



The Costs of Justice

A Plan for Promoting Efficiency & Public Safety through Criminal Court Costs Reform

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Table of Contents

About the Contributors	ii
Executive Summary	1
Preface	2
Legal and Historical Background	3
Introduction	4
Background	5
Part I: Rule 8 Issues & Recommended Reforms	10
Rule 8 Issues.....	11
Enforcing Rule 8.....	11
Supplementing Rule 8	11
Guidelines for Determining Ability to Pay	12
<i>Defining “Poverty” & “Disability”</i>	12
Judicial Training on Rule 8	15
<i>Continuing Legal Education Courses (CLEs)</i>	15
<i>Bench Cards & Manuals</i>	16
Uniform Rule 8 Form	16
Rule 8 Hearings via Videoconference	17
Summons Instead of Warrants	17
Structured Fines	19
Part II: Infrastructure Improvements	21
Fund the Administrative Office of the Courts.....	21
Case Management System	24
<i>The Department of Corrections’ Offender Banking System</i>	25
Statistical Analyst in the Administrative Office of the Courts	26
Statewide E-Payment System.....	26
Part III: Obtaining Court Costs Data	28
Reporting Requirements	28
Statewide Audit	28
Part IV: Court Debt Amnesty Programs	30
Court Debt Amnesty Programs	30
Part V: Extending Reforms to Municipal Courts	34
Extending Reforms to Municipal Courts	33
Conclusion	34
Endnotes	
Appendices	

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The Lobeck Taylor Community Advocacy Clinic

The Lobeck Taylor Community Advocacy Clinic (CAC) at The University of Tulsa College of Law offers student attorneys the opportunity to explore the ethical, strategic, and theoretical dimensions of legal practice by solving real-life legal problems in a structured learning environment. CAC students serve the community by providing representation that increases access to justice for low-income individuals and families, as well as advocacy, capacity-building, and systemic reform on behalf of non-profit organizations and community groups.

The Oklahoma Policy Institute

The Oklahoma Policy Institute is an independent, non-partisan policy think-tank whose mission is to promote adequate, fair, and fiscally responsible funding of public services and expanded opportunity for all Oklahomans by providing timely and credible information, analysis, and ideas.

Executive Summary

Oklahoma's existing practices related to assessing and collecting criminal legal financial obligations (LFOs) unfairly burden low-income criminal defendants and present a threat to public safety, government efficiency, and fiscal responsibility. In this report, we define LFOs to include the full range of court costs and fees assessed to criminal defendants. To improve Oklahoma's criminal justice system and alleviate problems in the assessment and collection of LFOs, we recommend the following reforms:

- Enact statutory definitions for “poverty” and “physical disability”
- Ensure courts apply laws relating to LFOs uniformly through judicial training, bench cards, and a uniform Rule 8 form
- Conduct hearings to determine eligibility for waiver of LFOs via videoconference
- Adequately fund the Oklahoma's Administrative Office of the Courts (AOC) and direct the AOC to track outstanding LFOs
- Implement a statewide E-payment system for LFOs
- Perform a special audit of Oklahoma's district courts to determine the scale of the problem of low-income defendants who cannot afford to pay LFOs
- Offer a short-term LFO amnesty program

Preface

As soon as she hung up, Cari Smith started to lose her breath.¹ Staring out her kitchen window in her modest one-bedroom apartment, she watched her five-year-old son climbing on the community jungle gym. Her eyes began to well up. She was tired.

About a year earlier, Cari was arrested and charged with embezzlement, the result of a problem with a rental car. Because Cari had never been in trouble with the law, the prosecutor offered her a plea agreement: attend a diversion program for struggling mothers instead of going to prison. As Cari sat in the cold metal chair at the jail, staring down at the offer, all she could think about was her son. If she refused the deal and was convicted, her son would grow up without a mother. She would miss seven of his birthdays. For Cari, accepting the plea agreement was the easiest choice she ever made, because it meant she could be with her son.

A few days later, Cari stood before the judge as he handed down her sentence: \$12,000 in fines, fees, and restitution, all of which had to be paid within seven years. She thought about the money she owed the babysitter and the electric bill she'd barely managed to pay. She wondered how she would ever get another job after losing the last job she had for missing work while in jail. But she took a deep breath and told herself she'd make it work.

As soon as she left the courthouse that day, she ran home, changed clothes, kissed her son on the forehead, thanked the babysitter, and went looking for a job. After applying to several restaurants—the only job she

had ever known—and being rejected, she finally asked one of the managers why. “It’s just... you just got out of jail for embezzlement. We can’t risk you handling cash,” he reluctantly mumbled. Devastated, Cari walked across the street to a little, family-owned grocery store with a “Now Hiring” sign, where, after incessantly promising she wouldn’t let down the empathetic owner, she got the job. It only minimum wage, but it was a job, and it was hers.

When the time came time to send in her restitution payment to the DA’s office, Cari placed her \$100 in an envelope, sealed it, and dropped it in the mailbox. When she heard the mailbox shut, she sighed in relief knowing she had just enough money after bills, rent, childcare expenses, and food to pay the bill. For the first time since her arrest, she felt like she would make it. But the next day, that all changed.

Before Cari picked up the phone, she shooed her son out the door and told him to go outside and play. “Mommy has an important phone call.” As soon as he skipped out the door, Cari answered.

“Hello?”

“Hello, is this Cari Smith?” the voice asked sharply.

“Yes, I’m Cari,” she responded.

“Yeah, hi, this is District Attorney Coleman. Do you know why I’m calling?”

“Uh, sir, I apologize if I missed my payment; you should be getting it in a couple of days. I-I-I just sent it in the mail yesterday,” she explained anxiously. “No, I received it, Ms. Smith. And it’s a dollar short. If it happens again, you’re going back to jail.”

Cari was lost. “I’m sorry, there has to be a mistake. I mailed a \$100 money order,

just like the judge said.” Impatient, DA Coleman responded, “Look, you didn’t add in the processing fee. So we had to take it out of your payment. You’re going to have to send in the other dollar or you’ll be in violation of your probation.”

As her eyes began to well up with tears of hopelessness and defeat, she politely conceded. “Yes, sir. It won’t happen again.” Without a response, he hung up the phone.

Legal and Historical Background

Introduction

In Oklahoma, low-income people who become involved in the criminal justice system face the significant challenge of burdensome legal financial obligations (LFOs), also known as court costs. Contrary to constitutional protections, low-income defendants are often jailed when they are unable to pay their LFOs. Evidence suggests Oklahoma courts rarely inquire into whether a defendant has the ability to pay LFOs, though this inquiry is required by law.

When combined with Oklahoma's excessive reliance on LFOs as a revenue source, the practice of levying these fees without regard to a defendant's ability to pay negatively affects public safety, government efficiency, and fiscal responsibility.

Fortunately, Oklahoma has a solid policy foundation for addressing the questions that arise from the state's application of LFOs to low-income defendants. The legislature has already indicated through statutes that it does not want low-income or disabled defendants burdened by onerous LFOs. However, in practice, such defendants are routinely assessed LFOs. This must change.

In this report, we explain the problems associated with how Oklahoma courts currently handle assessing and collecting LFOs. Further, we will recommend several specific reforms that will make Oklahoma more compliant with settled state and federal laws, reduce the negative effects of LFOs on our state's poorest populations, increase government efficiency and transparency, allow

the state to engage in more fiscally responsible practices, and ensure greater public safety for its citizens.

Presently, contrary to state and federal law, the courts do not always hold hearings to determine defendants' ability to pay LFOs, and apply existing protections inconsistently.² As a result, too many low-income defendants are jailed when they fail to make payments.³ In Part I, we recommend various measures to address these problems. First, we recommend the legislature enact clear and objective statutory standards for determining whether a defendant is able to pay his LFOs. Stricter, clearer guidelines will result in greater consistency among judges' application of existing protections. Second, we recommend adding judicial training requirements to ensure sentencing judges consistently and correctly apply these protections. For the same reason, we recommend creating and issuing bench cards and manuals to further aid judges in this process. Additionally, we recommend requiring, at a minimum, that courts use a statewide form to ensure all judges consider the same information about defendants' financial circumstances at sentencing and at subsequent hearings for determining defendants' ability to pay.

When defendants are jailed upon failure to pay, they take up space in the jail that could be used for violent offenders who present genuine threats to public safety. In Part I, we also recommend the legislature prevent courts from jailing defendants by requiring them to issue summons before arrest warrants upon a defendant's initial failure to pay. If a defendant ignores the summons, our recommendation would allow the court to issue a warrant, but in efforts to further relieve the

burdens on the jails, we recommend adding hearings to determine defendants' ability to pay to the list of judicial proceedings that courts can conduct via videoconference.

As the law currently stands, LFOs disproportionately burden the poorest populations and fail to effectively deter wealthy defendants. In response, Part I proposes implementing a structured fine system that will treat all defendants equally, prevent defendants from being unable to pay their LFOs, and increase public safety by better deterring crime. This will further improve consistency in assessment, collection rates, and deterrent effects of fines.

Currently, the Administrative Office of the Courts (AOC) lacks the resources and manpower needed to provide crucial support to the courts. In Part II, we recommend several infrastructure improvements that will ensure greater efficiency and transparency in government. First, we recommend the legislature appropriate additional funds to the AOC. With sufficient resources, the AOC will be able to create and implement a statewide case management system and E-payment system that will improve efficiency by consolidating information and processes and facilitating information sharing between departments at the state, county, and municipal levels.

The lack of data regarding LFOs assessed to low-income defendants leaves the state blind to their debt and unable to ascertain the costs and benefits of current practices and potential reforms. In Part III, we recommend that the legislature either require district and municipal courts to report data regarding court costs assessed and collected to the AOC, or obtain that data through a

statewide audit. The legislature can analyze this data and use the knowledge gained to en-

The sanctions defendants face after a conviction often involve far more than jail time.

act further reforms to prevent further deterioration of public confidence in the courts and future funding crises.

Finally, in Part IV, we recommend implementing a temporary LFO amnesty program to incentivize payments in exchange for partial forgiveness of outstanding LFOs. This should boost collections and raise enough revenue to implement some of these reforms.

These solutions will not only alleviate the challenges low-income defendants face, but they will also increase public safety and efficiency, and improve the state's financial circumstances.

Background

“Lock ‘em up and throw away the key” is what many envision when people are convicted of crimes. However, the sanctions criminal defendants face after conviction often involve far more than jail time. Generally, Oklahoma law authorizes state criminal courts to assess LFOs against defendants to hold them accountable for the costs of their own prosecutions and to reimburse the government for the services the criminal justice system provides. Statutes also authorize

courts to impose fines as part of the punishment.

Often, when a criminal defendant fails to make payments against these fines and fees, or LFOs, the court issues a warrant authorizing law enforcement to arrest her and throw her in jail pending a hearing. This common practice has resulted in debtors' prisons in Oklahoma, where people are incarcerated for their inability or failure to pay LFOs.⁴

Throughout American history, courts have gradually limited states' ability to jail criminal defendants for this purpose. In 1970, the United States Supreme Court held in *Williams v. Illinois* that a state could not extend a defendant's jail sentence beyond the statutory maximum merely because she could not pay a fine.⁵ Later, in 1971, the Supreme Court went further, saying that if the state had imposed a fine on a defendant as his sentence, it could not subsequently convert that sentence into jail time if he could not pay the fine.⁶ Finally, in 1983, *Bearden v. Georgia*, the Supreme Court outlawed incarcerating criminal defendants for failure to pay unless they did so willfully, as opposed to merely being too poor to pay.⁷ The Court also held that sentencing courts are required to inquire into a defendant's ability to pay court fees prior to assessing them.⁸

Faced with financial pressure, states across the nation, including Oklahoma, have had difficulties complying with these constitutional principles.⁹ For example, in response to a \$1.3 billion shortfall, the Oklahoma legislature created the District Court Revolving Fund, a measure which affected about 45 court fees—almost exclusively criminal court fees.¹⁰ By doing so, the legislature

placed excessive reliance on fees to fund crucial government functions.¹¹ Aside from impeding compliance with constitutional protections, this has also led to decreased public safety and severe fiscal strains.¹²

Eighty percent of Oklahoma's criminal defendants are just like Cari Smith, who was featured in the preface to this report. Most work low-paying jobs and have difficulty making ends meet.¹³ But many are even worse off.¹⁴ While Cari was able to find enough money to pay her LFOs, many criminal defendants cannot.¹⁵ Unfortunately, this does not stop the state from relying on them

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to fund the government.¹⁶

While basic fairness permits charging individual court users some reasonable fees to help partially offset the costs of operating the court system, courts' funding should largely come from general state revenue sources. Article II, Section 6 of the Oklahoma Constitution expressly provides:

The courts of justice of the state shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice.¹⁷

Eighty percent of criminal defendants in Oklahoma live at or below the poverty line.

Clearly, the legislature intended the court system to be open to, and thus to benefit, the general public as a whole, not just those who happen to use it. Thus, it has a responsibility to provide adequate funding from general appropriations. Unfortunately, the State of Oklahoma generally fails to meet this basic obligation.

Not only are Oklahoma courts almost exclusively funded through LFOs, but a number of state agencies that perform vital government functions draw significant or near-exclusive funding through court fees as well.¹⁸ Eighty-seven percent of operating costs—everything from building maintenance to payroll checks—of any given District Court in the State of Oklahoma derive from criminal and civil court fee collections.¹⁹ Additionally, the Council on Law Enforcement Education and Training (CLEET)—the agency responsible for training and certifying a large portion of the state’s law enforcement officers, private security guards, and private investigators—receives approximately 85% of its funding through a \$9 CLEET fee that attaches to all municipal and district court criminal cases.²⁰ Eighty percent of criminal defendants in Oklahoma live near or below the federal poverty line.²¹ If all of them had the means to pay those specific fees alone, over two-thirds of CLEET’s entire budget would come from the pockets of people who cannot even afford an attorney to represent them in contesting the

charges that eventually result in the assessment of those fees. Operating with this level of disparity between public funding and recovered LFOs creates a clear conflict of interest between various state agencies and the public they serve.

Further, a comparison of court collections in a sample of ten Oklahoma counties in 2003 versus collections in 2015 highlights the problems with utilizing criminal court fees as a revenue source. The dollar amounts for individual civil fees, which filers must pay at the time they file their suits, and thus are always collected,²² generally did not increase in amount from 2003 to when they were examined again in 2015.²³ However, the number of civil cases filed have increased, accounting for the rise in civil collections from 2003 to 2015.²⁴ Criminal fees, on the other hand, have increased in dollar amount over the last decade and a half due to the legislature’s efforts to raise revenue.²⁵ But despite increased efforts to improve collections on criminal cases, those collections actually decreased from 2003 to 2015.²⁶ Thus, neither increases in the criminal fees themselves nor increases in collections of

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However, these measures did have, and continue to have, severe negative effects on the lives of low-income defendants and their families.²⁷ Further, current practice places a disproportionate burden on the state’s most impoverished communities.²⁸ When a criminal defendant fails to make a payment on his court fees, he is often arrested and jailed.

While defendants with the financial means can bail themselves out, pay off their LFOs or adjust their payment plans, and be released the same day, many low-income defendants must sit behind bars for over a week—sometimes even longer—before being given the opportunity to explain their missed payments to a judge. As a result, their LFOs accumulate; their debt rises by at least \$50 for execution of their arrest warrants,²⁹ by 30% of their outstanding balances for missing their payments (if sent to collections),³⁰ and, in some counties, by the costs of incarceration charged for each day they spend in jail.³¹ Worse, they are forced to miss work, resulting in job loss or opportunities for promotion or better pay.

In short, this system traps low-income defendants in a vicious cycle of debt, incarceration, and poverty—their lives completely controlled by the criminal justice system for as long as they remain too poor to pay LFOs.

As a practical matter, the result is a two-tiered criminal justice system—one for the solvent, and one for the impoverished. This fundamental unfairness in the way Oklahoma courts administer criminal justice not only damages low-income defendants, but it also results in a lack of transparency and trust

in the judicial branch of our state government.

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Several states, including Mississippi, Georgia, Arkansas, Ohio, Alabama, Louisiana, and Missouri, among others, have all faced lawsuits for engaging in similar practices and for jailing defendants upon failure to pay.³² And perhaps the event that shone the brightest light on the issue was the United States Department of Justice’s (DOJ) investigation into the Ferguson, Missouri police department and the city’s municipal courts following the controversial officer-involved shooting of Michael Brown in 2014.³³ Significantly, in response to these events, many judicial organizations and government agencies published guidelines for states to follow to ensure compliance with the constitutional principles of the *Williams*, *Tate*, and *Bearden* decisions.

Recently, the DOJ issued a “Dear Colleague” letter that directs courts to follow the following principles:³⁴

- 1) Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an in-

digency determination and establishing that the failure to pay was willful;

(2) Courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees;

(3) Courts must not condition access to a judicial hearing on the prepayment of fines or fees; and

(4) Courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees.

The Conference of State Court Administrators (COSCA) has also published a series of principles for states to follow, the first of which highlights the importance of avoiding conflicts of interest between the courts and the use of fees they levy on criminal defendants:³⁵

Courts should be substantially funded from general governmental revenue sources because court users derive a private benefit from the courts and may be charged reasonable fees to partially offset the cost of the courts borne by the public. Neither courts nor specific court functions should be expected to operate exclusively from fees.

The principles discussed above provide a framework within which Oklahoma's policy regarding court fees may be evaluated and reform recommendations may be made to ensure constitutional compliance.

Oklahoma's Efforts

Despite Oklahoma's shortfalls in relying on criminal LFOs for revenue, there is some positive news. Oklahoma law includes several provisions that aim to prevent courts from jailing defendants for failure to pay and to reduce at least some of the burdens substantial LFOs entail.

The Bill of Rights of the Oklahoma Constitution provides that "[i]mprisonment for debt is prohibited"³⁶ Further, Section VIII of the Oklahoma Rules of Criminal Procedure sets out several rules limiting incarceration for failure to pay LFOs.

First, Rule 8.1 requires sentencing courts to hold hearings to determine defendants' ability to immediately satisfy LFOs.³⁷ Additionally, Rule 8.2 provides that a defendant may only be incarcerated for failure to pay if she is financially able but refuses to pay her LFOs.³⁸ The Rules also permit payment under installment plans, and they even require courts to waive all or part of a defendant's court fees if the defendant is too poor or physically disabled to keep up with his payments.³⁹

Additionally, in 2016, the legislature passed the following laws to alleviate the burden of court costs on indigent defendants:

- If an indigent defendant receives a reduction in one category of LFO, the same percentage reduction must apply to all categories of LFO except family support payments and restitution.⁴⁰
- Changed the guidelines for sentence modification from 24 months to 60 months, and eliminated ambiguity about whether

parolees are eligible for post-sentencing relief from LFOs. This measure allows the courts to modify court costs levied against parolees and inmates.⁴¹

- If a district attorney drops charges against a defendant, the defendant only pays the costs of prosecution and confinement if those costs are a clearly stated part of the settlement agreement.⁴²
- Created a new set of rules which go into effect on November 1st, 2016, allowing defendants leaving prison at least 6 months to reintegrate with society before reporting to a judge for a mandatory Rule 8 hearing. Court fees from concurrent and previous incidents can be consolidated, and after 2 years of successfully making timely payments, all court fees except family support obligations and restitution may be forgiven.⁴³

Earlier, the legislature also banned the suspension of driver's licenses for unpaid LFOs.

However, evidence suggests Oklahoma courts generally fail to conform to the state's own laws. Previous research has shown inconsistency in the application of these provisions, and that courts neglect to inquire into defendants' ability to pay prior to

assessing LFOs against them.⁴⁴ The vagueness of Rule 8 provisions leads not only to a surplus of judicial discretion in handling LFOs—and consequently, to discrepancies in how similarly situated criminal defendants are treated for failing to pay—but also to the

Thus, while Oklahoma's efforts represent a stronger movement forward than many states have made, plenty of room for improvement still remains.

unlawful incarceration of low-income defendants who, through no fault of their own, simply cannot satisfy their LFOs.⁴⁵ These defendants remain in jail for days, sometimes weeks, and occasionally even months before they receive the opportunity to explain why they failed to pay.⁴⁶ During this time, they risk losing their jobs and have additional fees for warrants and incarceration added to their already insurmountable debts.⁴⁷ A cycle of poverty and incarceration ensues.

Thus, while Oklahoma's efforts represent a stronger movement forward than many states have made, plenty of room for improvement remains.

Part I: Rule 8 Issues & Recommended Reforms

Rule 8 Issues

Rule 8.5 of the Oklahoma Rules of Criminal Procedure sets the standard courts use to determine whether a defendant has the ability to pay LFOs, and consequently, whether she qualifies to have them waived or whether she is eligible for payments on an installment plan.⁴⁸ Unfortunately, practice illustrates the Rule’s severe structural weaknesses. First, the Rule’s vagueness leads to inconsistency in application, which leads to inconsistency in treatment of similarly situated defendants. Further, how courts initiate Rule 8 hearings, and even whether they hold such hearings at all, varies from district to district and even from judge to judge within the same districts.⁴⁹ Tulsa County, for example, utilizes a form titled “Order of the Court – Rule 8 Hearing,” which the district court uses for setting fees and the defendant must take to the court clerk for making payment

Many Oklahoma courts fail to comply with the requirement that courts hold a hearing to determine a defendant’s ability to pay LFOs.

plan arrangements.⁵⁰ Presently, the Tulsa County District Court does not hold actual Rule 8 hearings. Further, lacking a standard Rule 8 hearing procedure—much less, a standardized guideline for determining whether defendants are able to pay—the Rule 8 hearing “can do little to help the defendants who so desperately need relief from the steep costs associated with a criminal conviction.”⁵¹

Enforcing Rule 8

Currently, many Oklahoma courts fail to comply with the Rule 8 requirement that courts hold a hearing to determine a defendant’s ability to pay LFOs assessed at the time of sentencing.⁵² Instead, some courts wait until after the defendant has missed a payment to inquire into his financial circumstances, and some never do at all.⁵³ Thus, our first and most basic recommendation is that courts should begin holding Rule 8 hearings at the time they impose LFOs on defendants. However, because this has already posed challenges for the courts, we recommend several avenues of supplementing Rule 8’s provisions.

Supplementing Rule 8

No single target for legislative and judicial reform possesses the potential for positively affecting the problematic imposition of LFOs against low-income defendants as providing adequate legislative guidance for the existing Rule 8 procedures. To effectively eliminate the two-tiered justice system, implementing uniform procedures and guidelines to prevent unfair outcomes is necessary. Some of the proposed reforms must, by legal necessity, be carried out by the legislature, while others would be most effectively implemented through the judiciary mandating training and continuing legal education (CLE) courses for judges, prosecutors, and criminal defenders on how to properly practice Rule 8 procedures.

Guidelines for Determining Ability to Pay

Defining “Poverty” & “Disability”

Under Oklahoma law, when a defendant is unable to pay LFOs due to poverty or physical disability, a court must either relieve her of those obligations or require her to report back at a later date to determine if her financial circumstances have changed enough so as to allow her the means to pay.⁵⁴ However, the law does not define “poverty” or “physical disability.” Courts have discretion to decide what constitutes poverty or physical disability, which leads to inconsistent results and unfair treatment of similarly situated defendants.

While Oklahoma statutes do not define “poverty” in the context of LFOs, Merriam-Webster defines “indigent” as “suffering from extreme poverty.”⁵⁵ Likewise, Black’s Law Dictionary defines “indigent defendant” as “[s]omeone who is too poor to hire a lawyer,” and who is “eligible to receive aid from a court-appointed attorney and a waiver of court costs.”⁵⁶ The two terms are virtually interchangeable, and we treat them as such in this report.

Various Oklahoma statutes define the word “indigent” differently, and each definition serves a distinct purpose. For example, for purposes of clarifying provisions under the Oklahoma Indigent Health Care Act, “indigent” is defined, in relevant part, as “a person . . . with an income less than or equal to the poverty level . . . and insufficient personal resources to provide for needed medical care for himself or his dependents.”⁵⁷ In the context of eligibility to receive state assistance, “[i]ndigent” means a person who

does not have sufficient property or means to support members of his or her family . . . and who has no one legally liable to support and maintain him or her.”⁵⁸ As applied to eligibility for drug manufacturer assistance programs, “indigent” means “a person who meets the criteria established by the drug manufacturer assistance programs for the purchase of prescribed medications.”⁵⁹

Perhaps the most analogous context in which Oklahoma law defines “indigent” is that of eligibility for court-appointed counsel. The Oklahoma Rules of Criminal Procedure provide that determining whether a defendant is indigent and eligible for court-appointed representation should depend, at least in part, on:

- Whether the defendant is able to make an appeal bond, and whether he actually decides to do so;
- The availability and convertibility of any property the defendant owns;
- Whether and to what extent the defendant has other outstanding debts and liabilities;
- The defendant’s past and present financial history;
- The defendant’s earning capacity and living expenses;
- The defendant’s credit standing in the community; and
- How many family members and dependents the defendant has and whether they have been willing and able to help him pay attorney fees and litigation expenses in the past.⁶⁰

Determining indigency for Sixth Amendment representation purposes requires the Chief Judge of the district court to determine whether, after liquidating all of the defendant’s assets and asking his family to assist in

litigation expenses, he should be considered indigent. In no other statutory context does one see the determination of indigency require such an in-depth inquiry into a person's financial circumstances.

In *Bruner v. State*, one of three cases that form the basis for Rule 8, the Oklahoma Court of Criminal Appeals acknowledged the difficulties district court judges face in making indigency determinations. It noted, “[W]hile . . . every defendant's financial condition is unique, we now believe that guidelines would aid the District Courts of this State”⁶¹ Rule 1.14, which codifies earlier court decisions regarding indigency determinations, was subsequently promulgated.⁶² However, the need for legislative guidance expressed in *Bruner* almost 40 years ago in the context of determining eligibility for court-appointed counsel remains a concern in the context of determining eligibility for waiver of LFOs.

Arguably, preventing strains on state resources as a result of providing court-appointed counsel to defendants with the means to pay for legal representation themselves is what necessitates this in-depth of an inquiry to ensure indigent defendants' constitutional right to court-appointed counsel. However, the Oklahoma Constitution also provides that individuals have a constitutional right to not be imprisoned for debt.⁶³ Thus, such an in-depth inquiry should similarly be required to protect that right.

While most statutes outside of the criminal law context reduce the indigency determination to a largely magisterial function (that is, an activity which could be conducted by a clerk or fully automated),⁶⁴ Rule 8.1 retains the court's role as the judge of ability-

to-pay determinations.⁶⁵ This tends to illustrate the importance of these determinations, arguing for legislation to make indigency determinations a magisterial function.

Aside from defining “poverty” outright, the legislature could enact a law outlining factors, which, if met, automatically create a presumption that a defendant is unable to pay LFOs. This presumption, of course, would be rebuttable, and the court could examine other evidence outside of those factors to determine whether the defendant actually can pay or not.

For example, in Connecticut, such a presumption arises if the defendant receives public assistance (including, but not limited to, state-administered general assistance, temporary family assistance, aid to the elderly, blind, and disabled, SNAP benefits, and supplemental security income) or if his income after taxes, mandatory wage deductions, and childcare expenses, is 125% or less of the federal poverty level.⁶⁶ However, a defendant applying for waiver must complete an affidavit outlining his assets, forms of income, liabilities, and dependents, and if the court finds upon reviewing those factors that the defendant is, in fact, able to pay, waiver may be denied.⁶⁷

In Washington, courts may presume a defendant is indigent and unable to pay LFOs if she “has been screened and found eligible for court appointed counsel.”⁶⁸ However, like courts in Connecticut, Washington courts may also weigh other factors such as income, other legal financial obligations, incarceration, employment history, and “other compelling circumstances.”⁶⁹

Implementing statutory guidelines that create rebuttable presumptions of indigency upon the satisfaction of certain requirements would ensure fairer outcomes for low-income defendants while adequately protecting the state's interest in being compensated for the services it provides, but only by those who are actually able to afford it.

Creating guidelines for determining what constitutes "poverty" and "disability" can be done in one of two ways. The first is by enacting a statute explicitly defining these terms or the standards off of which these determinations are to be based. The second is by enacting a statute that directs the Oklahoma Court of Criminal Appeals (OCCA) to promulgate its own rules on how to determine what constitutes "poverty" or "disability" in the context of a criminal defendant's ability to pay LFOs.

Each avenue of carrying out this crucial aspect of reform efforts carries its own advantages and disadvantages. By enacting a statutory definition, the legislature could determine how much discretion to grant judges in determining whether to waive or reduce LFOs in a given defendant's case; a more detailed and exhaustive definition will leave less room for judicial interpretation and will inevitably ensure a more uniform application of the law. Conversely, allowing the OCCA to promulgate its own rules will allow the judicial branch to retain some level of control over when court costs may be waived or reduced in criminal cases, both in the macro sense, in creating the rules, and in the micro sense, in determining how much discretion judges should retain in determining each defendant's ability to pay.

Because the existing surplus of judicial discretion in this area of the law has led to inconsistency in, and even incorrect, application of Rule 8 as it presently stands,⁷⁰ we recommend the former approach. More detailed and exhaustive statutory definitions of "poverty" and "disability" will bring unity in treatment of similarly situated criminal defendants. Such definitions would give judges clear guidance on how to apply the law, and consequently, ensure greater fairness in these proceedings.

Given that other areas of Oklahoma law provide specific standards to determine whether an individual is indigent, providing clearer indigency guidelines for the criminal courts determining eligibility for fee waivers and installment plans is reasonable and just. Others have recommended indigency determinations (both for purposes of determining eligibility for court-appointed counsel and for purposes of determining eligibility for fee waivers) be made by the Oklahoma Indigent Defense System (OIDS). This would, in essence, leave the role of the judiciary as one of oversight and validation.⁷¹ At a minimum, we recommend that Oklahoma adopt a guideline for indigency that establishes an initial, rebuttable standard that living at or below the federal poverty line constitutes indigent status both for purposes of access to a public defender and for purposes of eligibility for relief from court fees.

Judicial Training on Rule 8

Continuing Legal Education Courses (CLEs)

We recommend the judiciary require judges to undergo training on how to properly determine a defendant's ability to pay. Many judges misapply the law when it comes to making decisions about when and how to conduct inquiry into defendant's ability to pay, what they must do when a defendant is determined to be unable to pay, and how long a defendant has to fulfill her LFOs.⁷² Thus, training is needed to ensure consistency and fairness in application of Rule 8.

Attorneys and judges are required to complete at least twelve (12) hours of approved continuing legal education ("CLE") annually.⁷³ To be given authority to impose certain fines, nonlawyer judges (such as certain municipal judges) must undergo at least six (6) hours of continuing legal education for each reporting period for mandatory CLE.⁷⁴ In light of this provision, it is clear that requiring judges to take specialized courses is not a new concept.

In fact, Oklahoma has done it before in response to growing problems in the operation of juvenile courts. Under the State Court Improvement Plan component of the Oklahoma Pinnacle Plan, a program designed to improve child welfare services, judges assigned to juvenile dockets must attend twelve (12) hours of training on juvenile legal issues annually.⁷⁵

Appendix 1-B of Title 5 of the Oklahoma Statutes in Rule 7 outlines official requirements for creating approved CLE courses.⁷⁶ However, in the past, the legislature has delegated the authority to create and

manage CLE courses to the AOC in the context of the State Court Improvement Plan:

The Administrative Director of the Courts shall be responsible for developing and administering procedures and rules for such courses for judicial personnel, including monitoring the attendance of judicial personnel at such training.⁷⁷

While the legislature can regulate judicial training requirements, in the interests of maintaining a fair system of checks and balances, we recommend it only as a last resort. Ideally, regulating the criminal legal system should occur through the zealous advocacy of defense attorneys and prosecutors.

Ideally, regulating the criminal legal system should occur through the zealous advocacy of defense attorneys and prosecutors. However, this is not occurring in modern practice.

However, because this is not occurring in modern practice, the judiciary must require lawyers and judges to undergo training to solve problems like these when they arise.

We recommend enacting a law directing the OCCA to promulgate rules requiring specialized judicial training on applying laws related to indigency determinations as they relate to Rule 8 and to the assessment of LFOs on criminal defendants. However, recognizing that 16 years has passed since the last time the legislature required this same task of the OCCA and that this remains a widespread problem,⁷⁸ we recommend the

statute specify a time frame within which the OCCA must promulgate and distribute these rules and the training must be implemented. Under the statute we recommend, if the OCCA fails to comply and these problems persist, we recommend the legislature intervene and statutorily enact the training requirements. This compromise will preserve the tradition of the legislature's restraint from regulating the judiciary to the extent the judiciary regulates itself, while also providing a buffer to ensure these reforms take shape.

Finally, we reiterate the importance of combining these training courses with clearer guidelines for making indigency determinations. The two recommendations go hand-in-hand.

Bench Cards & Manuals

In addition to the indigency determination standards and judicial training efforts, the legislature should direct the AOC to create and distribute bench cards and manuals to guide judges through the process of making indigency determinations. Some states have implemented similar guides in response to litigation over improper handling of assessing LFOs to criminal defendants and inadequate processes relating to indigency determinations. Several examples are provided in Appendix A.

Uniform Rule 8 Form

Though Oklahoma law already requires courts to conduct hearings to determine a defendant's ability to pay LFOs imposed as part of a judgment and sentence,⁷⁹

actual practice differs significantly. Some district courts instead require criminal defendants to sign forms stating they have received Rule 8 hearings and are able to pay, which judges often sign without further inquiry.⁸⁰ In some of these district courts, like the Tulsa County District Court, no hearing or inquiry is ever actually held. The contents of the forms used by different district courts in Oklahoma vary widely. Some allow defendants to list in detail things like his income, employment status, debts, and assets. Others only ask for conclusory statements from the defendant as to whether he is able to pay and for the LFOs he currently owes.⁸¹ Because of these variations, a criminal defendant in one judicial district could be found able to pay, while another district could waive LFOs based on a finding of inability to pay.

To avoid these discrepancies for similarly situated criminal defendants, all courts should make ability-to-pay determinations using uniform criteria. Because of the existing requirement that Rule 8 hearings be conducted, the legislature should prioritize enacting statutory definitions, or statutorily requiring the OCCA to promulgate rules, regarding how these determinations should be made. However, in the interim, the AOC should create, have approved by the Supreme Court, and distribute, a uniform Rule 8 form to be utilized statewide by each district and municipal court not currently complying with the hearing requirement. Conveniently, the AOC has already created a version of such a form.⁸² See Appendix B.

Rule 8 Hearings via Videoconference

To alleviate the problem of jailing indigent defendants on failure-to-pay warrants before giving them the opportunity to explain to the court why they missed their payments, we recommend adding Rule 8 hearings to the statutory list of court proceedings permissible via videoconference from jails.

Oklahoma City Special Judge Donald Easter estimated the state incurs substantial costs from transporting inmates from jails to courthouses for cost docket hearings.⁸³ Allowing criminal defendants to appear in front of a judge via videoconference from jails would save the state money. First, it would obviate the need to transport inmates from the jail to the courthouse, and second, if low-income defendants could show cause for failure to pay sooner, jails could use the cells they otherwise would have occupied to house dangerous offenders and save money on resources spent housing and feeding them. Additionally, defendants would not have to spend as much time away from their jobs and families nor pay compounded LFOs due to added costs of incarceration.

A recently-enacted statute in Missouri provides an excellent example of such a provision. Senate Bill 572 provides that certain defendants arrested for failure-to-pay warrants issued by municipal courts must have an opportunity to be heard by a judge “as soon as practicable”—within 48 or 72 hours, depending on the offense, and allows use of videoconferencing to accomplish these ends.⁸⁴

Presently, Oklahoma law allows six types of proceedings to be conducted via videoconferencing: 1) sentence reviews; 2) post-conviction relief hearings; 3) delinquent and deprived actions; 4) custody and adoption proceedings; 5) commitment proceedings; and 6) extradition proceedings.⁸⁵ By adding Rule 8 hearings and ability-to-pay hearings as a seventh category, the legislature could benefit both the state and low-income defendants’ interests.

Summons Instead of Warrants

While Oklahoma law states a court cannot authorize jailing a defendant who fails to pay LFOs merely because he is poor or physically disabled, research shows some Oklahoma courts routinely do so, creating a system of debtors’ prisons in our state.⁸⁶ For example, whenever a court issues a warrant following a defendant’s failure to pay, a fee for the execution of the warrant is added to what the defendant already owes.⁸⁷ Addition-

In Tulsa County, defendants jailed on failure-to-pay warrants spend an average of ten days in jail before seeing a judge.

ally, at least in Tulsa County, defendants jailed on failure-to-pay warrants for misdemeanor convictions spend an average of ten days in jail before seeing a judge.⁸⁸ During this time, defendants may miss work or court dates for other charges. In some counties, responsibility for paying the costs of the jail stay falls on the defendant.⁸⁹ Thus, arresting

and jailing defendants before determining they have willfully refused to pay only adds to the cycle of poverty for those who are simply unable to pay their court costs.

Debtors' prisons create fiscal and public safety problems for Oklahoma taxpayers.

The practice of running debtors' prisons harms more than just criminal defendants; debtors' prisons create fiscal and public safety problems for Oklahoma taxpayers. In Tulsa County, for instance, the county pays \$52 per day to incarcerate each inmate.⁹⁰ Thus, for the ten days a low-income defendant spends in the Tulsa County jail before a court can determine he is simply too poor to pay his court costs, Tulsa County spends \$520, which does not include the costs of serving and executing the failure-to-pay warrant. Often, this results in the government paying more to house an indigent defendant for failing to pay his LFOs than the amount it would collect if the defendant were able to pay them.

Additionally, until the defendant receives an opportunity to see a judge, he occupies a bed in the jail. Oklahoma jails constantly face overcrowding problems.⁹¹ On a practical level, jailing defendants for failing to pay what they cannot afford to pay could necessitate releasing violent offenders because of a lack of space, leaving public safety at a greater risk. Thus, this practice can be materially detrimental to state and taxpayers' interests.

To alleviate these problems, courts should begin issuing a summons instead of a

bench warrant upon a defendant's initial failure to pay LFOs. Oklahoma law does not currently require courts to issue bench warrants upon a defendant's failure to pay. On the contrary, when a defendant fails to pay, the judge may issue either a warrant or a summons.⁹² However, because judges routinely do issue warrants first, the legislature should enact a statute requiring them to issue a summons first. In the event the defendant fails to appear in court, an arrest warrant may still issue for contempt.⁹³

An example of such a statute comes from municipal court reforms implemented in Missouri:

Defendants are not detained to coerce payment of fines and costs unless found to be in contempt after strict compliance by the court with the due process procedures mandated by Missouri Supreme Court Rule 37.65 or its successor rule.⁹⁴

Missouri Supreme Court Rule 37.65 provides in part:

(b) The judge may issue an order to show cause . . . for the defendant to appear in court at a future date in the event the fine is not paid in the time specified by the judge. In the event the defendant fails to appear at that future date, the court may issue a warrant to secure the defendant's appearance for a hearing on the order to show cause.

(c) If a defendant defaults in the payment of the fine or any installment thereof, the judge may issue an order to show cause why the de-

fendant should not be held in contempt of court. The judge shall issue a summons for the defendant's appearance on the order to show cause unless the defendant was ordered to appear at a future date as provided in Rule 37.65(b). If the defendant fails to appear on the summons, the court may then issue a warrant to secure the defendant's appearance for a hearing on the order to show cause. The summons may be served by the clerk mailing it to the defendant's last known address by first class mail.⁹⁵

By issuing summons, the state will save money on room and board in jails for defendants who actually present a threat to public safety. Additionally, the summons will benefit low-income defendants by not adding costs of incarceration to already overdue balances and will allow them to receive notification of their failure to pay and an order requiring them to appear in court without taking them away from their jobs. The court retains the ability to issue a bench warrant if the defendant fails to appear in court following receipt of the summons.

Structured Fines

A common argument against these types of reforms is that if criminal defendants do not want to pay the costs of their crimes, then they should not commit them. Implicit in this argument is the idea that fines deter crime. However, under the traditional, fixed system, fines generally fail to sufficiently deter solvent defendants. Currently, courts im-

pose fines within a statutory range to all criminal defendants based on factors like severity of offense rather than ability to pay—a system that disproportionately burdens the poor. Structured fine systems solve this problem by scaling the fines proportionally to defendants' daily income, less cost-of-living for themselves and their dependents to provide equal degrees of deterrent and punitive effects to both the indigent and the financially well-off defendant.

Structured fines are calculated based on two tables: a day unit penalty table, which lists the number of days' worth of disposable income along with values for mitigating and aggravating circumstances, and a table of disposable daily income for given income levels. To determine the appropriate fine for a given offense, one multiplies the number of day units imposed as a fine by the discretionary income value.

To demonstrate, consider the following example:⁹⁶ a defendant is charged with disorderly conduct, which carries a day unit penalty range of 13 to 17 day fine units—13 units for a mitigated offense, 17 units for an aggravated offense, and 15 units for the recommended penalty with neither mitigating nor aggravating factors.

Assuming there are neither aggravating nor mitigating factors, the sentencing judge must multiply the defendant's day fine by 15. Thus, he must ascertain the defendant's structured fine based upon her net daily income and the number of dependents she has. Assuming this defendant has no dependents and makes \$100 per day, she would owe \$50 per structured fine unit—\$750.00. If she had four dependents, she would owe \$150.00. In contrast, assume another defendant is

charged with the same crime, but he only makes \$10 per day. Without any dependents, he would owe \$5 per structured fine unit—\$75.00. If he had four dependents, he would owe \$15.00. Under this scheme, the fine scales to the defendant’s relative ability to pay it while preserving his ability to provide for himself, and if applicable, his family, but remains proportional in severity.

Implementing a structured fine system would be a complex undertaking, and

consideration should be given to all of the intricacies involved.⁹⁷ However, properly implemented, this type of system could provide many benefits to Oklahoma, and those benefits would not stop with fairness considerations. In fact, with adequate monitoring and enforcement, assessing fines to criminal defendants based upon what they can realistically pay may increase collection rates, especially when combined with installment plan opportunities.⁹⁸

Offense	Number of Structured Fine Units Mitigating / Presumptive / Aggravating
Disorderly Conduct	13 / 15 / 17

Net Daily Income	Structured Fine Unit Amount Based on Number of Dependents				
	0	1	2	3	4
\$10.00	\$5.00	\$4.00	\$3.00	\$2.00	\$1.00
\$100.00	\$50.00	\$40.00	\$30.00	\$20.00	\$10.00

Part II: Infrastructure Improvements

Fund the Administrative Office of the Courts

Lack of funding is the primary barrier to the effective administration of Oklahoma's court system.⁹⁹ Oklahoma vests the authority to perform the administration of the judicial branch in the Administrative Director of the Courts (ADC), who serves at the pleasure of

the Supreme Court.¹⁰⁰ In September of 2015, former Lieutenant Governor of Oklahoma, Jari Askins, was named ADC.¹⁰¹ She has explained that Oklahoma has one of the smallest Administrative Offices of the Courts in the nation.¹⁰² A comparison of other states' AOC websites demonstrates the relative lack of resources provided to Oklahoma's AOC:

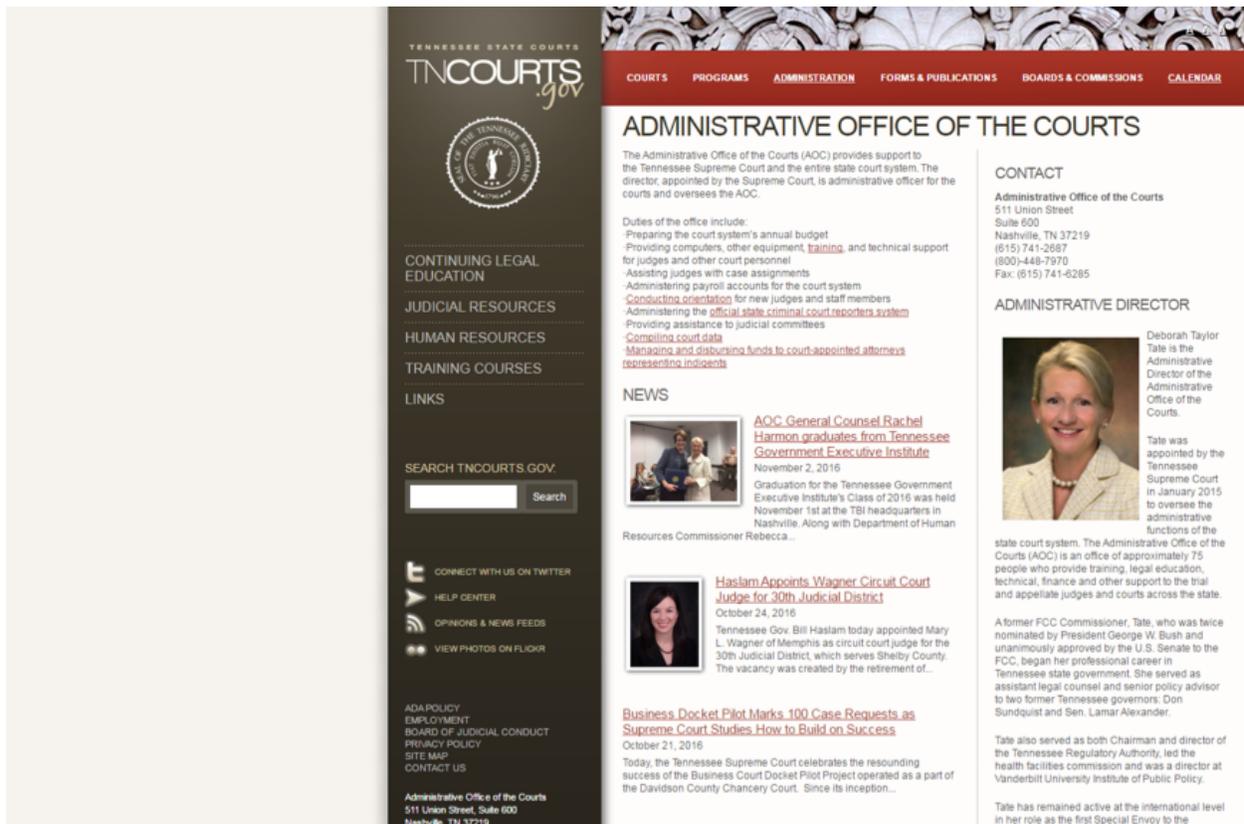


FIGURE 1: TENNESSEE AOC WEBSITE

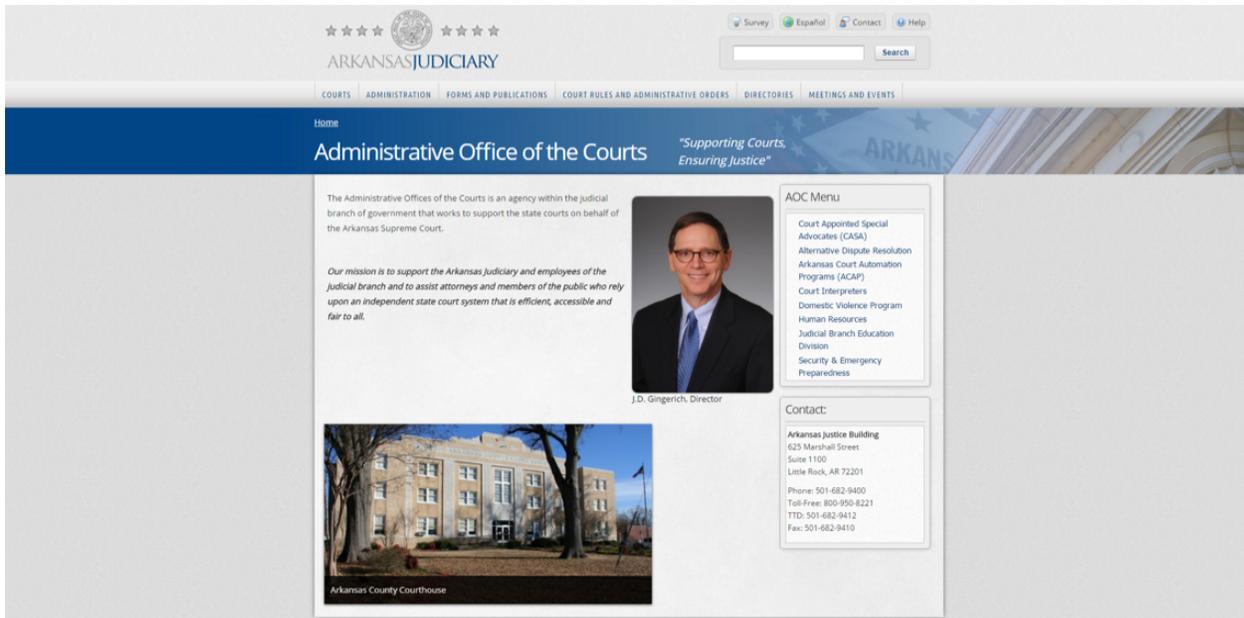


FIGURE 2: ARKANSAS AOC WEBSITE



FIGURE 3: GEORGIA AOC WEBSITE

A comparison of the above websites with Oklahoma’s AOC Website presents obvious differences:

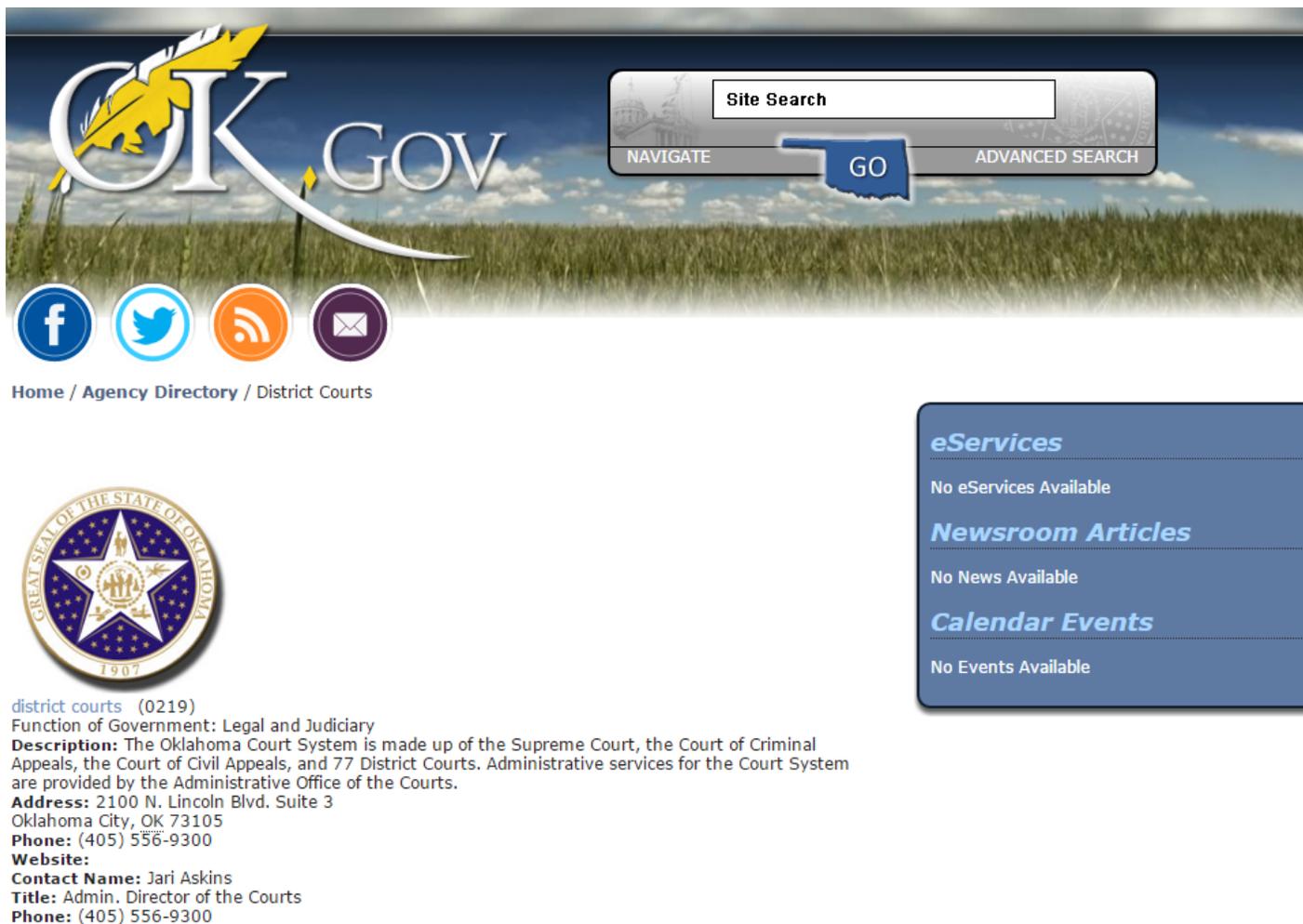


FIGURE 4: OKLAHOMA AOC WEBSITE

Oklahoma’s AOC website contains no links, no publications, no list of tasks to which the AOC has authority, and no forms—nothing more than a phone number and an address. Further, the ADC has noted her office consists of 15 employees, five of whom are finance-oriented.¹⁰³ The AOC’s responsibilities include judicial education

and training, reporting information regarding court clerks’ transfers to and from the State Judicial Revolving Fund, and managing the Oklahoma Court Information System.¹⁰⁴ In contrast with AOCs of other states with comparable populations—such as Connecticut, Oregon, Kentucky, and Louisiana—Okla-

homa’s AOC possesses significantly less authority and responsibility and has less funding and staff. For example, Connecticut, whose population is smaller than Oklahoma’s by nearly 200,000, employs ten times the amount of personnel within its AOC than Oklahoma.¹⁰⁵ Further, other states’ AOCs consist of multitudes of departments, including, but not limited to Information Technology, Judicial Training, Statistics, Government Relations, Court Services, Juvenile Justice Services, Legal Services, and Public Information.

AOC Comparison Table

	OK	CT	OR	KY	LA
Pop.	3.7M	3.5M	3.8M	4.3M	4.5M
AOC Staff	15	150	186	745	77

Of 25 administrative functions typically handled by AOCs, Oklahoma’s AOC only possesses total responsibility over six. It shares responsibility for 11 functions with other departments, and it possesses no responsibility at all over eight.¹⁰⁶ Additionally, the funding for other states’ AOCs comes directly from the state government, as opposed to collections of LFOs.¹⁰⁷

The ADC noted her office is not equipped to provide many of the functions generally expected of AOCs.¹⁰⁸ For instance, she stated researchers have frequently contacted her office asking her questions to which she could not provide answers because of the lack of an ability to analyze data about LFOs.¹⁰⁹ Moreover, she has explained that her office is trying to implement unified case management and E-payment systems, but

that a lack of resources and staff limits the AOC’s ability to do so.¹¹⁰

The AOC must receive sufficient funding to implement a useful case management system, increase government transparency by providing public information and court statistics to Oklahoma’s citizens, improve government efficiency by analyzing statistics related to court performance, and provide other administrative support to the courts as needed.

Case Management System

We recommend the legislature adequately fund the AOC’s efforts to create and implement an information system capable of tracking LFO data. The state has attempted this venture before. Oklahoma previously contracted with a vendor to create a unified Case Management System (CMS) for the state, but the vendor missed or fell behind on many milestones, so the state terminated the project. The ADC stated her office’s Management Information Systems (MIS) support team has been working on the materials the contractor submitted upon the termination of the contract.¹¹¹

We recommend the legislature make implementing this CMS a high priority to consider when appropriating funds to the AOC. Without a unified CMS, Oklahoma decision-makers cannot thoughtfully analyze the efficacy of current practices in imposing and enforcing LFOs. To adequately weigh the costs and benefits of potential reforms to LFOs in Oklahoma, it is important to understand where reforms are needed most, where the current system’s shortfalls lie, and where

the best opportunities for improvement are. A unified CMS would facilitate finding those answers.

If the first project to implement such a system had succeeded, the vendor would have created a software package able to generate reports on the total outstanding balance of LFOs and identify precisely how much each criminal defendant owed. It also would have provided for better oversight of collections, increased accuracy of payment records, and flexibility in payment locations, as it would have connected all the district courts, and allowed payments to be made electronically and in any district court. A well-designed and implemented CMS should improve budget forecasting. Thus, we recommend that the legislature provide adequate support to the AOC to make this implementation possible.

The Department of Corrections’ Offender Banking System

The Oklahoma Department of Corrections’ (DOC) Offender Banking System (OBS) models many of the capabilities desired in a unified CMS. It provides accounting and reporting functions for all activities the DOC handles with regard to offender banking, including accounting for offender payment of LFOs.¹¹² Modernizing information technology infrastructure for Oklahoma’s court system requires much of the functionality that presently exists within the OBS.

In 2007, the DOC contracted with Advanced Technology Group (ATG) to replace its information technology system for

general-purpose accounting in the prison can- teens and managing inmates’ trust ac- counts.¹¹³ The DOC implemented the new system in two phases. First, in February of 2009, it transitioned the women’s correc- tional facilities, which house about ten per- cent of Oklahoma’s inmate population. In the second phase, in May of 2009, it converted the remaining facilities to the unified ac- counting system.¹¹⁴ The conversion, which involved importing all of the existing data into the new system, took only a single day, and verifying that data’s accuracy took only the remainder of the week.¹¹⁵

The OBS is able to generate custom reports that separate offenders’ LFOs by type of obligation. For example, when the DOC first implemented the OBS, it was able to generate a document showing that in total, DOC offenders owed \$71 million in LFOs. The report broke that data down further, showing female offenders owed approxi- mately \$5.8 million, and male offenders owed \$65.2 million.¹¹⁶ In addition, it sepa- rated restitution from other LFOs, showing DOC offenders owed a total of \$206.7 mil- lion in restitution.¹¹⁷

When offenders make payments on LFOs, the OBS properly divides the pay- ment, disburses the payment to the creditor agencies above the district court level, and accurately records the payments against the offenders’ debts.¹¹⁸ Improving the AOC’s ca- pability to track outstanding debts and pay- ments of individuals who plead guilty to avoid DOC incarceration or supervision—in- dividuals who are not included in the DOC’s OBS—would help legislators understand the scope and scale of the problems associated

with collecting outstanding LFOs from criminal defendants.

A properly constructed, unified CMS would also increase efficiency, as it could eliminate redundant work within the DOC and the district courts. Currently, the district courts and the DOC exchange information about LFOs manually, rather than by electronic transmission.¹¹⁹ The DOC uses modern MIS to track LFOs of offenders under its supervision, but the district courts use paper forms to transmit information to the DOC.¹²⁰

The DOC's intake form provides a single dollar amount for the offender's total debt, and the information is frequently incorrect.¹²¹ When courts initially impose LFOs, the district court clerks calculate the offender's aggregate LFOs into a single number, which they submit to the DOC. Once the DOC receives that single number, it must divide that dollar amount into individual fee types to enter them into the OBS.¹²² The OBS disburses LFO payments to creditor agencies and tracks the reductions in individual fees appropriately. However, when the system disburses checks to the district courts, the court clerks must manually recalculate the payments against local court fee entries.¹²³ Consequently, implementing a statewide system under the AOC that is capable of facilitating sharing of information directly between courts and agencies could eliminate an enormous amount of redundant work.

At a minimum, the AOC's CMS would ideally be able to generate annual reports that detail the total outstanding balances of LFOs of all criminal defendants and the amounts paid toward those obligations in a manner that would allow state decision-makers to analyze collection rates effectively and

with a view of the entire scope. Oklahoma has already identified a firm that can successfully deliver this sort of product. ATG previously developed an impressive, modern system for the DOC that includes precisely the kind of functionality needed for the AOC. Thus, we recommend the legislature at least consider contracting with the same vendor, or one that has implemented a sufficiently similar system, to complete the state's unified CMS.

Statistical Analyst in the Administrative Office of the Courts

Once Oklahoma implements a CMS capable of gathering and filtering data, or once a statewide audit has been performed to determine the state of court costs collections, the legislature should create a statistical analyst position to operate under the ADC. As previously mentioned, Oklahoma's AOC is one of the smallest in the country.¹²⁴ To effectively process the data and turn it into a format that would be easily understandable for the courts, the legislature, and the public, the ADC has said she would need someone qualified to perform those types of tasks to assist her in providing that information in a useful form.¹²⁵

Statewide E-Payment System

Often, defendants have convictions in multiple counties and thus owe costs to multiple courts. When a defendant fails to make payments in multiple counties and is arrested

in one county, that defendant must be transported from one county jail to all of the other county courts to which he failed to make payments. Jailing defendants for failure to pay LFOs results in compounded costs for the defendant, and the state.¹²⁶ Specifically, as Judge Easter argued, even if one court determines a defendant is unable to pay his LFOs in one county, he still must be transported to

Jailing defendants for failure to pay LFOs results in compounded costs for the defendant and the state.

and attend ability-to-pay hearings in all of the other counties in which he owes outstanding LFOs, and the state is the one left to pay the bill.¹²⁷

To alleviate these costs, Judge Easter suggested Oklahoma implement a “one-stop shop” that consolidates all defendants’ outstanding LFOs into one database. Allowing the defendant to pay in one place, or allowing one court to hold one Rule 8 hearing and subsequently note it in the database, would obviate the need for additional failure to pay hearings in the other counties.¹²⁸

We recommend implementing a statewide E-Payment system to mitigate these problems. A case study of E-Payments in four states conducted by the National Cen-

ter for State Courts in 2009 found that E-Payment systems generally benefit court systems. Specifically, they increase collection rates and revenue as well as efficiency in processing of payments, save court clerks time in reconciling accounts and deposits, reduce the need for physical storage space, and improve customer service for citizens.¹²⁹

The ADC noted that her office is in the process of implementing an E-Payment system for the Oklahoma district courts. However, she pointed out that her office is not responsible for the municipal courts.¹³⁰ Thus, those courts will not be included in the system currently in development.

To comprehensively deal with the costs of transporting indigent defendants from court to court, we recommend the legislature sponsor an E-Payment system that would incorporate all defendants in the state of Oklahoma and their LFO balances, including those defendants under the jurisdictions of, and those LFO balances owed to, municipal courts.

As articulated by the National Center for State Courts, “Electronic payments have been a large success for citizens, judges and court clerks. This is one of the low hanging, high success technology applications that enhance services of the court and the public. Costs for development and implementation . . . show a good return on . . . investment[. . .].”¹³¹ If Oklahoma modernizes its AOC systems, E-payment functionality could be designed into the product.

Part III: Obtaining Court Costs Data

Reporting Requirements

Presently, Oklahoma court clerks are required to report district courts' revenue and finances to the AOC annually. If each district court reported accurate information about LFOs, the legislature and the AOC would be able to analyze the costs and benefits of collecting LFOs. To that end, we recommend the legislature add a provision to the district court reporting requirement that would require court clerks to report the total LFOs imposed on criminal defendants, the amount of outstanding LFOs, and statistics regarding the frequency of ability-to-pay hearings.

Statewide Audit

Another method of obtaining information about LFOs would be a statewide audit. An audit would enhance transparency by allowing the public to see how the district courts collect and use funds, opening them up to greater accountability. It would also make courts more efficient by identifying gaps in procedure, discovering redundancies, or noting whether collections are being conducted properly. This could result in identifying and implementing best practices.

Oklahoma has an auditing mechanism through the office of the State Auditor and Inspector.¹³² The State Auditor's Office is established in Oklahoma's Constitution¹³³ and regulated by statute, which gives it the power to audit "the books and accounts of all state agencies whose duty it is to collect, disburse, or manage funds of the state."¹³⁴

In fact, the Office of the Auditor has often used its authority to audit district courts

and the AOC.¹³⁵ However, none of these audits focused on LFOs or their collection.

The State Auditor's has the power to conduct several types of audits, including operational, performance, and special or investigative audits.¹³⁶ The only audits conducted on the district courts since 2000 were "operational audits."¹³⁷

The purpose of an operational audit, according to statute, is to "evaluate management's performance in administering assigned responsibilities in accordance with applicable laws," and such an audit is more of a mechanism of evaluating internal control.¹³⁸ The type of audit we recommend is a special audit, limited in scope to the collection of LFO collections only. Special audits allow the State Auditor to conduct audits for "particular situations" for which another type of audit may not be appropriate, and to focus in on a specific aspect of operations.¹³⁹ Narrowing the scope of the audit would help eliminate some of the costs and burden of conducting statewide audit.

Other states, such as Virginia and Texas, have engaged in special audits of their court collection systems.¹⁴⁰ The 2000 State Acts of Assembly requires the Virginia State Auditor to "continue to examine the results of Circuit and District Court collection efforts and methods for unpaid fines, fees, and costs."¹⁴¹ The Virginia audit uncovered much of the information we seek to find about Oklahoma, such as collection rates of fines and fees as well as suggested improvements for managing the collection of such fines and fees.¹⁴² In November 2013, Texas released an audit of their Collection Improvement Program ("CIP").¹⁴³ The CIP is a program of Texas' AOC, which "provides training and

consultation to counties and cities to improve the collection of court costs”.¹⁴⁴ This audit focused the on legal compliance of the program, its effectiveness in calculating collection rates and assistance, identifying areas in which the program could improve its efficacy.¹⁴⁵

Instigating an audit of LFO collections in Oklahoma courts would be a simple solution that would allow the state to begin working towards improved fiscal responsibility. State statute allows for the Governor, dis-

trict attorneys, and county officers to instigate such an audit.¹⁴⁶ Further, the Auditor himself can initiate the audit, or he can be petitioned to do so.¹⁴⁷ The legislature could even take the same course of action as Virginia, and pass legislation to make it mandatory for the State Auditor to examine LFO collections within a specified time frame.¹⁴⁸ Regardless of the triggering mechanism chosen, we recommend the State Auditor and Inspector conduct a special audit into the state court system focusing on LFOs.

Part IV: Court Debt Amnesty Programs

Court Debt Amnesty Programs

As previously noted, Oklahoma lacks the data necessary to understand the efficacy of LFOs and LFO collections, something that is true in most other states. The limited data that is available comes from a report published by the National Center for State Courts called, *Study of the Effectiveness of Collections in Florida Courts*. The report finds the Florida courts' collection rate for overdue LFOs in criminal cases referred to collection agencies between 40% and 56%.¹⁴⁹ If Oklahoma's collection rate resembles Florida's at all, our courts collect only half of the LFOs they impose.

However, collection rates of LFOs in Oklahoma seem to fall far below those in Florida. Judge Don Easter estimated "Oklahoma County alone had a balance of over \$100 million on 124,000 criminal cases between 2000 and 2014,"¹⁵⁰ and only five to eleven percent of those LFOs are collected.¹⁵¹

Nearly half, if not more, of LFOs assessed to criminal defendants go uncollected.

Whether Oklahoma's actual collection rates are closer to Florida's rates or Judge Easter's estimates, one thing is virtually certain: nearly half, if not more, of LFOs assessed to criminal defendants go uncollected.

While many of the reforms we propose would waive uncollected LFOs for indigent defendants, thereby lowering the balance of uncollected revenue, the reforms themselves would not negatively affect the budget because those LFOs are unlikely to be

collected regardless of waiver programs. However, indigent defendants are not the only defendants who fail to pay their LFOs, and improved collection rates from those defendants could boost the budget enough that some of these reforms could be more easily and inexpensively implemented.

Amnesty programs are one way to temporarily boost revenue through LFO collections. These programs encourage compliance with payment of overdue LFOs by offering criminal defendants partial LFO debt forgiveness in exchange for lump-sum payments of some percentage of their court fees.¹⁵² Typically, courts use these programs for collecting overdue fines for minor offenses.¹⁵³ However, they can also be used to collect fees and costs.¹⁵⁴

The amnesty solution has several advantages. First, it can increase revenues where money would not otherwise be collected while decreasing the number of criminal defendants who are burdened by LFOs. Second, successful amnesty programs provide significant incentives to encourage payment without substantially reducing revenue, are combined with strict collections efforts, and are offered rarely and for limited periods of time.¹⁵⁵

Recently, California implemented a successful statewide amnesty program.¹⁵⁶ The program, which began on October 1, 2015 ends March 31, 2017. It offers amnesty for any eligible unpaid ticket, including tickets for failure to appear. However, tickets for parking violations, reckless driving, and DUI offenses are not eligible.¹⁵⁷ Under the amnesty program, "[p]ersons with unpaid tickets whose fines were originally due to be paid date [sic] on or before January 1, 2013, who

have not made a payment after September 30, 2015” can have their debt reduced by 50% to 80% depending on their income, and those with suspended drivers’ licenses can have their driver’s license reinstated in certain circumstances.¹⁵⁸ It also allows for those who made a payment after September 30, 2015 on a ticket to have their driver’s license reinstated as long as they are in good standing on a payment plan with a comprehensive collection program.¹⁵⁹

California’s amnesty program particularly helps indigent defendants, as people who make below the federal poverty level can have the amounts they owe discounted by up to 80%, and the courts still allow them to pay the remaining balance under installment plans.¹⁶⁰

While the overall success of California’s amnesty program cannot yet be ascertained because it is still an ongoing measure, early reports have hinted at its success.¹⁶¹ In just two-and-a-half months after the statewide program went into effect, the Los Angeles Superior Court alone collected \$3 million in overdue fines and restored over 30,000 drivers’ licenses.¹⁶² However, reports dated four months later, in March 2016, indicate that number did not even double—not just for the Los Angeles Superior Court, but for the state as a whole. This suggests that perhaps states considering this solution should consider shortening the lengths of time these programs would operate to cut down on administrative costs once their positive effects begin to dwindle.¹⁶³

Iowa incorporated this shortened time period concept into its court debt amnesty program, which spanned a period of three months.¹⁶⁴ That program, implemented in

2010, generated more than \$3.4 million in outstanding LFOs and resulted in the state collecting \$2.8 million in revenue.¹⁶⁵ It allowed eligible individuals with outstanding LFOs to pay 50% of their balances in lump sums in exchange for having the remainder forgiven,¹⁶⁶ but unlike the program implemented by California, it did not allow for payment on installment plans, nor did it discount overdue amounts based off individuals’ respective ability to pay.

Similarly, Arizona hosted an amnesty pilot program the same year, which allowed individuals with traffic tickets whose balances were more than thirty-six months overdue to pay 50% of their balances and have the rest forgiven.¹⁶⁷ This was a pilot program limited to one county.¹⁶⁸ The state determined that program, which was only implemented in two pilot courts and which used primarily manual identification and tracking of eligible cases, was too costly compared to its utility to justify implementing it in other courts.¹⁶⁹

In Oklahoma, assuming Judge Easter’s estimates are correct, each case in Oklahoma County averages \$800 in outstanding court costs.¹⁷⁰ For an indigent defendant working full-time for the minimum wage, it would take handing over an entire paycheck to pay 50% of that amount. Unless we are willing to require individuals to give up money they desperately need for things like rent, childcare, and utilities, neither Iowa’s nor Arizona’s amnesty programs would do much to help the defendants most affected by burdensome LFOs.

Thus, we recommend implementing a program that incorporates California’s amnesty program’s discounts with Iowa’s and

Arizona's short time periods. Under this model, both solvent and indigent defendants will be incentivized and able to participate in the program, and it should operate only as long as it generates revenue to ensure the benefits outweigh the costs.

Part V: Extending Reforms to Municipal Courts

Extending Reforms to Municipal Courts

To the greatest extent possible under the law, we recommend the legislature extend the reforms to the municipal courts in Oklahoma—especially with respect to the judicial training requirements. Much of the nationwide attention on LFOs has focused on municipalities.¹⁷¹

The Oklahoma Constitution gives the state legislature authority over municipal courts:

Municipal Courts in cities or incorporated towns . . . shall be subject to creation, abolition or alteration by the Legislature by general laws.¹⁷²

The legislature can extend these provisions to municipalities by enacting a law that requires municipal courts to participate in these reforms, and conditioning cities' continued incorporation on compliance. Missouri did just that in enacting its recent reforms:

If the court . . . finds that the municipality is not in compliance with the minimum standards . . ., the court may . . . enter an order disincorporating the municipality . . .¹⁷³

By extending these reforms to include municipal courts, the legislature would make greater strides toward positive change in our state. If municipal courts are held to the same standards as district courts in assessing and collecting LFOs, an even greater number of low-income defendants' cases will be affected. Sweeping changes like these are necessary to ensure the reforms we propose have

the strongest impact as they can on public safety, government efficiency, fiscal responsibility, and fundamental fairness.

Conclusion

Conclusion

While Oklahoma's current system of imposing and enforcing LFOs virtually criminalizes poverty, existing frameworks in Oklahoma law can be leveraged to alleviate the problem. Strengthening and clarifying Rule 8 will, in itself, provide significant relief to low-income individuals involved in the criminal justice system. Strengthening the AOC and giving the AOC the technological tools needed to track and analyze offender debts will allow legislators to fine-tune Oklahoma's LFO regime. Additional reforms, such as instituting structured fines, implementing court debt amnesty programs, and using summonses rather than warrants for those who fail to pay court fees will create a more efficient and fiscally responsible system. Enacting the changes recommended in this report will place Oklahoma into a leadership position in this critical national issue while helping the Oklahomans who need it most.

Endnotes

¹ Cari Smith’s story is based on a real low-income criminal defendant in Oklahoma. The name has been changed to protect the real individual’s privacy, and the story has been altered in some aspects to reflect the situations of more than just one criminal defendant. District Attorney Coleman’s name has been changed, but the conversation detailed represents a conversation that actually occurred between a criminal defendant and one Oklahoma district attorney.

² See QUINN COOPER, LINDSEY FINE, SARAH HARP & CLINT WILSON, ASSESSING THE COST: CRIMINAL FINES, COURT COSTS, AND PROCEDURE VERSUS PRACTICE IN TULSA COUNTY, A REPORT OF THE COMMUNITY ADVOCACY CLINIC AT THE UNIVERSITY OF TULSA COLLEGE OF LAW (Apr. 2014) [hereinafter “ASSESSING THE COST”]; Casey Smith and Cary Aspinwall, *Increasing Number Going to Jail for Not Paying Fines*, THE TULSA WORLD (November 23, 2013) (available at, http://www.tulsaworld.com/news/local/increasing-number-going-to-jail-for-not-paying-fines/article_8b8d2229-c7ad-5e7f-aea2-baeb13390880.html); M. Scott Carter and Clifton Adcock, Prisoners of Debt: Justice System Imposes Steep Fines, Fees, Oklahoma Watch (January 31, 2015) (available at, <http://oklahomawatch.org/2015/01/31/justice-system-steeps-many-of-fenders-in-debt/>) [hereinafter “PRISONERS OF DEBT”].

³ *Id.*

⁴ Eli Hager, *Debtors’ Prisons, Then and Now: FAQ*, THE MARSHALL PROJECT (Feb. 24, 2015, 7:15 AM), <https://www.themarshallproject.org/2015/02/24/debtors-prisons-then-and-now-faq#.ang7DmbLS>.

⁵ *Williams v. Illinois*, 399 U.S. 235, 243-44 (1970).

⁶ *Tate v. Short*, 401 U.S. 395, 398-99 (1971).

⁷ *Bearden v. Georgia*, 461 U.S. 660 (1983).

⁸ *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983).

⁹ See Written Statement of the American Civil Liberties Union Before the United States Commission on Civil Rights (Mar. 18, 2016) (on file with author).

¹⁰ This information is derived from the May, 2016 Oklahoma Economic Report, the text of HB 3220, and the July, 2016 Schedule of Court Fees. The Oklahoma Economic Report can be found at https://www.ok.gov/treasurer/documents/OER_5-31-16.pdf, HB 3220 text can be found at http://webserver1.lsb.state.ok.us/cf_pdf/2015-16%20INT/hB/HB3220%20INT.PDF, and the schedule of court fees can be found at <http://www.oscn.net/datafiles/SCAD/2016/SCAD2016-0052.pdf>.

¹¹ Ryan Gentzler, Fines and Fees Report (Okla. Pol’y Inst., Working Paper) (on file with author) [hereinafter “GENTZLER REPORT”].

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

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- ¹⁵ PRISONERS OF DEBT, *supra* note 2.
- ¹⁶ GENTZLER REPORT, *supra* note 11.
- ¹⁷ OKLA. CONST. art. II, § 13.
- ¹⁸ Interview with Ryan Gentzler, Policy Analyst, Oklahoma Policy Institute (Sept. 28, 2016) [hereinafter “GENTZLER INTERVIEW”].
- ¹⁹ GENTZLER REPORT, *supra* note 11.
- ²⁰ *Id.*
- ²¹ GENTZLER INTERVIEW, *supra* note 18.
- ²² GENTZLER REPORT, *supra* note 11.
- ²³ GENTZLER INTERVIEW, *supra* note 18.
- ²⁴ *Id.*
- ²⁵ *Id.*
- ²⁶ *Id.*
- ²⁷ GENTZLER REPORT, *supra* note 11.
- ²⁸ *Id.*
- ²⁹ UNIF. OKLA. FEE SCHED. (eff. Jul. 1, 2016).
- ³⁰ *Id.*
- ³¹ *Prevalence of Failure to Pay Warrants and Trends in Court Costs and Fees: Interim Studies Before the H. Comm. on Crim. Just. & Corr.* (Okla. 2016) [hereinafter “*Interim Studies*”] (statements of Judge Thad Balkman, Cleveland Cty. Dist. Judge & Robert Nigh, Tulsa Cty. Chief Pub. Def.).
- ³² *See, e.g., Bell et al. v. City of Jackson*, No. 3:15-cv-00732-TSL-RHW (S.D. Miss. 2016); *Mitchell et al. v. City of Montgomery*, No. 2:14-cv-00186 (M.D. Ala. 2014).
- ³³ *See generally* U.S. DEP’T JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT, https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf (last visited Nov 26, 2016).
- ³⁴ Four of the seven principles were selected from Vanita Gupta & Lisa Foster, *Joint “Dear Colleague” Letter*, U.S. DEP’T OF JUST. (Mar. 14, 2016), <https://www.justice.gov/crt/file/832461/download>.
- ³⁵ *See* CARL REYNOLDS & JEFF HALL, CONF. OF ST. CT. ADMINS., COURTS ARE NOT REVENUE CENTERS 7-12 (2012), <http://ncsc.contentdm.oclc.org/cdm/ref/collection/financial/id/198>. (last visited Oct 21, 2016). *See also, Who We Are*, CONF. ST. CT. ADMINS. (last visited Nov. 14, 2016, 4:49 PM), <http://cosca.ncsc.org>.
- ³⁶ OKLA. CONST. art. II, § 13.
- ³⁷ OKLA. R. CRIM. P. 8.1.
- ³⁸ OKLA. R. CRIM. P. 8.2.
- ³⁹ OKLA. RS. CRIM. P. 8.3, 8.4, 8.5.
- ⁴⁰ SB-941, 55th Legis., 2d Reg. Sess. (Okla. 2016) (enacted).
- ⁴¹ HB-2443, 55th Legis., 2d Reg. Sess. (Okla. 2016) (enacted).
- ⁴² HB-2934, 55th Legis., 2d Reg. Sess. (Okla. 2016) (enacted).

⁴³ HB-3160, 55th Legis., 2d Reg. Sess. (Okla. 2016) (enacted).

⁴⁴ *See generally* ASSESSING THE COST, *supra* note 3; ALIA HEINTZ, MIRA RADIEVA & HANNAH SCANDY, CAUGHT UP IN COURT COSTS: AN INVESTIGATION INTO COURT COSTS CHARGED TO CRIMINAL DEFENDANTS AND THE IMPACT ON STATE AND COUNTY BUDGETS IN OKLAHOMA, A REPORT OF THE COMMUNITY ADVOCACY CLINIC AT THE UNIVERSITY OF TULSA COLLEGE OF LAW (Apr. 2015) [hereinafter “CAUGHT UP IN COURT COSTS”].

⁴⁵ *Id.*

⁴⁶ PRISONERS OF DEBT, *supra* note 2.

⁴⁷ *Id.*

⁴⁸ OKLA. R. CRIM. P. 8.5.

⁴⁹ *See generally* ASSESSING THE COST, *supra* note 2; CAUGHT UP IN COURT COSTS, *supra* note 44.

⁵⁰ *Id.* at 19-20.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*; *see also* OKLA. STAT. tit. 22 § 983a.

⁵⁵ *Indigent*, MERRIAM-WEBSTER’S LEARNER’S DICTIONARY (last visited Nov. 14, 2016, 5:15 PM), http://www.merriam-webster.com/dictionary/indigent?utm_campaign=sd&utm_medium=serp&utm_source=jsonld.

⁵⁶ *Indigent Defendant*, BLACK’S LAW DICTIONARY (10th ed. 2014).

⁵⁷ OKLA. STAT. tit. 56, § 58(2)(a)(1).

⁵⁸ OKLA. STAT. tit. 56, § 26.5(B).

⁵⁹ OKLA. STAT. tit. 74, § 5040.3(1).

⁶⁰ OKLA. R. CRIM. P. 1.14.

⁶¹ *Bruner v. State ex rel. Dist. Ct., Okla. Cty.*, 581 P.2d 1314, 1315-16 (Okla. Crim. App. 1978).

⁶² OKLA. R. CRIM. P. 1.14.

⁶³ OKLA. CONST. art. II, § 6.

⁶⁴ Carrie Savage Phillips, *Oklahoma’s Indigency Determination Scheme: A Call for Uniformity*, 66 OKLA. L. REV. 655, 692 (2014), <https://www.law.ou.edu/sites/default/files/files/FACULTY/05%20phillips%20comment%20blu3.pdf> [hereinafter “OKLAHOMA’S INDIGENCY DETERMINATION SCHEME”].

⁶⁵ OKLA. R. CRIM. P. 8.1.

⁶⁶ CONN. GEN. STAT. § 52-259b(b); *see also* Conn. Aff. of Indigency—Fee Waiver, Crim. (on file with author).

⁶⁷ CONN. GEN. STAT. § 52-259b(b); *see also* Conn. Aff. of Indigency—Fee Waiver, Crim. (on file with author).

⁶⁸ WASH. ST. SUP. CT. MINORITY & JUST. COMM’N, 2015 UPDATE: REFERENCE GUIDE ON LEGAL FINANCIAL OBLIGATIONS (LFOs) COURTS OF LIMITED JURISDICTION (CLJ) IN WASHINGTON STATE 1 (Oct. 2015), <https://www.courts.wa.gov/content/manuals/CLJ%20LFOs.pdf> [hereinafter “REFERENCE GUIDE ON LEGAL FINANCIAL OBLIGATIONS”].

⁶⁹ *Id.* at 1-2.

⁷⁰ *Interim Studies*, *supra* note 31 (statement of Judge Thad Balkman, Cleveland Cty. Dist. Judge).

⁷¹ OKLAHOMA'S INDIGENCY DETERMINATION SCHEME, *supra* note 46, at 676.

⁷² *See generally* OKLAHOMA'S INDIGENCY DETERMINATION SCHEME, *supra* note 64; CAUGHT UP IN COURT COSTS, *supra* note 44; ASSESSING THE COST, *supra* note 2.

⁷³ OKLA. STAT. tit. 5, App. 1-B, § R. 3.

⁷⁴ OKLA. STAT. tit. 11, § 27-104.

⁷⁵ OKLA. DEP'T HUMAN SERVS., THE OKLAHOMA PINNACLE PLAN: AN IMPROVEMENT PLAN FOR CHILD WELFARE SERVICES, http://www.okdhs.org/okdhs_pdf_library/oklahomapinnacleplanfinal_cfsd_07252012.pdf (last visited Nov 14, 2016, 7:07 PM); OKLA. STAT. tit. 10A, § 1-8-10.

⁷⁶ *See* OKLA. STAT. tit. 5, App. 1-B, § R. 7.

⁷⁷ OKLA. STAT. tit. 10A, § 1-8-101.

⁷⁸ OKLA. STAT. tit. 22, § 983(D).

⁷⁹ OKLA. R. CRIM. P. 8.1.

⁸⁰ *See* ASSESSING THE COST, *supra* note 2, at 17.

⁸¹ *See, e.g.* 20TH JUD. DIST. CT. RS. app. 2 (Financial Disclosure) (on file with the authors); ASSESSING THE COST, *supra* note 41, at app. B (Rule 8 Form Used in Tulsa County District Court).

⁸² *See Asset Disclosure Forms*, OSCN, http://www.oscn.net/static/forms/aoc_forms/judicial.asp. (last visited Oct. 30, 2016).

⁸³ *Interim Studies*, *supra* note 27 (statement of Judge Donald Easter, Okla. Cty. Special Dist. Judge).

⁸⁴ S.B. 572, 98th Gen. Assemb., 2d Reg. Sess. §479.360 (Mo. 2016) (enacted).

⁸⁵ OKLA. STAT. tit. 20, § 3006 (2011).

⁸⁶ ASSESSING THE COST, *supra* note 2, at 15-16.

⁸⁷ *Id.* at 21.

⁸⁸ *Interim Studies*, *supra* note 31 (statement of Robert Nigh, Tulsa Cty. Chief Pub. Def.).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Overcrowding in the jails is such a large problem that two counties have contracted with the Vera Institute of Justice to conduct studies on fines and fees assessed to defendants and how they affect jail overcrowding. *See generally* Ashli Lincoln, *Green Country Jails Facing Overcrowding*, FOX23 (Mar. 18, 2016, 6:47 PM), <http://www.fox23.com/news/green-country-jail-face-overcrowding/168286931>; *see also Interim Studies*, *supra* note 27 (statements of Roy Williams, Oklahoma City Chamber of Commerce, and Judge Donald Easter, Okla. Cty. Special Dist. Judge).

⁹² OKLA. STAT. tit. 22, § 209(3) (1967).

⁹³ *Id.* at § 209(4).

⁹⁴ S.B. 572, 98th Gen. Assemb., 2d Reg. Sess. (Mo. 2016) (enacted).

⁹⁵ MO. SUP. CT. R. 37.65(b), (c).

⁹⁶ VERA INST. OF JUST., HOW TO USE STRUCTURED FINES (DAY FINES) AS AN INTERMEDIATE SANCTION, 61 (Nov. 1996), <https://www.ncjrs.gov/pdffiles/156242.pdf>.

⁹⁷ *Id.*

⁹⁸ SUSAN TURNER & JOAN PETERSILIA, DAY FINES IN FOUR U.S. JURISDICTIONS, 78-79 (Mar. 1996).

⁹⁹ THE CTR. FOR CT. RES., INNOVATION & PLAN., ADMIN. OFF. OF THE CTS. OF CAL., RESULTS FROM THE 2003 SURVEY OF ADMINISTRATIVE MODELS 4-5, http://www.courts.ca.gov/documents/short_survey_final.pdf [hereinafter “2003 SURVEY OF ADMINISTRATIVE MODELS”].

¹⁰⁰ OKLA. CONST. art. VII, § 6; OKLA. STAT. tit. 20, § 16.1.

¹⁰¹ Randy Krehbiel, *Former Lt. Gov. Jari Askins Named Chief Administrator of State’s Court System*, TULSA WORLD (Sept. 19, 2015, 12:00 AM), http://www.tulsaworld.com/news/capitol_report/former-lt-gov-jari-askins-named-chief-administrator-of-state/article_185be0c9-c730-5b90-9410-dedc8397a6da.html.

¹⁰² *Interim Studies*, *supra* note 31 (statement of Jari Askins, Admin. Dir. of the Cts. of Okla.).

¹⁰³ *Id.*

¹⁰⁴ OKLA. STAT. tit. 22, § 1417; OKLA. STAT. tit. 20, §§ 1307, 1315.

¹⁰⁵ U.S. CENSUS BUREAU, 2010 CENSUS INTERACTIVE POPULATION SEARCH (last visited Nov. 20, 2016, 5:22 PM), <http://www.census.gov/2010census/popmap/>; NAT’L CTR. FOR ST. CTS., ADMINISTRATIVE OFFICE OF THE COURTS: STAFFING AND RESPONSIBILITIES FOR TRIAL COURT FUNCTIONS (2004), <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1087>.

¹⁰⁶ U.S. CENSUS BUREAU, 2010 CENSUS INTERACTIVE POPULATION SEARCH (last visited Nov. 20, 2016, 5:22 PM), <http://www.census.gov/2010census/popmap/>; NAT’L CTR. FOR ST. CTS., ADMINISTRATIVE OFFICE OF THE COURTS: STAFFING AND RESPONSIBILITIES FOR TRIAL COURT FUNCTIONS (2004), <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1087>.

¹⁰⁷ 2003 SURVEY OF ADMINISTRATIVE MODELS, *supra* note 96, at 9-10.

¹⁰⁸ *Interim Studies*, *supra* note 31 (statement of Jari Askins, Admin. Dir. of the Cts. of Okla.).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *See* OKLA. DEP’T OF CORR., OFFENDER BANKING SYSTEM (OBS) USER’S GUIDE (Mar. 2011), https://www.ok.gov/doc/documents/users_guide_march_2011_update_032911.pdf.

¹¹³ OKLA. DEP’T OF CORR., OFFENDER BANKING OVERVIEW at 4. <https://www.ok.gov/doc/documents/Offender%20Banking%20Overview.pdf> (last visited Nov 4, 2016) [hereinafter “OFFENDER BANKING OVERVIEW”].

¹¹⁴ Interview with Leon Wilson, Comptroller Offender Banking, Okla. Dep’t of Corr. (Nov. 4, 2016) [hereinafter “WILSON INTERVIEW”].

¹¹⁵ *Id.*

¹¹⁶ OFFENDER BANKING OVERVIEW, *supra* note 113, at 2.

¹¹⁷ *Id.*

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- ¹¹⁸ WILSON INTERVIEW, *supra* note 114.
- ¹¹⁹ *Id.*
- ¹²⁰ *Id.*
- ¹²¹ *Id.*
- ¹²² *Id.*
- ¹²³ *Id.*
- ¹²⁴ *Interim Studies*, *supra* note 31 (statement of Jari Askins, Admin. Dir. of the Cts. of Okla.).
- ¹²⁵ *Id.*
- ¹²⁶ *Interim Studies*, *supra* note 31 (statement of Judge Donald Easter, Okla. Cty. Special Dist. Judge).
- ¹²⁷ *Id.*
- ¹²⁸ *Id.*
- ¹²⁹ NAT'L CTR. FOR ST. CTS., PAPER ON DEMAND 2 (2009), <http://www.ncsc.org/~media/Files/PDF/About%20Us/Committees/JTC/POD%20Case%20Study%20Electronic%20Payments%20to%20LISTSERV%2012-10-10.ashx> [hereinafter "PAPER ON DEMAND"].
- ¹³⁰ *Interim Studies*, *supra* note 31 (statement of Jari Askins, Admin. Dir. of the Cts. of Okla.).
- ¹³¹ PAPER ON DEMAND, *supra* note 129, at 2.
- ¹³² OKLAHOMA STATE AUDITOR AND INSPECTOR, ABOUT THE AGENCY, https://www.sai.ok.gov/about_the_agency/ (last visited Nov. 26, 2016).
- ¹³³ OKLA. CONST. art. 6, § 19.
- ¹³⁴ OKLA. STAT. tit. 74, ch. 8, § 212(B)(1).
- ¹³⁵ ADMINISTRATIVE OFFICE OF THE COURTS OPERATIONAL AUDIT (2008, 2011), https://www.sai.ok.gov/audit_reports/index.php?action=showorg&org=39 at 2 [hereinafter "OPERATIONAL AUDIT"].
- ¹³⁶ OKLA. STAT. tit. 74, ch. 8, § 212(B)(4).
- ¹³⁷ OPERATIONAL AUDIT, *supra*, at 2.
- ¹³⁸ OKLA. STAT. tit. 74, ch. 8, § 212(B)(4)(b).
- ¹³⁹ OKLA. STAT. tit. 74, ch. 8, § 212(B)(4)(d).
- ¹⁴⁰ AUDITOR OF PUBLIC ACCOUNTS, COMMONWEALTH OF VIRGINIA, REVIEW OF VIRGINIA COURTS MANAGEMENT OF UNPAID FINES AND COSTS SPECIAL REPORT (Nov. 20, 2000) www.apa.state.va.us/reports/fines00.pdf [hereinafter "VIRGINIA REPORT"]. STATE AUDITORS OFFICE, AN AUDIT REPORT ON THE COLLECTION IMPROVEMENT PROGRAM AT THE OFFICE OF COURT ADMINISTRATION (NOV. 2013), www.sao.texas.gov/reports/main/14-011.pdf [hereinafter "TEXAS REPORT"].
- ¹⁴¹ VIRGINIA REPORT, *supra* note 140, at 3.
- ¹⁴² *Id.* at 1.
- ¹⁴³ TEXAS REPORT, *supra* note 140.
- ¹⁴⁴ *Id.*
- ¹⁴⁵ *Id.*

¹⁴⁶ OKLA. STAT. tit. 74, ch. 8, § 212(C), (H)-(I).

¹⁴⁷ OKLA. STAT. tit. 74, ch. 8, § 212(B), (L).

¹⁴⁸ OKLA. STAT. tit. 74, ch. 8, § 212

¹⁴⁹ NAT'L CTR. FOR ST. CTS., STUDY OF THE EFFECTIVENESS OF COLLECTIONS IN THE FLORIDA COURTS: A REPORT TO THE FLORIDA CLERKS OF COURT OPERATIONS CORPORATION 23 (Nov. 26, 2012), <http://ncsc.contentdm.oclc.org/cdm/ref/collection/financial/id/193> [hereinafter "COLLECTIONS IN THE FLORIDA COURTS"].

¹⁵⁰ GENTZLER REPORT, *supra* note 11.

¹⁵¹ *Id.*

¹⁵² COLLECTIONS IN THE FLORIDA COURTS, *supra* note 149, at 44.

¹⁵³ *Id.*

¹⁵⁴ See Press Release, Iowa Dep't Revenue, Iowa Court Debt Amnesty Program (Sept. 10, 2010), <https://tax.iowa.gov/press-release/iowa-court-debt-amnesty-program> [hereinafter "Iowa Court Debt Amnesty Program Press Release"].

¹⁵⁵ COLLECTIONS IN THE FLORIDA COURTS, *supra* note 149, at 44.

¹⁵⁶ See TRAFFIC TICKETS/INFRACTIONS AMNESTY PROGRAM, <http://www.courts.ca.gov/trafficamnesty.htm> (last visited Nov. 6, 2016).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ See, e.g., Associated Press, *58,000 California Drivers Have Traffic Fines and Court fees Cut Under Amnesty*, L.A. TIMES (Mar. 15, 2016, 4:07 PM), <http://www.latimes.com/local/lanow/la-me-ln-california-drivers-traffic-tickets-amnesty-20160315-story.html>; Elijah Chiland, *California Is Slashing Traffic Fines for Those Who Can't Pay*, CURBED L.A. (Mar. 16, 2016, 7:40 PM), <http://la.curbed.com/2016/3/16/11250352/california-traffic-tickets-fines-amnesty>; Meghan McCarty, *Ticket Amnesty Update: \$3M Collected, 30,000 LA Licenses Restored*, KPCC (Dec. 31, 2015), <http://www.scpr.org/news/2015/12/31/56598/ticket-amnesty-update-3m-collected-30-000-la-licen/>.

¹⁶² *Id.*

¹⁶³ See, e.g., Associated Press, *supra* note 161; Chiland, *supra* note 161.

¹⁶⁴ See Iowa Court Debt Amnesty Program Press Release, *supra* note 154.

¹⁶⁵ IOWA LEG. SERVS. AGENCY, FISCAL SERVS. DIV., ISSUE REVIEW: COURT DEBT COLLECTION PROGRAMS AND OUTSTANDING COURT DEBT 2 (Mar. 17, 2014) (on file with the authors).

¹⁶⁶ *Id.* at 2.

¹⁶⁷ ARIZ. ADMIN. OFF. CTS., REPORT ON THE RESULTS OF THE ARIZONA JUDICIARY PILOT COLLECTIONS PROJECT 2 (Mar. 9, 2011), <http://www.ncsc.org/~media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/Arizona%20Judiciary%20Pilot%20Collections%20Project.ashx>.

¹⁶⁸ *Id.* at 2.

¹⁶⁹ *Id.* at 3.

¹⁷⁰ GENTZLER REPORT, *supra* note 11.

¹⁷¹ See, for example, U.S. DEP'T JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT, *supra* note 33.

¹⁷² OKLA. CONST. art. VII, § 1.

¹⁷³ S.B. 5, 98th Gen. Assemb., Reg. Sess. (Mo. 2015).

Appendix A – Bench Cards



THE SUPREME COURT OF ALABAMA



COLLECTION OF FINES AND COURT COSTS

Developed for Alabama Judges by the Alabama Access to Justice Commission

IMPOSING FINES AND COURT COSTS

- In determining whether to impose a fine, the court should consider the reasons a fine is appropriate, the financial resources and obligations of the defendant and the burden payment of a fine will impose, ability of the defendant to pay, and the extent to which payment of a fine will interfere with the defendant's ability to make restitution.¹
- Docket fees and other costs in criminal cases shall be assessed at the time of conviction.²
- Trial courts retain jurisdiction to permit payment of costs, fines, and/or restitution at some later date, or in specified installments. The trial court may also, should the defendant fail to pay a fine and/or restitution, reduce the fine to an amount the defendant may pay, modify the fee payment schedule, or release the defendant from the obligation to pay the fine.³
- When multiple offenses arise from the same incident, docket fees and other court costs should generally be assessed on the basis of the most serious offense for which the defendant is convicted. A judge may, in his or her discretion, assess costs for each conviction.⁴

ENFORCING FINES BY IMPOSING JAIL

- In no case shall an indigent defendant be incarcerated for inability to pay a fine or court costs or restitution.⁵
- A person may be jailed for willful nonpayment of a fine that he or she has the ability to pay.⁶
- Incarceration shall not automatically follow nonpayment and should be employed only after the court has examined the reasons for nonpayment.⁷ This examination should include the defendant's financial, employment, and family standing, and the reasons for nonpayment of the fine and/or restitution, including whether nonpayment of the fine and/or restitution was contumacious or due to indigence.⁸
- Before committing an offender to jail for nonpayment of fines, a court must examine reasons for nonpayment and make specific determinations and findings that the defendant willfully refused to pay, failed to make sufficient bona fide efforts to pay, or that alternate measures to punish or deter are inadequate.⁹
- In the event of incarceration for willful nonpayment only, the period of incarceration may not exceed the maximum periods set forth in Ala. Code § 15-18-62.
- If, at the time the fine was imposed or the restitution was ordered, a sentence of incarceration was also imposed, the aggregate of the period of incarceration imposed for nonpayment and the term of the sentence originally imposed may not exceed the maximum term of imprisonment authorized for the offense.¹⁰
- If the fine was imposed in connection with a felony, the period of incarceration for nonpayment may not exceed one (1) year.¹¹
- If the fine was imposed in connection with a misdemeanor or municipal ordinance violation, the period of incarceration for nonpayment may not exceed one-third (1/3) of the maximum term of incarceration authorized for the offense.¹²

COURT ACTIONS ON NONPAYMENT

PERMISSIBLE ACTIONS:

- Community Service¹³
- Reducing or Remitting Amount Due
- Voluntary Payment¹⁴
- Payment Plan¹⁵
- Collection Agency¹⁶
- Imposing Jail for Willful Nonpayment Only (see *Enforcing Fines*)
- Suspension of Driver's License or Restricted Driving Conditions¹⁷
- Attachment of Prisoner Property¹⁸
- Contempt of Court¹⁹
- Execution of Civil Judgment²⁰
- Forfeiture of Confiscated Money²¹
- Order Employer to withhold wages²²

IMPERMISSIBLE ACTIONS:

- Violation or Extension of Probation²³
- Refusal to Accept Filings²⁴
- Jailing or threatening to jail a person who is indigent or other wise unable to pay.

CONTEMPT

- Nonpayment of a fine or court costs constitutes contempt only where the court determines, after proper notice and an evidentiary hearing, that defendant has willfully refused to comply with the court's order to pay.²⁵

OTHER REMEDIES FOR NONPAYMENT

- If a defendant fails to pay a fine, the court may reduce the fine to an amount the defendant is able to pay, continue or modify the payment schedule, or release the defendant from the obligation to pay.²⁶
- For indigent defendants, the court should consider alternative public service in lieu of fines, where the State's goals of punishment and deterrence are adequately served.²⁷ Municipal courts have the authority to remit fines and require competent defendants to attend educational, corrective or rehabilitative programs.²⁸ Alternatively, municipal courts may allow a defendant to work off, under municipal direction, the amount of an unpaid judgment at a rate of at least \$10.00 per day of service.²⁹

PROBATION

- Probation may be used only when a suspended sentence is imposed following a conviction.³⁰
- For misdemeanors, “in no case shall the maximum probation period...exceed two (2) years.”³¹
- Community service may be imposed as a condition of probation. Conditions requiring payment of fines, restitution, reparation or family support should not go beyond the probationer’s ability to pay.³²
- In order to revoke probation for nonpayment, defendant must be given proper notice and the court must conduct an evidentiary hearing. Only where the evidence presented shows that defendant willfully failed to make payment may the Court then sentence Defendant to imprisonment within the authorized range of its sentencing authority.³³
- If the evidence shows that defendant is indigent, the court must consider alternative measures of punishment other than imprisonment.

RIGHT TO COUNSEL

- The court must provide access to legal counsel, including to misdemeanor defendants, in any proceeding in which there is a possibility of incarceration.³⁴
- A probationer is entitled to be present at the probation revocation hearing and to be represented by counsel.
- When probation is revoked and the defendant was not provided access to counsel in the original underlying adjudication, the court cannot impose jail time.³⁵

INDIGENCE

- In determining indigence, the court shall recognize ability to pay as a variable depending on the nature, extent and liquidity of assets, disposable net income of the defendant, the nature of the offense, the effort and skill required to gather pertinent information and the length and complexity of the proceedings.³⁶
- A defendant whose income is at or below 125% of the Federal Poverty Level is presumed to be indigent.³⁷
- In determining indigence and ability to pay, the court cannot consider the assets of relatives or friends.³⁸
- A court may develop a form to uniformly collect earning and asset information from defendants, which may be required to be completed under oath. The Administrative Office of Courts has developed an Affidavit of Substantial Hardship for civil proceedings that may provide helpful guidance

BAIL

- Except as provided in Ala. Code § 15-13-3(a), a defendant before conviction is entitled to bail as a matter of right.³⁹
- Any bail that is set must be reasonable, with consideration of defendant’s ability to pay.⁴⁰
- Holding an indigent defendant, otherwise eligible for release, solely because he cannot make a monetary bail payment violates the defendant’s right to equal protection under the law.⁴¹
- A system of monetary bail only, not providing for release on a defendant’s own recognizance in appropriate circumstances (including indigence), is unconstitutional.⁴²

ENDNOTES:

¹Ala. R. Crim. P. 26.11(b).

²Ala. R. Crim. P. 26.11(c).

³Ala. R. Crim. P. 26.11(h).

⁴Ala. Code § 12-19-150(c) (2014).

⁵Ala. R. Crim. P. 26.11(i)(2); *Tate v. Short*, 401 U.S. 395 (1971) see also Alabama Judicial Inquiry Commission, Advisory Opinion No. 14-926 (March 4, 2014).

⁶Ala. R. Crim. P. 12.11(h)(3), (i)(2); *Taylor v. State*, 47 So. 3d 287, 289-90 (Ala. Crim. App. 2009).

⁷Ala. R. Crim. P. 26.11(i)(1).

⁸Ala. R. Crim. P. 26.11(g).

⁹*Taylor v. State*, 47 So. 3d at 290; see also Alabama Judicial Inquiry Commission, Advisory Opinion No. 14-926 (March 4, 2014).

¹⁰Ala. R. Crim. P. 26.11(i)(1)(iv).

¹¹Ala. R. Crim. P. 26.11(i)(1)(ii).

¹²Ala. R. Crim. P. 26.11(i)(1)(iii).

¹³Code of Ala. § 12-14-10 and 12 (1975); Ala. R. Crim. P. 27.1.

¹⁴Ala. R. Crim. P. 26.11(b).

¹⁵Ala. R. Crim. P. 26.11(d).

¹⁶*Wilkins v. Dan Haggerty & Associates, Inc.*, 672 So.2d 507, 510 (Ala.1995).

¹⁷Ala. R. Crim. P. 26.11(i)(3); Code of Ala. § 12-14-10 (1975).

¹⁸Code of Ala. § 15-18-180 (restitution).

¹⁹*Little v. State*, 693 So. 2d 30, 30-32 (Ala. Crim. App. 1997).

²⁰*Smith v. State*, 335 So. 2d 393, 395 (Ala. Crim. App. 1976);

Ala. R. Crim. P. 26.11(k).

²¹Ala. Code 1975 § 15-5-65; *Heard v. State*, 607 So. 2d 260, 261 (Ala. Civ. App. 1992).

²²Ala. R. Crim. P. 26.11(h).

²³Ala. R. Crim. P. 26.11.

²⁴*Boddie v. Connecticut*, 401 U.S. 371, 381-82 (1971).

²⁵Ala. R. Crim. P. 33.

²⁶Ala. R. Crim. P. 26.11(h).

²⁷*Jackson v. State*, 435 So. 2d 235, 238 (Ala. Crim. App. 1983).

²⁸Code of Ala. § 12-14-10 (1975).

²⁹Code of Ala. § 12-14-12 (1975).

³⁰Alabama Judicial Inquiry Commission, Advisory Opinion No. 14-926 (March 4, 2014).

³¹Ala. Code §15-22-54(a) (1975).

³²Ala. R. Crim. P. 27.1; see *Vandiver v. State*, 401 So. 2d 326

(Ala. Crim. App. 1981).

³³*Bearden v. Georgia*, 461 U.S. 660, 672 (1983); Ala. Code §15-22-54 (1975).

³⁴See *Gideon v. Wainwright*, 372 U.S. 335 (1963). See also *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

³⁵*Alabama v. Shelton*, 535 U.S. 654 (2002).

³⁶Ala. Code § 15-12-5 (2014).

³⁷Ala. Code § 15-12-1 (2014).

³⁸*Ex parte Sanders*, 612 So. 2d 1199 (Ala. 1993); *Quick v. State*, 825 So. 2d 246 (Ala. Crim. App. 2001).

³⁹Ala. Code § 15-13-1 (2014).

⁴⁰Ala. R. Crim. P. 7.2; Alabama Judicial Inquiry Commission, Advisory Opinion No. 14-926 (March 4, 2014).

⁴¹*E.g., State v. Blake*, 642 So. 2d 959, 968 (Ala. 1994).

⁴²*Id.*



THE SUPREME COURT of OHIO

OFFICE OF JUDICIAL SERVICES

COLLECTION OF FINES AND COURT COSTS IN ADULT TRIAL COURTS

Fines are separate from court costs. Court costs and fees are civil, not criminal, obligations and may be collected only by the methods provided for the collection of civil judgments.¹ Sole authority exists under **R.C. 2947.14** for a court or magistrate to commit an offender to jail for nonpayment of *fin*es in a criminal case. An offender **CANNOT** be held in contempt of court for refusal to pay fines.² Accordingly, unpaid fines and/or court costs may neither be a condition of probation, nor grounds for an extension or violation of probation.

ENFORCING FINES BY IMPOSING JAIL

- A person may be jailed for a willful refusal of nonpayment of a fine that he or she has the ability to pay.³
- Prior to committing an offender to jail for nonpayment of fines, an economic ability-to-pay hearing is required, but this requirement does not arise until the trial court decides to jail the offender for failure to pay fines.⁴
- Notice must be provided at a reasonable time prior to the hearing.⁵
- A person has a right to counsel (including a public defender or court-appointed attorney) for the hearing.⁶
- Any person jailed for failure to pay a fine shall receive credit upon the fine at the rate of fifty dollars per day or *per fraction of a day*.⁷
- The court shall inquire and make a determination of an offender's ability to pay a fine, which shall be supported by findings of fact set forth in a judgment entry that indicates the offender's ability to pay, as well as the income, assets, and debts, as presented by the offender.⁸
- A person cannot be ordered to serve additional days for failure to pay a fine if the maximum jail sentence was imposed and served.⁹ Under R.C. 2947.14(E), no commitment pursuant to this section shall exceed six months.

IMPOSING COSTS

- Trial court must impose court costs at time of sentencing.¹⁰
 - Stated at sentencing hearing
 - Written in sentencing order
- Trial court has a mandatory duty to inform a defendant at the time of sentencing that failure to pay court costs may result in imposition of community service.¹¹
- Trial court retains jurisdiction to waive, suspend, or modify the payment of costs at the time of sentencing or any time thereafter.¹²
- A court may not order a person to appear or issue a warrant for unpaid court costs.¹³

Note: When both fines and court costs are owed, the court has the obligation to segregate and/or allocate the amounts when imposing jail time for nonpayment, so that the appropriate mechanisms can be utilized to collect each.¹⁴

LIMITATION OF CONTEMPT

1. Contempt **may not** be used in lieu of R.C. 2947.14 to impose jail time to collect fines.¹⁵
2. Contempt **may not** be used to collect costs.¹⁶
3. If community service is in lieu of either fines or court costs, contempt **may not** be imposed for failure to perform.¹⁷

Contempt of court may be applied if a defendant fails to appear for a court-ordered hearing, including a hearing under R.C. 2947.14, but only after the defendant has been served with a separate citation for contempt of court, notice, and advised of the right to counsel (including appointed, if applicable) and jury trial. Contempt may not be used to create a jail sentence that does not exist with the underlying offense. Contempt for non-appearance cannot be used on a summary basis. If contempt is used for non-appearance at a payment hearing, then any imposition of jail time must be based upon the failure to appear, not for the failure to pay fines.

Failing to follow the dictates of R.C. 2947.14 and using contempt as a sanction to collect fines can result in disciplinary violations.¹⁸

ALLOCATION OF COURT COSTS, FINES, RESTITUTION & REIMBURSEMENTS IN MISDEMEANOR CASES (R.C. 2949.111)

Unless the court enters in the record of the case a different method of assigning payments, the clerk shall assign the offender's payment in the following manner:

1. Court costs, until entirely paid, then;
2. State fines or costs, on a pro rata basis, until entirely paid, then;
3. Restitution, until entirely paid, then;
4. Fines, until entirely paid, then;
5. Reimbursements

COLLECTING FINES

Permitted Methods of Collection:

- Voluntary Payment¹⁹
- Payment Plan²⁰
- Collection Agency²¹
- Community Service²²
- Attachment of Prisoner Accounts²³
- Execution of Civil Judgment²⁴
- Registration Block²⁵
- Imposing Jail (see Enforcing Fines)
- Driver's License Forfeiture²⁶
- Warrant Block²⁷
- Extension of probation if within maximum allowable term of probation and if made a condition of probation

Non-permitted Methods of Collection:

- Contempt of Court²⁸
- Forfeiture of Confiscated Money²⁹
- Refusal to Accept Filings³⁰
- Violation or Revocation of Probation³¹

COLLECTING COSTS

Permitted Methods of Collection:

- Voluntary Payment³²
- Payment Plan³³
- Collection Agency³⁴
- Community Service³⁵
- Attachment of Prisoner Accounts³⁶
- Execution of Civil Judgment³⁷
- Registration Block³⁸

Non-permitted Methods of Collection:

- Imposing Jail³⁹
- Driver's License Forfeiture⁴⁰
- Warrant Block⁴¹
- Contempt of Court⁴²
- Forfeiture of Confiscated Money⁴³
- Refusal to Accept Filings⁴⁴
- Violation or Extension of Probation⁴⁵

AN ALTERNATIVE: CANCELLATION/DISCHARGE

If at any time the court finds that an amount owed to the court is due and uncollectible, in whole or in part, the court may direct the clerk of the court to cancel all or part of the claim.⁴⁶ The court retains jurisdiction to waive, suspend, or modify the payment of the costs of prosecution, including any costs under R.C. 2947.231, at the time of sentencing or at any time thereafter.⁴⁷

COMMUNITY SERVICE AS PAYMENT FOR COURT COSTS

R.C. 2947.23 authorizes a court to convert court costs to community service when a defendant fails to pay court costs or comply with a payment plan to pay court costs.

- Notice must be given to the defendant and the prosecuting attorney
- An evidentiary hearing must be held

Defendant is entitled to credit at no less than the specified hourly credit rate defined by 29 U.S.C.A. 206(a)(1).

COMMUNITY SERVICE SCHEDULE

Offense	Statutory Authority	Limitation
Minor Misdemeanor	R.C. 2929.27 (D)	Maximum 30 hours
Second, Third, and Fourth Degree Misdemeanor	R.C. 2929.27 (A)	Maximum 200 hours
First Degree Misdemeanor	R.C. 2929.27 (A)	Maximum 500 hours
Unclassified Misdemeanor	Suspended License Offenses ⁴⁸	Maximum 500 hours
Felony	R.C. 2929.17 R.C. 2951.02	Maximum 500 hours
Satisfaction of Court Costs	R.C. 2947.23	No less than federal minimum hourly wage rate; hearing required
Satisfaction of Fines ⁴⁹	R.C. 2929.28	Not specified; hearing not required

ENDNOTES

¹Stratman v. Studt (1969), 20 Ohio St.2d 95.
²Cleveland v. Anderson (1992), 82 Ohio App.3d 63.
³State v. Ellis, 2d Dist., 2008 Ohio 2719.
⁴State v. Perkins (2003), 154 Ohio App.3d 631.
⁵State v. Swift, 2d Dist., 2005 Ohio 1595.
⁶Id.
⁷R.C. 2947.14 (D).
⁸R.C. 2947.14 (B).
⁹Stratman v. Studt (1969), 20 Ohio St.2d 95.
¹⁰State v. Joseph, 125 Ohio St.3d 76, 2010 Ohio-954.
¹¹R.C. 2947.23 (A)(1)(a)(i).
¹²R.C. 2947.23 (C).
¹³Strongsville v. Watwood (1989), 62 Ohio App.3d 521.
¹⁴State v. Swift, 2d Dist., 2005 Ohio 1595.
¹⁵Alliance v. Kelly (1988), 48 Ohio App.3d 133; Cleveland v. Anderson (1992), 82 Ohio App.3d 63.
¹⁶State v. Lamb (2005), 163 Ohio App.3d 290.
¹⁷Id. & State v. Ellis, 2d Dist., 2008 Ohio 2719.

¹⁸Ohio State Bar Assn. v. Goldie (2008), 119 Ohio St.3d 428.
¹⁹R.C. 2929.28 (F).
²⁰R.C. 2929.28 (F)(2).
²¹R.C. 2929.18 (F) Felony; R.C. 2929.28 (F)(1) Misdemeanor.
²²R.C. 2929.28 (B).
²³R.C. 5120.133.
²⁴R.C. 2929.28 (D).
²⁵R.C. 1901.44 (B) Municipal Court; 1907.25 (B) County Court; 2947.09 (A) Common Pleas Court.
²⁶R.C. 4510.22 1st-4th Degree Misdemeanor; R.C. 2935.27 Minor Misdemeanor.
²⁷R.C. 4503.13 Registration of Vehicle; R.C. 4507.091 Driver's License.
²⁸Alliance v. Kelly (1988), 48 Ohio App.3d 133; Cleveland v. Anderson (1992), 82 Ohio App.3d 63.
²⁹R.C. 2981.12 (G)
³⁰In re GMS Mgt. Co., Inc. v. Unpaid Court Costs, Fees and Delinquencies (2010), 187 Ohio App.3d 426.
³¹R.C. 2947.14 (D), provides the basis for incarceration for

willful non-payment of fines.
³²R.C. 2929.28 (F).
³³R.C. 2929.28 (F)(2).
³⁴R.C. 2929.18 (F) Felony; R.C. 2929.28 (F)(1) Misdemeanor.
³⁵R.C. 2947.23.
³⁶R.C. 5120.133.
³⁷R.C. 2929.28 (D).
³⁸R.C. 1901.44 (B) Municipal Court; 1907.25 (B) County Court; 2947.09 (A) Common Pleas Court.
³⁹State v. Swift, 2d Dist., 2005 Ohio 1595.
⁴⁰State v. Short, 2nd Dist. Darke No. 2011 CA 16, 2012-Ohio-2546.
⁴¹Strongsville v. Watwood, (1989), 62 Ohio App.3d 521.
⁴²State v. Ellis, 2d Dist., 2008 Ohio 2719.
⁴³State v. Cruise, (2009) 185 Ohio App.3d 230.
⁴⁴In re GMS Mgt. Co., Inc. v. Unpaid Court Costs, Fees and Delinquencies (2010), 187 Ohio App.3d 426.
⁴⁵Stratman v. Studt (1969), 20 Ohio St.2d 95.
⁴⁶R.C. 1901.263 (Municipal Court); 1905.38 (Mayor's

Court); 1907.251 (County Court); 1925.151 (Small Claims Division of Municipal or County Court); 2101.165 (Probate Court); 2151.542 (Juvenile Court); 2303.23 (Court of Common Pleas).
⁴⁷R.C. 2947.23 (C).
⁴⁸The following R.C. sections (4507.35, 4510.111, 4510.12, 4510.16, 4510.21, and 4511.203) provide for a maximum of 500 hours of community work service if the offense is charged as a "first offense" with no prior convictions set out in the citation or charging document. For these offenses, a jail sentence may not be directly imposed, but to enforce the community service assignment, the defendant may be charged with indirect criminal contempt of court in accordance with R.C. 2705.02 et. seq. for failure to complete community service. This is a separate charge, however, and the defendant would be entitled to counsel, and, appointed counsel, if indigent.

⁴⁹Although the statute does not set out a rate of credit of a fine when converted to community service, the court in State v. Glasscock (1993), 91 Ohio App.3d 520 implied the appropriate rate to be the daily rate for incarceration under R.C. 2947.14. The current rate is \$50.00 per day.

The Staff of the Supreme Court of Ohio would like to thank the following who contributed to the development of this bench card: Judge Patrick Carroll of the Lakewood Municipal Court, Judge John T. Rohrs, III of the Defiance Municipal Court, Judge Beth W. Root of the Fairborn Municipal Court and Tim Young, the Ohio Public Defender.

Appendix B – Rule 8 Forms

IN THE DISTRICT COURT OF THE TWENTIETH JUDICIAL DISTRICT
XXX COUNTY, STATE OF OKLAHOMA

State of Oklahoma

vs

CF-

REQUEST TO PAY FINE, COSTS AND FEES IN PERIODIC PAYMENTS

INSTRUCTIONS: This document must be submitted at the time of sentencing. The information it contains will be used by the judge to determine if you will be permitted to pay certain fines, costs and fees at a later date or in installments. It is your responsibility to convince the judge you cannot afford to pay the entire amount of fine, costs and fees on the day of sentencing. This application is your only chance to do that. If you are employed this disclosure must be accompanied by a wage assignment, with the periodic amount left blank.

I hereby request permission to pay the unpaid balance of fine, costs, and/or fees in periodic installments. I understand if my request is granted and I fail to comply with the court's order, the entire balance will become due and I may be confined in the county jail for one day for each \$5.00 which is unpaid.

Address _____
_____ Tele-
phone _____ Social security
number _____
Single__ Married__ Separated__ Spouse's name _____
Spouse's address _____

How many people live in your household? _____ Names and ages _____

Name, address and telephone number of two acquaintances who are not related:

Household Income

Your monthly take-home pay _____ Weekly take-home pay _____ Who is your employer or source in income (including government agency)?

If not working, when and where did you last work?

How long did you work there? _____

Why did you quit? _____

Where is your spouse employed? _____

Spouse's monthly take-home pay _____ Spouse's weekly take-home pay _____ Is any other member of your household employed? _____ If yes, what is that person's income per month? _____

What is the total household income for the month? _____

If you are not working, list the date and place of your last three job applications:

If you are not working and have not applied for a job in the last month, why not?

Household Assets

What is the total amount of money you or anyone in your household has in a checking account? _____ in a savings account? _____ held at the jail? _____

What is the value of any of the following owned by any member of your household?

House _____ Land _____ Mobile home _____ Automobile _____ Motorcycle _____ Boat _____ Jewelry _____ Tools/equipment _____ Tax refund _____ Does anyone owe any money to you or a member of your household? _____ If so, how much is owed? _____ Who owes the money? _____ Is this person related to you? _____ Does he/she make payments on the debt? _____ When and how much are the payments on this debt?

Are you represented by a lawyer in an effort to get money in any other court case, including probate of an estate and workers compensation? _____ Name of lawyer _____

Debts and Expenses

House payment/rent _____ Food _____ Clothing _____ Utilities _____
Car payment _____ Medical expenses _____ Other _____

If you smoke, how many packs per day? _____ If you drink alcohol, how much do you spend each week? _____

Financial Assistance/Contribution to Cost of A Lawyer

Which of these family members are living? Father _____ Mother _____ Brother _____

Sister _____ Son _____ Daughter _____ Grandmother _____ Grandfather _____ Which of them have you asked for

help? _____ If you have not asked any of them

for help, why

not? _____

Did you post an appearance bond? _____ If so, who paid the bondsman? _____

_____ How much was paid? _____

Defendant's signature

ORDER OF THE COURT - RULE 8 HEARING

[prepare separate Rule 8 for each case]

DEFENDANT'S NAME: _____ **CASE NO.:** _____

The Court has sentenced you to the custody of the Department of Corrections or the Tulsa County Jail and you are therefore ordered to report to the Cost Administrator on the 2nd floor of this building within two weeks of your release from the Department of Corrections, or immediately after your release from the Tulsa County Jail, to make payment arrangements on the costs and fines assessed to you today.

The Court finds you are able to pay and you agree to pay by installment payment the fines and costs assessed in this case. You are ordered to report immediately to the Cost Administrator on the 2nd floor of this building to make arrangements for installment payments of the costs and fines assessed in this case as shown below.

The Court orders you to perform _____ **hours of community service in lieu of the fines and costs or in lieu of** _____ assessed in this case as shown below. You are first ordered to report immediately to the Misdemeanor Work Program located in the basement of this building, Room B3 in the Court Services Office and secondly you are ordered to report to the Office of the Cost Administrator on the 2nd floor of this building. A review of your community service is set before this Court on: _____

The Court has found you to be indigent and unable to pay the costs and fines assessed in this case and said monies are hereby ordered suspended. You are ordered to take this form immediately to the Cost Administrator on the 2nd floor of this building.

The Court finds you are able and agree to pay the fines and costs assessed in this case immediately and you are ordered to **report immediately to the Criminal/Traffic Division** on the 2nd floor of this building and to pay all costs and fines assessed in this case as shown below.

COUNT 1: (circle one) **D.U.I. Felony Misdemeanor Traffic Charge amended to:** _____

Deferred (date) _____ D.U.I. Program (date) _____ Suspended (____ yrs) Dismissed cost to: State/Def. (circle 1)

Fine \$ _____ Victim's Compensation \$ _____ Court Fund \$ _____ Deferred Fee \$ _____

Drug Fund Fee \$ _____ Lab Fee \$ _____ D.A. Drug Fund \$ _____ P.S.I. Fee \$ _____

DNA Fee \$ _____ Incarceration Fee \$ _____ Restitution \$ _____ Other _____ \$ _____

COUNT 2: (circle one) **D.U.I. Felony Misdemeanor Traffic Charge amended to:** _____

Deferred (date) _____ D.U.I. Program (date) _____ Suspended (____ yrs) Dismissed cost to: State/Def. (circle 1)

Fine \$ _____ Victim's Compensation \$ _____ Court Fund \$ _____ Deferred Fee \$ _____

Drug Fund Fee \$ _____ Lab Fee \$ _____ D.A. Drug Fund \$ _____ P.S.I. Fee \$ _____

DNA Fee \$ _____ Incarceration Fee \$ _____ Restitution \$ _____ Other _____ \$ _____

COUNT 3: (circle one) **D.U.I. Felony Misdemeanor Traffic** Charge amended to: _____
Deferred (date) _____ D.U.I. Program (date) _____ Suspended (____ yrs) Dismissed cost to: State/Deft. (circle 1)
Fine \$ _____ Victim's Compensation \$ _____ Court Fund \$ _____ Deferred Fee \$ _____
Drug Fund Fee \$ _____ Lab Fee \$ _____ D.A. Drug Fund \$ _____ P.S.I. Fee \$ _____
DNA Fee \$ _____ Incarceration Fee \$ _____ Restitution \$ _____ Other _____ \$ _____

COUNT 4: (circle one) **D.U.I. Felony Misdemeanor Traffic** Charge amended to: _____
Deferred (date) _____ D.U.I. Program (date) _____ Suspended (____ yrs) Dismissed cost to: State/Deft. (circle 1)
Fine \$ _____ Victim's Compensation \$ _____ Court Fund \$ _____ Deferred Fee \$ _____
Drug Fund Fee \$ _____ Lab Fee \$ _____ D.A. Drug Fund \$ _____ P.S.I. Fee \$ _____
DNA Fee \$ _____ Incarceration Fee \$ _____ Restitution \$ _____ Other _____ \$ _____

**IF YOU FAIL TO PAY, APPEAR, OR REPORT AS ORDERED, A WARRANT WILL BE ISSUED FOR YOUR ARREST
AND YOU MAY BE CONFINED IN THE TULSA COUNTY JAIL UNTIL THE BALANCE IS PAID IN FULL**

Dated this _____ day of _____, _____

Judge of the District Court of Tulsa County

I HAVE READ AND UNDERSTAND THIS ORDER:

Form 3913 (Rev. 3-01)

Defendant's Signature

Attorney's Signature

IN THE DISTRICT COURT IN AND FOR CREEK COUNTY
SAPULPA/BRISTOW/DRUMRIGHT DIVISION, STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
Plaintiff,) Case No. _____
) _____
vs.) _____
) _____
_____,) _____
DOB: _____) _____
Defendant.) _____

JUDGE: _____ DATE: _____

Cause comes on for: SETTING UP PAYMENT SCHEDULE
Criminal Case _____ Traffic Case _____ Civil Case _____ Plea _____
Adding Case to Existing Plan _____ Veteran's Court _____ Drug Court _____
Court Review/Cost Admin. Review _____ Released from D.O.C./C.C.J.C _____
AMOUNT DUE \$ _____ **** (AMOUNT SUBJECT TO CHANGE)

****Your court costs will increase if fees are required by statute.
Please call back for exact amount due.****

RULING/FINDING BY COURT: Defendant appears personally _____ by mail _____, to set up his/her
payment plan. Payments are set at a minimum of \$ _____ per month beginning
_____. ****If completing a deferred sentence this amount may not pay
case in full by review date.****

Down Payment of \$ _____ to be made within _____ days.
_____ Guilty Plea _____
_____ Dismissed with costs _____
_____ Suspended Sentence* _____

All fees are to be paid before completion of sentence.
_____ Deferred Sentence* _____

All fees are to be paid before deferred date or deferral will be denied
*****PAYMENTS MUST BE MADE EACH MONTH*****

Failure to make payments as scheduled will result in a bench warrant being issued and/or your taxes being
intercepted, or your case being turned over to our collection agency. When pay sequence includes multiple
Creek County cases a bench warrant will be issued containing all case numbers represented above.

Defendant's Address: _____
Defendant's Phone Number: _____

*It is defendant's responsibility to notify Court Clerk's Office of any change of address or phone number. All
notices will be sent to the last address received by the Court Clerk's Office.*

I, the defendant, understand all of the above.

Defendant's Signature

Notary Public Comm. No. _____

**MAIL PAYMENTS TO:
AMANDA VANORSOL, CREEK COUNTY COURT CLERK**

_____ 222 East Dewey, Suite 201
Sapulpa, OK 74066
(918) 227-2525

_____ P.O. Box 1055
Bristow, OK 74010
(918) 367-5537

BY THE ORDER OF THE COURT

JUDGE OF THE DISTRICT COURT

CERTIFICATE OF DELIVERY

Copy of the above court minute was _____ mailed _____ given to the defendant on _____ day of _____, 20____.

DEPUTY COURT CLERK

LOBECK TAYLOR
COMMUNITY ADVOCACY CLINIC



THE UNIVERSITY *of*
TULSA
College of Law

407 South Florence Avenue | Tulsa, Oklahoma 74104 | legalclinic@utulsa.edu | law.utulsa.edu/CAC