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Resolution in Support of Legal Financial Obligation Reforms

WHEREAS, when a defendant is convicted of a crime in Washington, the court may impose legal financial obligations (LFOs) as part of the judgment and sentence;

WHEREAS, the LFOs may include (1) victim restitution, (2) a crime victims' penalty assessment, (3) costs associated with the defendant's prosecution and sentence, (4) fines, and (5) assessments. The costs may include (a) public defense costs, (b) a jury fee, (c) a criminal filing fee, (d) a bench warrant fee, (e) a deferred prosecution fee, (f) a pre-trial supervision fee, (g) witness costs, (h) incarceration costs, and (i) other costs and obligations ordered by the court;

WHEREAS, the imposition of LFOs falls primarily on poor people inasmuch as a substantial majority of persons charged with criminal offenses in Washington qualify for indigent defense;

WHEREAS, the imposition of LFOs without a meaningful individualized assessment of a defendant's ability to pay the LFOs traps defendants who cannot afford them in poverty and criminalizes poverty;

WHEREAS, the balance on any assessed LFOs accrue interest at an annual rate of 12%, one of the highest rates in the nation;

WHEREAS, felons who have served their sentence but have unpaid LFOs may not have their convictions vacated or their voting rights fully restored because they remain subject to the court's jurisdiction even after all other sentencing terms and conditions have been satisfied;

WHEREAS, a defendant is subject to penalties—including incarceration, labor on a work crew, community restitution, wage garnishment, and civil contempt sanctions—for noncompliance with LFO payment obligations;

WHEREAS, the assessment and enforcement of LFOs is arbitrary and capricious because they vary significantly throughout the State based on geography, the portion of a county's budget devoted to law and justice, and race, ethnicity, and gender;

WHEREAS, the imposition of certain costs, such as the cost of an appeal or a public defender, on a defendant who cannot afford them, and the imposition of higher LFOs on defendants who are convicted following a trial than on those defendants who plea bargain, chills a defendant's right to defend herself or himself;

WHEREAS, LFOs create obstacles to reentry and reintegration into society by making it more difficult to get hired, find stable housing, obtain federal benefits, obtain credit, seal court records,

and vacate a criminal record and is contrary to the Legislature's goal of reducing recidivism by facilitating the successful reintegration of Washington State residents with felony convictions;

WHEREAS, while holding an offender financially accountable for the consequences of his or her criminal behavior through payment of restitution and other compensation to crime victims is an important and legitimate goal, the imposition of LFOs for the primary purpose of funding the court system is not;

WHEREAS, the failure to pay LFOs can result in subsequent arrests, additional fines, and incarceration, all of which perpetuates the cycle of poverty and does not protect society or promote public safety;

WHEREAS, incarcerating people who are unable to pay their LFOs creates a modern day debtor's prison;

WHEREAS, the amount of LFO revenue collected is sometimes less than the direct and indirect costs of calculating, assessing, administering, enforcing, and collecting LFOs;

WHEREAS, LFO collection practices, including adverse credit reports, can limit the ability of offenders to reintegrate into society and deprive them of the ability to secure housing and employment; and

WHEREAS, the negative societal impacts of imposing LFOs on defendants who cannot afford to pay them is contrary to the King County Bar Association's mission of promoting a just and accessible legal system and working with the judiciary to achieve excellence in the administration of justice, as reflected by a session of the 2015 KCBA Bench-Bar Conference about LFO abuses;

NOW THEREFORE, the King County Bar Association supports reforms in the system of LFOs in Washington to achieve these goals:

1. Defendants should not be ordered to pay LFOs unless there has been an individualized assessment that the defendant has the ability to pay and the court has considered the negative impact of LFOs on the defendant's ability to reintegrate into society.
2. Defendants should receive a full, fair, and meaningful hearing on their ability to pay before LFOs are imposed.
3. Courts should provide defendants with meaningful post-sentencing opportunities to request a waiver or remission of LFOs if the defendant lacks the ability to pay them.
4. Establish objective criteria for assessing defendants' ability to pay.
5. Defendants should not be incarcerated or required to engage in manual labor based solely on their inability to pay LFOs.
6. Interest accrued on unpaid balances on LFOs should be reduced or eliminated.

7. Defendants should regain their full voting rights after completing their sentence of confinement, even if they still have unpaid LFOs.
8. Collection of data on the imposition of LFOs.
9. A review of LFO collection methods, practices, and impacts should be conducted.
10. The King County Bar Association supports LFO reform through legislation and/or court rules.

*Approved by the Board of Trustees
February 17, 2016*