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## “Are You Able-Bodied?” Embodying Accountability in the Modern Criminal Justice System

Michele Cadigan<sup>1,\*</sup>, Tyler Smith<sup>1,\*</sup>

<sup>1</sup>University of Washington, Seattle, WA, USA

### Abstract

Monetary sanctions are a common tool for enforcing accountability within the criminal justice system. However, it is unclear how individuals with disabilities who have a limited capacity to work interact with the system of monetary sanctions. Drawing on courtroom observations and interviews in Washington State, we find that although the court does take disability into account when imposing economic sanctions and monitoring payment compliance, individuals with disabilities end up in a perpetual cycle of administrative hearings that can result in serious financial and health consequences for those involved. Implications for findings are discussed.

### Keywords

disability; monetary sanctions; workfare; criminal justice system

### Introduction

Penal practices that directly or indirectly prioritize labor or workforce participation as a form of rehabilitation and accountability are an integral part of the modern criminal justice system (Gurusami 2017; Wacquant, 2009). Monetary sanctions, also known as legal financial obligations (LFOs), are an example of this practice as courts attempt to make individuals responsible for “using” court resources by financially compensating the state and punishing them when they cannot pay (Friedman & Pattillo, 2019; Harris, 2016). For those who cannot immediately pay in full, this practice requires them to seek employment to fulfill these court-ordered obligations and exit the system—a difficult task for many indigent defendants.

However, this work has yet to examine the experiences of individuals with disabilities within the system of monetary sanctions. This is important because disabled people are overrepresented in the criminal justice system, have an even more difficult time accessing the labor market than nondisabled people, and are often poorer than the general population (Giertz & Kubik, 2011; L. Harris, 1994; Jenkins, 1991). Thus, the expectation of workforce

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**Corresponding Author:** Michele Cadigan, Sociology, University of Washington, 211 Savery Hall, Box 353340, Seattle, WA 98195, USA. [mlcadig@uw.edu](mailto:mlcadig@uw.edu).

\*Equal authorship

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participation that is inherent to the practice of monetary sanctions presents unique difficulties for this population. To understand the relationship between disability and LFOs, we examine what considerations the justice system gives to individuals with disabilities when imposing and monitoring compliance with monetary sanctions. Furthermore, how do these different practices and policies shape the experiences of people with disabilities burdened with this debt?

Drawing on 169 hours of ethnographic observation of court hearings and 59 interviews with individuals convicted of misdemeanors or felonies in three Washington State counties, we found that the process for assessing LFOs and monitoring payment compliance presented unique challenges for individuals with disabilities. We define disability as a set of limitations that prevent people from pursuing collective, social, and economic pursuits (Wendell, 1996). In this case, disability included physical, cognitive, or psychiatric limitations, both visible and nonvisible, that individuals we interviewed and observed claimed limited or prevented them from working. Although there is likely a significant amount of nuance in how individuals with different types of disability experience the justice system, our goal was to provide a descriptive account of how disability, broadly defined, may shape experiences with monetary sanctions.

Even though the courts did consider disability when assessing ability to pay and determining if noncompliance with payment orders was willful, the laws governing monetary sanctions required the imposition of some fines and fees nonetheless. As a result, individuals unable to work because of their disability were kept under the surveillance of the criminal justice system seemingly indefinitely. Under this surveillance, they were subject to routine administrative reviews where they were required to continually reassert their disability status to avoid the legal consequences of nonpayment. Overall, individuals with disabilities reported they struggled to pay their LFOs and discussed the real and potential health consequences they faced while attempting to balance these legal debts with other financial and medical needs. These findings underscore a previously unexplored mechanism by which the criminal justice system furthers economic and social marginality among disabled populations.

## **Disability and the Criminal Justice System**

The surveillance and control of individuals with disabilities have a long and sordid history. Individuals with disabilities have often been framed as dangerous and in need of containment (Ben-Moshe, 2013; Foucault, 2003). Individuals with developmental and psychiatric disabilities in particular have come to be seen as prone to violence and in greater need of strict supervision (Mueller et al., 2019). These narratives linking disability to deviance led to the institutionalization of disabled people in mental hospitals during the 18th century, and although many of these institutions were closed in the 20th century, scholars suggest these populations have simply been redistributed across other institutions of control such as nursing homes, treatment centers, and correctional facilities (Ben-Moshe, 2020; Parsons, 2018).

Although it is hard to estimate the exact number of individuals with disabilities entangled in the justice system today (see Smith et al., 2008), evidence suggests they likely make up a large portion of the justice-involved population (Bronson et al., 2015). Researchers find individuals with disabilities, such as those related to mental health, may be more vulnerable to arrest than the general population due to high rates of homelessness and substance abuse (Fischer, 2005). Conservative estimates find at least 39% of incarcerated individuals have at least one chronic physical or mental health condition (Wilper et al., 2009). Furthermore, about 15% have multiple cognitive, visual, hearing, and/or self-care disabilities (Bronson et al., 2015). Compared with the general population, individuals in prisons or jails have a greater likelihood of experiencing chronic conditions such as asthma, arthritis, and some forms of cancer (Binswanger et al., 2009).

Despite the number of individuals with disabilities in the criminal justice system, most research on the proliferation of the carceral state largely ignores this population (Ben-Moshe, 2020). What research does exist suggests the justice system is ill-equipped to deal with this population and that correctional institutions can even be deadly for those with various disabilities due to institutional mismanagement (Fischer, 2005; Herbert, 2019; Petersilia, 2000). Even family members of defendants claim there is inadequate support for individuals with disabilities throughout the process and a lack of sentencing options that account for this population's particular needs (Cockram et al., 1998). Furthermore, individuals with disabilities encounter unique difficulties navigating life postincarceration and are at increased risk of returning to prison or jail (Ben-Moshe, 2013; Bunn, 2018).

Although this research is important, there is a dearth of studies that explore the experiences of individuals with disabilities with forms of criminal punishment outside of direct incarceration. Engaging in such research has become increasingly critical as scholars document the expansion of punishment practices such as the increased use of probation (Phelps, 2017), electronic home monitoring (Jones, 2014), coercive treatment programs (Gowan & Whetstone, 2012), and monetary sanctions (Harris et al., 2010). Not only is the United States experiencing an era of mass incarceration, but it is experiencing what might rightly be called an era of mass punishment more generally. A greater exploration of how different forms of punishment affect those with various disabilities will serve to further our knowledge about how the criminal justice system further marginalizes these individuals.

## **The Role of Labor in Criminal Justice Punishment Practices**

Central to understanding the effect of the modern criminal justice system on individuals with disabilities is an examination of the increased use of labor as an aspect of punishment. Modern state bureaucracies are shaped by the "new economic discipline" of neoliberal governance emphasizing personal responsibility and celebrating the benefits of labor market participation (Schram et al., 2008; Wacquant, 2010). Social hardship and deviance are seen as resulting from personal moral failings rather than structural issues, and state institutions have increasingly focused on the direct or indirect enforcement of labor participation as a tool for the development of moral accountability among the poor (Korteweg, 2003; Wacquant, 2009).

These logics extend into systems of justice where labor and workforce participation are used as methods of both retributive and rehabilitative justice (Goodman, 2012; Gurusami, 2017; Middlemass, 2017). Sanctions such as community service directly extract labor from individuals as a primary mechanism by which personal accountability is demonstrated (Herrera et al., 2019). Seeking or maintaining employment is also often a formal or informal requisite to maintain compliance with community supervision requirements (Doherty, 2016; Simon, 1993). Gurusami (2017) notes that securing stable employment is viewed by state actors as a necessary tool to demonstrate commitment to rehabilitation, and failure to find stable employment can open individuals up to threats of reincarceration. Monetary sanctions also indirectly require engagement in the labor force, and those who fail to pay can face further consequences such as additional fees and costs and jail time (Cadigan & Kirk, 2020; Middlemass, 2017).

However, these conditions can present challenges for individuals who have a limited ability to work. Community service work sites can and often do discriminate against individuals with disabilities, and as a result, these individuals have a harder time complying with required hours (Herrera et al., 2019). Although there is some evidence that courts are more lenient on folks with physical limitations preventing them from completing community service orders, individuals with disabilities can and are incarcerated due to failure to fulfill these requirements.

People with disabilities also encounter greater difficulties accessing the labor market, and many are unable to work (Harris, 1994). Those who are employed often earn less than the general population and are more reliant on economic resources outside the formal labor market, and labor prospects are even worse for women and people of color with disabilities (Maroto et al., 2019). Add on the stigma of a criminal record (see Middlemass, 2017; Pager, 2003), and securing employment becomes an almost impossible task. If labor market participation is a mechanism through which individuals' commitment to rehabilitation is measured, individuals with disabilities may be further marginalized and handicapped by punishment practices that they cannot comply with.

## The Case of Monetary Sanctions

Monetary sanctions refer to the range of financial penalties that individuals may be assessed and include fines, fees, surcharges, and restitution (Harris et al., 2010). LFOs have become a common method of punishment and are imposed in nearly all cases including citations, traffic violations, misdemeanors, and felony charges as well as in deferred prosecution (Shannon et al., 2020). Almost all incarcerated individuals in the United States have been assessed LFOs, and 80% of those on community supervision for misdemeanors or felonies have fines and fees (Harris et al., 2010). According to a report in 2011 by The National Center for Victims of Crime, approximately 10 million people owe more than US\$50 billion in court debt across the country.

A burgeoning literature on monetary sanctions documents how these debts shape individuals' lives and negatively affect their employment prospects, health, families, and ability to exit the justice system (Colgan, 2018; Harris et al., 2011; Meredith & Morse,

2017), and how these effects are disproportionately concentrated in communities of color (Harris et al., 2010). In addition, the discretion available to court actors in the process of imposing and collecting monetary sanctions has led to practices that have been described as inconsistent and inequitable (Ruback & Shaffer, 2005).

The expanded use of monetary sanctions highlights the importance of workforce participation within the justice system. Monetary sanctions are designed to shift the cost of an expanding criminal justice system onto those who are being arrested and convicted (Albin-Lackey, 2014; Martin, 2018). Accountability is demonstrated by requiring individuals to pay for the “services” provided by the court. As such, monetary sanctions are framed as a tool to promote work as a pathway to behavioral change among the mostly indigent defendants, and conversations justifying the imposition of monetary sanctions are often couched in the language of personal responsibility, societal obligation, and the rehabilitative function of work (Friedman & Pattillo, 2019). In the imposition of LFOs, a great deal of effort is put not only into determining a defendant’s ability to pay but also in emphasizing that they need to *gain* the ability to pay to exit the court’s system of surveillance and control. This is important because LFO debt can outlive many other forms of supervision and penal practices and thus individuals can shoulder this burden long after they have completed all other court orders (Harris, 2016).

As previously mentioned, the expectation of securing paid employment to pay LFOs is likely to be particularly challenging for individuals with disabilities. However, the issue of disability as it relates to monetary sanctions has yet to be examined. This study fills this gap by exploring this important intersection by examining how individuals with disabilities interact with the system of monetary sanctions.

## Method

To answer our research questions, we draw on data collected in Washington State as part of the Multi-State Study of Monetary Sanctions.<sup>1</sup> In this larger study, researchers pulled together a variety of data sources across eight U.S. states to examine the process of assessing, monitoring, and recouping court-related debt and to understand how these debts affect those who experience them. Between 2017 and 2019, the research team interviewed 59 individuals who were convicted of one or more misdemeanors or felonies and observed 169 hours of courtroom procedures in eight jurisdictions within three counties in Washington State. Counties were purposefully selected to vary in population density, socioeconomic status, and racial diversity, and our final sample included rural, suburban, and urban criminal court systems. Although the central aim of this larger project was not to examine the experiences of the disabled, themes around debtors’ physical ability to work emerged throughout our interviews and observations. For this analysis, we identified

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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 principal investigator (PI) Alexes Harris. Washington data used here were collected with the approval and support of the institutional review board of the University of Washington. Interviews were conducted by Michele Cadigan, Brian Sargent, Frank Edwards, and Emmi Obarra. Observations and field notes were completed by the coauthors as well as Maxine Wright, Devon Collins, Alexes Harris, Emmi Obarra, Audrey Omar, Betsy Priem, Anne Tseng, and Hannah Curtis.

relevant themes across these data sources to analyze the interaction between monetary sanctions and disability more deeply.

Respondents were recruited within the selected counties using a variety of convenience sampling tactics. We used a standardized screening form to confirm respondents had been assessed LFOs and that we interviewed individuals with a variety of offenses. Although our primary goal was to interview individuals who were still in the process of paying their LFOs, we did not exclude individuals who had completed their payments. Once recruited, individuals participated in semistructured interviews about the amount of LFOs they were assessed, how they managed their payments, what happened when they failed to make payments, and how LFOs have affected their lives. Interviews lasted an average of 45 min and participants were compensated with US\$15 in cash for their time.

Table 1 provides a demographic breakdown of our interview sample. Respondents were predominantly men (59%) and identified as White (58%). Most of our respondents indicated they made less than US\$1,500 a month in income (68%), and a large portion of the overall sample had experienced homelessness at some point in their lives (64%). In regard to disability, 34 respondents indicated they had some form of disability such as a chronic health condition or were the caregiver of someone with a disability. This sample was not intended to be representative of individuals with LFOs as no national database exists (see Martin et al., 2018). Rather, this sample allows us to take an initial descriptive look at systems of monetary sanctions across different contexts.

To contextualize our interview findings, we also drew on 169 hours of courtroom observations. During our observations, we noted how judges determined ability to pay when assessing monetary penalties, which included any discussion of health-related issues and caretaking responsibilities. Observations of review hearings allowed us to understand how the court handled nonpayment. We recorded our observations in hand-written notes, typed them into a document, and uploaded them to a secure server.

### **Analytic Design: The Study of Monetary Sanctions Coding Process**

Working with the broader study team, we developed a unified codebook used across all interviews and coded in NVivo 12 to make cross-site comparisons possible. This cross-site codebook focused on topical coding, where general, value-neutral topics helped organize the data into descriptive themes that could be later analyzed by smaller research teams (Richards, 2015). To create the codebook, we took a hybrid approach of inductive and deductive coding similar to that outlined by Fereday and Muir-Cochrane (2006), where the initial coding template was created a priori, but “inductive codes were assigned to segments of data that described a new theme observed in the text” (p. 88). Using this method, an initial set of topical codes were identified based on the expertise of our team, the reflections of those who had conducted the interviews, and findings from previous research.

The team then collectively coded a select set of interviews to identify new topics as they emerged and create new codes, alter existing codes based on the content of the data, and improve reliability. We repeated this process twice more with two new subsets of interviews until the team agreed we had an exhaustive set of all major topics found within the interview

transcripts. Reliability throughout the coding process was assessed at three different points by assigning coding team dyads.<sup>2</sup> In addition, the coding team met regularly to discuss the process, clarify code descriptions, and come to a consensus on passages that researchers had a difficult time placing. A similar process was used to develop a codebook for all field notes.<sup>3</sup>

### Analytic Process of Disability and LFOs

To interrogate the relationship between disability and LFOs, we examined all data from debtor interviews and field notes coded at “health,” “ability to pay,” and “willful non-payment.” We then relied on a more inductive, analytic approach to coding the data assigned to these topical codes (Charmaz & Mitchell, 2001; Glaser & Strauss, 1967). This process of analytical coding allowed us to interpret emergent themes, reflect on meanings, and generate ideas and explanations of the data that we were analyzing (Richards, 2015). After we completed our secondary coding across data types, we created analytic memos (see Emerson et al., 2011) that summarized how disability was handled by the courts when assessing ability to pay, how payment compliance was monitored, and how this process was experienced by those with disabilities.

Although the central aim of the larger project was not to examine the experiences of individuals with disabilities, themes around indigent debtors’ physical ability to work were apparent throughout the interviews and observations conducted in Washington State. As this topic has not been previously explored, we were able to leverage thick descriptions produced by ethnographic and interview data that allowed us to characterize both the process of imposing and recouping debt in real time as well as the experiences and narratives constructed by those who inhabit this space. Although our analysis remains limited without more direct inquiry into the mechanisms and consequences discussed below, we see this inquiry as an important first step in identifying the critical issue of how individuals with disabilities experience the system of monetary sanctions, and hope this study highlights the need for further exploration.

## Findings

### Law on the Books

In Washington State, case law and relatively new statutory requirements mandate that judges consider an individual’s ability to pay before imposing monetary sanctions and when considering whether someone who fails to pay is willfully noncompliant.<sup>4</sup> This pertains to not only the present ability to pay but future ability as well.<sup>5</sup> In a recent decision by *State of Washington v. Catling* (2019), the state’s Supreme Court ruled that although the court cannot

<sup>2</sup>Teams were matched into pairs and coded two interviews from the opposite site. These two sites then met to discuss inconsistencies in coding between the sites and arrive at consensus. Different dyads were created for each reliability check. Although this process did not allow us to assess reliability across the entire set of coded interviews, we believe that it was adequate in improving consistency across such a large group of multisite coders.

<sup>3</sup>The initial set of codes developed were derived from the codebook used with our interview data to make comparisons across data sources possible. Once we adapted an initial set of topical codes based on these prior codebooks, we followed the same iterative coding process outlined above to reach our final set of codes and monitor reliability throughout the process.

<sup>4</sup>*State of Washington v. Blazina*, 182 Wn.2d at 839 (May 2013).

<sup>5</sup>*State of Washington v. Ramirez*, No. 95249-3 (September 2018).

expect LFO payments from individuals whose sole income is derived from social security disability benefits in accordance with Social Security Act's antiattachment statute, 42U.S.C. § 407(a), they can and *must* impose fines and fees considered mandatory and restitution in all cases regardless of disability or indigency.<sup>6</sup> State-level mandatory fees include a Victim Penalty Assessment fee (VPA) of US\$500 imposed on felony convictions, US\$43 criminal conviction fee for misdemeanors, and a US\$100 DNA collection fee if none has been previously collected for felonies and select misdemeanors convictions. In addition to these state-mandated fees, jurisdictions can impose public defender fees and county-level filing fees (US\$100-US\$200).

Although the statute currently prevents these local fees from being imposed on individuals who rely on Social Security Disability Income (SSDI), this does not prevent judges from imposing them on other individuals with disabilities. Moreover, individuals who were subject to restitution amounts for damages inflicted on victims were required to pay these carefully calculated costs regardless of ability to pay. Irrespective of dependency of SSDI, courts can also periodically require any defendant to report to court to provide updates regarding their financial status. Thus, although the law states that disability needs to be taken into account when assessing an individual's ability to pay and compliance with payment orders, the imposition of LFOs is still mandated and payment compliance is still monitored by the court. How this process operates and how this shapes individuals with disabilities' experience of the court, is explored in the following analysis.

### Assessing Able Bodies and Imposing Mandatory LFOs

In many courtrooms, qualifying for a public defender was the primary indicator used to assess ability to pay before imposing LFOs. However, some judges made more detailed inquiries and specifically asked about their physical capacity to work. One such superior court judge assessed ability to pay by informally evaluating the defendant's "able-bodiedness":

**Judge:** You look able bodied and able to work, but is there anything you'd like to say with regards to LFOs?

**Defendant:** Yeah. I'm currently not working right now, so I can't really pay anything.

**Judge:** Okay, but nothing is preventing you from finding a job and working? You can still work? You are able-bodied, so I'll set the payments at \$20, \$25 a month.

In situations when a claim was made about how a defendant's disability created financial hardship and difficulty accessing the labor market, most judges appeared to take this into account to the extent the law made possible when imposing LFOs. In one district court, a defense attorney explained to the judge that his client had broken his hand and was unable to work as a result. Considering this, the judge decided to waive all probation fees. Similar accommodations were also observed for reducing monthly payment amounts. After

<sup>6</sup>. *State of Washington v. Catling*, No. 95794-1 (April 2019).



imposing US\$800 in mandatory LFOs, the public defender in a separate case advocated for leniency when installing a payment plan. He explained that the defendant had been suffering from seizures for some time and was unable to work for the past several months. They asked the judge to set LFO payments at no more than US\$15 a month. The judge agreed that this was reasonable considering the defendant's medical condition. Even though this defendant was not solely reliant on SSDI, the court was accommodating of the defendant's conditions with regard to monthly payment amounts.

It was common to hear judges attempt to accommodate individuals with a temporary or long-term disability in the court. However, these reductions were a common practice for many judges due to the indigent nature of most defendants regardless of disability status. In one court, the presiding judge rarely if ever imposed nonmandatory LFOs because he believed most individuals were indigent anyway. Another judge explained how the district court was no longer concerned with nonpayment because no one was really able to pay anyway. Although such assessments of inability to pay allowed judges to reduce imposed sanctions, the laws mandated that all these individuals still be assessed some amount of criminal legal debt. Even for judges who may have wanted to waive all LFOs for individuals who were disabled, they did not have the legal power. Thus, individuals with disabilities were still imposed mandatory LFOs and were subject to review hearings to discuss payment progress.

### The Repeating Cycle of LFO Review Hearings

One of the consequences of mandatory LFOs being imposed on individuals with disabilities were endless cycles of administrative review hearings to discuss payment progress. We observed a multitude of cases where individuals had been summoned to court where the only punishment order that had not been completed was outstanding LFO debt. During these hearings, defendants offered explanations for why they were unable to pay their LFOs including evidence of disability status.

**Prosecutor:** We have proof of a disability, he receives assistance.

**Defender:** He receives \$197 a month in cash assistance and \$192 in food assistance.

**Judge:** I will make a finding of indigency and the violation [of failure to pay] is not willful. We'll set a review in 6 months and see if anything changes.

Despite not being able to make payments due to his disability, the defendant in this case was ordered to come back to see whether his disability status had changed. In the case of the courts, absent of SSDI as proof, individuals with disabilities were continually asked to show that they were in fact disabled and deserving of exemption from consequences for nonpayment.

However, individuals attempting to show the court they were disabled were sometimes directly chastised by judges who used varying degrees of paternalistic language to emphasize their need to meet court demands. During one of these review hearings, a public

defender advocated on behalf of his client explaining that he had a serious heart condition and extremely swollen legs that prevented him from working. Although he was applying for SSDI, he had no income and was, therefore, unable to pay anything toward his LFOs. The prosecutor, however, insisted the defendant be sanctioned with jail time, arguing that one of his victims was deeply invested in getting the US\$4,000 in restitution as soon as possible. In considering the defendants' physical and financial situation, the judge tried to work with the defendant and the court clerk to come up with a compromise.

**Judge:** Not to make light of this situation because the court is very concerned—especially in regards to the restitution and less concerned with the court fines, but when is the last time this court put someone in jail for a financial matter?

**Defender:** I have never seen someone in the defendant's situation be put in jail over a financial matter.

**Judge:** We need to make the victim feel like we're trying to get him his restitution-suggestions?

**Defender:** Can he pay \$5 a month to show he is making a good-faith effort despite his fairly desperate circumstances?

The judge conferred with the clerk who explained the minimum payment allowable in this jurisdiction was US\$25 a month. The judge then ordered no jail time and for the defendant to pay US\$25 a month, stating that the "victim needs to feel like something is coming in." The judge ordered a hearing in 6 months, stating, "you need some accountability to the court."

These comments from both the judge and prosecutor show how court actors view these hearings as important avenues for holding individuals accountable. However, this was often in direct conflict with the reality of the lives of folks with disabilities and the ability to comply with payment orders. Individuals observed were almost always given extra time to comply with payments, particularly among those who claimed to have some form of a disabling condition. Review hearings thus seemed less about sanctioning these individuals for noncompliance and more about showing that *some* action was being taken to recoup costs, particularly for victims.

Even when it was clear to judges that payment would never be collected from individuals with disabilities, we saw no clear mechanism available for them to wipe away these debts. Instead, individuals would be summoned, judges would find their lack of payment nonwillful, and a new review hearing would be set at a future date. The result was a repeating cycle of administrative review hearings that kept individuals "tethered" to the criminal justice system (Harris, 2016) and offered no clear resolution to the conflict between owing LFOs and disability.

### **Individuals With Disabilities Failing to Appear**

Although we did not observe individuals being incarcerated solely for failure to pay, failing to appear (FTA) at these payment compliance review hearings often resulted in a bench

warrant and, consequently, arrest and short stints in jail. Once picked up on these warrants, individuals were often sanctioned for nonpayment with jail time equivalent to what they had just served. Thus, although individuals out of custody were rarely sanctioned with jail for nonpayment during these review hearings, this was not the case for those who failed to show up to their initial review hearing. This proved to be incredibly consequential for individuals with disabilities.

We found evidence suggesting that individuals with disabilities experienced unique difficulties in getting to court than other individuals and thus may be more likely to miss court due to mobility issues. While observing quash warrant dockets in one jurisdiction, we saw several individuals who missed court due to being hospitalized. In one case, a defendant was sobbing uncontrollably while her public defender was trying to explain to the judge that she missed her court date because she had been in and out of the hospital:

**Public Defender:** We have documents corroborating that she has been in and out of the hospital. She was in in-patient care all of July of this year.

**Judge:** Are these hospitalization medical or substance abuse related?

**Public Defender:** She has mental health issues, anxiety, and she had an ankle issue that lack of steady medical care exacerbated. She has a lot of follow-up care too.

Judge asked for documentation and the defendant pulled up her records on her phone, passed it to her public defender who gave it to the judge to examine.

**Judge:** Did you have MRSA [methicillin-resistant staphylococcus aureus]?

Defendant (through sobs): No, my legs swelled up and got infected, then I got an ulcer.

**Judge:** I'll give you one more chance. I'll reinstate the \$10,000 bond and ask that you get a rider or return to jail.

Mobility issues were brought up in a few cases related to a failure to appear. During another quash warrant hearing, the father of a developmentally disabled defendant who lived in a full-time medical care facility in the next county said he had failed to bring his son to court because he had trouble coordinating transportation. Although the judge claimed she understood that the distance made appearing difficult, there had been a history of failing to appear. She ultimately quashed the warrant but emphasized this was the last time she would take this lenient action.

These cases indicate that people with disabilities may encounter greater difficulty making scheduled court appearances. Although these examples only represent individuals who appeared before the court to quash their warrants before they were served, there were many times we observed judges issue multiple bench warrants for individuals who did not appear at their court hearings. What percentage of these cases missed court due to difficulties stemming from a disability is not known and remains an interest for further investigation.

However, some interview respondents discussed purposefully avoiding the court because of the potential health consequences of being put in jail if they were going to be sanctioned for failure to pay their LFOs. After receiving a notice of a bench warrant for failing to appear at a hearing stemming from an unpaid transit ticket, Odette explained that she chose not to go to court out of fear it would lead to her arrest and that the jail would not be able to meet her medical needs:

I'm scared to go to court. I am. I am, and if they take me to court I ain't going to be able to get the right medicine and stuff. I don't want to be sick, you know? I have medical issues and I have serious health issues, what I got. I've been hearing horror stories where people fall ill or they die because they won't give them medicine that's prescribed.

For Odette, even a short stint in jail is seen as a potential death sentence. According to other respondents, this was not an altogether unfounded claim. Lupita, a Latinx American woman with chronic respiratory issues who lived in a multigenerational household reported falling ill with pneumonia after spending time in jail due to a failure to appear warrant. Carol, who uses a motorized wheelchair after suffering a brain aneurysm, failed to appear at a court hearing to review nonpayment of her LFOs and was issued a warrant. She was subsequently arrested and was not able to receive the medications she needed while in jail. She was released within a day, but she said the experience was incredibly stressful and frightening due to concerns about her health.

Research indicates individuals may avoid the criminal justice system and other bureaucratic institutions when they feel that there is a heightened risk of apprehension by authorities (Brayne, 2014). Here, we argue that for the disabled, this avoidance is inextricably tied to their disability and exacerbated by the system of monetary sanctions. Therefore, even though the courts appear to account for disability when imposing LFOs and determining willful noncompliance for failure to pay, individuals with disabilities are still subject to surveillance by the courts that can land them in jail anyway.

### **The Diversion of Disability Income Into the Criminal Justice System**

Multiple respondents reported specifically using welfare benefits or SSDI to pay their LFOs despite federal law prohibiting such use. For some, disability income was the only potential resource they had when attempting to make monthly payments and avoid additional scrutiny by the court. In one courtroom, the judge made explicit his expectation that individuals unable to work in the formal labor market make payments from their disability or welfare benefits. Charged with forgery, the defense attorney for a 62-year-old man in a wheelchair explained that his client had a hip injury and was scheduled for surgery soon. The state indicated that in addition to US\$800 in mandatory LFOs to be assessed, the defendant still owed US\$408 in restitution. The judge asked the defendant whether he has any kind of income, and he indicated he received US\$600 a month in social security benefits. Upon hearing this, the judge asked, "How come you haven't paid this restitution over the last 2 years?" and ordered him to start making payments 90 days after his surgery. Without any further conversation about his other bills, it is hard to know how reasonable the judge's expectations were for making payments from his welfare benefits. However, it is clear that

courts explicitly or implicitly require individuals to use their benefits to satisfy these debts despite this practice being illegal.

For those struggling to pay their LFOs, getting approved for SSDI was a reprieve. Lupita explained her relief when her application for SSDI was finally approved:

Because I have a lot of health problems where I cannot go to work ... I'm always developing pneumonia, asthma, bronchitis. Yea, and I just can't breath ... so I was stressing [about my LFOs]. I mean "What am I gonna do?" You know? And then when I qualified, now I'm a little bit less stressed.

Initially, Lupita was ordered to complete community service as an alternative to paying her LFOs. However, she was not able to complete her hours due to her health issues and was facing jail time. Upon getting approved for SSDI, she believed that she could use this income to meet her minimum monthly payments and was able to convert her community service back to LFOs. Others we observed in court faced similar physical and medical obstacles to completing community service hours, making payments of monetary sanctions their only choice and welfare benefits their only financial resource.

Although receiving SSDI helped some respondents feel more confident that they could pay their LFOs, this was not the case for everyone. A couple of individuals told us that the disability income they received was not enough to cover their monthly court-ordered payments and they felt forced to make difficult decisions between their health and paying their LFOs. After being convicted of forgery, Suzy was in a car accident that left her with a number of health issues including heart failure and chronic seizures. Not being able to work, Suzy found it impossible to pay off her LFOs from SSDI alone. To make ends meet, she ended up living in her car, sleeping on friends' couches, or spending nights with her abusive ex-partner. Odette reported having Graves disease and she chose to pay for her medications and food rather than LFOs. In the case of another respondent, having to divert income from his disability payments toward his court debt contributed to his eventual homelessness. The degree to which individuals rely on disability payments to pay court-ordered debt is largely unknown, but it is clear from our study that some portion of disability benefits are given back to the state through the collection of LFOs, and that this extraction can have severe negative impacts on the lives of those involved.

## Discussion

In sum, we found that disability was considered when imposing LFOs and determining whether a lack of payment was nonwillful. However, the laws governing LFOs mandated courts impose some amount of monetary sanctions to all individuals regardless of disability. Furthermore, in some jurisdictions, individuals with disabilities with outstanding court debt were regularly required to come to court and prove they were still disabled and indigent. Appearing at these review hearings was difficult for individuals with disabilities who were balancing the demands of their medical care with other obligations or experienced mobility issues making it hard to physically get to court. Missing court would often result in a warrant, subsequent arrest, and short stints in jail. Being arrested was not only stressful for these individuals, but also had the potential to exacerbate underlying health conditions.

Thus, the bureaucratic process of mandatory review hearings and the lack of legal mechanisms to waive all debts for those who would never be able to pay due to disability placed these individuals in stressful and potentially dangerous circumstances.

In a punishment system that increasingly prioritizes labor force participation to demonstrate accountability and commitment to desistance (Gurusami, 2017), those who cannot work because of physical, psychiatric, or cognitive limitations face distinct challenges. Unable to meet the expectations of employment set forth by criminal sanctioning, individuals with disabilities must continually prove their worthiness of exemption from punitive action by the court. Research by Kohler-Hausmann (2013) shows how commitment to the pretrial administrative process is an important way for individuals to demonstrate responsibility and deference to the court. However, these seemingly lenient and mundane bureaucratic practices are actually incredibly burdensome and problematic for those entangled in the system (see also Feeley, 1979). Cadigan and Kirk (2020) demonstrate the high opportunity costs and persistent nature of the postconviction bureaucratic practices related to the monitoring of LFO debt on individuals' labor market participation. When placed in the context of individuals with disabilities who are already marginalized or altogether excluded from the labor market, the systems in place to monitor legal debts can have enduring and serious consequences.

Our findings on the interaction between LFOs and disability remain preliminary. The fact that the exploration of this interaction was not the primary goal of the larger research project means that we may only offer a descriptive and localized account. Our primary suggestion for further research would be a more robust study that specifically explores how individuals with disabilities experience the system of monetary sanctions across time, place, and type of disability. Even more, work needs to examine how race and gender intersect with disability in the justice system more broadly. Evidence suggests race and gender intersect with disability in important ways (Annamma et al., 2013); however, how these function in relation to punishment practices emphasizing labor remains undertheorized. Similarly, we suggest future studies explore the interaction of disability, LFOs, and other forms of punishment. LFOs were initially implemented as a less punitive alternative to incarceration and intensive community supervision, but have since become imposed alongside other forms of punishment (Gordon & Glaser, 1991). Therefore, it is important that more research examines how these different punishment practices interact together to shape the experience of individuals with disabilities.

Evidence in this article also suggests a more complicated relationship between social welfare and the criminal justice system than previously explored. Although prior work finds a trade-off in funding between welfare and criminal justice institutions (Beckett & Western, 2001), we show how the system of monetary sanctions can function to directly extract social welfare benefits from individuals, particularly those who rely solely on them. However, the extent to which this practice occurs warrants further investigation.

Based on these findings, we propose that policy makers seriously consider not only how ability to pay determinations are made but also how these practices may be disproportionately affecting certain groups. Although judges considered individual health

when assessing and recouping LFOs, this was not enough to address the specific problem of not having the physical capacity to comply with payment orders. Lawmakers should provide avenues for determining a permanent inability to pay based on serious physical, mental, or developmental conditions and allow judges to waive all LFOs based on these determinations. Not only would this ease the financial burden on these individuals so they can focus on getting their life in order, but it would also end the ceaseless cycle of review hearings that individuals must undergo for their inability to pay. Decision makers must also recognize that the barriers to payment also extend to cases where LFOs are primarily restitution (i.e., victim compensation). Establishing a social insurance program for victims that is not reliant on the ability of individual defendants to pay would be much more reliable and would help mitigate the harm done to those who are not physically capable of covering the costs themselves.

Although scholars document how the system of monetary sanctions creates a dual system of justice where the poor face greater levels of punishment and increased burdens than those who can quickly pay off their fines and fees (Harris, 2016), we argue this may actually be a triune—one that not only creates disproportionate burdens and experiences between the poor and wealthy but also can have particularly devastating effects on the disabled. Through further investigation into how individuals with disabilities interact with the system of monetary sanctions, we can better understand the mechanisms through which the justice system marginalizes this population.

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## Author Biographies

**Michele Cadigan** is a PhD candidate of sociology at the University of Washington. Her work brings together theoretical frameworks from economic sociology, law and society, and criminal justice research to understand the complex relationship between markets and the criminal justice system, paying particular attention to how these relationships both shape and are shaped by various intersecting identities. Her current work, *Cannabis-Infused Dreams: A Market at the Crossroads Between Criminal and Conventional*, draws on both quantitative and qualitative methodologies to understand how racial equity is constructed in legalized recreational cannabis markets. Specifically, she takes an in-depth look into state-sanctioned recreational cannabis markets in three U.S. cities to examine how different approaches to racial equity transform market spaces and market actors' experiences to either reinforce or disrupt economic inequality.

**Tyler Smith** is a PhD candidate of sociology at the University of Washington. His research focuses on the interaction between the criminal justice system and economic entities, particularly emphasizing how this interaction shapes institutional organization and action. His recent paper with Dr. Alexes Harris and Emmi Obara, *Justice “Cost Points”: Examination of Privatization Within Public Systems of Justice*, offers a survey of the how private companies are involved in the criminal justice system, their justification, and their associated costs. He also works as part of a large, multistate study exploring the assessment and impact of legal financial obligations.

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**Table 1.**

## Demographic Characteristics.

Sample	Percent (N = 59)
Reported disability	58
Gender	
Men	59
Women	37
Transgender	2
Declined	2
Race	
Black	12
White	58
Asian or Pacific Islander	3
Native American	8
Multiracial/Other	17
Declined	2
Latino or Hispanic	22
Income below US\$1,500/month	68
Ever experienced homelessness	64
Felony only	15
Misdemeanor only	31
Both felony and misdemeanor	53