The methods available to collect criminal justice debts—defined herein as debts imposed by the government on those accused of criminal or traffic violations or civil infractions—can be draconian. In at least forty-four states and the District of Columbia, individuals may be incarcerated for “willful” nonpayment of criminal justice debts.¹ Payment of criminal justice debt obligations may also be treated as a condition of sentence or of probation, which may result in extended periods of supervision and monitoring until the debts are repaid and in incarceration for failure to pay.² Outstanding criminal justice debts can also lead to a person’s repeated arrest on debt-related warrants and detention in jail while awaiting a hearing to explain the reasons for failing to pay.

In many jurisdictions, nonpayment may also result in governmental infringements on other rights essential to a person’s self-sufficiency or successful reentry following incarceration, including suspension of driver’s or professional licenses, restrictions on expungement of criminal records, and denial of the right to vote.³ Debtors may also face garnishment of their wages or benefits, seizure of their tax refunds or other assets, aggressive or problematic interactions with debt collection agencies, and credit reporting consequences.

Criminal justice debts may not seem like huge sums of money in isolation. But they can pile up quickly, especially if multiple mandatory debts are imposed for each count of a conviction. Defendants simultaneously prosecuted for multiple charges can see a dramatic rise in their exposure to mandatory financial obligations. For example, in Washington State, for every felony judgment and sentence, the court must impose a mandatory $500 victim penalty assessment, regardless of indigence.⁴ Individuals with three, four, or five felony convictions arising from a single incident can find themselves owing $1500 or $2500 in debt before adding in the various costs and surcharges that are often levied on criminal defendants.

The debt can also get larger and more financially burdensome over time due to mandatory interest, penalties for late or nonpayment, or other collection costs that may accrue from the date of judgment or missed payment.⁵ In some jurisdictions, interest may accrue during any prison or jail term that a defendant serves—a time when a person who is indigent will have little or nothing to contribute toward repayment.⁶ As a result, individuals may come out of jail or prison with significantly higher debt than they had at sentencing.⁷

Legal representation can limit the imposition of excessive and unaffordable criminal justice fines and fees, facilitate the debtor obtaining a payment plan or modification or remission of the debt itself, and advocate for the application of federal or state exemption law to protect assets and income. A bankruptcy filing may allow for the discharge of some types of criminal justice debt. An attorney can also make constitutional arguments to prevent imprisonment based upon an inability to pay or to limit unduly harsh collection methods. Constitutional and statutory claims may also be available to right wrongs committed in the collection of criminal justice debt.

Nevertheless, criminal justice debt representation too often falls through the cracks between criminal defense attorneys and civil legal service providers. Fines and fees are often imposed by a criminal court, where the individual may or may not have a criminal defense attorney present.⁸ But criminal defense resources today are in a state of “crisis” due to inadequate resources and soaring caseloads.⁹ Criminal defense attorneys tend to focus not on criminal justice debt but on keeping clients out of prison. Appointed counsel may not be available or may not consider it their responsibility later to deal with enforcement of a debt imposed in a criminal proceeding. Civil legal services attorneys also face resource constraints and too often think of criminal justice debt as a criminal issue, to be handled by criminal defense attorneys. There is thus a real need for civil and criminal attorneys alike to represent individuals in criminal justice debt matters.

Footnotes

1 [1] See Alexes Harris, A Pound of Flesh: Monetary Sanctions As Punishment for the Poor 50 (2016). For a summary of all states, see id. at tbl. 4.2; for a chart of the state law authority relied upon, see id. at tbl. A2.2.

11.1.1 Need for Criminal Justice Debt Representation

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underlying fine and are charged monthly probation fees that may make it more difficult to pay court debt and may extend the probation sentence), available at https://www.hrw.org.


7 [49] See, e.g., Roopal Patel & Meghna Philip, Brennan Ctr. for Justice, Criminal Justice Debt: A Guide for Action [5] 17 (2012), available at www.brennancenter.org (describing woman whose criminal justice debt increased from $36,000 to over $100,000 by the time of her release from prison due to interest accrued while she was incarcerated and unable to pay).


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