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## On Thin Ice: Bureaucratic Processes of Monetary Sanctions and Job Insecurity

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### Abstract

Research on court-imposed monetary sanctions has not yet fully examined the impact that processes used to manage court debt have on individuals' lives. Drawing from both interviews and ethnographic data in Illinois and Washington State, we examine how the court's management of justice-related debt affect labor market experiences. We conceptualize these managerial practices as procedural pressure points or mechanisms embedded within these processes that strain individuals' ability to access and maintain stable employment. We find that, as a result, courts undermine their own goal of recouping costs and trap individuals in a cycle of court surveillance.

### Keywords

monetary sanctions; procedural hassle; court surveillance; poverty; employment

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Research investigating monetary sanctions—the fines, fees, restitution, costs, and surcharges that court systems impose—has revealed the ways these legal financial obligations (LFOs) create precarious conditions for the justice-involved (Harris 2016; Harris, Evans, and Beckett 2010; Edelman 2017). Within a burgeoning literature examining how LFOs shape the lives of those who incur these debts, researchers highlight racial and ethnic differences in amounts imposed (Harris, Evans, and Beckett 2011), sanctions for nonpayment (Bannon, Diller, and Nagrecha 2010; Harris 2016; Friedman and Pattillo 2019), and the financial strain LFO payments can place on poor debtors (Colgan 2018; Beckett and Harris 2011). Researchers also find that the discretion in imposing and collecting monetary sanctions by clerks, judges, and community supervision officers has led to inconsistent and inequitable practices (Alexander et al. 1998; Ruback and Shaffer 2005; Olson and Ramker 2001; Beckett and Harris 2011).

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Scholars have yet to examine, however, the possible destabilizing effects of court processes used for managing payments on those burdened with this debt. Previous work has demonstrated the punishing nature of the court process itself prior to conviction (Feeley 1979; Kohler-Hausmann 2018) and the ways that court surveillance profoundly shapes the lives of the justice-involved (Goffman 2014; Cozzolino 2018; Brayne 2014; Vanhaelemeesch, Vander Beken, and Vandeveldel 2014), but it has not discussed the management of court debt as part of this surveillance of individuals over time. Monetary sanctions are a particularly important context in which to examine this process because they can be more enduring and pervasive than other forms of justice system supervision. Focusing on impacts on employment, this study examines how court bureaucratic processes for monitoring and incentivizing payment toward LFOs place pressure and strain on the lives of individuals outside the formal punishment of the debt. For financially strained individuals, access to stable employment is vital to paying off court debt and exiting the criminal justice system (Harris 2016). Thus, when courts use a system for managing payments that strains labor market participation, they undermine their goal of recouping costs and trap individuals in an endless cycle of court surveillance.

Work on the pre-sentencing process has defined procedural hassle as the “burdens and opportunity costs attendant to complying with the legal proceedings” (Kohler-Hausmann 2013, 353). In the case of monetary sanctions, respondents in this study identified particular practices within the court that extracted time and resources beyond the debt itself that constrained their ability to access and maintain stable employment. Drawing from interview data and ethnographic court observations, we conceptualize these particular practices as *procedural pressure points* to pinpoint the mechanisms embedded in the court’s process for managing payment that strained labor market experiences and led to this counterproductive system. This concept allows for a more detailed analysis of the specific practices that contribute to procedural hassle, particularly in the post-sentencing process, and enables examination of the unique consequences associated with each practice. Further, by looking at each point within the process separately, we describe how these practices related to each other and affected individuals differently depending on their access to resources such as stable housing and reliable transportation. Three practices emerged as procedural pressure points with unique transaction costs in the courts’ debt management process: compliance review hearings, failure to appear (FTA) warrants, and driver’s license suspensions for unpaid LFOs. These practices led to missed days of work, made it difficult to get to work on time, and strained individuals’ time and resources needed to seek employment.

This article expands the literature that examines the ways criminal justice involvement impedes full and consistent labor market participation—adding a new focus on court administrative processes for debt collection. In addition to adding empirical findings to scholarship on monetary sanctions, the article adds to our understanding of the court system as an institution of surveillance, management, and particularly enduring social control. Even more, these court processes for managing and punishing individuals with court-related debt suggest that this is truly a story of managing and punishing poverty given that we find procedural pressure points disproportionately affect the poor. Criminal justice involvement is both a cause of economic insecurity and a consequence (Wacquant 2001; Western 2002). The imposition of monetary sanctions and the particular processes through which courts

attempt to collect them highlight another important mechanism by which penal expansion contributes to inequality for a wide range of individuals.

## COURT MANAGEMENT OF MONETARY SANCTIONS

Monetary sanctions encompass a range of financial penalties the court system imposes. Fines serve as economic sanctions tied directly to particular offenses; restitution is a calculated debt owed to victims for damage or harm inflicted; and fees, assessments, and surcharges are imposed to compensate the state for a defendant's "use" of the court system (Friedman and Pattillo 2019). Initially, LFOs were seen as an alternative and less punitive sanction to incarceration and probation for lower-level offenses (Gordon and Glaser 1991; Hillsman 1990; Ruback and Bergstrom 2006). Today, they are frequently imposed in addition to other sanctions, such as incarceration, community supervision, or mandated treatment (Bannon, Diller, and Nagrecha 2010). This change is in part a result of the rapidly increasing expense of an expanding criminal justice system that has led courts to shift costs onto those arrested and convicted in the form of fees and surcharges (Friedman and Pattillo 2019; Appleman 2016). Although court actors conceptualize discretionary fines and restitution as part of the formal punishment, the various fees, assessments, and surcharges operate often as "hidden sentences" in that court actors view them as falling outside judge-imposed punishment (Kaiser 2016; Martin 2018). Because monetary sanctions often fall on the indignant and those least able to pay, these practices have led to significant unpaid court debt—approximately ten million people in the United States owing more than \$50 billion (National Center for Victims of Crime 2011).

Previous scholarship on monetary sanctions centers on the inequalities in imposing these costs and sanctioning noncompliance. We look instead at the inequalities that the systems used to manage payments produce. This focus is in line with another strand of sociological criminal justice research on procedural punishment. Research on court processes has shown simply making court contact, regardless of conviction as the final outcome, instigates procedural obligations that often lead to a loss of time and money for defendants (Kohler-Hausmann 2018; Feeley 1979). Issa Kohler-Hausmann (2018) finds that continued pretrial court appearances for low-level offenses serve as a form of social control and use a managerial model to supervise people over time. These appearances function as performances in which defendants show court actors that they are "governable" and responsible individuals capable of complying with court orders. This procedural hassle and performance are court techniques that operate in lieu of formal punishment, particularly confinement and conviction. Just as social control of misdemeanor justice is unique to its context (Kohler-Hausmann 2013), the forms of social control in monetary sanctions follow their own logics and operate within their own constraints. Although the consequences to employment are similar, this work highlights a different intention of the court in managing individuals over time, in this case, debt collection (Martin 2018).

Previous studies of procedural hassle focus primarily on pre-sentencing processes, but the strain caused by surveillance and sanctions related to community supervision post-sentencing can have similar impacts on people's lives. To varying degrees, probation and parole can extract significant time and resources from individuals by monitoring their

compliance with court orders through mandatory check-ins, drug testing, and electronic monitoring (Simon 1993; Petersilia 2003; Werth 2011; Travis 2005). These forms of supervision often claim to help people gain stability, but instead destabilize lives and make finding stable housing and high-quality employment more difficult (Young and Petersilia 2016; Seim and Harding 2020). Those who fail to comply are at risk of violation and additional punishment, including incarceration (Petersilia 2003). Similarly, failing to pay monetary sanctions can trigger an escalation of consequences, including repeated court hearings, sanctions such as jail time, and fines, fees, and interest in addition to the original sentence (Harris 2016; Martin et al. 2018; Friedman and Pattillo 2019).

Interrogating the court processes that manage LFO payment compliance is an important missing piece of this conversation on procedural hassle and managerial justice because it often co-occurs with other forms of punishment and supervision and operates at multiple levels of offenses. Moreover, payment monitoring can persist long after other sanctions, such as parole or probation, have ended (Harris 2016). This study marries the scholarship on procedural punishment and formal sanctioning because monetary sanctions present a case where both operate simultaneously. Just as Michelle Phelps (2013) conceptualizes “back-end net widening” to describe the policies around probation that exacerbate mass incarceration. We demonstrate how court practices used to monitor payment compliance contribute to back-end procedural hassle that does not end with a case disposition and that strains labor market participation of the justice-involved.

Furthermore, examining court management of LFO debt as a process of court surveillance and management of people over time, particularly the poor, highlights the court’s role in poverty governance. Poverty governance has been most commonly studied within welfare and social services bureaucracies that work to directly monitor and surveil the poor (Seim 2017; Elliott and Bowen 2018; Soss, Fording, and Schram 2011; Eubanks 2018; Gilliom 2001). Within the criminal legal system, similar arguments of poverty governance have been made regarding the monitoring and enforcement of child support (Cozzolino 2018) and of parole supervision (Seim and Harding 2020; Simon 1993; Werth 2011). Thinking about the court as a bureaucratic institution that manages individuals over time rather than as solely an arbiter of justice changes the way we conceptualize the relationships and interactions between court actors and individuals with LFOs. Current U.S. social control and its form of poverty governance have turned toward “paternalist and custodial approaches to poverty” (Schram, Fording, and Soss 2008, 18) that favor direct administrative oversight and punitive enforcement. In the case of monetary sanctions, we highlight the ongoing monitoring of LFOs as another example of a poverty governance characterized by direct, ongoing surveillance and governance of those who cannot afford to pay their court debts.

## MONETARY SANCTIONS AND EMPLOYMENT

Given that access to financial resources is critical to paying off LFO debt and exiting the court system, the ability of individuals of low socioeconomic status to repay court debts depends on job stability (Harris 2016). The relationship between employment precarity and criminal justice contact has been widely found to contribute to accumulated disadvantage and inequality, particularly among poor and marginalized communities (Travis 2005; Clear

2009; Wakefield and Uggen 2010; National Research Council 2014). Work examining this relationship provides powerful evidence demonstrating that contact with the justice system limits job prospects (Pager 2009; Uggen et al. 2014), lowers long-term earnings (Harding et al. 2017; Western 2002), and shapes labor market participation (Seim and Harding 2020; Harding et al. 2018). Moreover, these effects are disproportionately concentrated and exacerbated among African American and Hispanic communities (Western 2006; Western and Pettit 2005).

Monetary sanctions have an impact on a much wider population of individuals than these previous studies of employment and criminal justice contact have conceptualized. Monetary sanctions are imposed in nearly all cases, including felonies, traffic infractions, and those that include a suspended sentence without formal conviction (Bannon, Diller, and Nagrecha 2010; Harris 2016). In 2011, 26.4 million adults reported being pulled over in a traffic stop; half of them received a citation (Langton and Durose 2013). Combined with the roughly 4.5 million individuals under probation and parole each year and the 2.2 million incarcerated, monetary sanctions reflect a much larger reach of the system given that people in all three groups have likely been sentenced to monetary sanctions (Harris et al. 2017; Kaeble et al. 2016). Scholars have shown that this debt affects employment prospects in various ways—poor credit, wage garnishment, and the prevention of expungement among them (Harris 2016; Harris, Evans, and Beckett 2010). In addition, unpaid LFOs lead to limits on occupational licensing and driver’s license suspension, creating additional barriers to accessing a range of employment possibilities (Warner, Kaiser, and Houle 2020). This work has not, however, focused on identifying the specific mechanisms within the court’s collection process that reinforce poverty through employment strain. Thus, if LFO management impinges on people’s ability to access and maintain stable employment, then this system may be trapping individuals in a cycle of poverty, court surveillance, and direct social control.

## METHODOLOGY

The data for this article were collected as part of the Multi-State Study of Monetary Sanctions.<sup>1</sup> The purpose of the larger project is to deeply examine the process of assessing, monitoring, and recouping criminal justice–related debt and understand the experiences of those burdened with this debt across eight U.S. states. In the collection of these data, strained labor market participation and procedural hassle emerged as salient themes. In this analysis, we draw from data collected in Illinois and Washington State using jurisdictions across each as comparative cases, leveraging differences and similarities to identify nuances and build on existing theories of labor market participation and criminal justice contact (Luker 2008).

Between January 2017 and February 2018, the research team conducted 126 in-depth interviews with residents of Illinois and Washington State who had been sentenced to pay court costs, fines, fees, and restitution resulting from a misdemeanor or felony case (both

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<sup>1</sup>The Multi-State Study of Monetary Sanctions is housed at the University of Washington Sociology Department, funded by Arnold Ventures and led by PI Alexes Harris. Illinois and Washington data used here were collected with the approval and support of The Institutional Review Boards of Northwestern University and the University of Washington.

traffic and criminal charges).<sup>2</sup> In each state, respondents were recruited in multiple counties that varied in size, population density, political affiliation, socioeconomic status, and racial composition. Given differences in court structures and county size, the final sample included seven counties in Illinois and three in Washington State.<sup>3</sup> We recruited this convenience sample of respondents using a range of methods. We hung flyers in courthouses, attorney offices, libraries, local businesses, legal clinics, and nonprofit service organizations in addition to posting advertisements on Craigslist. We also approached individuals in courthouses, community supervision offices, food banks, and reentry programs. A number of respondents were recruited through referrals from other interviewees. We used a standardized screening form with potential respondents to confirm that they had been sentenced to monetary sanctions and to ensure that we recruited individuals with a range of offense types, such as traffic infractions and drug cases, at both the misdemeanor and the felony level. Although we aimed to interview those who were still paying LFOs, we did not exclude those who had completed their payments.

Once recruited, a member of the research team either scheduled a time and location for the interview or conducted the interview at the time of recruitment if the respondent was available. Researchers conducted interviews in private rooms in courthouses or local libraries, in coffee shops and fast food restaurants, in respondents' homes, outside food banks and gas stations, and at local parks. Interviews lasted on average forty-five minutes; participants were compensated for their time with \$15 in cash. The interviews were audio recorded and transcribed by a private transcription company. To ensure anonymity, we have changed the names of the respondents and have not named the counties studied. Table 1 presents a breakdown of the demographic information of the final sample of respondents. The two samples were quite similar in terms of gender, income, and employment. The samples differed somewhat by race and ethnicity. The sample was not intended to be representative of individuals sentenced to LFOs because reliable statewide data on the distribution of monetary sanctions were not available (see Martin et al. 2018).

We used a uniform interview protocol that included both survey and open-ended questions about individuals' current and past experiences with the court system. We asked respondents to report the amount of LFOs they were assessed across their cases, whether they received payment notices, and whether they knew how their LFOs were broken down across fines, fees, interest, restitution, and other costs. Respondents were rarely aware of the breakdown, particularly in instances when they had multiple cases or where they also paid private attorney fees. In Illinois, 78 percent of respondents reported being assessed more than \$1,000 in LFOs; of those, 17 percent reported owing more than \$10,000. In Washington State, at least 85 percent of respondents reported owing more than \$1,000 in LFOs; 48 percent of those individuals reported owing more than \$10,000 over the course of their lives.

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<sup>2</sup>Interviews were conducted by the coauthors and Mary Pattillo, Brian Sargent, Frank Edwards, Emmi Obarra, Brandon Alston, Erica Banks, Niamba Baskerville, Brittany Friedman, and Austin Jenkins.

<sup>3</sup>Illinois has a unified court system, meaning that only one level of court deals with all cases per county. Our Washington State data include three levels of court: municipal, district, and superior. In two counties, municipal courts manage misdemeanors and gross misdemeanors, district courts handle both misdemeanor and felony cases, and superior courts handle felony and some gross misdemeanor charges. In the third county, a district court handles the misdemeanor and gross misdemeanor cases and a superior court handles felonies. Throughout this article, we refer to the different court systems in Washington as jurisdictions (n = 8) and in Illinois as counties (n = 7).

We asked respondents a series of questions about the impact monetary sanctions had had on their lives financially, materially, and emotionally, including “How have your LFOs affected your ability to get your life in order?,” “How much do you worry about your LFOs?,” and “How do you make payments?” Particularly in regard to employment, we asked about the respondents’ occupation, numbers of hours worked per week, periods of unemployment, and how their criminal record, as well as LFOs in particular, shaped their ability to find a job. At the time of the interview, 49 percent of respondents were currently employed, 27 percent were unemployed but looking, and 24 percent were unemployed and not looking. Although individuals’ current employment statuses were recorded, the focus of the broader research project was on both the present and past impact of monetary sanctions on the lives of individuals with felony and misdemeanor convictions. Thus, the accounts of respondents reflected any impacts to employment rather than solely those on employment at the time of the interview. Many respondents described precarious employment situations, having started new jobs within a few days of their interview, or were recently unemployed.

In addition, we conducted a combined three hundred hours of courtroom observations across the same jurisdictions we recruited respondents. We observed traffic, misdemeanor, and felony proceedings as well as LFO assessment and payment review hearings. We recorded handwritten field notes while observing due to restrictions on recording devices and then later typed these observations. In the field notes, we documented conversations among and between court personnel and individuals with LFOs, case information, general descriptions of the courtrooms, and local court practices. Because discussions regarding ability to pay, sources of income, payment amounts, compliance with LFOs, and payment schedules occur in open court in Illinois and Washington State, we observed a range of cases involving individuals with differential access to financial resources. For example, in Illinois we saw a young woman make a one-time payment of \$4,700 on the day of her sentencing and others who struggled to make a \$10 payment over multiple visits. These observations also provided insight into the practices used when individuals fail to comply or appear for court.

To analyze the interview data, we identified themes in the transcripts regarding labor market participation and court processes. From there, we constructed a codebook and coded interview transcripts using NVivo 11. Key codes used to analyze our interview data include conversations of employment history, stated struggles with accessing and maintaining employment, experiences attending court, consequences for failure to pay LFOs, discussions about failing to appear at hearings, employer reactions to criminal justice system involvement, access to financial resources, and transportation. Using this coding scheme, we identified both barriers to accessing employment previously captured in the literature as well as several less explored processes related to the court bureaucratic system used to manage LFOs.

Once we had identified these themes among the interview data, we examined the field notes for interactions that reflected similar themes including mentions of employment, requirements for appearance, failure to appear, and consequences for nonpayment. We then wrote analytic memos to describe the similarities and differences in court proceedings within each jurisdiction and summarized the coded data. Although criminal justice systems in Illinois and Washington State operate differently in terms of structure and laws, we came to

identify a broadly defined conceptual understanding of procedural pressure points that incorporated the variation within and between states. This concept aims to provide a common vocabulary in which to discuss elements of these processes and the consequences they produce.

## FINDINGS

Across Illinois and Washington State, courts relied on various bureaucratic processes in an effort to manage and monitor collection of LFOs. Fines, fees, restitution, and interest were often but not always managed as a lump sum, blurring the distinction between punishment and administrative costs related to the use of the system. In the post-sentencing process, individuals either paid their LFOs in full or set up a payment plan. If they failed to pay or were inconsistently paying, individuals were notified via mail or in person during hearings that they needed to come back to court to make a payment or explain why they could not do so.<sup>4</sup> Missing payments also triggered driver's license suspensions, which for many respondents who choose to drive anyway led to a misdemeanor charge for driving while a license is suspended. Failing to appear at court hearings often led to a failure to appear warrant. Once a warrant was issued, individuals could be arrested, placed in jail, or in Washington State, could file a motion and appear before a judge to have their warrant be quashed for a fee.

Conceptualizing each step of the LFO management process as a procedural point that can be scrutinized allows us to narrow in on the consequences and transaction costs of each decision rather than the process as a whole. Moreover, this concept helps identify particular points in the system of managing payments that are particularly burdensome and counter-productive and thus helps improve court practices and increase people's capacity to be successful postconviction. We focus our discussion here on three procedures intended to enforce and monitor payment: payment review hearings, failing to appear at these hearings, and driver's license suspensions. These procedures and their consequences disrupted labor market participation, particularly for low-income individuals, making it more difficult to pay off debt and further embedding them in systems of justice.

### **“It Takes Forever to Get Up Out of There”: In-Person Review Hearings**

As mentioned, monetary sanctions are a part of nearly every sentence imposed in the jurisdictions studied. Judges in Illinois and Washington State often stated the range of fines that could be imposed for a particular offense prior to the agreed-upon sentence, but rarely specified the amounts of all of the additional court costs and fees out loud. One judge in a rural county in Illinois read, “A class C misdemeanor is punishable by up to thirty days in jail, up to \$1,500 fine.” Once the negotiated sentence was agreed to, the judge read that the actual sentence was a “\$200 fine plus costs and six months of supervision.” In this particular county, these costs ranged from an additional \$500 to more than \$2,000, depending on the

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<sup>4</sup>A number of counties and jurisdictions in Illinois and Washington State utilize private collection agencies to collect unpaid LFOs. Based on our knowledge of court processes, debt that has been sent to collections sometimes triggers similar court appearances described here, sometimes becomes a civil judgment, and other times does not require any further interactions with the court. The use of these agencies likely creates a different set of obstacles for those unable to pay. A few respondents reported interactions with collection agencies. The processes involved for those who may be paying collection agencies are beyond the scope of these data.



offense. In Washington State, although most judges specified some fees during sentencing such as a public defender fee, criminal conviction fee, and a Victim Penalty Assessment fee, additional costs such as interest, community supervision fees, and mandatory drug testing were rarely if ever mentioned. Although fines in both states can be negotiated or waived, some fees and costs are considered mandatory. Evident in the language used in the court, these “costs” are not considered part of the punishment itself, but instead as part of the cost of participating in the system. As Alexes Harris (2016) writes, they reflect a “pay to play” mentality of the court.

Because the amounts of monetary sanctions were often not highlighted as the most notable part of the sentence or plea, many respondents reported not knowing that they had agreed to such a large amount. Janet, a woman interviewed in Illinois, discussed not fully realizing what she was agreeing to before pleading to a sentence that included \$3,000 in monetary sanctions. She said at the time her focus was on avoiding jail and exiting the court process as quickly as possible and not on the costs sentenced. “I think it’s unfair because when you’re in that [situation], you’re not thinking logically. You’re thinking freedom. And so I’m gonna tell you whatever you want to hear. You want money? All right, as long as you ain’t taking me. And then once we’re out of the courthouse and I moved on with my life, and you think you granted [*sic*] this for me without a job, and then want to know why I’m in your courthouse three months later, because you want to know where my money’s at.” Consistent with work on the pretrial experience (see Feeley 1979), several respondents mentioned quickly pleading to their original cases to avoid having to return to court. Much to their dismay, they soon realized this plea deal did not necessarily mean the end of their court appearances if they were not able to pay their LFOs in a timely manner.

All seven counties studied in Illinois and at least two of eight jurisdictions in Washington State mandated in-person review hearings when the payment of LFOs was not completed in a timely manner. These hearings created an additional and often separate time commitment to other types of court-related appearances, such as probation check-ins, drug treatment appointments, or anger management classes. The frequency of the hearings varied by court, ranging from each week to every few months. The primary purpose of these hearings in Washington State was for judges to gather information to assess when it appeared nonpayment was willful (*Bearden v. Georgia*, 1983).<sup>5</sup> Judges would then use their discretion to decide whether to impose additional punishments for noncompliance. In contrast, judges in Illinois were largely unconcerned with willfulness. Instead, individuals with outstanding LFOs were required to appear before the judge with either some amount of payment or a reason for why they were not making a payment that day. Although judges sometimes threatened to sanction individuals with jail time for missing payments, we rarely observed an individual not already in custody actually sanctioned in either state. Rather, respondents reported they would simply tell the judge that they did not have the money and were given more time and another court date. As a result, these hearings for some individuals went on indefinitely following the case.

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<sup>5</sup>. *Bearden v. Georgia*, 461 U.S. 660, 103 S. Ct. 2064, 76 L. Ed.2d 221 (1983).

Respondents in these jurisdictions aired concerns regarding the strain these hearings placed on their work commitments. Across both states, these payment compliance hearings frequently required individuals to appear at court on time only to wait, sometimes for hours, for their case to be called. Respondents in Illinois commonly complained about judges appearing an hour after the time they had been notified to appear or mentioned needing to wait for the entire court session only to spend a few minutes, or even seconds, dealing with their case. As one respondent in a rural Illinois county lamented, “I don’t like this because you have to be here at 8:30 a.m., and he [the judge] don’t start calling people until 10:30 a.m., sometimes. It’s ridiculous because I’ve missed a whole day’s work for this.” These hearings were not scheduled for a specific time on the day’s court docket and were mixed in with all of the cases for the day. A respondent in a suburban county in Illinois expressed frustration that other cases were prioritized before her own. “What I don’t understand is, you’ve got people like me that has a job, but yet, I may have done wrong. I own that. But, why is you taking the people sitting in jail, before me? They’re not going anywhere. If you release them, they’ve got all day to be released. Let me get back to work.” Although both the frequency of these hearings and the motivation for them varied between and within states, the outcomes were similar in that these additional court appearances directly strained individuals’ ability to work.

Respondents in jurisdictions with regularly held review hearings expressed frustration at how repeated court appearances had a direct impact on their earnings and, as a result, their ability to pay off their court debt. Teddy, a man from Illinois who owed around \$2,300 across multiple jurisdictions at the time of our interview, reported that taking the day off work affected his ability to make payments toward his monetary sanctions. As he explained, “That’s a whole \$60 right there that’s being taken out of my paycheck because I had to take a day off. That’s \$160 that could be toward my bills or toward that file they want. It’s affecting me.” The missed wages as a result of taking time off work (\$60) on top of the cost of the LFO payment (\$100) impinged on his ability to meet other needs. Previous research notes how court debt itself infringes on individuals’ lives. This procedural hassle added another dimension of strain on time, finances, and employment. By way of contrast, Jim from Illinois was able to use a paid vacation day to deal with his payment hearings. He thus characterized these hearings as a mere inconvenience rather than a heavy burden, saying, “I took a paid vacation day to come here and mess with this bull crap. I got ten of them left. I’m good. I’m still getting paid while I’m sitting here talking to you.” The level of strain on employment varied by the type of employment and how accommodating that employment could be to these interruptions. For those with paid time off, flexible scheduling, and salaried income, the procedural hassle of these hearings was less disruptive.

Regardless of the flexibility granted by paid time off, several respondents noted that their employers were suspicious as to why they had to continue taking time off to attend court, leading to a strained relationship with employers who might have already accommodated a stigmatizing criminal record. This was the case for Larry, who had been charged with more than \$14,000 in fines, fees, restitution, and costs related to a domestic dispute charge. Following a recent job loss, he had fallen behind on his monthly payments of \$75 toward his LFOs. This prompted the judge to increase the frequency of his hearings to every two weeks until he caught up, threatening to revoke his conditional discharge and resentence the case

with jail or prison time. At the time of the interview, he had caught up enough with his payments that the hearings were scheduled once a month. When asked how his court debt had affected his life, Larry responded, “The employment, not so much really except for when I have to go keep on telling them I have to go to court. That’s the big one because they want to know why. What have you done?” These frequent hearings led to attendance issues for him at work that drew suspicion from both his boss and coworkers. He also remarked, “It’s the worst thing you have to tell your employer. Well, you’re going to court again? Everybody wants to know why you’re going to court and I never tell them anything. I go, It’s none of your business. It’s personal.” Not only does missing work because of these hearings carry an opportunity cost, but the frequency of these short payment hearings also strained Larry’s relationship with his employer.

The procedural pressure on employment also varied by an individual’s financial means and how quickly and easily LFOs could be paid off. Those who could not pay their debts off quickly were often required to attend these hearings over much longer periods or with more frequency than those who could afford regular payments. Respondents who could make only small payments reported needing several years to pay off the debt. In Illinois, the scheduling of these hearings was further complicated by a lack of consideration for ability to pay. Conversations between the judge and the individual with LFOs surrounding payment typically structured expectations for the timing of the next court date rather than any real measurement of financial ability. Al, a forty-four-year-old man in Illinois, described how courtroom interactions typically played out in one small, rural Illinois jurisdiction. “I just hear [the judge], ‘Hey, where do you work? You ain’t got no money?’ [defendant], ‘I’ll get you next month.’ [Judge], ‘When [do] you get paid?’ [Defendant], ‘Oh, I get paid Friday.’ [Judge], ‘Oh, okay. You owe \$200, have it paid off by next Friday.’ They have you on a weekly schedule. It’s all about money. You know, and it’s crazy. You ain’t asked that lady if she has five kids to feed.” Al’s observations of courtroom practices captures the different level of pressure those who struggle to make payments face relative to more financially stable defendants. Chen, a man in Washington State who lived rent free with his wealthy sister and had a flexible work schedule, reported that making payments was never an issue. “I worked more just to get that done faster. I could’ve worked less and I could still be paying on it now and have it impact my life less in that sense, financially or time wise, but I was just like, you know what, this is a priority. Just get it done and get it out of the way.” Chen would typically pay double or triple the minimum payment amount toward his LFOs as he had few other financial responsibilities. Thus he never had to attend a compliance hearing and was debt free within two years of his release from prison. Payment review hearings are then disproportionately straining the employment of those who are most in need of income to pay off their debt and exit the court system.

Payment review hearings functioned as procedural pressure points because they were key moments of bureaucratic procedural hassle in the monetary sanctions system. Although beneficial for avoiding jail and supervision violations and for spreading the payments over time, the constant rescheduling of payment review hearings strained employment, which further perpetuated the cycle of criminal justice contact by decreasing available income to pay off these debts. This pressure was more intense for low-income individuals who could not afford to make regular or large payments toward their LFOs and for those who were paid

hourly or who were less able to take time off of work. Additionally, the perpetual nature of these review hearings opened up the possibility for ongoing surveillance and monitoring of those with debt as it often extended their supervision or probation.

### **“I Didn’t Miss a Payment, I Missed Court”: Failing to Appear and Warrants**

While payment compliance review hearings shaped employment experiences, failing to appear was even more consequential. Throughout our observations, failure to appear at these hearings often resulted in a bench warrant, which granted the state the authority to arrest and hold an individual in jail either until paying a bond amount or fee determined by a judge or until the next hearing. Imposing such a financial penalty to a warrant is a common practice in other states as well (see Cahill 2012; Flannery and Kretschmar 2012; Diller 2010). These warrants often turned routine traffic stops or other law enforcement interactions into arrests. In some jurisdictions, amounts for FTA bench warrants were set to the amount of outstanding LFOs, or, in one Washington jurisdiction, just the restitution. For some, this meant tens of thousands of dollars—the highest observed bond set for an FTA being \$167,882.37 in Washington State. Terrence from Illinois explained the process: “If you owe \$2,000, you got a warrant for that. You know what I’m saying? But if you come to court and get, I don’t care how much it is, \$50, \$30, reschedule.” Terrence stresses the benefits of coming to court no matter the payment, but respondents missed hearings for a variety of reasons. Research on FTA warrants has found that low-income individuals are at particular risk for receiving these warrants given their limited access to transportation, incomplete information, and competing work or childcare responsibilities (Zettler and Morris 2015; Rosenbaum et al. 2012). By setting bond amounts equal to the outstanding debt, courts attempted to recoup the entirety of what is owed regardless of the financial strain on individuals’ lives by forcing them to either pay their LFO balance or stay in jail.

For low-income individuals who could not or did not show up to their compliance review hearings and could not afford to pay the set bond or fee, these warrants resulted in arrests and short stints in jail. These warrants were particularly consequential to employment, as in the case of Darius, a thirty-six-year-old man in Washington State who owed LFOs for a felony conviction and was issued a FTA warrant after missing a payment compliance review hearing. The warrant then resulted in a short stint in jail. He described it this way:

[This particular county’s] LFOs hit me the worst because they have reviews concerning their LFOs. During these reviews, if I’m not able to get notice of the court date, the review date, they immediately put an NCIC [National Crime Information Center] nationwide warrant on you. ... I was just stopped on a random stop. ... they arrested me and held me in their county jail for two days. Then I was transported to [the county where I missed my review hearing] and held until my court date for another two days only for the judge to say, “You haven’t been making payments.” I lost my job. It was very important for me at the time because I had no source of income.

Like many people with felony convictions, Darius had a precarious housing situation. As a result, he missed his summons for court in the mail and subsequently missed his court date. After a warrant was issued and he was arrested and jailed for four days, he lost his job.

Being incarcerated, if only for a few days, is shown to have a negative impact on labor market participation (Harding et al. 2018). In Darius's case, being arrested for a FTA cost him his employment and shaped his future ability to make payments toward his court debt. In Illinois, even when these warrants only resulted in being booked for an arrest and avoiding jail, they still led to unexplained absences from work. A few respondents reported driving to work when they were pulled over for a more routine traffic stop only to be taken to jail immediately until they were able to post bond later that day. Overall, FTA warrants for compliance review hearings not only strained labor market participation, but made it more difficult for low-income individuals to make the payments necessary to comply with payment orders.

While some respondents reported they were unable to physically get to hearings, fear over being sanctioned with jail time for nonpayment kept them from coming to court. Scholars find that the threat of incarceration can lead to system avoidance, or purposefully avoiding institutional contact to avoid surveillance and further criminal justice contact (Goffman 2014; Brayne 2014). Chris, a thirty-six-year-old man in Illinois who owed \$1,300 at the time of our interview, said he avoided court when he did not have enough money to make payments toward his LFOs. When asked the reason for his most recent warrant, he said, "Not going to court. I'm not going to lie to you, bro. If I don't have at least \$15 to \$200 in my pocket to give him, I don't go." This system avoidance only increased the likelihood of being served an FTA warrant and jailed as a result. In one jurisdiction in Washington State, multiple respondents reported that the court did not jail people solely for failing to pay their LFOs. However, Angelique, a woman we spoke to at a soup kitchen, told us that she refuses to go to court out of fear of being thrown in jail, despite being summoned multiple times related to nonpayment of her LFOs from a charge of riding public transit without a ticket. The stress of possible jail time, even when it was not likely to occur, was a frequent fear among those unable to pay and those with outstanding debt.

Although not appearing in court often led to the imposition of a warrant, we observed instances when defense attorneys in Washington State successfully made a case that their clients should be given another chance to appear. During one observation, a man who was not present in court had his attorney request to reschedule the hearing rather than issue a warrant: "I have every reason to believe he would come to court," the defense attorney told the judge. "I have always been in good contact with him and his family. I ask that you hold the warrant today and allow him to come back tomorrow. He can come in 10:30 a.m." The 10:30 a.m. docket for the dates the defense attorney proposed were all full, so the judge pushed the attorney to accept a 3:00 p.m. docket. The defense attorney continued, "He is employed between noon and 8:00 p.m. and I'm trying not to interrupt employment if possible." Discussion went on between the judge and attorneys. Then the defense attorney caved: "Okay, we ask that this be set over to the 3:00 p.m. docket tomorrow so he can give his employer enough notice."

Consistent contact with attorneys, checking in with the court, payment history, and a person's record of FTAs often came up in conversations during hearings when attorneys advocated to issue or not issue a bench warrant. Those with unpaid LFOs who were able to stay in contact with their attorneys demonstrated their compliance to the court and then had

an advocate who could avoid the issuance of the warrant. However, in multiple Illinois courts, hearings did not require attorneys and thus no one was present to advocate against a warrant if the individual failed to appear. We observed judges at the end of each docket go through the list of no-shows with the prosecutor, setting bond amounts and warrants for those with misdemeanor and felony cases. The presence of defense attorneys is thus important within the process of imposing bench warrants for failing to appear at review hearings, a practice not present across court systems.

### **“I’m Already on Thin Ice”: Driver’s License Suspensions**

Courts often use suspending or revoking driver licenses as both a punishment for nonpayment and a mechanism for enforcing the collection of monetary sanctions on a variety of both criminal and traffic cases (Carnegie and Eger 2009). Although this practice has changed rapidly in the past few years because of new legislation and civil suits, millions have had their licenses suspended for failure to pay monetary sanctions (Marsh 2017; Fernandes et al. 2019). These suspensions made it more difficult to get to court and comply with court orders, particularly in rural areas, and led to additional convictions. Conceptualizing driver’s license suspensions as a procedural pressure point highlights the ways they affect employment indirectly by exacerbating the procedural hassle of the payment management system.

Research on driver’s license suspensions as a result of monetary sanctions notes that this practice has direct impacts on labor market participation by making it difficult to get to work and seek new employment (Carnegie 2007; ACLU 2017). Tammy, a white woman in Washington first became involved in the criminal justice system after she was stopped for speeding and had her license suspended for her inability to pay the traffic fine. As she explained, “[Having a license means] more job opportunities because I could get somewhere where they’re paying more or [giving] more hours. Even looking for a job in this area because why would I look for a job across town when that’s gonna be a good hour, hour-and-a-half walk every day to and from work.” Respondents like Tammy similarly noted that not having a valid license made it more difficult to pay off their monetary sanctions given their diminished employment opportunities. Particularly in rural and suburban communities, the ability to drive was essential to employment. A respondent in rural Illinois remarked, “No public transportation down here. Ain’t no buses down here like it is in the city up north. You don’t have a car down here, you’re basically stuck.” Taken together, these respondents point to the difficult choice individuals sanctioned with driver’s license suspensions needed to make: drive on a suspended license to get to work or find employment and risk incurring additional misdemeanor charges; or do not drive and constrain their ability to access employment opportunities.

Many of the respondents whose licenses had been suspended chose to drive anyway, some explicitly citing a need to get to work or court as outweighing the risk of incurring new charges. For Rob, a man living in a rural area of Washington State who had a suspended license and about \$2,000 in court debt at the time of our interview, driving was a necessity if he was to be able to pay off his LFOs. When asked how not having a driver’s license affected him, he responded, “Caused a lot of stress in my life. Worrying about if there’s a



Moreover, some employers require a valid driver's license for employment. These jobs are inaccessible to those attempting to earn income to pay off court debts and either exit the system or minimize the number of court appearances required of them. Tim, a self-employed rancher in his thirties in Washington State once convicted of driving under the influence when he was eighteen, explained that, although he understood the difficulty poor individuals face when their licenses are suspended, he could not hire anyone without a valid license. He said, "I'm a business owner, and the first question I ask is do you have your own transportation? [If they don't] then, you're probably not gonna hire that person, because the job still needs to get done. Whenever I don't show up, my horses still have to get fed." Thus, even when individuals chose to drive on a suspended license, our respondents suggested that employers may screen out applicants who cannot produce a valid one.

Although driving license suspensions can facilitate more strain on labor market participation, variation in how jurisdictions handle driving on a suspended license either increased or alleviated some of this strain. For example, Tony in Illinois explained during an interview that after repeatedly driving with a suspended license, his license was revoked. He remarked, "So therefore I was suspended, go to court, fined, didn't have the money, didn't pay the fine. But of course I wanted to keep driving. And I'm driving on the fine so, get another one, then they make it a revoke. A revoke, they make it a felony, there it just adds up and adds up. And before you know it you owe \$3,000." Tony didn't know about the very first suspension for a missing emissions sticker. After he was unable to pay the fines for the first misdemeanor charge of driving on a suspended license, the suspensions spiraled. For Tony, the simple act of driving turned into a felony conviction that came with more fines, fees, and procedural hassle. In contrast, a few Washington State courts have recently stopped actively pursuing cases of driving while a license is suspended when the suspension is for unpaid LFOs (ACLU 2017). Although individuals in those locations may still struggle to pay off the initial debt, this prosecutorial practice prevents the cumulative and additive nature of these convictions and LFO debt.

## DISCUSSION AND CONCLUSION

Focusing on procedural pressure points in the justice system's management of monetary sanctions illuminates how different post-sentencing practices work to further surveil and disadvantage the poor. Although the location of these points and the strain on individuals' employment status varied depending on the practices of court systems and individuals' access to resources, the way these pressure points destabilized the employment of those burdened with debt was largely the same. Hearings to review payment compliance were seen as helpful in avoiding additional sanctioning and punishment, but ultimately strained the ability of wage-workers and those with traditional work schedules to maintain steady employment and earnings essential to paying off LFOs. Failing to appear at these hearings was even more consequential for employment because it often resulted in bench warrants, subsequent arrest, and brief incarceration. Suspended driver licenses for failure to pay only exacerbated this strain given that it made attending court hearings and accessing labor markets more difficult. These mechanisms of compliance ultimately undermined the system's stated goals, in this case debt collection, and ensnared low-income individuals in a perpetual system of court surveillance.



Conceptualizing these procedural pressure points embedded in these court surveillance systems may have important implications for other outcomes of interest to criminal justice scholars and policymakers. The pressure to pay off LFOs to escape court surveillance or elude jail time coupled with the multitude of barriers straining access to formal labor markets may push some to illicit markets. Warrants have been shown to motivate some to exit the formal labor market, where risks of detection are heightened, and toward illegal forms of income (Goffman 2014; Brayne 2014). In addition, the frustrating and transactional nature of these hearings may speak to a perceived lack of procedural justice and undermine desistance from crime (Lind and Tyler 1988; Thibaut and Walker 1975). Finally, the strain of procedural pressure points may vary in important ways by race, ethnicity, gender, and family status. Further research is therefore needed to explore such variation in experiences with monetary sanctions.

Some scholars have argued that monetary sanctions can be a useful tool as an alternative to more severe sanctions such as incarceration or community supervision when LFO amounts are kept to a manageable level for indigent individuals (Brett and Nagrecha 2019; Colgan 2019). Using graduated sanctions or day fines, fines calculated based on an individual's income are one way, advocates argue, that courts can assess manageable LFO amounts that enable individuals to exit the court system in a reasonable amount of time (Colgan 2018, 2019; Brett and Nagrecha 2019). Further, when used appropriately, restitution in particular allows individuals to repair harm done to victims or their communities. Researchers have found a link between restitution completion and lower recidivism rates for both adults and juveniles, but only when the payment amounts were financially feasible (Outlaw and Ruback 1999; Colgan 2019; Ervin and Schneider 1990; Jacobs and Moore 1994). Additionally, scholars have called for the elimination of court fees that raise revenue for both the government and the court, instead funding the courts through taxes (Brett and Nagrecha 2019).

Broadly and locally, the landscape of the system of monetary sanctions is rapidly changing. In 2018, Illinois's state legislature passed the Criminal and Traffic Assessment Act to create a sliding scale waiver for individuals whose income is up to 400 percent of the poverty line to limit the burden of court costs and fees from criminal offenses. This waiver eliminates court costs for those below the poverty line. Within Washington State, as a result of the judicial outcomes in the *State of Washington v. Blazina* (2013) and *State of Washington v. Ramirez* (2018), courts are mandated to consider present and future ability to pay when assessing LFOs.<sup>6</sup> In June 2018, the Washington State legislature implemented a new law barring courts from imposing any nonmandatory financial obligations on indigent defendants and discontinued the use of a 12 percent interest rate added to all delinquent fines and fees. These changes indicate a growing concern over the disproportionate burden monetary sanctions places on the poor, but these laws do not automatically apply to those holding outstanding debt prior to these changes. Even more, these efforts to more seriously consider ability to pay when imposing LFOs do not apply to restitution in either state, to punitive fines in Illinois, and mandatory fees in Washington State. Finally, such discussions

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<sup>6</sup>. *State of Washington v. Blazina*, 182 Wn.2d at 839 (May 2013); *State of Washington v. Ramirez*, No. 95249-3 (September 2018).

and reform efforts rarely consider how the process of managing court debt itself can strain labor market participation and thus further impede individuals' ability to pay.

Although some may argue that holding more frequent payment review hearings enables courts to provide individuals with ample opportunity to make a case for their inability to pay and escape formal sanctioning, we find that these practices are counterproductive and affect people's future ability to pay by straining labor market participation. Advocates recently called for ending the practice of issuing warrants for those who fail to appear at nonpayment review hearings and even eliminating court summons for payment notices and nonpayment review hearings overall (Brett and Nagrecha 2019). Having an informal process or mechanism that allows individuals to check in about their payment compliance and request waivers when financial circumstances change could considerably lessen the strain on individuals who work during the court's operating hours or cannot get to court for other reasons. Further, providing access to attorneys to explain payment compliance can help individuals understand their legal options and advocate on their behalf. Finally, decoupling driver's license suspensions from unpaid LFOs could greatly reduce the cyclical and enduring nature of court debt (Fernandes et al. 2019).

This article highlights the important way courts manage people over time and create a cycle of criminal justice embeddedness. Moving forward, research examining how shifting policies around the system of monetary sanctions shapes the lives of individuals, particularly the poor, needs to pay particular attention to not just the amounts imposed, but also the method used to manage payments. This article also contributes to a larger conversation on court surveillance and labor market experiences of the justice-involved. Through the conceptualization of procedural pressure points, we suggest that there are a multitude of ways the justice system shapes the labor market experience of those entrenched in it; these can often be additive. Even with efforts to decarcerate and to destigmatize criminal records, embedment in inefficient systems laden with procedural pressure points would continue to strain the justice-involved.

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**Table 1.**

Respondent Demographics

	IL N = 67 Percent	WA N = 59 Percent	Total N = 126 Percent
<b>Gender</b>			
Female	58	59	59
Male	40	37	39
Transgender	1	2	1
Declined	0	2	1
<b>Race</b>			
Black	55	12	35
White	37	58	48
Asian or Pacific Islander	1	3	1
Native American	0	8	4
Multiracial or other	4	17	10
Declined	1	2	2
Latino or Hispanic	12	22	16
Income less than \$1,500/month	60	68	63
<b>Employment (at time of interview)</b>			
Employed	49	49	49
Unemployed, but looking	27	27	27
Unemployed, not looking	24	24	24
<b>Ever experienced homelessness</b>			
Yes	48	64	56
Don't know	10	2	6
<b>Criminal case</b>			
Felony case	31	15	24
Misdemeanor case	22	31	26
Both felony and misdemeanor	46	53	49
Don't know	0	2	1

Source: Author's calculations.