

# The Debt Penalty

Exposing the Financial Barriers  
to Offender Reintegration

Douglas N. Evans

Research & Evaluation Center  
John Jay College of Criminal Justice

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John Jay College of Criminal Justice  
524 59th Street  
New York, NY 10019  
[www.johnjayrec.org](http://www.johnjayrec.org)

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### ***Author***

Douglas Evans is a project director with the Research and Evaluation Center at John Jay College of Criminal Justice, City University of New York (CUNY). He earned the Ph.D. from Indiana University, Bloomington.

## SUMMARY |

Financial debt associated with legal system involvement is a pressing issue that affects the criminal justice system, offenders, and taxpayers. Mere contact with the criminal justice system often results in fees and fines that increase with progression through the system. Criminal justice fines and fees punish offenders and are designed to generate revenue for legal systems that are operating on limited budgets. However, fines and fees often fail to accomplish this second goal because many offenders are too poor to pay them. To compound their financial struggles, offenders may be subject to other financial obligations, such as child support payments and restitution requirements. If they do not pay their financial obligations, they may be subject to late fees and interest requirements, all of which accumulate into massive debt over time. Even if they want to pay, offenders have limited prospects for meaningful employment and face wage disparities resulting from their criminal history, which makes it even more difficult to pay off their debt. An inability to pay off financial debt increases the possibility that offenders will commit new offenses and return to the criminal justice system. Some courts re-incarcerate offenders simply because they are unable to settle their financial obligations. Imposing financial obligations and monetary penalties on offenders – a group that is overwhelmingly indigent – is not tenable. States often expend more resources attempting to recoup outstanding debt from offenders than they are able to collect from those who pay. This report explores the causes and effects of perpetual criminal debt and offers solutions for encouraging ex-offender payment.

# INTRODUCTION |

The criminal justice system saddles offenders with financial obligations at nearly every stage of the legal process. Two primary justifications underlie these obligations: punishment and revenue generation. Legal systems impose fines, fees, and restitution requirements as a punitive measure intended to deter offenders from future crime. In addition to their punitive value, financial obligations are intended to generate revenue for criminal justice systems. Few would argue against funding at least a part of the criminal justice system by charging offenders. However, the majority of offenders are indigent unable to pay (Patel and Philip 2012). If they do not pay, they face perpetual late fees, high interest penalties, bad credit, mounting debt and the possibility of re-incarceration, all of which decrease the likelihood that offenders will ever be able to settle their legal debts. Paradoxically, criminal justice systems sometimes spend more on debt collection and punishing offenders who are behind on their payments than they are likely to recoup from enforcing the financial obligations of ex-offenders.

Offenders are subject to a number of criminal justice fees that multiply with deeper involvement in the criminal justice system. If there are victims, offenders may be responsible for restitution payments. If they have children, they will likely be required to pay child support. Nonpayment of these obligations has become a persistent problem despite aggressive attempts to collect outstanding debts. Most ex-offenders are poor. Many are unable to find meaningful employment or earn a steady and livable wage. Their financial struggles are compounded by laws that limit their eligibility to receive public assistance funds. Financial obligations overwhelmingly consign many ex-offenders to perpetual debt and poverty, increasing their likelihood of returning to the criminal justice system.

## CRIMINAL JUSTICE FEES

Depending on the jurisdiction, offenders are charged fees at nearly every phase of the criminal justice process. In addition to fines, interest, and penalties for late payments, offenders may be required to pay "user fees," which differ from court-imposed fines. The sole purpose of user fees is to raise revenue for criminal justice systems, while court-imposed fines are intended to punish offenders or to provide financial compensation to victims (Bannon, Nagrecha and Diller 2010). Because many offenders are indigent and unable to afford payment, financial burdens can accumulate quickly.

Legislators across the country have created numerous criminal fees and increased existing fees to offset the high costs of the legal system and incarceration. A Brennan Center study of the 15 states with the highest prison populations found that nearly all charge "poverty penalties," which are added costs (e.g., late fees, interest, payment plan fees) imposed on individuals who cannot pay criminal debt all at once. Several states (e.g., California, Florida, Ohio, Texas) charge public defender fees, which could include a fee to apply for a public defender, fees for the cost of legal defense, and various administrative court fees (Bannon, Nagrecha and Diller 2010). Florida, for example, charges misdemeanor offenders \$50 and felony offenders \$100 for the cost of a public defender (Diller 2010).

Every state has a unique set of criminal fees, which could include fees for pre-trial detention, security in the courtroom, medical expenses during incarceration, community supervision, drug screens, treatment classes, transfer of community supervision to a different state, registration (for convicted sex offenders) and electronic monitoring (Levingston 2008; Bannon, Nagrecha and Diller 2010). Texas assesses a fee for “judicial fund court costs” (\$15) as well as requiring offenders to pay a string of charges – an arrest fee (\$5), a warrant fee (\$50), and a time payment fee (\$25) (Sunset Advisory Commission 2007). Washington State assesses an “insurance policy” fee of \$15 per week for individuals sentenced to community service (Rosenthal and Weissman 2007). Since 1996, Florida has raised many of its existing fees by \$10 to \$50 and enacted 20 different fees for individuals ensnared in the criminal justice system (Diller 2010). These added fees include requirements that defendants pay for the costs of prosecution (minimum \$50 charge), various surcharges that vary by offense type (a low of \$15 for criminal traffic violations and a high of \$151 for assault and battery convictions), and charges to inmates for subsistence costs while incarcerated (Diller 2010).

### Inmate Wages

In 1934, Congress authorized the development of the Federal Prison Industries (FPI), a government corporation that uses inmate labor. Currently, approximately 20,000 physically-able inmates work for FPI to produce goods and services that are sold exclusively to government agencies and never reach commercial markets. FPI work programs generate revenue to fund the costs of incarceration and to enable inmates to pay restitution and child support obligations (Solomon, Johnson, Travis and McBride 2004). Inmate workers with financial obligations are required to pay at least 50 percent of their wages towards their debt (James 2008). FPI pays inmate workers between \$0.23 and \$1.15 per hour of work (James 2008). Currently, about 16 percent of eligible inmates in federal prisons work in FPI factories (Federal Bureau of Prisons 2013).

Common prison work assignments include institutional maintenance (janitorial work, laundry), industry jobs (furniture making, clothing and textile, printing, metal fabrication), and farm work (Solomon, Johnson, Travis and McBride 2004). Inmates who work while they are incarcerated earn approximately 90 percent less than minimum wage, making it difficult for them to save money and provide for their families. However, prison work does have benefits: it reduces idle time, enhances the development of vocational skills, and allows inmates to contribute some money to their legal debt and to their families at home (Atkinson and Rostad 2003).

Inmate wages vary by state:

- Massachusetts inmates earn approximately \$1 per day of work
- Colorado pays inmates between \$0.25 and \$2.50 per work day
- California inmates receive between \$0.30 and \$0.95 per hour prior to deductions
- Kentucky compensates inmates between \$0.25 to \$0.95 per hour
- South Dakota inmates earn \$0.25 per hour although some work assignments are unpaid
- Arkansas, Georgia and Texas do not pay inmates

Sources: Pearson (2004); California Prison Industry Authority (2011); Upton and Harp (2009); South Dakota Department of Corrections (2013).

Some jurisdictions may have increased fees in response to citizen complaints regarding the amount of taxpayer money spent on incarcerating offenders. An Arizona sheriff proposed charging inmates \$1 for every meal (Sign 2013). Officials in Anderson County, Tennessee proposed a plan to charge jail inmates for the cost of amenities while they are incarcerated. Inmates would have to pay for jail-issued pants (\$9.15), blankets (\$6.26) and toilet paper (\$0.29) to defray these expenses (Rawlings 2013). Riverside County, California already requires financially solvent inmates to pay the full cost of their incarceration – \$142 per day (St. John 2011). A majority of these fees will likely become outstanding debt because they are imposed on indigent individuals who cannot afford payment (Shookhoff, Constantino and Elkin 2011).

### Examples of User Fees and Penalties for Non-Payment of Criminal Justice Debt by State

| State                 | Penalties   |
|-----------------------|---|
| <b>Florida</b>        | Requires offenders to pay for the costs of prosecution irrespective of their ability to pay.<br>[§ 938.27(2)(a)]  |
| <b>Michigan</b>       | Courts can revoke probation or impose incarceration for those who fail to pay their debt.<br>[Act 87 of 1985, 780.826]  |
| <b>Pennsylvania</b>   | Denies parole to offenders who are unable to pay a \$60 fee.<br>[18 Pa. Stat. Ann. § 11.1101]   |
| <b>Virginia</b>       | Many jurisdictions suspend the driver's licenses of individuals who miss debt payments.<br>[Va. Stat Ann. § 46.2-395(B)]  |
| <b>Alabama</b>        | Disenfranchises ex-offenders until they pay all of their criminal justice debt.<br>[Ala. Code § 15-22-36.1(a)(3)]   |
| <b>California</b>     | Charges ex-offenders \$300 if they are unable to pay their fines.<br>[Cal. Penal Code § 1214.1(A)]  |
| <b>Missouri</b>       | Individuals can spend time in jail to settle their criminal justice debts. Debtors are credited \$10 for each day imprisoned.<br>[Mo. Rev. Stat. § 543.270(1)]  |
| <b>North Carolina</b> | Charges at least \$95 in general court fees, a \$25 late payment fee, and a \$20 charge for paying in installments.<br>[North Carolina Administrative Office of the Courts, Court Costs and Fees Chart] |

Source: Bannon, Nagrecha and Diller (2010)

## RESTITUTION

Restitution is one of the few mechanisms by which the criminal justice system seeks to acknowledge and address the direct impact of crime on victims. Courts require offenders subject to restitution obligations to provide financial compensation to victims for loss or damage to their property, lost income due to missing work, direct medical expenses, and psychological services, among other things (Reiss 2011).

While restitution payments are an attempt to repair the harm inflicted upon victims, advocates assert they may also benefit offenders (Dickman 2009). Requiring offenders to pay restitution compels them to take responsibility for their offense and to participate actively in compensating their victim(s). Restitution may have rehabilitative effects as well, particularly for those who make consistent payments. There is an inverse correlation between paying restitution and recidivism, such that offenders who pay a high percentage of their restitution obligations have a lower likelihood of committing a new crime (Kempinen 2002). The same correlation was not found for payment of criminal fines, which suggests that paying restitution to victims has a more positive impact on offender rehabilitation than paying criminal fees to the state (Fetsco 2012).

Nevertheless, restitution debt is massive both at the individual and aggregate levels. This is particularly concerning because the majority of offenders lack the financial resources to pay their debts (Dickman 2009). Restitution usually comprises the largest proportion of criminal debt for individual offenders (Diller 2010). In total, offenders in the United States owe more than \$50 billion in criminal justice debt (National Center for Victims of Crime 2011), and in 2007, total restitution debt was nearly \$40 billion (Dickman 2009). This suggests that a majority of uncollected criminal debt could be existing restitution obligations. Uncollected restitution debt means that victims may be left without financial compensation unless states provide other victim assistance funds.

Nonpayment of restitution obligations is inherently problematic. The Mandatory Victims Restitution Act requires federal courts to order restitution without consideration of an offender's capacity to pay (Dickman 2009). Despite the inability of most offenders to pay their restitution obligations, criminal justice officials must attempt to collect this debt. Most collection methods have not been effective (Ruback and Bergstrom 2006) and result in extensive administrative costs. Administrative costs increase substantially when offenders do not pay because officials must spend considerable time (and labor) to collect unpaid restitution (Dickman 2009). Additional problems with collecting restitution arise when an offender has multiple victims because there is no simple method for prioritizing restitution payments to each victim (Ruback and Bergstrom 2006). Despite the efforts of many jurisdictions to collect unpaid restitution, the majority of restitution payments remain uncollected (National Center for Victims of Crime 2011).

## CHILD SUPPORT

Many offenders are non-custodial parents subject to child support obligations during and after their release from custody. In some states, child support debt continues to accumulate while the obligor (person who owes money) is incarcerated. Approximately 70 percent of incarcerated males between the ages of 33 and 40 are fathers (Western 2006), and the majority owe child support arrearages (debt) that they are unable to pay. The current amount of unpaid child support in the United States is around \$100 billion (Patterson 2008). Laws regarding child support have become more punitive during the past few decades in response to rampant non-payment. However, many parents who owe child support are indigent and/or incarcerated and simply have no means to pay. When states do not have methods for modifying, suspending or forgiving arrearages for incarcerated parents, inmates accrue immense child support debt during and following their release from prison (Pearson and Griswold 2005).

Noncustodial parents enter prison owing an average of more than \$10,000 in child support debt (Pearson 2004). By the time they return to society from prison, noncustodial parents on parole owe thousands more in child support debt (Harris, Evans and Beckett 2010). If they serve their full sentences, they stand to accumulate approximately \$20,000 in additional child support debt, between \$4,000 and \$5,000 in interest, and around \$2,000 in penalty charges (Thoennes 2002). The majority of these individuals are indigent and unable to pay their debt, which subjects them to further late penalties, interest charges, and continually increasing debt. Research indicates that fathers making less than \$10,000 per year are responsible for 70 percent of all child support debt (Sorensen and Zibman 2001).

While some federal laws address child support payment, each state has its own guidelines for setting, collecting and modifying child support orders. Federal law forbids retroactive absolution of child support debt (Pearson 2004), which means that such debt will remain until it is paid. Also, federal guidelines (42 U.S.C. § 659) allow jurisdictions to take up to 65 percent of a non-custodial parent's salary to apply towards this debt (Public Counsel 2011). Some jurisdictions grant modifications in child support orders when changes in a parent's situation damage their ability to pay. At least 21 states do not accept incarceration as a justification to reduce or eliminate child support debt because it is considered a foreseeable consequence of criminal action (Pearson 2004). Many states incarcerate parents for failure to pay child support orders (Brito 2012). Currently, national data on legal outcomes associated with nonpayment of child support debt do not exist because most jurisdictions do not track the number of arrests and incarcerations related to nonpayment (Solomon-Fears, Smith and Berry 2012).

Parents who do not pay child support are subject to a range of sanctions, none of which benefit their children. Child support agencies can garnish wages, withhold tax returns and social security benefits, suspend drivers licenses, deny passports, and encumber bank accounts to recover this debt (Anthony and Mellgren 2009). If obligors are financially solvent, these sanctions may not be problematic, but for individuals with limited income, such penalties may affect their ability to also pay rent and other obligations. If parents are unable to pay, child support obligations do not benefit children, the intended beneficiaries. Additionally, this failure to



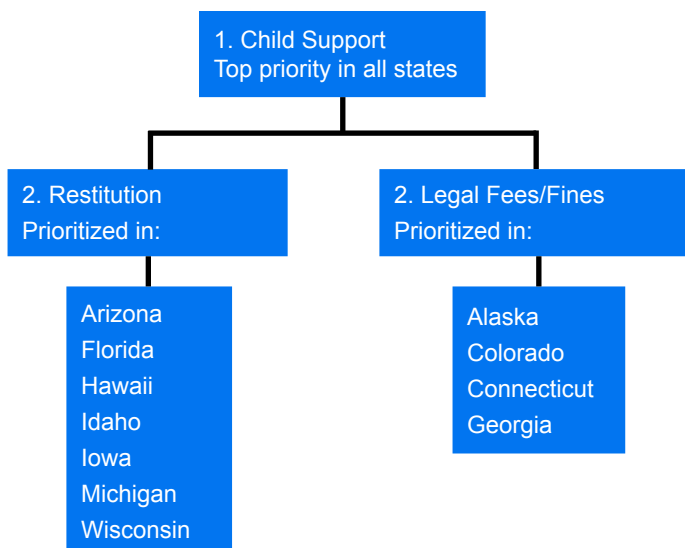
provide financial support may strain the parent-child relationship. The possibility of incarceration for failure to pay child support may force indigent parents to flee, which not only negates the parent's financial resources but removes parental support from the child's life completely (Patterson 2008).

There is no denying the importance of child support obligations. If parents refuse to provide financial support for their children, courts should have the authority to require them to make such payments. However, forcing an incarcerated or indigent parent to pay money that they do not have only worsens the situation and may saddle indigent individuals with perpetual debt. Child support debt is becoming unmanageable for many ex-offenders (Pearson and Griswold 2005). A survey of released offenders found that child support assistance is the most common form of aid requested, higher than help finding a job or a place to live (Pearson and Griswold 2005).

## DEBT PRIORITIES

States have some discretion to prioritize offender debt payments. Federal law (42 U.S.C. § 666), however, requires that child support obligations be given preference over all other debt (e.g., restitution, legal fees) (McLean and Thompson 2007). After child support, some states (e.g., Colorado, Georgia) prioritize legal fines and fees while other states (e.g., Florida, Michigan) prioritize the collection of restitution (McLean and Thompson 2007). On the federal level, the Code of Federal Regulations (28 CFR 545.11) outlines how payments should be prioritized (Legal Information Institute). The Code prioritizes Special Assessments imposed under 18 U.S.C. 3013, which consist of fines that increase with the severity of the offense (Legal Information Institute). Court-ordered restitution receives next priority, followed by fines and court costs, state or local court obligations, and any other federal government obligations (Legal Information Center).

### State Prioritization of Offender Obligations



### Federal Prioritization of Offender Obligations



Sources: McLean and Thompson (2007); Legal Information Institute

## DEBT COLLECTION

An estimated 10 million people owe more than \$50 billion in debt resulting from their involvement in the criminal justice system (Harris, Evans and Beckett 2010; National Center for Victims of Crime 2011). Many offenders cannot afford payment and court-ordered financial obligations become detrimental to their reintegration. Criminal debt competes with other essential life expenses, such as food, rent, and child support (Shookhoff, Constantino and Elkin 2011).

The reasons offenders do not pay criminal fees, restitution obligations, and child support arrearages include financial inability, lack of awareness of debt, and unwillingness to pay. The majority of offenders may never be able to pay off their criminal debt because they are poor both before and after their incarceration. Most offenders remain unemployed for at least a year following their release from prison (Patel and Philip 2012). Others may not pay their debts because they do not understand the sanctions, they disagree with the reasons behind their financial obligations, or they believe that the financial penalties were unfairly applied to them (Ruback, Hoskins, Cares and Feldmeyer 2006).

The high prevalence of nonpayment creates problems for jurisdictions attempting to collect criminal fees and other financial obligations from offenders. Several jurisdictions have pursued aggressive methods of debt collection and punishments for nonpayment, which prolong existing financial burdens on offenders long after they are convicted or released from incarceration. Ironically, due to the amount of personnel hours and resources they require, the cost of debt collection efforts is usually higher than the money they generate.

### Hidden Costs to the Legal System and Ex-Offenders Associated with Debt Collection Practices

| Common Collection Practices  | Hidden Costs   |
|--|--|
| Probation or parole officers monitor payments.                                   | Possible overtime costs and less time to devote to offender risks/needs. |
| Debtor must attend regular meetings with a judge, clerk, or collection official. | Possible overtime costs and burdened court dockets.                      |
| Incarceration for failure to pay.  | Possible overtime for legal system personnel and incarceration costs.    |
| Debt referred to private collection agencies.                                    | Debtor faces considerable collection fees and damage to credit.          |
| Driver's license suspended for failure to pay.                                   | Debtor has more obstacles to finding and maintaining employment.         |
| Wage garnishment and tax rebate interception.                                    | Debtor is deterred from seeking legitimate employment.                   |
| Debt converted to a civil judgment.  | Damage to debtor's credit.   |

Source: Bannon, Nagrecha and Diller (2010)

Many states persistently pursue debtors because court operations budgets depend on this source of revenue (American Civil Liberties Union 2010). Officials in Washington State take a portion of wages from debtors or their spouses, and they also can confiscate bank assets, home equity, and tax refunds from debtors (Harris, Evans and Beckett 2010). County officials or collection agencies have the authority to charge late fees and interest to those who do not or cannot pay (Harris, Evans and Beckett 2010). Alabama imposes a 30 percent collection fee on debtors. Florida charges an additional 40 percent on top of debt owed for the cost of debt collection (Bannon, Nagrecha and Diller 2010). Interest rates on criminal fees are often as high as 12 percent. California can levy a 15 percent interest charge on debtors who are more than a month late on payments (Harris, Evans and Beckett 2010). When debt collection is not possible, jail time may become the only recourse for nonpayment.

Debt collection also places additional burdens on criminal justice employees. Probation and parole officers are often tasked with debt monitoring, collection and issuing punishments for failure to pay. These duties divert time from their essential functions of supervising ex-offenders and ensuring public safety (Patel and Philip 2012).

The collection of restitution debt suffers from inefficiencies. Public and private collection agencies do not coordinate well, courts do not have a system to enforce the legal requirement to collect restitution payments, and many jurisdictions do not prioritize restitution collection (National Center for Victims of Crime 2011). Also, the majority of jurisdictions do not track the amount of restitution ordered or collected (National Center for Victims of Crime 2011), which makes it difficult to evaluate the effectiveness of different collection methods. Some jurisdictions do not prioritize restitution payments and instead require that other financial obligations, such as fines and fees, be paid first, which leaves victims uncompensated for lengthy periods of time (Ruback and Bergstrom 2006).

Child support debt collection is also problematic. After child support orders are established, it is difficult to keep track of obligors and ensure that they are making payments. This is of particular concern when obligors are incarcerated, as states do not have a method for identifying inmates with child support obligations and thus have no way to communicate with them (Pearson 2004). Even after their release from incarceration, the majority of child support arrears are uncollectable. Arrears that are more than a few years old are especially unlikely to be collected (Bartfeld 2003). Despite the low success rate of child support debt collection, many jurisdictions continue to pursue debtors and spend more on debt collection than they are able to collect (Pearson and Griswold 2005).

While criminal debt collection is costly, it is impossible to determine exactly how much is spent to collect these debts because most states do not have procedures for monitoring the costs of debt collection (Bannon, Nagrecha and Diller 2010). Ultimately, states are often able to collect only a small portion of the criminal debt that offenders owe. In Florida, for example, court officials routinely expect to collect only nine percent of fees associated with felony cases (Diller 2010). A study in North Carolina found that the costs of collection – law enforcement, courts, and jails – outweighed the amount collected from debtors (Bannon, Nagrecha and Diller 2010). Officials in Alabama collected \$4 million in 2012, which was only a small percentage of the financial obligations owed by offenders (Lockette 2013).

## EFFECTS OF CRIMINAL DEBT

Former offenders with debt encounter a number of problems that interfere with successful reintegration. Debt reduces household income and limits their ability to attain housing, employment, and access to credit. It also hobbles existing credit, which makes it even more difficult to get a job, to receive approval to rent an apartment, and to apply for loans. Criminal debt also impedes an ex-offender's prospects of attaining public health benefits, can result in a driver's license suspension, and negates their ability to apply for a pardon or criminal record expungement in some states (Vallas and Patel 2012). It also increases the likelihood of continued involvement with the criminal justice system through extended probation or parole, re-arrest, or re-incarceration (Harris, Evans and Beckett 2010). Some states disenfranchise ex-offenders until they have paid off their debt entirely. For example, ex-offenders in Florida are required to fulfill their restitution obligations before they can restore their right to vote, serve jury duty, and obtain certain occupational licenses (Diller 2010). An important consequence of financial burdens is that they increase the likelihood of recidivism, particularly when offenders are unable to pay (Dickman 2009).

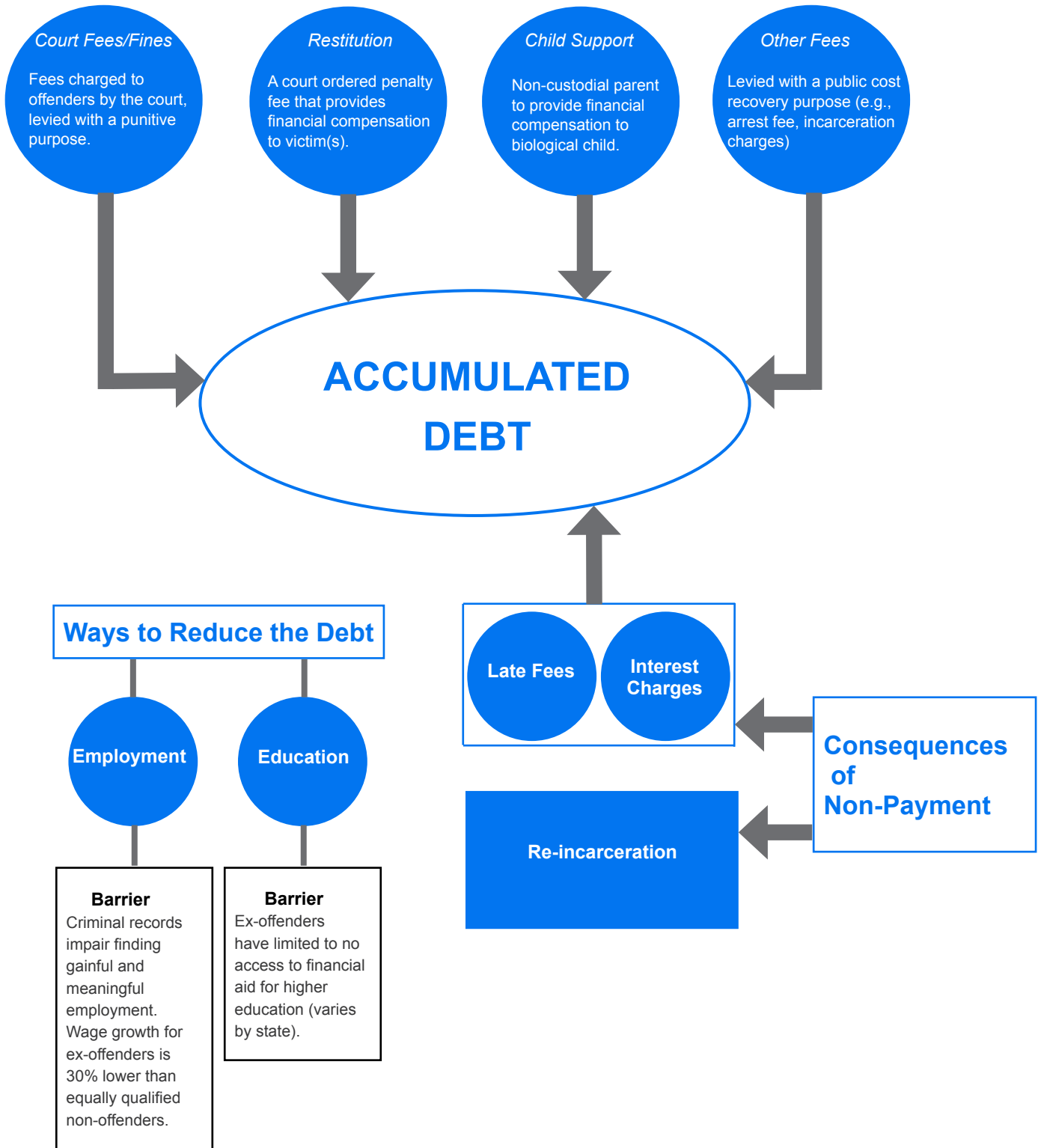
A job can help ex-offenders generate income to pay their debts, but even with employment, they stand to lose much of their income to debt collectors. Based on their annual average, ex-offenders owe as much as 60 percent of their income to criminal debts (Harris, Evans and Beckett 2010). A study of ex-felons on probation in Texas found that they owed between \$4,000 and \$5,000 in obligations related to their offense (Reynolds et al. 2009). For ex-offenders who are unemployed or indigent, fines and interest that accrue over time gradually make this debt unmanageable.

Debt financially and emotionally strains ex-offenders, which can negatively affect their psychological well-being (Shookhoff, Constantino and Elkin 2011). Some offenders saddled with debt have expressed feelings of anxiety, anger and hopelessness (Martire, Sunjic, Topp and Indig 2011). Those who experience these psychological symptoms are more likely to abscond in order to avoid payment (Harris, Evans and Beckett 2010).

The worst-case scenario for offenders who cannot pay their debt is re-incarceration. Some jurisdictions (e.g., California, Missouri) allow individuals who have outstanding criminal debt to spend time in jail in lieu of paying off their debt (Bannon, Nagrecha and Diller 2010). This practice creates what critics call the new "debtors' prisons" (American Civil Liberties Union 2010). Despite its occurrence, however, incarcerating an individual for being too poor to pay criminal debt is not constitutionally permissible. The Supreme Court ruled in *Bearden v. Georgia* (1983) that failure to pay criminal debt is not grounds for incarceration if an individual lives in poverty (American Civil Liberties Union 2010). The Supreme Court determined in its ruling that only "willful" nonpayment may result in incarceration (Harris, Evans and Beckett 2010).

Jurisdictions in several states continue to incarcerate individuals if they do not pay their debt, regardless of their financial insolvency. In Rhode Island, failure to pay court debt was the most common reason that individuals were incarcerated between 2005 and 2007. The average amount owed was \$826 and the average cost of three days of incarceration was \$505 (Rhode Island Family Life Center 2008).

Sources of Offender Debt, Consequences of Non-Payment, and How to Reduce Debt



## EMPLOYMENT WAGES

While employment barriers are a concern for ex-offenders, the quality of jobs available to them is equally problematic. Incarceration makes it difficult for ex-offenders to attain quality jobs for several reasons. First, incarceration stigmatizes ex-offenders and reduces the likelihood that an employer will hire them. Second, the lack of access to job training in prison and time out of the job market with its changing technologies erode offenders' job skills. Finally, incarceration erodes inmates' existing social networks that could have helped them attain quality jobs. Together, the stigma of a criminal conviction, lack of training and experience, and loss of social networks during incarceration can have negative impacts on an ex-offender's employment opportunities upon release (Pettit and Lyons 2009). The jobs that ex-offenders can attain often lack security and do not provide much capacity for higher earnings over time.

Wage inequality is a near certain consequence of incarceration. Because those who have served time in prison have less access to steady jobs that provide sufficient income, incarceration reduces the wages that ex-offenders earn by 10 to 20 percent (Western 2002). Incarceration also negatively impacts wage mobility, which is the change in earned income over time. Offenders who have been incarcerated experience a slower growth in their wages over time than individuals without a history of incarceration; serving time in prison reduces the rate of wage growth by 30 percent (Western 2002).

This problem is compounded for minority offenders. Studies have shown that Black and Latino offenders usually earn lower wages than White offenders (Johnson and Johnson 2012). Additionally, an examination of the quarterly earnings of ex-offenders who were recently released from prison in Washington State found that the wages of Black offenders increased at a considerably slower rate than the wages of White offenders (Lyons and Pettit 2011). Even after controlling for additional factors, such as education, age, and work history, Black offenders still earned 10 percent less than White offenders (Lyons and Pettit 2011).

## FINANCIAL ASSISTANCE FOR EX-OFFENDERS

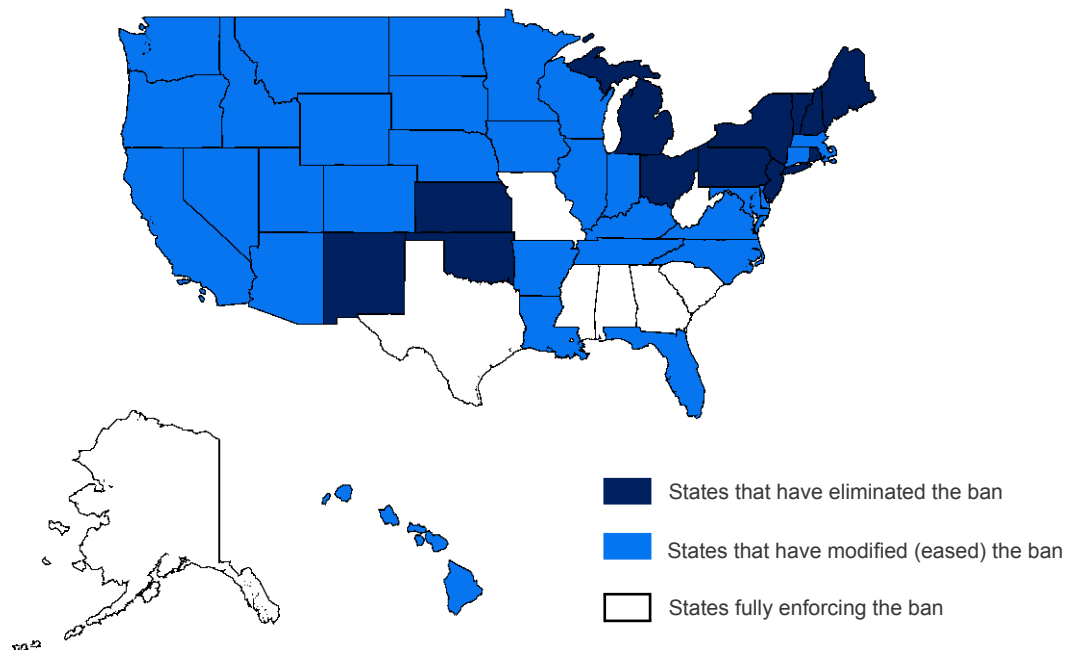
Despite living on minimal income and facing substantial financial obligations, offenders often face barriers to obtaining state and federal financial assistance. Currently, between 13 and 18 million individuals in the United States are unable to receive public benefits because of their criminal history (Lucken and Ponte 2008). For instance, convicted sex offenders are prohibited from receiving government housing subsidies (Oyama 2009). Convicted drug offenders may be denied Temporary Assistance for Needy Families (TANF), food stamps, and postsecondary education aid, including Pell Grants, Stafford loans, and work-study assistance (United States Government Accountability Office 2005).

While food stamps are intended to provide individuals and families living in poverty with financial assistance to purchase food, federal legislation has limited the ability of convicted offenders to receive food stamps (Pearson 2004). The Personal Responsibility and Work Opportunity Act of 1996 banned individuals with a felony drug conviction from receiving TANF and food stamps from the federal Supplemental Nutrition Assistance Program (SNAP) (The Sentencing

Project 2013). States may modify or opt out of this ban, and many have done so, but the ban is estimated to have stripped more than 180,000 people of food stamp eligibility (The Sentencing Project 2013). Food stamps represent valuable financial aid that can ease part of an ex-offender's living costs and permit them to allot their financial resources towards other obligations and debts. Removing food stamp benefits from convicted offenders strains their existing financial resources, increases their risk of malnutrition, and increases their risk of recidivism. The health and re-incarceration costs of denying food stamps to convicted drug offenders may be higher than providing them with food stamps in the first place.

Individuals with a criminal conviction may lose their eligibility for financial aid to attain higher education. A conviction for a drug offense results in an outright ban on financial aid for those who were convicted of the drug offense while they were receiving financial aid (Legal Action Center 2012). Students are disqualified from receiving educational benefits for varying periods of time if they are convicted of certain drug offenses (United States Government Accountability Office 2005). The first conviction for *possession* of a controlled substance can result in an individual losing his or her financial aid for one year, and the first conviction for *sale* of a controlled substance can result in two years of ineligibility. Subsequent convictions can lead to indefinite ineligibility (Mukamal and Samuels 2002). Convicted drug offenders can restore their postsecondary education benefits if they successfully complete a drug treatment program and pass unannounced drug tests (United States Government Accountability Office 2005).

### State Responses to the Ban on Federal Welfare Benefits for Convicted Drug Offenders (2011)



Source: The Sentencing Project (2013)



Government subsidized housing is sometimes denied to convicted offenders. Local Public Housing Authority (PHA) offices can deny public housing assistance to applicants who were previously evicted from a federally funded housing project due to drug use or sale (Prison Law Office 2011). PHA's have the discretion to consider the arrest records of applicants when determining eligibility for public housing, even if the arrest did not result in a conviction. One study found that more than half the housing authority decisions regarding public housing eligibility are based on arrests that never led to a conviction (Legal Action Center 2004). Individuals convicted of sexual and drug offenses encounter the greatest housing restrictions (Morani, Wikoff, Linhorst and Bratton 2011). Convicted sex offenders are prohibited from receiving government housing subsidies completely (Oyama 2009), while convicted drug offenders subject to federal housing restrictions could lose housing benefits from three years to life (United States Government Accountability Office 2005).

Some states provide offenders with a small sum of money upon their release from prison. Called "release funds" or "gate money," these are intended for ex-offenders to buy food, clothes or a bus ticket (Prison Law Office 2011). In Illinois, for example, ex-offenders receive \$50 in addition to a new outfit and a bus ticket when they are released (Visher and Travis 2003). According to California Penal Code § 2713.1, the state is to provide ex-offenders with \$200 when they are released from an incarceration facility. Some ex-offenders receive only half of this money initially, but they must receive the entire payment within 60 days of their release (Prison Law Office 2011). However, across all states, average release funds amount to only \$53, which does not cover a full day of living expenses if the ex-offender needs temporary lodging (Rukus and Lane 2013).

Financial obligations resulting from criminal involvement are intended to generate money for criminal justice systems and to punish offenders. However, because the majority of ex-offenders responsible for these obligations are indigent and unable to pay (Patel and Philip 2012), financial requirements become a perpetual punishment, exacerbating poverty and economic inequality (Harris, Evans and Beckett 2010). Offenders who owe money become ensnared in debt without means for resolving it. If they cannot pay, they face mounting fees and possible incarceration for nonpayment. The threat of re-incarceration leads some ex-offenders to abscond. The system of financial obligations for offenders will never be profitable for the state. Rather, it will only serve to expand and prolong criminal punishment for ex-offenders already facing multiple barriers to reintegration, including possible unemployment, lesser income and job stability, and ineligibility for many forms of public financial assistance.



## Release Funds in Selected States

| State          | Gate Money | Notes   |
|----------------|------------|---|
| Alabama        | \$10       |   |
| Arizona        | \$50       | State supplements account for up to \$50 of gate money.   |
| Arkansas       | \$100      |   |
| California     | \$200      |   |
| Colorado       | \$100      |   |
| Connecticut    | \$50       | State supplements account for up to \$50 of gate money.   |
| Delaware       | \$0        |   |
| Florida        | \$100      |   |
| Georgia        | \$25       |   |
| Idaho          | \$0        | No gate money. Funds provided for housing/treatment directly to provider.   |
| Kansas         | \$100      | Offenders with multiple offenses receive \$40. Average distribution to inmates is \$50 or less.   |
| Kentucky       | \$50       | \$50 at warden's discretion if inmate is indigent.  |
| Louisiana      | \$10       | Distributions to inmates range between \$10 and \$100.  |
| Maine          | \$50       | Receipt of gate money is contingent on good behavior.   |
| Maryland       | \$50       | \$50 gate money comes from a reserve account set up for inmates.  |
| Massachusetts  | \$50       | \$50 paid to indigent inmates.  |
| Mississippi    | \$25       | Gate money is based on time served.   |
| Missouri       | \$0        |   |
| Montana        | \$100      | Additional funds are available for those serving longer than three years.   |
| Nebraska       | \$100      | State supplements account for up to \$100 of gate money.  |
| Nevada         | \$25       |   |
| New Hampshire  | \$0        |   |
| New Jersey     | \$0        |   |
| New Mexico     | \$50       | State supplements account for up to \$50 of gate money, but there are deductions from inmates placed into a release program.            |
| North Carolina | \$45       | Inmates only receive funds if they were incarcerated for 24 months or more.   |
| Ohio           | \$75       |   |
| Rhode Island   | \$20       | State supplements account for up to \$20 of gate money.   |
| South Carolina | \$0        |   |
| Vermont        | \$200      | Distribution of gate money is based on inmate financial need.   |
| Virginia       | \$25       |   |
| Washington     | \$40       |   |
| Wisconsin      | \$0        | Deductions from inmate pay provide funds for inmates on work release. Funds are contingent on employment, so assumed gate money is \$0. |

Source: Rukus and Lane (2013)

## PROPOSED SOLUTIONS |

Although most offenders have debt resulting from their criminal justice involvement and many will never be able to pay it off in full, by addressing some inherent problems, criminal justice systems can increase the likelihood of payment while lessening the financial burden on offenders.

### BANKRUPTCY REFORM

Individuals who are unable to repay their debts to creditors may have to file for bankruptcy. Bankruptcy is a stigmatized condition that allows the debtor to abrogate their rightful obligations of payment (Stiglitz 2001). There is no optimal bankruptcy code that benefits all debtors. While a legal declaration of bankruptcy may be necessary for some debtors, it has negative consequences for many of their creditors, which can include the state (criminal fees), the victims (restitution), and the debtor's dependents (child support). Today's legal methods for handling the debts of indigent ex-offenders creates problems for both debtors and creditors.

Bankruptcy is beneficial when it results in a quick discharge of a debtor's legal debts, although they do have to surrender their non-exempt property. However, this could leave a large group of debtors, particularly those with minimal financial resources, unable to ever have positive net worth, to plan for retirement or sickness, or to own property. Criminal debt makes it difficult for many ex-offenders to attend school and obtain housing. Regional and racial variation in debt discharge imposes a disproportionate burden on communities as a result of criminal justice system involvement (Lawless 2010). Bankruptcy laws should be changed to reduce perpetual criminal debts, which act as a barrier to reintegration.

### FEE AMOUNTS

Many courts set fee amounts without taking into account an offender's financial viability, income, or employment status. Although courts should consider the nature and impact of an offense when establishing fee amounts, it may be more important for them to ascertain an offender's financial status. In Florida, state law requires payment plans to be tailored to an offender's income and ability to pay, though courts do not always follow this law (Diller 2010). Tailoring payment schedules to offenders' finances could lessen the rate of debt accumulation and increase payment consistency. Even if offenders are only able to pay a few dollars a month on a payment schedule, prioritizing consistency over amount will likely generate more payment than the current system. In order to accomplish this, courts need access to offenders' financial records and must receive regular notifications about any changes in employment status so that financial obligations and payment schedules can be adjusted accordingly.

Financial obligations in the criminal justice system are further complicated because they primarily affect those who are least able to afford payment. The majority of people who enter the criminal justice system are poor, and fines and fees at nearly every phase of the criminal justice process severely strain their meager finances. Some of these fees should be removed. It is unreasonable for courts to hold indigent defendants liable for public defender fees. In *Gideon*

*v. Wainwright* (1963), the Supreme Court affirmed that individuals who cannot afford legal representation are entitled to a court-appointed legal defense. This ruling should preclude any attempt to charge poor defendants for legal representation. These charges dissuade some offenders from exercising their right to legal counsel, which could result in wrongful convictions (Bannon, Nagrecha and Diller 2010). Georgia has a law that requires courts to waive public defender fees if a defendant cannot afford payment, but many defendants have no opportunity to demonstrate indigence and ultimately waive their right to legal representation (American Civil Liberties Union 2010). A federal court recently found two cities in Washington State liable for failing to provide adequate representation for indigent defendants (American Civil Liberties Union 2013). This ruling has implications for jurisdictions with underfunded indigent defense systems. In addition to removing public defender fees, states should reduce or waive other financial penalties for individuals living in poverty, including late fees, collection fees, payment plan fees and high interest charges (Bannon, Nagrecha and Diller 2010).

## PRIORITIZATION OF FEES

Although federal law prioritizes child support payments, states should follow the model of Arizona, Florida, Michigan and others that also prioritize restitution payment over legal fees and court-ordered fines. Restitution payment not only benefits victims but enables offenders to know where and to whom their payments are going. The payment of criminal fees and fines only benefits criminal justice systems, which may discourage offenders from paying them. Restitution and child support directly benefits victims and children. If offenders are aware of how much of their payment benefits the victim(s) of their crime, there may be psychological benefits that increase their likelihood of continued payment (Ruback and Bergstrom 2006).

## TRACKING DEBT

States often lack systems for tracking aggregate criminal debt and expenditures on debt collection, so it is impossible to calculate the amount of outstanding criminal debt and the costs of enforcing debt collection. It takes considerable time for probation and parole officers, clerks, judges, attorneys, and law enforcement to collect debt, so a portion of their salary should be included in the debt collection. It appears that states spend more to collect debt than they recoup from debtors (Bannon, Nagrecha and Diller 2010), but it is impossible to know the exact amount of this deficit. States officials should create a system for tracking debt collection expenditures to assess their cost-benefit.

## IMPROVING RESTITUTION COLLECTION

The system of restitution collection should be reformed. Victims should be able to play an active role in their pursuit of restitution. To this end, the legal system should educate and empower victims and provide them with the resources and legal support necessary to seek restitution payments from their offenders (Fetsco 2012). In Arizona, law enforcement informs victims of their rights and allows victims the opportunity to exercise or waive those rights (National Center for Victims of Crime 2011). If a court finds that a defendant willfully defaulted from restitution payment, state constitutional provisions allow the court to garnish the

defendant's wages or to incarcerate him or her (National Center for Victims of Crime 2011). State officials should target and enforce the collection of restitution debt when individuals are financially able to pay (Dickman 2009). States also should create uniform policies for collecting restitution and informing debtors about the status of their restitution debt through letters and notices (National Center for Victims of Crime 2011).

## IMPROVING CHILD SUPPORT COLLECTION

It makes little sense to require offenders who are non-custodial parents to pay money that they do not have, so courts should adjust unrealistic child support debts accordingly. Maryland has created the Child Support Payment Incentive Program, which offers incentives for those who comply with child support obligations. Non-custodial and low income parents who make consistent child support payments for one year can reduce their child support debt by 50 percent; those who make consistent payments for two years can have their debt absolved completely (Klempin and Mincy 2009). Maryland also suspends child support orders for indigent parents who are incarcerated for more than 18 months (Warnock Foundation 2013).

Several states have adopted mechanisms to ease the burden on indigent or incarcerated parents. These policies are effective because they require accountability but offer incentives for compliance. Courts in Minnesota can retroactively modify child support orders if a parent lacks financial means and is incarcerated for any reason other than nonpayment (Pearson 2004). Arizona passed legislation to allow non-custodial parents to petition the court to suspend interest on child support arrears while they are incarcerated (Pearson 2004). Only the debtor can make requests for child support modifications, however, which is difficult if he or she is incarcerated. Caseworkers should be available to assist incarcerated people with the process of requesting reviews and modifications of child support orders, as some states currently do (Anthony and Mellgren 2009). Iowa operates a program that forgives a percentage of arrearages following several months of consistent payment; the longer they are able to make payments on time, the greater the proportion of their debt that can be legally forgiven (Bartfeld 2003). Counties in Wisconsin forgive interest requirements for debtors that make consistent payments (Bartfeld 2003).

Information and resources could encourage offenders both during and following their incarceration to pay their child support debt. Four states – Oregon, Massachusetts, Minnesota, and Washington – offer information sessions to newly processed inmates to inform them how to request a review and modification of child support orders (Pearson 2004). Video sessions save on these costs because they preclude a state employee from having to be present. Agencies in Washington State, including Child Support Enforcement, the Department of Corrections, and Corrections Clearinghouse, a reentry program, work with ex-offenders to develop payment plans and modify arrears to match their ability to pay (Pearson 2004). Educating and providing reentry assistance to those with child support debt can improve the collection of child support payments and reduce the burden on obligors to a manageable, payable level. Also, courts should have more discretion to set and modify child support orders, which would enable them to consider changes in the financial circumstances of debtors.

## PUBLIC ASSISTANCE

Prohibitions on public assistance for certain categories of convicted offenders make sense when public safety is at stake. However, ex-offenders should be able to earn back their eligibility for food stamps, educational aid, and housing subsidies if they demonstrate reform and do not commit additional offenses for some duration of time that varies in proportion to the severity of their offense. Denying otherwise eligible ex-offenders access to public assistance keeps them in poverty (Eadler 2011), while enabling ex-offenders' access to social services enhances their reintegration and reduces their likelihood of recidivism (Visher and Travis 2003). For example, cost-benefit analyses indicate that removing the food stamp ban for certain drug offenders would decrease recidivism and yield considerable savings for individuals who are not re-incarcerated (Eadler 2011).

## ALTERNATIVES TO INCARCERATION

Instead of incarceration for nonpayment, work assistance programs should provide opportunities for ex-offenders to work on community service projects at a real wage and pay off their debt through a portion of the income they generate. Incarceration should not be an option for offenders who are without financial means to settle their financial obligations. States should only allow incarceration or extend parole or probation sentences for individuals who are financially solvent but refuse to pay their debts (Patel and Philip 2012).

Although some ex-offenders are able to pay their criminal debt, many lack the income and the social support necessary to achieve financial stability. Ex-offenders are often uneducated (Guerrero 2010). It is difficult to find a steady job without a GED or high school diploma and with incarceration-related gaps in one's work history. More attention to employment needs and social support would increase the ability of ex-offenders to pay their debt. Ex-offenders who are employed, have ties to their community, are allowed to make payments over time, and are informed about the importance of restitution are most likely to make payments (Ruback and Bergstrom 2006). Policies should address these issues.

## CONCLUSION |

Contact with the criminal justice system may lead to severe financial consequences for offenders. Even after completing court-imposed punishments, they may have difficulty finding employment, and if they do manage to get a job, their criminal history negatively affects the quality of the job, their job security, and their wage growth. Offenders are also subject to a number of criminal fees, fines, and restitution. If they have children, the legal system can require offenders to pay child support, which compounds during incarceration. Because many ex-offenders lose their eligibility to receive public assistance funds, financial obligations resulting from criminal justice system involvement exacerbate every financial expense in their lives, from food and rent to medical and educational costs.

There are hidden costs to saddling offenders with large amounts of debt. The majority of offenders who enter the criminal justice system are indigent and unable to pay their financial obligations, so many rack up endless debt (Patel and Philip 2012). When ex-offenders are unable to pay, interest can accumulate and create a debt so large that it is meaningless because they will never be able to pay it off. Offenders in some jurisdictions are subject to re-incarceration for failure to pay their financial obligations. The creation of these new “debtors’ prisons” are antithetical to the U.S. Supreme Court’s ruling that individuals cannot be incarcerated for indigence.

The purpose of criminal fees and fines is to generate funds for the criminal justice system and to restore the harms caused by crime. In most cases, these goals are not being met. Some states allocate more resources to collect debt than they garner from debtors (Bannon, Nagrecha and Diller 2010). To improve this system, criminal justice personnel should collect information on debt burdens to determine appropriate fees for ex-offenders based on their ability to pay.

Former offenders living in poverty may never be able to fully settle their financial obligations. Debt reduction incentives for even minimal payments would help generate some funds and alleviate the constant accrual of debt. Policies should also prioritize restitution obligations that benefit victims over those that benefit the criminal justice system (criminal fines). Unreasonable financial obligations perpetually punish many ex-offenders and consign them to a life of permanent debt and poverty – the ultimate debt penalty. While obligations like child support and restitution are legitimate, it makes better sense to enable and incentivize achievable payments than to compound crushing debts beyond any hope of payment.

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