY, *supra* note 2, at 9–10.

¹²⁵ *Id.*

¹²⁶ WASH. REV. CODE § 13.50.260 (2015).

¹²⁷ *Id.*

¹²⁸ *Id.* (emphasis added).

significant impact because juvenile record sealing would no longer be conditioned on one's ability to pay.

RCW 13.50.260 makes three other references to restitution, two of which are identical. The first is section 4(a)(vi) and the second is 4(b)(v). These two sections set restitution repayment as a requirement for Class A offenses and Class B, C, gross misdemeanors, and misdemeanor offenses, respectively.¹²⁹ These sections should be eliminated entirely to remove restitution repayment as a requirement for juvenile record sealing. This amendment is necessary because the current system allows affluent individuals to effortlessly seal their juvenile records while low-income individuals must face significant hardship to do the same.¹³⁰

The final reference to restitution in RCW 13.50.260 is in section 4(c). This section states that “[n]otwithstanding the requirements in (a) or (b) of this subsection, the court shall grant any motion to seal records of any deferred disposition vacated under RCW 13.40.127(9) prior to June 7, 2012, if *restitution has been paid and* the person is eighteen years of age or older at the time of the motion.”¹³¹ This section should be rewritten as “the court shall grant any motion to seal records of any deferred disposition vacated under RCW 13.40.127(9) prior to June 7, 2012, if the person is eighteen years of age or older at the time of the motion,” removing the reference to restitution entirely. This is a necessary step for ensuring that financial difficulties do not bar individuals from having their juvenile records sealed.

In addition, RCW 13.50.010, which contains definitions regarding the process for juvenile record sealing,¹³² contains a statutory note (referenced above) regarding the legislative intent behind the statute.¹³³ The note emphasized the importance of prohibiting “most nonrestitution LFOs for

¹²⁹ WASH. REV. CODE § 13.50.260 (2015).

¹³⁰ MAKING FAMILIES PAY, *supra* note 2, at 9–10.

¹³¹ WASH. REV. CODE § 13.50.260 (2015) (emphasis added).

¹³² *Id.*

¹³³ *Id.*

juveniles convicted of less serious crimes.”¹³⁴ However, a new note must be added to expand this prohibition to all LFOs for juveniles. Building off of the already existing language of this statutory note, a new note should be drafted as follows:

The legislature finds that requiring juvenile offenders to pay all legal financial obligations before being eligible to have a juvenile record administratively sealed disproportionately affects youth based on their socioeconomic status. Juveniles who cannot afford to pay their legal financial obligations cannot seal their juvenile records once they turn eighteen and oftentimes struggle to find employment. By eliminating *all* legal financial obligations for juveniles *convicted of crimes*, juvenile offenders will be better able to find employment. This legislation is intended to help juveniles understand the consequences of their actions and the harm that those actions have caused others without placing insurmountable burdens on juveniles attempting to become productive members of society.

The state has acknowledged the harsh lifelong impacts that monetary punishments have on low-income youth.¹³⁵ Following this acknowledgement, there is no way to justify the continuation of juvenile LFOs, regardless of whether they are restitution based or not. Washington state has a responsibility to address this inequality by eradicating juvenile LFOs entirely. The state has taken the first step in acknowledging the disproportionate impact that LFOs may have on youth based on race and class.¹³⁶ The state must take the next step and draft legislation that prevents such disproportionate impacts from being statutorily imposed.

Further, the definition of “Legal Financial Obligation,” as outlined in RCW 9.94A.030, should be amended to explicitly preclude juveniles from receiving LFOs. The current statute does not include language regarding juveniles;¹³⁷ however, a simple clause could be added to the end of the

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ WASH. REV. CODE § 9.94A.030 (2020).

definition stating that “*juveniles are not eligible for restitution.*” Amending this definition would be the nail in the coffin for juvenile LFOs in Washington state, affirming that justice should never depend on the depth of one’s pocket, especially when it comes to our youth.

B. Support for the Prohibition of Juvenile LFOs

The issue of juvenile LFOs and the call to bring an end to the practice of imposing them extends far beyond the borders of Washington state.¹³⁸ In 2015, the Obama Administration drew attention to the issue of LFOs broadly in a brief by the Council of Economic Advisors.¹³⁹ The brief, entitled *Fines, Fees, and Bail: Payments in the Criminal Justice System That Disproportionately Impact the Poor*, expressed concern regarding the “expanding use of monetary penalties.”¹⁴⁰ The brief reported that twenty percent of persons in jail are being detained for failure to pay their outstanding LFOs.¹⁴¹ The council found that, in response to the increasing costs of the criminal legal system, the amount of LFOs being assigned has also increased, affirming that LFOs are not solely punitive; individuals are being forced to raise revenue for a system that is more biased than just.¹⁴² This furthers the point expressed by Justice Mary Yu that LFOs are a way for states, such as Washington, to fund its legal system “off the backs of those incarcerated” without imposing income taxes on the public.¹⁴³

¹³⁸ See generally MAKING FAMILIES PAY, *supra* note 2, at 23; FEIERMAN, *supra* note 3, at 1.

¹³⁹ MAKING FAMILIES PAY, *supra* note 2, at 23; FEIERMAN, *supra* note 3.

¹⁴⁰ COUNCIL OF ECON. ADVISERS, FINES, FEES, AND BAIL: PAYMENTS IN THE CRIMINAL JUSTICE SYSTEM THAT DISPROPORTIONATELY IMPACT THE POOR (2016), https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf [<https://perma.cc/4WKK-R7LN>].

¹⁴¹ *Id.*

¹⁴² *Id.* at 2; see generally MICHELLE ALEXANDER, THE NEW JIM CROW (2010) (asserting that the criminal legal system is the new racial caste system in the United States).

¹⁴³ Interview, Justice Yu, Washington State Supreme Court Justice, in Seattle, Wash. (May 29, 2019).

Not long after the Administration released this brief, the New York Times ran a front-page story about juvenile LFOs.¹⁴⁴ The story followed sixteen-year-old Dequan Jackson.¹⁴⁵ Jackson, an honor student and athlete, was charged with a single count of battery at the age of thirteen when he accidentally “bang[ed] into a teacher while horsing around in a hallway.”¹⁴⁶ Jackson did everything that he could to comply with his sentence, but he was left with one insurmountable task: paying a \$200 fee for his public defender.¹⁴⁷ Because Jackson was only thirteen-years-old at the time of his sentence, unable to work, and had a family who was experiencing significant financial strain, Jackson’s probation was extended.¹⁴⁸ Three years later, Jackson and his mother continued to struggle to pay off his LFO, which had grown to be over \$800 as a result of collection fees and interest.¹⁴⁹

The New York Times article emphasized that the issue of juvenile LFOs is not unique to any particular state.¹⁵⁰ A recent nationwide survey by the Juvenile Law Center revealed that nearly every state in the country imposes LFOs on juveniles to cover expenses such as court fees, detention fees, treatment fees, other fines, and restitution.¹⁵¹

Although LFOs are not discussed nearly as often as they should be in the legal community, there are organizations that are taking strides to share knowledge, resources, and stories regarding LFOs; Living with Conviction: Sentenced to Debt for Life in Washington State is one such organization.¹⁵² Living with Conviction documents the damage inflicted on individuals,

¹⁴⁴ Erik Eckholm, *Court Costs Entrap Nonwhite, Poor Juvenile Offenders*, N.Y. TIMES (Aug. 31, 2016), [https://www.nytimes.com/2016/09/01/us/court-costs-entrap-nonwhite-poor-juvenile-offenders.html?_r=\[https://perma.cc/QQ6V-U86C\]](https://www.nytimes.com/2016/09/01/us/court-costs-entrap-nonwhite-poor-juvenile-offenders.html?_r=[https://perma.cc/QQ6V-U86C]).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ FEIERMAN, *supra* note 3, at 5.

¹⁵² LIVING WITH CONVICTION, *supra* note 60.

juvenile and adult, who have been victimized by court imposed LFOs. Through photographs and audio recorded testimony, *Living with Conviction* illustrates the compounding harms that LFOs have on individuals, particularly when imposed at a young age.¹⁵³ The goal of *Living with Conviction* is to educate individuals and advocate for further LFO reform in Washington and across the United States.¹⁵⁴

California, in particular, has taken significant steps towards eradicating juvenile LFOs.¹⁵⁵ As of 2017, five counties in the state of California opted out of imposing juvenile administrative fees on youth.¹⁵⁶ Juvenile administrative fees are a broad category of fines and fees imposed on youth to pay for the costs of representation, detention, and probation.¹⁵⁷

A recent report on juvenile administrative fees in California found that the fee policies harm vulnerable families,¹⁵⁸ are often unlawful,¹⁵⁹ and are so costly to impose that they are not effective at paying back the costs of the juvenile legal system.¹⁶⁰ As a result, lawmakers in several counties have voted to repeal or suspend juvenile administrative fees, and policy advocates are calling for more to follow suit.¹⁶¹ While the report on LFOs in California does not include restitution in its definition of juvenile administrative fees, it does call into question the efficacy of restitution based LFOs.¹⁶²

While Washington state has attempted to reduce the amount of LFOs that may be given to youth who are involved in the system, the fact that restitution

¹⁵³ *Stories*, LIVING WITH CONVICTION: SENTENCED TO DEBT FOR LIFE IN WASHINGTON STATE (Dec. 1, 2019, 5:00 PM), <https://www.livingwithconviction.org> [<https://perma.cc/2YES-3XDG>].

¹⁵⁴ LIVING WITH CONVICTION, *supra* note 60.

¹⁵⁵ See generally MAKING FAMILIES PAY, *supra* note 2.

¹⁵⁶ *Id.* at 20.

¹⁵⁷ *Id.* at 1.

¹⁵⁸ MAKING FAMILIES PAY, *supra* note 2, at 9.

¹⁵⁹ *Id.* at 14.

¹⁶⁰ *Id.* at 17–18.

¹⁶¹ *Id.* at 20.

¹⁶² *Id.* at 28.

remains an option and, in the case of felonies, a requirement,¹⁶³ indicates that Washington courts, by implication, continue to target youth of color and youth of lower socioeconomic status.¹⁶⁴ These populations are at greater risk of being harmed by LFOs because they are statistically more likely to be arrested, more likely to be assigned LFOs, and less likely to be able to afford them.¹⁶⁵ Without addressing race and class based biases, the current system of LFOs “may inadvertently legitimize racial inequity.”¹⁶⁶

Although twenty-three states have stopped charging youth for court costs and five states have stopped charging youth for “cost of care” (which includes incarceration and monitoring), not a single state has taken the leap to remove juvenile LFOs from the list of potential sentencing options, including states with more progressive policies such as California and Washington.¹⁶⁷

C. Challenges to the Prohibition of Juvenile LFOs

There are a number of arguments in favor of LFOs, particularly when it comes to restitution.¹⁶⁸ Fines and fees are favorable for the state and for taxpayers because they are in place for the unique purpose of reimbursing the government for the costs incurred when policing and punishing crime and delinquency.¹⁶⁹ Restitution, on the other hand, is more restorative in nature and focuses on individuals who have been impacted by criminal and delinquent activity.¹⁷⁰ The Office of Juvenile Justice and Delinquency

¹⁶³ Monica Llorente, *Criminalizing Poverty Through Fines, Fees, and Costs*, AM. BAR ASS’N (Oct. 3, 2016), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2016/criminalizing-poverty-fines-fees-costs/> [https://perma.cc/M64T-FVRM].

¹⁶⁴ Zhen, *supra* note 99, at 180.

¹⁶⁵ *Id.* at 196.

¹⁶⁶ *Id.*

¹⁶⁷ Llorente, *supra* note 163.

¹⁶⁸ See generally R. Barry Ruback et al., *Restitution Payment and Recidivism*, 17 CRIMINOLOGY & PUB. POL’Y 789 (2018).

¹⁶⁹ *Id.* at 790.

¹⁷⁰ *Id.*

Prevention (OJJJ) and the Washington State Legislature both rely on the argument that restitution based LFOs are beneficial because restitution supports victims of crime and requires offenders to take responsibility for their actions.¹⁷¹

Advocates for victims' rights will likely have a particular interest in maintaining the current laws on restitution because payment of restitution is intended to be a restorative process.¹⁷² Restitution can be used by victims to pay for medical expenses, therapy costs, lost wages, lost or damaged property, and insurance deductibles, along with other harms or expenses that they suffered as a result of an offense, thus restoring them to their rightful states.¹⁷³ These are legitimate interests that make it particularly difficult for states to eliminate LFOs.¹⁷⁴ However, the "restitution for victims" argument is significantly undermined by the fact that restitution is rarely paid in full.¹⁷⁵ Of those who do end up making LFO payments, it can take decades before the victim receives the full amount.¹⁷⁶ At such a point, it is questionable as to whether the payment is truly being used to "make the victim whole" and serve justice, or whether the prolonged payment is intended to be a slow form of punishment imposed on the payer.

In a recent study on the psychological impacts of restitution conducted by faculty of Penn State University, William Paterson University, and Florida State University, researchers asserted that individuals who pay restitution are less likely to reoffend.¹⁷⁷ The research presumes that juvenile offenders who

¹⁷¹ S.B. 5564, 64th Leg., 2015–2016 Reg. Sess. (Wash. 2015); JUVENILE JUSTICE PREVENTION ACT, *supra* note 14, at 2.

¹⁷² Ruback, *supra* note 168, at 790.

¹⁷³ *Restitution*, NAT'L CTR. FOR VICTIMS OF CRIME, <https://members.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/restitution> [https://perma.cc/4AJR-743T] [hereinafter NAT'L CTR. FOR VICTIMS OF CRIME].

¹⁷⁴ *King County Collections Program*, *supra* note 24.

¹⁷⁵ Ruback, *supra* note 168, at 799.

¹⁷⁶ NAT'L CTR. FOR VICTIMS OF CRIME, *supra* note 173.

¹⁷⁷ Ruback, *supra* note 168, at 809.

pay restitution will feel rehabilitated by the action of paying restitution because they will internalize a sense of responsibility to the victim and accountability for their actions. By paying their dues, the study suggests juvenile offenders will face a constant reminder of the consequences of their actions and, as a result, will be less likely to commit crimes in the future.¹⁷⁸

However, there are several caveats to this study that must be considered. First, there is a correlation between high fees and recidivism.¹⁷⁹ Individuals who were given a high number of fines and fees unrelated to their recidivism were less likely to pay them back and were at a greater risk of reoffending.¹⁸⁰ This suggests two things. First, individuals are less likely to pay back non-restitution LFOs. These outcomes are bolstered by the fact that only nine percent of participants in the study paid off their restitution based LFOs in full and only four percent paid back their non-restitution LFOs in full.¹⁸¹ Second, there is a point of diminishing returns when it comes to LFOs.¹⁸² Researchers have concluded that when LFOs are too high, individuals feel an increased sense of hopelessness and, rather than making small payments, they forgo making payments altogether due to their reasonable belief that they will never be able to afford the full amount required by their sentence.¹⁸³

The second caveat is in the limitations of the study. The study was unable to take into account external factors, such as family support and employment.¹⁸⁴ This means that there could be alternative explanations for the correlation between LFO payment and lower recidivism rates.¹⁸⁵ It is entirely possible that the reason that individuals who made LFO payments were less likely to reoffend is due to an external factor, such as having more

¹⁷⁸ *Id.* at 792.

¹⁷⁹ *Id.* at 808.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 799.

¹⁸² *Id.* at 808.

¹⁸³ Dickman, *supra* note 48, 1697.

¹⁸⁴ Ruback, *supra* note 168, at 805.

¹⁸⁵ *Id.*

financial resources.¹⁸⁶ Further, the study admits that juveniles from affluent households typically did not experience a sense of accountability or responsibility for their offense because their parents were the ones to pay off the LFOs.¹⁸⁷ Because most juveniles do not have the sufficient funds to pay off their LFOs and their parents end up being financially responsible for their fines, fees, and restitution, the argument that juvenile offenders will be rehabilitated by paying rehabilitation based LFOs falls flat.¹⁸⁸

The final caveat to take into account is that less than thirty percent of individuals in this study made more than two payments toward their LFOs.¹⁸⁹ This means that a vast majority of individuals did not meet the burden of paying off, or even paying most of, their legal financial obligations. This aligns with the research done on California juvenile administrative costs.¹⁹⁰ Not only are juvenile administrative costs more likely to increase recidivism, but in a single county the elimination of juvenile administrative fees could result in a “net financial benefit to society of \$192,000 annually or more than \$5.5 million in perpetuity (present value) due to state and local administrative savings and the reduction of labor market harms and wage garnishment.”¹⁹¹

The current practice of imposing and attempting to collect juvenile LFOs requires a significant amount of time and money. The result is an incredibly small return on the investment with many jurisdictions collecting only small percentages of the juvenile LFOs that they assign.¹⁹² In fact, in the 2014-15 fiscal year, Santa Clara County, California lost about \$50,000 by spending more on LFO debt collection than they actually collected that year.¹⁹³ Further, a majority of the money that states receive from juvenile LFOs is used to pay

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 793.

¹⁸⁸ FEIERMAN, *supra* note 3, at 3.

¹⁸⁹ Ruback, *supra* note 168, at 808.

¹⁹⁰ See MAKING FAMILIES PAY, *supra* note 2.

¹⁹¹ *Id.* at 19.

¹⁹² *Id.* at 18.

¹⁹³ *Id.*

for collection activity rather than to fund the system itself.¹⁹⁴ With this in mind, the argument that LFOs are necessary to finance courts and detention facilities is insufficient because the current system of collection does not generate enough revenue to actually support the costs associated with the juvenile legal system.¹⁹⁵

The takeaway from these studies is that in a cost benefit analysis of LFOs, particularly when imposed on youth, the burdens that come from juvenile LFOs greatly outweigh any perceived benefit. When juveniles are unable to make the payments, the state is not reimbursed, and the victim of the offense goes uncompensated. Instead, the state spends great amounts attempting to collect LFOs from individuals who are unable to pay.¹⁹⁶ In addition, LFOs have not been found to significantly reduce recidivism rates.¹⁹⁷ Even the researchers who have found a slight correlation between LFO repayment and lower recidivism rates acknowledge that there are a handful of external factors to consider and the statistics are not significant enough to formally conclude that LFOs have a bearing on recidivism.¹⁹⁸

While the impacts of unpaid restitution are substantial for the individuals who struggle to make payments, the broader societal impacts are catastrophic as well. From 1996 to 2007, the federal criminal debt went from \$6 billion to \$50 billion.¹⁹⁹ Eighty percent of that debt is due to unpaid restitution.²⁰⁰ Thus, any argument that the purpose of LFOs is to compensate the state and compensate victims of crime is inadequate and inaccurate; few individuals have the ability to make the payments that are required of them by the legal system²⁰¹ and the state must go to great lengths to collect unpaid LFOs.²⁰²

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 22.

¹⁹⁷ Ruback, *supra* note 168, at 808.

¹⁹⁸ *Id.*

¹⁹⁹ Dickman, *supra* note 48, at 1691.

²⁰⁰ *Id.* at 1692.

²⁰¹ *Id.*

²⁰² MAKING FAMILIES PAY, *supra* note 2, at 22.

Further, the argument that LFOs prevent individuals from reoffending in the future is flawed in that LFOs have not proven to have a significant deterrent effect on crime and delinquency.²⁰³ If the state’s goals are to generate revenue and promote rehabilitation by forcing responsibility on youth in the form of financial debt, their goals will remain unmet, and youth and families will continue to face hardship as a result. These reasons alone should be enough to justify the abolition of juvenile LFOs.

V. CONCLUSION

Legal financial obligations are a burden on adults and juveniles alike.²⁰⁴ However, youth experience unique complications when it comes to paying off LFOs because they are unable to work, and family members often end up being burdened with the costs of their child’s juvenile legal system involvement.²⁰⁵ In particular, we know that youth of color and youth from low socioeconomic status households are more likely to be targeted by the juvenile legal system and thus are saddled with the responsibility of paying off LFOs at a higher rate than their white counterparts.²⁰⁶ From this, it is clear that the creation and enforcement of LFOs have caused a two-tiered system of justice in which “the rich may walk away, while the poor must pay or

²⁰³ Ruback, *supra* note 168, at 808.

²⁰⁴ See generally MAKING FAMILIES PAY, *supra* note 2; FEIERMAN, *supra* note 3; Zhen, *supra* note 99, at 180; COUNCIL OF ECON. ADVISERS, FINES, FEES, AND BAIL: PAYMENTS IN THE CRIMINAL JUSTICE SYSTEM THAT DISPROPORTIONATELY IMPACT THE POOR (2015),

https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf [<https://perma.cc/RZG7-SLLD>]; Erik Eckholm, *Court Costs Entrap Nonwhite, Poor Juvenile Offenders*, N.Y. TIMES (Aug. 31, 2016), https://www.nytimes.com/2016/09/01/us/court-costs-entrap-nonwhite-poor-juvenile-offenders.html?_r= [<https://perma.cc/5K8V-T7VB>].

²⁰⁵ MAKING FAMILIES PAY, *supra* note 2, at 10.

²⁰⁶ Redfield & Nance, *supra* note 98, at 9–10; MAKING FAMILIES PAY, *supra* note 2, at 12–13.

stay,”²⁰⁷ proving that our legal system “continues to treat people better if they are rich and guilty than if they are poor and innocent.”²⁰⁸

Washington has taken significant steps toward mitigating the damages that juvenile LFOs have had on youth in the state.²⁰⁹ The state legislature should further the goals of the juvenile legal system and prohibit all LFOs, including restitution based LFOs, by amending RCW 13.40.720,²¹⁰ RCW 13.50.260,²¹¹ and RCW 13.50.010.²¹² These statutes require individuals to pay back restitution before their petitions to seal their juvenile records can be granted.²¹³ By eliminating this requirement, courts will allow individuals to seal their juvenile records without penalizing individuals who are unable to pay and remove non-restitution *and* restitution based LFOs from our state system entirely.²¹⁴

In addition to juvenile record sealing challenges, juvenile LFOs have detrimental impacts on youth and families, particularly youth and families of color who are low income.²¹⁵ The current system fails to take into account the systemic social inequalities such as racialized policing, racial stratification of wealth, and the compounding effects from prior violations that have deep roots in our nation’s courts and prisons.²¹⁶ These inequalities have no place in our justice system and must not be tolerated. The first step in combatting these inequalities requires the prohibition of juvenile

²⁰⁷ Torie Atkinson, *A Fine Scheme: How Municipal Fines Become Crushing Debt in the Shadow of the New Debtors’ Prisons*, 51 HARV. C.R.-C.L. L. REV. 189, 191 (2016).

²⁰⁸ STEVENSON, *supra* note 1, at 313.

²⁰⁹ WASH. REV. CODE § 13.50.010 (2019) (amending “intent” specifically at 2015 c 265 § 1); Hidalgo, *supra* note 4.

²¹⁰ WASH. REV. CODE § 13.40.720 (2015).

²¹¹ WASH. REV. CODE § 13.50.260 (2015).

²¹² WASH. REV. CODE § 13.50.010 (2019).

²¹³ WASH. REV. CODE § 13.40.720 (2015); WASH. REV. CODE § 13.50.260 (2015); WASH. REV. CODE § 13.50.010 (2019).

²¹⁴ See generally Zhen, *supra* note 99.

²¹⁵ MAKING FAMILIES PAY, *supra* note 2, at 9–13.

²¹⁶ Zhen, *supra* note at 99, at 180.

restitution based legal financial obligations and Washington state should pave the way.²¹⁷

²¹⁷ Llorente, *supra* note 163.