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# COLLECTING CRIMINAL JUSTICE DEBT THROUGH THE STATE CIVIL JUSTICE SYSTEM

A PRIMER FOR ADVOCATES  
AND POLICYMAKERS

By Carolyn Carter, Ariel Nelson,  
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## ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

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## INTRODUCTION

The use of the criminal justice system to collect fines, fees, restitution, and other types of criminal justice debt has been condemned as punitive, self-defeating, discriminatory, and, in some cases, unconstitutional.<sup>1</sup> Would use of the existing civil justice system be a viable alternative?

The criminal justice system's collection machinery varies from state to state, but typically involves monitoring and coercion of payment through actors such as judges, court clerks, probation officers, and law enforcement officers.<sup>2</sup> The hallmark of criminal enforcement is actual or threatened punishment for nonpayment—frequently through use of arrest warrants, jailing, revocation or extension of probation or other court supervision, and suspension of driver's licenses.<sup>3</sup> Nonpayment also has severe collateral consequences, such as restrictions on criminal record clearing, occupational licenses, and the right to vote. These punishments unfairly enmesh those who cannot afford to pay further in the criminal justice system and add to the financial burden of their debt, including by leading to assessment of more fees and fines and by making it more difficult to maintain or secure employment. Incarceration, the most severe punishment for nonpayment, devastates individuals burdened by debt along with their families and communities. Low-income communities of color suffer in particular; these communities are disproportionately targeted for enforcement of revenue-generating minor crimes and infractions and racial wealth and income disparities make fines and fees particularly unaffordable.

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Abandoning the coercive and punitive methods of the criminal justice system could reduce harmful entanglement in the criminal justice system and could give those who experienced incarceration a better chance of successfully reentering society. In the civil system, failure to pay is less likely to result in arrest or imprisonment. Moving from criminal to civil enforcement of debt should also mean uncoupling payment from probation, similarly reducing the risk of trapping people in the criminal system because they cannot pay. Civil judgment debts are not generally grounds to deny a debtor a driver's license, an occupational license, record clearing, or the right to vote. And in theory, the state's limits on collection of civil debts should protect enough income and basic property so that criminal justice debt would not push families into destitution, and families would eventually be free from the threat of legal enforcement of the debt.

**It is important to be clear-eyed in considering the perils of civil judgment collection systems.**

But it is important to be clear-eyed in considering the perils of civil judgment collection systems. As with state criminal collection laws, civil judgment collection laws vary significantly from state to state, and so the experience

in one state is not necessarily representative of what collection may look like in another. And there are common problems across states that advocates should consider carefully before embracing use of the civil judgment system to collect criminal justice debts.

**This report focuses on the most significant threats that use of the civil judgment collection system can pose to the liberty and financial security of people who owe criminal justice debt, including:**

- **Imprisonment for civil debt.** Some states still allow imprisonment for civil debt. Typically, this occurs when judges have the authority to order the debtor to make payments on the debt. When the debtor does not make payment, the judge may hold the debtor in contempt of court. Debtors can also be imprisoned for failure to appear for questioning about their income or assets. In addition, it is common for states to exclude fines or other types of criminal justice debt from the prohibition against imprisonment for debt.
- **Heavy reliance on wage garnishment.** Civil judgment debts are commonly collected through wage garnishment, which requires employers to withhold earnings from a debtor's paycheck and redirect them to the collector. This prevents the employee from using their earnings to meet their most pressing needs, and in many states, garnishment can reduce a low-wage worker's income below the poverty level. Wage garnishment can also lead to discharge from employment and can force people into the underground economy.
- **Authorization of seizure of new types of property.** The state laws governing collection of civil debts commonly allow a judgment creditor (a party who holds a civil judgment) to seize and sell personal property, such as a car or household goods, belonging to the debtor, that may not be within the reach of the current system for enforcement of criminal justice debt. Many states also allow a judgment creditor to clean out the debtor's bank account. If seizure of this type of property began to be used to collect criminal justice debt, it would create new types of hardship for debtors.
- **Failure to protect even a subsistence income and essential property.** In many states the exemption laws—the laws that specify what income and property cannot be seized to pay a civil judgment—do not even protect a poverty-level income or a working car, and allow a bank account to be cleaned out without notice. Use of these methods to enforce criminal justice debts could be financially destabilizing and further threaten the economic security of an already vulnerable population.
- **Laws making exemptions from seizure inapplicable to criminal justice debt.** Some states have laws currently on the books that make the civil justice system's exemption laws entirely inapplicable to some or all criminal justice debts. Moving to the civil justice system without repealing those laws would leave criminal justice debtors vulnerable to complete impoverishment.

- **No individualized assessment of ability to pay or process for waiver of debt based on financial hardship.** Most state exemption laws do not take the debtor's actual financial circumstances into account when determining how much can be collected. Only a few states allow a judge to reduce a garnishment if the debtor shows financial hardship. In most states there no procedure for seeking cancellation or reduction of a civil judgment debt based on financial hardship.
- **Lack of uniformity.** State collection and exemption laws vary widely from state to state, so a move to the enforcement system for civil debts would produce widely different outcomes for individuals with criminal justice debt in different states.
- **Costs of invoking civil enforcement mechanisms.** Court costs and attorney time can be significant for civil enforcement methods. Court costs are routinely imposed on the debtor when civil judgments are enforced. Some states also allow the creditor's attorney fees in obtaining the judgment to be charged to the debtor, and some allow debt collectors to add fees for their work trying to collect a debt. If these costs are also imposed on individuals with criminal justice debt, it would further increase the financial burden of fines and fees, particularly for those who cannot afford to pay them off shortly after their assessment.

Other factors to consider when assessing the potential risks and benefits of using the civil collection system are:

- the effect of state laws that allow **interest** to be assessed on judgments;
- the state's rules on **how long a civil judgment remains enforceable**; and
- **credit reporting** issues.

This report explores these issues to help advocates and policymakers assess whether moving criminal justice debt collection into existing civil judgment collection systems would be a worthwhile reform in their states, or whether it would be better to focus efforts on development of a distinct system for collection of criminal justice debts that avoids the harms of both the current criminal justice and civil judgment collection systems. It also examines states' existing laws allowing collection of criminal justice debts through the civil justice system, and cautions that many states have laws creating a "worst of both worlds" situation by allowing civil enforcement as an additional method of collection along with the criminal enforcement system, rather than as a replacement.

Finally, the focus of this report is limited to exploration of collection practices that assume the continued existence of some forms of criminal justice debt. Eliminating fees, costs, and surcharges from the criminal justice system altogether, and making fines proportionate to individual financial circumstances, are essential long-term solutions that would go a long way toward reducing unaffordable criminal justice debts and the harms associated with their collection.

**Reforms to collection practices are necessary but insufficient to address the problematic role of fines and fees in the justice system. To reduce unjust and unaffordable criminal justice debts in the longterm, we advocate for eliminating all fees, costs, and surcharges and tailoring fines to individual financial circumstances.**

## How the Civil Judgment Enforcement System Works

The civil justice system allows a judgment creditor—a person or entity that has obtained a civil judgment for a sum of money—to take a number of steps to collect the debt. In most states, the judgment creditor can obtain a court order requiring the debtor’s employer to pay a portion of the debtor’s wages to the judgment creditor. This procedure is usually referred to as wage garnishment, although in some states, garnishments are referred to as “trustee process.”

Typically, the judgment creditor can also get a court order requiring the money in any bank account owned by the debtor to be turned over. The judgment creditor can usually place a lien on the debtor’s home, and may be allowed to foreclose on that lien, forcing sale of the home. States also generally allow the judgment creditor to send a sheriff or constable out to seize and sell any vehicles the debtor owns, and even the debtor’s household goods, but these mechanisms are more cumbersome and are not widely used.

These harsh methods are ameliorated to some extent by state exemption laws, which specify how much of the debtor’s wages and property a judgment creditor can seize and how much it cannot seize. These exemptions vary dramatically from state to state. For example, some states protect the debtor’s home regardless of its value, while others provide almost no protection. Similarly, some states protect all of the debtor’s household goods, while others protect as little as \$300 worth of this essential property. Federal law prevents a judgment creditor from seizing more than 25% of a debtor’s wages or reducing the debtor’s paycheck below thirty times the minimum hourly wage (\$217.50 a week), but states vary widely as to whether they exceed this minimal protection.

In a few states, the state’s exemptions, or some of them, are self-executing: the debtor does not have to act affirmatively to protect the property that is exempt. However, in many states, the exemptions are not self-executing. The property will not be protected unless the debtor takes various procedural steps—typically, filing papers in court or attending hearings—to claim the exemptions. These steps are often daunting for debtors, who are typically left to navigate the judicial system on their own without attorneys.

Judgment creditors also typically have the authority to require the debtor to appear for a “debtor’s examination” and answer questions about the debtor’s income and assets. Failure to appear at a debtor’s examination can result in arrest and jailing in most states. In some states, courts are allowed to order debtors to pay civil debts, and to imprison debtors for contempt of court if they are able to make the payments but fail to do so.

The costs of invoking these civil enforcement methods are typically added to the amount of the debt. Civil judgments also bear interest at a rate set by statute. How long a civil judgment remains enforceable varies from state to state.

Sources: National Consumer Law Center, *Collection Actions* (5th ed. 2020); National Consumer Law Center, *No Fresh Start 2020: Will States Let Debt Collectors Push Families Into Poverty in the Wake of a Pandemic?* (Oct. 2020); American Civil Liberties Union, *A Pound of Flesh: The Criminalization of Private Debt* (2018).



## **MOST STATES HAVE LAWS ALLOWING CRIMINAL JUSTICE DEBT TO BE COLLECTED AS OR CONVERTED TO A CIVIL JUDGMENT, BUT MANY ARE SPOTTY IN SCOPE AND THERE IS LITTLE DATA ABOUT THEIR USE**

Before diving into the ways in which shifting enforcement of criminal justice debt from the criminal to the civil system may impact those burdened by such debt, it is important to recognize that in many states, collection through the civil system is already allowed, at least for some types of criminal justice debt.

In many cases, these laws are structured to create an additional means of collection, not to replace the criminal justice system's enforcement methods, thereby creating a "worst of both worlds" situation where those burdened by criminal justice debt face the prospect of enforcement through both the criminal legal system and the civil system of garnishments, seizures, and liens. To the extent a state currently permits a type of fee, fine, or restitution to be enforced through both the criminal and civil systems simultaneously, ending use of the criminal system and moving solely to civil enforcement may be an improvement for debtors inasmuch as it reduces the scope of adverse actions the state can take (or threaten) to attempt to collect the debt. This is distinct from the question of whether it is better to simply shift criminal justice debt collection from the criminal to the civil judgment system or to work to reform the criminal collection process.

Many states single out restitution as collectible via the civil judgment process, with all but a few states allowing enforcement of the sentencing court's restitution order as a civil judgment. Additionally, over half the states have laws that allow other types of criminal justice debt to be enforced as a civil judgment, though these laws often single out just one or two particular types of criminal justice debt for civil enforcement.

Assessing the existing use and impact of the civil judgment collection system to collect criminal justice debts would shed helpful light on the policy question of the benefits and drawbacks of moving from criminal system collection to civil system collection. Unfortunately, there is currently little data about the use of the civil justice system to collect criminal justice debt.

### **Most states allow restitution to be enforced as a civil judgment**

At least 45 states (see [Appendix A](#)), have laws that allow a sentencing court's order of restitution to be registered as and enforced as a civil judgment.<sup>4</sup> Most of these laws allow not just the state but also the person to whom restitution is to be paid to enforce the restitution order as a civil judgment. Some require the court to order the restitution obligation to be recorded as a civil judgment, but others make it discretionary and some allow it only if the defendant has defaulted in payments.

Close to half of these state statutes make it clear that enforcement of a restitution order as a civil judgment is allowed in addition to criminal enforcement,<sup>5</sup> meaning that those with criminal justice debt face the “worst of both worlds” in collection terms. Most of the remaining statutes are unclear on this point.

Close to half of these state statutes make it clear that enforcement of a restitution order as a civil judgment is allowed in addition to criminal enforcement, meaning that those with criminal justice debt face the “worst of both worlds” in collection terms.

A few states appear to preclude simultaneous use of civil and criminal enforcement. **Wisconsin** specifically allows enforcement only by the criminal court during probation or parole, and enforcement only through the civil justice system after that (or if the debtor was never placed on probation or parole).<sup>6</sup> **Vermont** also limits criminal enforcement. Under Vt. Stat. Ann. tit. 13, § 7043, the court may make restitution a condition of probation, supervised community sentence, furlough, preapproved furlough, or parole, but may not charge an offender with a violation of probation, furlough, or parole for nonpayment of a restitution obligation. Instead, the statute allows the Restitution Unit to bring a civil action to seek a civil judgment on a restitution award. If the person fails to comply with the restitution order, the court may, *inter alia*, order the disclosure, attachment, and sale of assets and accounts owned by the person or order garnishment (called trustee process in Vermont) of the person’s wages. Even Vermont does not rule out imprisonment, though the path there is through the civil system: the statute provides that a person who has the ability to pay but willfully refuses to do so can be subjected to civil contempt proceedings, which can result in imprisonment.<sup>7</sup> Imprisonment for civil contempt may last until the defendant makes the payment,<sup>8</sup> so for people who do have the ability to pay, it might be considered less onerous than revocation of probation or parole, which could result in reinstatement of the existing sentence.

## Half the states allow some non-restitution debts to be enforced as a civil judgment

At least 25 states (see [Appendix B](#)), have laws that allow kinds of criminal justice debt other than restitution to be treated as a civil judgment.

Some of these statutes are comprehensive, covering all or almost all types of criminal justice debt. For example, **Hawaiian** law provides that fees, fines, costs, or restitution may be collected in the same manner as a civil judgment.<sup>9</sup> Similarly, **Florida** law provides that the court may enter judgment upon any court-imposed financial obligation and issue any writ necessary to enforce the judgment in the manner allowed in civil cases.<sup>10</sup> **Wisconsin** law provides that, if a defendant fails to pay a fine, surcharge, costs, or fees within a specified time period, the court may issue a civil judgment for the unpaid amount.<sup>11</sup>

Other states' statutes allow only a certain type of criminal justice debt, such as fines<sup>12</sup> or indigent defense costs,<sup>13</sup> to be treated as a civil judgment. Some of these statutes are phrased as allowing collection of the debt in the same manner as a civil judgment, while others allow a civil judgment to be entered for the debt.

Some of these statutes explicitly provide that the criminal justice debts they refer to can continue to be enforced through the criminal justice system.<sup>14</sup> Others rule out imprisonment as a means of enforcing the criminal justice debts to which they apply, usually costs.<sup>15</sup> Many have no explicit provision addressing this question. Some statutes draw other enforcement distinctions. For example, **Tennessee** provides that, while both fines and court costs can be collected in the same manner as a civil judgment, payment of a fine can still be enforced through contempt of court, but a debtor cannot be imprisoned for nonpayment of costs.<sup>16</sup>

### **Some states authorize use of a particular civil judgment method to collect criminal justice debt**

Even when a state does not provide for treatment of a particular criminal justice debt as a civil judgment generally, it may make some of the civil judgment enforcement methods available. For example, some states allow the sentencing court to order a defendant to execute a wage assignment to pay a criminal justice debt,<sup>17</sup> thus providing a procedure similar to the civil justice system's authorization of wage garnishment to collect a judgment debt. Some states also provide that a criminal justice debt may operate as a lien on the obligor's property, similar to the property liens available for enforcement of civil judgments.<sup>18</sup>

These enforcement methods are typically layered on top of criminal justice enforcement methods, such as court-ordered payment hearings, issuance of arrest warrants for nonpayment, and use of probation to monitor or enforce payment. Additionally, when civil enforcement methods are layered on top of criminal enforcement

### **Other Government Collection Methods: Tax Refund Offsets, Administrative Wage Garnishment, and Wage Assignment**

For criminal justice debt and other debts owed to the state, some states allow collection through offset (or seizure) of payments that the state would otherwise make to the debtor, including interception of state income tax refunds. Some states also allow collection through "administrative" garnishment—garnishment that is instituted not through a court but by a state administrative agency. Like the other seizures discussed in this report, these collection methods can jeopardize an individual's or family's financial security. But since these methods are not available for the collection of ordinary civil debts, they are beyond the scope of this report. Many states also allow criminal justice debt to be collected through wage assignments, which are ostensibly voluntary agreements by which debtors may assign a portion of their wages to a creditor. The process can be coercive, and it presents concerns similar to wage garnishment. This non-judicial collection method is also beyond the scope of this report.

methods without formally entering or converting the debt to a civil judgment, there may be increased risk that debtor protections that typically apply to civil judgment collection do not apply. For example, the many state statutes that prohibit or limit wage assignments as a way of repaying consumer loans<sup>19</sup> would not apply to court orders requiring assignments to repay criminal justice debts, but some states have more generally-applicable restrictions that might apply.<sup>20</sup> State exemptions would likely apply to liens for criminal justice debts unless the exemption statute explicitly excludes them or the statute authorizing lien for criminal justice debt sets forth its own rules. The interrelationship between these criminal justice lien statutes and the state's exemption laws is an issue that merits further research.

### **Even where allowed by statute, there is little reporting on actual use of the civil justice system to collect criminal justice debt**

Even though many states already authorize enforcement of criminal justice debt as a civil judgment or through the use of common civil judgment collection mechanisms, such as wage garnishment, we have found only a few reports discussing actual use of this authority. The reports suggest significant variability in actual use of civil judgment collection methods, and provide limited information from which to assess the impact of the collection mechanisms on individuals with criminal justice debt.

Several reports suggest that some states forgo use of civil judgment methods to collect criminal justice debt, even where authorized. A 2019 Brennan Center for Justice report,<sup>21</sup> which studied criminal justice debt collection in **New Mexico, Florida, and Texas**, cited only **Florida** as making any use of its procedure to record criminal justice debts as civil judgments. Even in Florida, where 25% of fees and fines are converted to civil judgments, “courts have low expectations for eventual payment,” including because of the rate of indigence among those burdened with fines and fees.<sup>22</sup> A 2010 Brennan Center report stated that, while **Georgia** authorizes the use of garnishment and other civil judgment collection methods, nobody that the Brennan Center interviewed knew of any instance of wage garnishment or liens being used in practice.<sup>23</sup> Similarly, in a 2017 study of monetary sanctions in eight states, none of the numerous individuals interviewed from **California, Georgia, Illinois, or Texas** reported experiencing wage garnishment to collect criminal justice debts.<sup>24</sup>

At the same time, these and other reports indicate that at least some jurisdictions do make use of civil judgment collection methods. The 2010 Brennan Center report reveals use of civil judgment collection methods in at least some parts of **Alabama, Arizona, Michigan, and Missouri**.<sup>25</sup> It reports that wage garnishment was commonly used to collect criminal justice debt in Tuscaloosa County, **Alabama**. This finding is backed up by more recent information: in a 2018 survey of nearly a thousand Alabamians involved in the justice system, nearly a quarter of them reported money was taken out of their paychecks to pay criminal justice debt.<sup>26</sup> The 2010 Brennan Center report also reflects that Maricopa County, **Arizona** refers criminal

justice debt to debt collectors, who engage in collection efforts that can include wage garnishment. That report also noted that an official disclosed that Oakland County, **Michigan**, a county just north of Detroit, uses wage and bank account garnishment,<sup>27</sup> and the court’s website confirms that this is still the case in 2021.<sup>28</sup> The Brennan Center also found some indication of at least occasional use of wage garnishment and other civil judgment collection methods in two **Ohio** counties, the use of liens in one **Pennsylvania** county, and the use of wage garnishment in **Missouri** and in at least one **Virginia** court.<sup>29</sup>

The 2017 multistate study of monetary sanctions stated that some individuals with criminal justice debt in four of the states—**Minnesota, Missouri, New York, and Washington**—reported experiencing either wage garnishment or tax refund offsets.<sup>30</sup> Even then, however, only a fraction of those interviewed reported such collection methods. Wage garnishment to collect criminal justice debt is also described as an example in a *Northwestern Law Journal* article.<sup>31</sup>

A 2018 report by the San Francisco Financial Justice Project states that wage garnishment and bank account levies are used to collect criminal justice debt in San Francisco County, **California**. The report suggests that garnishment is “often” employed, but provides no data on its prevalence. Despite these measures, only 17% of criminal justice administrative fees are ever collected, and only 9% of probation fees.<sup>32</sup> San Francisco refers overdue debt to Alliance One, a private debt collector, whose contract with the county authorizes it to use “standard collection techniques.”<sup>33</sup>

**Even though San Francisco County reportedly uses wage garnishment and bank account levies to collect criminal justice debt, only 17% of administrative fees and 9% of probation fees are ever collected.**

While most of these reports do not address the government’s reasons for engaging in or refraining from civil judgment collection methods, a 2004 **Florida** study provides some helpful insight. The study reported that judges did not favor using wage garnishment to collect criminal justice debt because it required attorney time and court time, and employers might fire the garnished employee.<sup>34</sup> Court clerks also lacked the resources or expertise to issue wage garnishments. More broadly, judges were “skeptical that the typical defendant with outstanding debt would have either a bank account with a sufficient balance or regular wages to garnish.” Court clerks also disfavored the placement of judgment liens on criminal justice debtors’ real property because it involved a lot of paperwork but produced little in the way of collection.

The National Consumer Law Center (NCLC) also invited state advocates to share their experiences with use of civil judgment collection mechanisms to collect criminal justice debt. An advocate in **North Carolina** reported to us that wage and state tax refund garnishment was used in criminal cases to collect public defender/court-appointed attorney’s fees, as well as in probation court, but that the process was becoming rare.<sup>35</sup>

## Garnishment in Iowa

Iowa is the jurisdiction where NCLC has documented the most widespread use of the civil justice system to enforce criminal justice debts. A civil legal services attorney who has studied the system in detail told us that garnishment of wages and bank accounts is used statewide to collect criminal justice debts, and that revocation of probation, revocation of parole, and contempt of court are now limited to a minority of counties.<sup>36</sup> However, criminal justice enforcement methods remain on the books, enabling prosecutors to use the threat of incarceration to coerce debtors to sign ostensibly voluntary wage assignments.

In addition to wage assignments, court debt in Iowa is extensively collected through garnishment. Garnishment can be accomplished either of two ways—through the same civil judicial process that an ordinary judgment creditor can use, or through an administrative garnishment procedure. With the latter method, an order for garnishment is issued by the state Department of Revenue rather than a court.<sup>37</sup> The authority for administrative garnishment to collect court debt was repealed in 2015 and then restored by the legislature in 2020.<sup>38</sup>

There have been disputes in Iowa regarding the application of federal and state exemptions to criminal justice debt. In one case, an Iowa Legal Aid client was left with just 19% percent of her paycheck, after a garnishment for child support and a wage assignment for criminal justice debt.<sup>39</sup> There have also been many due process issues involving insufficient notice and hearing. Some of these concerns were recognized and resolved, with the state at least recognizing that certain exemptions must be applied, but advocates in other states should look out for similar failures to protect even minimal essential wages from garnishment to collect criminal justice debts.

Counties in Iowa have the option of handling collections themselves or letting the state handle it. Handling collections themselves can produce some fiscal benefits for counties,<sup>40</sup> creating the danger of a Ferguson-type approach to fines and fees as a revenue stream.<sup>41</sup> On the other hand, from 2010 to 2020 state law mandated referral of debt not collected by prosecutors to private collection firms. In 2017, the Des Moines Register reported that 33 of the state's 99 counties deferred collections to private firms, which regularly garnished wages. One firm collected \$13.3 million in court debt in 2017 alone.<sup>42</sup> The state legislature eliminated mandatory referral of court debt to private collection firms, effective January 1, 2021. However, the Iowa Department of Revenue subsequently contracted with Transworld, Inc. to perform some debt collection functions other than garnishment for counties that do not handle collections themselves.<sup>43</sup>

Despite the use of these harsh collection methods, only 2% to 3% of jail fees and indigent defense fees, which disproportionately impact low-income people, were collected in Iowa over the last 5 years.<sup>44</sup> Some data about the use of these collection methods and the amounts collected is available in Iowa, and NCLC has started the process of obtaining it in hopes of analyzing it for a future report.

Use of the civil justice system's enforcement procedures appears to be common in **Louisiana**, at least in some parts of the state. An attorney in New Orleans reported to NCLC that when someone is on probation or parole, the criminal court system monitors payment of restitution and other criminal justice debts by scheduling frequent hearings. Typically, the courts do not revoke probation or parole for non-payment, but may schedule even more frequent hearings—increasing both the burden on the individual and the likelihood of missing a hearing. A person incurs a contempt fee, sometimes as high as \$150, for missing a hearing and could also be subject to revocation of probation or parole if an attachment is issued and an arrest is made.

If a person still owes criminal justice debt when probation or parole ends, the debt is then converted to a civil judgment. At that point, the payment hearings cease, but the person is now subject to debt collection calls and letters, wage garnishment, and interception of tax refunds. In addition, once the debt is converted to a civil judgment, it starts accruing interest. The conversion to a civil judgment and movement from criminal to civil collection may thus reduce required court hearings, but increase actual collections and financial pressures on the debtor.

In summary, there is only patchwork data available about the actual use of civil judgment enforcement methods to collect criminal justice debt, the government reasons for and against such use, and the impact of these methods on people subjected to them. Moreover, most jurisdictions do not appear to publish any information about the dollar amount of revenue collected through these methods, or how it compares to collection through the criminal justice system. There also appear to be no empirical studies of the costs of civil enforcement compared to the revenue collected, much less comparisons of these costs to the cost of using the enforcement methods of the criminal justice system. Indeed, the cost of using the criminal justice system's enforcement methods also remains elusive even though these methods are widely used.<sup>45</sup>

Even if there were data about the costs and effectiveness of civil enforcement methods, however, fiscal concerns should not drive decisions to turn to the civil justice system to collect criminal justice debt. Concerns about justice, equity, and the effect upon individuals enmeshed in the criminal justice system and their communities should be paramount. Reformers should pay particular attention to the experiences of those subjected to civil enforcement methods to collect criminal justice debt when considering the value of a move toward that system. Unfortunately, there is also a dearth of public information on this topic.

Two of the recent surveys of people with criminal justice debt sound cautionary notes, however. The 2017 multistate study of monetary sanctions, which interviewed 380 people in eight states who were assessed monetary sanctions, reported that of those interviewees who did experience wage garnishment or other seizures

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of their earnings or assets, 80% reported that it interfered with their ability to pay other bills, threatening their health and financial security.<sup>46</sup> In a 2018 survey of nearly a thousand people in **Alabama** burdened by court debt, nearly 25% of respondents reported being subjected to wage garnishment; though the report did not disaggregate responses to other questions for this subset of garnishees, more than 8 in 10 of those surveyed reported that the criminal justice debt costs led them to forgo payments for essentials, including food, rent, car payments, child support, and medical bills.<sup>47</sup> More research on this topic would be valuable, but these survey results suggest that wage garnishment and other involuntary seizures to collect criminal justice debt threaten to leave people who owe criminal justice debts—and families—without the means to meet their basic needs.

**These survey results suggest that wage garnishment and other involuntary seizures to collect criminal justice debt threaten to leave people who owe criminal justice debts—and families—without the means to meet their basic needs.**

## **HOW SHIFTING COLLECTION OF CRIMINAL JUSTICE DEBT TO THE CIVIL JUSTICE SYSTEM WOULD WORK: POTENTIAL RISKS TO LIBERTY AND FINANCIAL SECURITY**

There are obvious benefits to moving collection of fines and fees out of the punitive criminal justice system, which punishes poverty and needlessly entangles people in the criminal justice system. But advocates and policymakers considering pushing collection into the civil justice system as a reform solution should look before they leap. The lack of a robust track record for the use of the civil justice system to collect criminal justice debt means that many of the issues that would be encountered in such a transition have yet to be explored.

This section examines the biggest perceived advantage of using the civil justice system for collection—reducing the risk of arrest and imprisonment for nonpayment—and explores ways in which civil judgment enforcement would continue to allow for debt-based arrest and incarceration. It then addresses the primary ways civil judgments are collected, including seizure of wages and property, and discusses ways in which gaps and weaknesses in the civil justice system’s protection of a debtor’s basic income and property affect low-income people generally, and how they might affect people with criminal justice debt in particular.

Because civil judgment collection laws vary significantly from state to state, the collection machinery and protections available in one state are not necessarily representative of those in another. State advocates and policymakers must therefore look carefully at the laws and practices in their own state in assessing the advantages and drawbacks of moving criminal justice debt collection into the civil judgment system. The following topics may be used to guide that analysis.



## Imprisonment for debt

The biggest perceived advantage of moving criminal justice debt collection out of the criminal legal system and into the civil judgment collection system is likely the belief that this would end the use of arrest and imprisonment for debt. But while it is likely that moving to the civil collection system would significantly decrease the use of arrest and imprisonment for debt, there are risks that it would not end these consequences, and so should not be considered a complete solution to the problem of debtors' prisons.

It is widely believed that imprisonment for debt is unlawful in the United States. Unfortunately, in many states that is not the case: while every state has a statutory provision, a constitutional provision, or a court decision banning imprisonment for civil debt,<sup>48</sup> it is the exceptions that are the issue. Some exceptions would leave the door wide open for imprisonment of people with criminal justice debt through the civil justice system.

**It is widely believed that imprisonment for debt is unlawful in the United States. Unfortunately, in many states that is not the case.**

First, there are problems with the scope of the state prohibitions against imprisonment for debt. Many states exclude fines or other types of criminal justice debt from this protection.<sup>49</sup> And some states also exclude debts incurred through criminal intent,<sup>50</sup> through fraud<sup>51</sup> or other tortious acts,<sup>52</sup> or any debts that do not arise from contracts.<sup>53</sup> There are arguments that some types of criminal justice debt, such as costs, do not fall within most of these exceptions.<sup>54</sup> But even if so, imprisonment may remain available for many criminal justice debts, including fines, in many jurisdictions, subject only to constitutional protections requiring ability-to-pay determinations before incarceration—protections that are too often paid only lip service or ignored altogether.<sup>55</sup> Relabeling a criminal justice debt obligation as a civil judgment may not solve this problem, as courts have often looked to the underlying nature of the debt when applying these exceptions.<sup>56</sup>

Second, there are problems with the strength of the state prohibitions. Even when the prohibition applies, some states prohibit imprisonment for civil debt in name only. They allow the court to order the debtor to make specified payments on a civil debt, and then allow the court to hold the debtor in contempt of court if the debtor fails to pay.<sup>57</sup> This is justified on the theory that the debtor is not being imprisoned because of the existence of the debt, but only because of failing to pay it as ordered by the court. As in the criminal collection context, there are constitutional protections requiring ability-to-pay determinations prior to incarceration for nonpayment. A judgment debtor who faces criminal contempt charges for failing to abide by a payment order is subject to an ability-to-pay determination and the due process protections generally available in criminal proceedings, including appointment of counsel where the result is more than six months of imprisonment.<sup>58</sup> In the case of civil contempt charges (charges that will result in imprisonment only until the debtor performs

whatever act the court's order required), the debtor is also subject to an ability-to-pay determination<sup>59</sup> and is entitled to due process protections which may include appointed counsel or other procedural protections depending on the balancing of several factors.<sup>60</sup>

Another, perhaps more common, way in which a civil debt can result in incarceration despite a prohibition against imprisonment for debt is through abuse of debtor's examinations. States commonly allow creditors to compel a judgment debtor to appear at a certain place and time to be questioned about income and assets. If the debtor fails to appear, the court can issue an arrest warrant, commonly called a "capias" or "body attachment," which may result in being jailed. The court may find the debtor in contempt of court and order imprisonment.<sup>61</sup>

The ability to force judgment debtors to reveal information about their assets has a legitimate place in the justice system, particularly for wealthy debtors who have the wherewithal to transfer substantial assets to dummy corporations or overseas bank accounts. However, creditors have also used it as a means to harass low-income debtors, and debtors may unknowingly or for good reason miss a hearing, leading to arrest.<sup>62</sup> Even though the arrest is ostensibly to force the debtor to provide the requested financial information, often the court requires the debtor to pay the debt itself to get out of jail. Or the court may set bail at the amount of the debt and then turn the bail money over to the creditor when the debtor pays it in order to be released.<sup>63</sup>

As a result of the gaps in the scope of the protection against debt-based incarceration—even in the civil system and particularly when the underlying source of the debt is a criminal violation—there is a very real risk that arrest and incarceration may still play a significant role in criminal justice debt collection even if moved to the civil judgment system. In many jurisdictions, states and localities pursuing enforcement of a civil judgment debt entered for a criminal fine could likely still threaten arrest and incarceration, and in many jurisdictions a court that has ordered payments or appearance at a debtor's examination could issue arrest warrants and even order incarceration on contempt charges for non-payment or non-appearance, subject to the various constitutional protections previously described.

The possible use of such a procedure to incarcerate criminal justice debtors is not merely theoretical. Using a procedure similar to contempt for failure to appear at a debtor's examination, courts in Leon County, **Florida**, made 838 arrests of criminal justice debtors during a 12-month period for failing to appear at hearings to review their payments on criminal justice debt.<sup>64</sup> While we have been informed that Florida has abolished the courts that engaged in these practices, the example shows how the ability to hold criminal justice debtors in contempt for failure to appear at a hearing about payment can be abusive. Courts, court clerks, prosecutors, and other government officers are accustomed to using incarceration and the threat of incarceration to enforce payment of criminal justice debt, and if it were still available,

they might see no reason to abandon it. Civil courts might make a practice of ordering debtors to pay criminal justice debts, and using their standard civil and criminal contempt powers to imprison those who fail to pay.

In sum, given the many limits and loopholes in state prohibitions of imprisonment for debt, advocates should not assume that moving collection of fines and fees to the civil judgment enforcement system will prevent the use of arrest and incarceration as enforcement mechanisms.

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### **Greater authorization and expanded use of wage garnishment**

The civil judgment collection system relies on the involuntary seizure of money and other assets from the debtor, putting financial security at risk. One of the most widely used means of enforcing a judgment debt in the civil justice system is wage garnishment. Federal law prevents a judgment creditor from seizing more than 25% of a debtor's wages or reducing the debtor's paycheck below 30 times the minimum hourly wage (protecting \$217.50 a week).<sup>65</sup> This is a painfully low amount. Federal law allows states to protect a larger amount of the debtor's wages, but 23 states still allow wage garnishment to reduce a minimum-wage worker's paycheck to below the poverty level for a single person (\$246.15 per week). Only eight states and the **District of Columbia** protect more than the poverty level for a family of four (\$509.16 per week).<sup>66</sup>

A number of states already allow wage seizure as part of the criminal justice debt collection system, authorizing the sentencing court to require a criminal justice debtor to execute a "wage assignment" to pay a criminal justice debt.<sup>67</sup> A wage assignment operates in a way similar to the wage garnishment procedure used in the civil justice system. But while we have found some current examples of the use of wage assignments to enforce criminal justice debt, the use of this mechanism does not appear to be common. Moving to the civil justice system for collecting criminal justice debt would likely mean much more seizure of wages. Widespread use of wage garnishment would reduce many more people burdened by fines and fees to the poverty level or below.

Another concern is the effect of wage garnishment on employment. Finding employment and staying employed are often of utmost importance for individuals burdened by criminal justice debt, and a criminal record is already a substantial barrier to employment.<sup>68</sup> People are in a particularly precarious position after a period of incarceration, and even more so if they are burdened by criminal justice debt. The inability to get a job or the loss of a job can result in disaster.

Shifting away from use of arrest, frequent court hearings, probation, driver's license suspension, and incarceration as primary ways to enforce criminal justice debt would help people find and maintain employment. But wage garnishment could introduce yet another threat to employment.

First, a wage garnishment is likely to reveal the employee's conviction to the employer—or to remind the employer or others in the company if the employer was already aware of the conviction as a result of a prior background check. Even a wage garnishment order that comes from the civil division of a court is going to carry a case name, and a case name like “People v. Smith” will make it clear to most employers that it is a criminal conviction. Revealing this information to the employer could mean discharge from the job.

**Wage garnishment could introduce yet another threat to employment.**

Even if the employer is already aware of the debtor's conviction, or is unconcerned about it, simply having to implement a garnishment can induce an employer to discharge an employee. Federal law prohibits an employer from discharging an employee because of wage garnishment for a single debt, but does not prohibit discharge if a garnishment comes in for a second debt.<sup>69</sup> Thus, an employee who already has a wage garnishment for child support or an old credit card debt could be fired if a garnishment came in for a criminal justice debt. Similarly, an individual who faces garnishment for one criminal justice debt might have their employment at risk if they face simultaneous garnishment for a second criminal justice debt, such as one arising from another jurisdiction within the state or a separate payment order. Federal law does not prevent states from enacting a stronger protection against discharge,<sup>70</sup> but many have not done so.<sup>71</sup>

The financial effect of wage garnishment can also drive a worker out of stable employment. A minimum wage worker whose paycheck is reduced by 25% because of a garnishment may have to move to lower-paying day labor work or the underground economy simply to meet basic needs.

### **Authorization of seizure of new types of property**

The civil judgment collection system authorizes not only wage garnishment, but also the involuntary seizure of money and other assets from the debtor. Most states allow a judgment creditor to garnish the debtor's bank account to collect a civil judgment. In some states, the judgment creditor can completely empty the debtor's bank account, leaving the debtor with no funds at all for rent, child care, utilities, and other expenses.<sup>72</sup> Moving to the civil judgment enforcement system could tempt states to use this draconian tactic.

The state laws governing collection of civil debts also commonly allow a judgment creditor to seize and sell personal property, such as a car or household goods, belonging to the debtor. While forfeiture of cars and other property used in the

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commission of crimes is common, seizure of such property does not otherwise seem to be a generally available method for collecting criminal justice debts. Moving to a civil enforcement system could conceivably result in additional types of hardship for debtors by fostering seizure of personal property that is essential for daily living and that may not currently be at risk of seizure.

On the other hand, reports from advocates around the country indicate that seizure of cars and household goods to pay civil debts is far less common than use of wage garnishment, bank account garnishment, and judgment liens on real property. One likely reason is that the returns to creditors are so uncertain. For example, selling an impoverished debtor's used household goods at a sheriff's auction is unlikely to bring in enough money to cover the costs of seizing, storing, and selling them. Selling a debtor's car is more likely to bring in some value, but again there are costs of seizure, storage, and sale, plus any lienholder will be paid first from the proceeds of the sale.

These considerations are likely to make seizure of criminal justice debtors' cars and household goods uncommon. But even so, moving to the civil enforcement system would open the door to using or threatening to use this authority, particularly if probation or parole could no longer be revoked as a way of enforcing criminal justice debts. As reported on by ProPublica, the City of Chicago, **Illinois** impounded thousands of cars for unpaid traffic tickets, selling those that went unclaimed,<sup>73</sup> so there is reason to believe that jurisdictions might start using car seizure authorized under the civil judgment enforcement system to collect fines and fees if they moved to a civil enforcement system.

## Communities of Color Disproportionately Bear the Burden of Criminal Justice Debt—and of Civil Debt Collection Judgments

A critical concern among many people working to address harmful fines and fees practices is the impact on people of color. Low-income communities of color disproportionately bear the costs of criminal justice debt, in part because these communities, and Black communities in particular, are disproportionately targeted for enforcement of minor crimes and infractions that generate fines and fees.<sup>74</sup> The harm of this racial targeting is compounded by the fact that Black families have less wealth to draw upon than white families when hit with unexpected fines and fees. The longstanding racial wealth gap, caused by deeply entrenched public and private discrimination and wealth stripping,<sup>75</sup> means that today the median net worth of a Black family is about one tenth that of a white family and many Black families have minimal or no assets to draw on.<sup>76</sup> Black families are thus less likely to be able to pay the amounts of fines and fees assessed immediately, often resulting in snowballing costs (e.g., interest, late payment fines, driver's license suspension and reinstatement fees) and potential criminal punishment—consequences that can be avoided by those able to simply pay and move on.

Unfortunately, racial disparities also plague the civil judgment collection system. An analysis of judgments in three metropolitan areas by *ProPublica* found that Black neighborhoods “were hit twice as hard by” civil collection judgments as white neighborhoods, even when adjusting for differences in income.<sup>77</sup> The scale of the problem of collection lawsuits, judgments, and garnishments has often been underappreciated as a result of limited data and the tendency of Americans not to talk about their money, and in particular, debt, which can be a source of shame. But collection lawsuits and efforts are common in Black communities: in Jennings, **Missouri**, which is 90% black, there was more than one collection lawsuit for every four residents during the five-year period studied.

The impact of wealth stripping and barriers to asset building for Black families means the financial bumps are more likely to create unaffordable debts that result in lawsuits. Courts often process collection suits quickly, and those sued rarely have lawyers and often do not appear, resulting in default judgments. In **Missouri**, the suits typically result in authorizations and attempts to garnish wages and/or bank accounts, further destabilizing already tight household budgets and safety nets and extracting scarce resources from Black communities. *ProPublica*'s analysis found that collectors seized at least \$34 million from residents of St. Louis' mostly Black neighborhoods through suits filed between 2008 and 2012.

Advocates working to address fines and fees practices through a racial equity lens should thus be cautious about embracing the civil justice collection system for collection of criminal justice debts without reforms to protect against seizure of needed income and assets that may destabilize families and extract substantial assets from Black communities.

## Failure to protect a subsistence income and essential property

The purpose of exemption laws—the laws that place limits on judgment creditors’ seizure of a debtor’s income and property—are to protect debtors and their families from destitution and to afford them a means of financial rehabilitation.<sup>78</sup> State laws are the primary source of exemptions, although federal law protects a few types of federal payments such as Social Security and SSI benefits.<sup>79</sup> If the civil justice system and these exemption laws lived up to this goal and preserved a living wage and essential property, debtors would not have to divert their rent money, or the money they need to get to work or provide for their families, in order to pay a debt. But most state exemption laws do not meet this standard. In many states, the exemption laws do not protect a living wage and the basic property a debtor needs in order to work and function in society.

For example, as previously noted, all but ten states allow wage garnishment to reduce a minimum-wage worker’s paycheck to below the poverty level for a family of four. Thirteen states protect less than half the federal poverty level for a family of four, and less than even the poverty level for a single individual.<sup>80</sup>

Some states also fail to protect even the most basic property for decent living. For example, in **Pennsylvania** an exemption of just \$300 is all that is available for the debtor’s property, including the debtor’s car, household goods, appliances, beds, furniture, bank account, work equipment, and home. These counterproductive seizures are unlikely to result in any substantial reduction of the debt but leave the debtor without the ability to manage daily life or continue to get to work. In some states that authorize seizure of household goods, cars, work tools, and other property, actual seizure is uncommon, but creditors still use the threat of seizure as a way to coerce payment of old judgment debts ahead of immediate needs, such as rent and food.

A steady job is often critical for individuals with criminal justice debt to stabilize their lives, but can be maddeningly difficult for those with a criminal record to access.<sup>81</sup> This challenge is made worse if the individual cannot drive to or for work—a reality widely recognized by reformers working to end debt-based drivers’ license suspension laws.<sup>82</sup> A car is especially important for workers in rural areas and those who have irregular work hours or work on evenings and weekends. Yet the exemptions available in **Arkansas** (\$500),<sup>83</sup> **Delaware** (\$500),<sup>84</sup> **New Jersey** (\$1,000),<sup>85</sup> and **Pennsylvania** (\$300)<sup>86</sup> are insufficient to protect even a barely-running junker, and the **Virgin Islands** appears to offer no means at all to protect a car. The exemption laws in eleven additional states make it possible for a debtor only to preserve a car worth between \$2,000 and \$5,500.

Seizing and selling a car as a way to enforce criminal justice debt is likely to be self-defeating even if only the state’s financial interest is considered. The state may gain a payment on the debt, but a debtor who can no longer get to work or perform a job

will have no earnings with which to make any future payments or from which to pay income taxes, and will be more likely to need to rely on state benefits in order to survive. And the impact on the debtor and their family of losing a job is likely to be devastating.

In some of the states that fail to protect even a subsistence income and minimal property, families who are trapped in debt have another avenue of relief—bankruptcy. For example, **Pennsylvania** protects only \$300 of personal and real property, but the state allows a debtor who files bankruptcy to use the considerably more realistic exemptions provided by federal bankruptcy law.<sup>87</sup> State laws in **Delaware** similarly provide one set of exemptions for use outside of bankruptcy, and a separate, more generous set for use in bankruptcy.<sup>88</sup>

The availability of bankruptcy provides an escape valve for civil debts in these states despite their inadequate exemptions, as civil judgment debtors may be able both to discharge the debt and to protect their assets from seizure using more protective bankruptcy exemptions. However, this escape valve is considerably less useful for criminal justice debt. This is likely the case even if the criminal justice debt has been entered as a civil judgment.<sup>89</sup> Fines, restitution, penalties, the costs of incarceration, and many fees are generally non-dischargeable in a Chapter 7 bankruptcy case, so a Chapter 7 bankruptcy will provide little relief to a criminal justice debtor.<sup>90</sup> A Chapter 13 bankruptcy, in which the debtor makes payments on the debts over a three- to five-year period, allows more types of criminal justice debt to be discharged, but still excepts restitution and fines that are included in the sentence on the debtor's conviction of a crime.<sup>91</sup> In addition, Chapter 13 is more costly than a Chapter 7 bankruptcy, and its success depends on the debtor's ability to make payments consistently for at least three years.

**The escape valve that bankruptcy can provide is considerably less useful for criminal justice debt.**

Regardless of the type of bankruptcy, though, a benefit for the debtor is that the exemptions the debtor claims in bankruptcy retain a permanent character.<sup>92</sup> Even though the bankruptcy discharge may not cover a criminal justice debt, the debtor's exempt interest claimed in specified property remains protected by the full scope of the bankruptcy exemption. The bankruptcy exemption shields this interest against post-bankruptcy actions to collect a criminal justice debt, even a non-dischargeable criminal justice debt.<sup>93</sup> Thus, for example, if a debtor claimed a car as exempt in a Chapter 7 case, that car could not be seized for a criminal justice debt even though the criminal justice debt itself was not discharged.



**TABLE 1: Statutes Denying the Usual Exemption Rules to Criminal Justice Debt**

CITATION	TEXT OR SUMMARY	COMMENTS
Alaska Stat. § 09.38.065(a)(3)	<p>“A creditor may make a levy against exempt property of any kind to enforce the claim of a victim, including a judgment of restitution on behalf of a victim of a crime or a delinquent act, if the claim arises from conduct of the debtor that results in a conviction of a crime or an adjudication of delinquency, except that the debtor is entitled to an exemption in property</p> <p>(A) not to exceed an aggregate value of \$3,000 chosen by the debtor from the following categories of property:</p> <p>(i) household goods and wearing apparel reasonably necessary for one household;</p> <p>(ii) books and musical instruments, if reasonably held for the personal use of the debtor or a dependent of the debtor; and</p> <p>(iii) family portraits and heirlooms of particular sentimental value to the debtor; and</p> <p>(B) not to exceed an aggregate value of \$2,800 of the debtor’s implements, professional books, and tools of the trade.”</p>	<p>By contrast, for a civil debt there is an exemption for up to \$72,900 in a home, up to \$4,050 in a car, up to \$4,050 in household goods, and up to \$2,970 in a bank account if the debtor is not earning wages. Alaska Stat. §§ 09.38.010, 09.38.020, 09.38.030. These amounts are adjusted biennially for inflation, Alaska Stat. § 09.38.115 and new amounts are reported in Alaska Admin. Code tit. 8, §95.030.</p>
Colo. Rev. Stat. § 16-11-101.6(4)	<p>Allows court to order that up to 50% of a defendant’s earnings be withheld and applied to unpaid fines or fees.</p>	<p>By contrast, Colo. Rev. Stat. § 13-54-104 limits wage garnishment for other debts to 20% of disposable earnings. Note that garnishment of 50% of a defendant’s earnings for an obligation other than child support likely violates federal law.</p>
Del. Code Ann. tit. 11, § 4104(c)	<p>“Any court may, in its discretion, direct any person sentenced to pay a fine or restitution upon conviction of a crime, who is employed within this State or by a Delaware resident or employer, to execute an assignment of a specified periodic sum not to exceed 1/3 of the person’s total earnings, which assignment shall direct the person’s employer to withhold and remit that amount to this State up to the total of the fine, costs and restitution imposed.”</p>	<p>By contrast, Del. Code Ann. tit. 10, § 4913 protects 85% of wages from garnishment for other debts. Note that requiring a person to execute a wage assignment of 1/3 of earnings would likely violate federal law, which restricts wage garnishment to 25% of disposable earnings. 15 U.S.C. § 1673.</p>
Iowa Code § 909.6(1)	<p>“Whenever a court has imposed a fine on any defendant, the judgment in such case shall state the amount of the fine, and shall have the force and effect of a judgment against the defendant for the amount of the fine. The law relating to judgment liens, executions, and other process available to creditors for the collection of debts shall be applicable to such judgments; provided, that no law exempting the personal property of the defendant from any lien or legal process shall be applicable to such judgments.”</p>	<p>In addition, Iowa protects 40 times (rather than the federal minimum of 30 times) the minimum wage from wage garnishment, but only if the debt arises from a consumer credit contract. Iowa Code § 537.5105.</p>
La. Rev. Stat. Ann. 20:1(C)(8)	<p>Homestead exemption does not apply to “any obligation arising from the conviction of a felony or misdemeanor which has the possibility of imprisonment of at least six months.”</p>	<p>In addition, La. Rev. Stat. Ann. § 13:3881(D) exempts certain pensions and retirement funds, but La. Rev. Stat. Ann. § 11:292 denies this exemption to certain public employees’ retirement funds for criminal fines, restitution, or incarceration expenses.</p>

CITATION	TEXT OR SUMMARY	COMMENTS
Me. Rev. Stat. Ann. tit. 9-A, § 5-105(2)	Protects 40 times the state or federal minimum wage (rather than the federal minimum of 30 times the federal minimum wage) from garnishment, but only for debts arising from consumer credit transactions.	
N.C. Gen. Stat. § 1C-1601(e)	State exemptions do not apply: ... “(10) For criminal restitution orders docketed as civil judgments pursuant to <a href="#">G.S. 15A-1340.38</a> .”	
N.D. Cent. Code § 28-22-02	Only the exemptions made absolutely exempt by § 28-22-15 apply to debt for fines, penalties or costs of criminal prosecution.	
42 Pa. Cons. Stat. § 8127(a)	Generally forbids wage garnishment, but allows it: “(5) For restitution to crime victims, costs, fines or bail judgments pursuant to an order entered by a court in a criminal proceeding.”	In addition, 42 Pa. Cons. Stat. § 9730 allows the sentencing court to “assign an amount not greater than 25% of the defendant’s gross salary, wages or other earnings to be used for the payment of court costs, restitution or fines.”
S.D. Codified Laws § 43-45-10	Only the homestead and other exemptions made absolutely exempt by § 43-45-2 apply to judgment for fines, penalties or costs of criminal prosecution.	
Vt. Stat. Ann. tit. 12, §§ 3170(b)	Protects 40 times (rather than the federal minimum of 30 times) the federal minimum wage from garnishment, but only for debts arising from consumer credit transactions.	
Wash. Rev. Code § 6.27.150	Protects a higher percentage of wages than federal law requires (80% rather than 75%), but only for consumer debt.	
W. Va. Code § 46A-2-136	Exempts “children’s books, pictures, toys, and other such personal property of children, and all medical health equipment used for health purposes”, but only for consumer credit transactions and consumer leases.	
Wis. Stat. § 973.05(4)(b)	“(4) If a defendant fails to pay the fine, surcharge, costs, or fees within the period specified under sub. (1) or (1m), the court may do any of the following: [...] (b) Issue an order assigning not more than 25 percent of the defendant’s commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102, and other money due or to be due in the future to the clerk of circuit court for payment of the unpaid fine, surcharge, costs, or fees.”	Wis. Stat. §§ 812.34, 812.38 protects a greater amount of wages for other debts. In addition, Wisconsin exempts certain specified household goods, but only for debts that arise from a consumer credit transaction. Wis. Stat. § 425.106.

## Laws making state exemptions inapplicable to criminal justice debt

Another obstacle to treatment of criminal justice debt as a civil judgment are laws currently on the books that deny the usual exemptions to criminal justice debt. Some states make clear that their exemptions apply to collection of criminal justice debts. For example, **Tennessee** specifically provides, with a few exceptions, that a debtor's homestead "is exempt from seizure in criminal as well as civil cases."<sup>94</sup> However, it is more common for states to do the opposite.

Although there are constitutional arguments, flowing directly from the Supreme Court's decision in *James v. Strange*,<sup>95</sup> that states should not be able to deny basic exemptions applicable to civil debtors to those who owe criminal justice debts,<sup>96</sup> at least twelve states explicitly deny one or more of the usual exemptions to criminal justice debt, or otherwise allow an even larger-than-usual seizure from a criminal justice debtor. Sometimes this is accomplished by restricting a protection to debts arising from consumer transactions.

To achieve the goal of enforcing criminal justice debt the same as civil debt, these statutes would have to be repealed.

## No individualized assessment of ability to pay prior to seizure; little ability to seek reduction due to hardship

The civil judgment collection system does not offer much improvement over the typical criminal justice collection system when it comes to considering individual financial circumstances. And the civil system is potentially worse in that it does not offer a mechanism like remission to allow for complete cancellation or reduction of a debt based on financial hardship.

In the criminal justice system, an individualized assessment of ability to pay a monetary obligation has an important but limited role. In all states, the U.S. Constitution requires an assessment of whether a debtor has the ability to pay a criminal justice debt before the defendant can be imprisoned for non-payment.<sup>97</sup> This is an important but fairly limited protection, and even then it is, unfortunately, often honored only in the breach.<sup>98</sup> At least one state, **Florida**, extends this principle to require a determination of ability to pay before any seizure of a criminal justice debtor's property.<sup>99</sup> However, most penalties for non-payment, such as extension of probation or denial of a driver's license, are imposed without determination of ability to pay.<sup>100</sup> (Some jurisdictions also require an assessment of ability to pay at the time of imposition of fines, fees or other monetary sanctions, but this is separate from the collection process.)<sup>101</sup>

Unfortunately, the system for enforcement of civil debts generally does not improve on these protections, as most states do not provide for individualized assessment of the debtor's ability to pay the debt as part of the collection process, creating the very real risk that wages and assets the debtor needs for subsistence living

will be taken. For example, the great majority of states set the amount that can be garnished from a civil judgment debtor's wages without regard to the debtor's actual daily living expenses or whether the debtor is supporting children.

A handful of jurisdictions—**Arizona, California, the District of Columbia, Indiana, Iowa, North Dakota, Oklahoma, Vermont, and West Virginia**<sup>102</sup>—allow a debtor to petition the court to reduce a wage garnishment on grounds of undue hardship. These determinations are not built into the enforcement procedure, but depend on the debtor filing a petition in court and persuading the judge that undue hardship is shown. They typically do not set standards for what amounts to undue hardship, leaving open the possibility of inconsistent or discriminatory decision-making. The statute may only allow the court to reduce the garnishment to a certain amount rather than suspend it altogether.<sup>103</sup>

Some states make certain exemptions or larger exemptions available only to a debtor who is the head of a household.<sup>104</sup> Four states provide a slightly higher protection against wage garnishment, such as \$2.50 per week per child,<sup>105</sup> if the debtor is supporting children.

Another approach that at least indirectly takes ability to pay into account is to provide some special protection for debtors who are receiving or have recently received public assistance. **Minnesota**,<sup>106</sup> **New York**,<sup>107</sup> and **Rhode Island**<sup>108</sup> prohibit wage garnishment in these circumstances. Since eligibility for public assistance depends on need, these states at least indirectly allow the debtor's particular financial circumstances to be taken into account. **Minnesota's** and **New York's** laws extend the protection to some debtors who meet the eligibility requirements for public assistance, even if they are not currently receiving assistance. These statutes are the exception rather than the rule, however.

A few states also provide a statutory procedure for courts to order installment payments on civil debts that have gone to judgment.<sup>109</sup> These statutes typically require the court to take the debtor's financial condition into account in setting the amount of the installments. The downside of these installment payment orders is that in some states they are the first step toward imprisonment for non-payment via a contempt proceeding.<sup>110</sup>

A potentially significant flaw of the civil judgment system as compared to the criminal collection system is the lack of a mechanism like remission that would allow for waiver or reduction of the debt based on the debtor's financial hardship. In the criminal justice system, some states allow individuals who owe criminal justice debt to petition for remission (reduction or waiver) of a debt based on financial hardship. The remission system is quite imperfect—it typically relies on the debtor to affirmatively petition for relief, often sets difficult to meet or ambiguous standards for what constitutes financial

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hardship, and often provides courts the authority but not the obligation to provide relief if those standards are met.<sup>111</sup> But it is a potential source of meaningful or even complete relief for the debtor. The civil judgment enforcement system does not provide anything comparable. If states move to the civil judgment enforcement system for criminal justice debt, it will be important to retain these provisions allowing for remission.

## Lack of uniformity

Except in the area of wage garnishment, where federal law sets a minimum floor that must be protected, and for certain federal benefits such as Social Security, exemption laws are a matter for the states. The result is a striking lack of uniformity. As noted previously, some states protect almost none of the debtor's property—even work tools, beds, dishes, or a no-frills family car can be seized. Other states protect all of the debtor's necessary household goods, or provide a wildcard that can exempt as much as \$100,000 in personal property.<sup>112</sup>

Protection of a home varies even more greatly from state to state. **New Jersey** provides no exemption at all for a home,<sup>113</sup> and **Pennsylvania** and **Delaware** allow exemptions of \$300 and \$500 respectively.<sup>114</sup> At the other extreme, nine jurisdictions—**Arkansas, the District of Columbia, Florida, Iowa, Kansas, Oklahoma, Puerto Rico, South Dakota, and Texas**—protect a home from seizure for a civil debt regardless of the home's value.<sup>115</sup> Some of these states have a long and deeply-embedded history of protecting the home, going back to the early days of statehood.

Even for wage garnishment, there are great variations among the states. Federal law requires states to protect at least 30 times the federal minimum wage or 75% of the debtor's paycheck, whichever is greater, from wage garnishment.<sup>116</sup> This formula leaves a full-time minimum wage worker with just \$217.50 a week, less than half the poverty level for a family of four, and less than the poverty level even for a single person. However, states are allowed to provide a greater protection, and about three-quarters of the states have done so. In **North Carolina, South Carolina, and Texas**, wage garnishment is completely forbidden for most debts.<sup>117</sup> (**Pennsylvania** also prohibits wage garnishment for most debts, but excepts most criminal justice debt).<sup>118</sup> **Florida** protects \$750 per week and **Alaska** protects \$743 per week if the wage earner is the head of a family.<sup>119</sup>

This extreme level of inconsistency from state to state makes it particularly important for advocates and policy-makers to understand their particular state's laws, protections, and practices before settling on the approach of funneling all criminal justice debt collection into the civil justice system. Unless a shift to the civil justice system is coupled with reform of the state's exemptions, in

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### The costs of civil enforcement of debts

The costs of collection through the civil judgment collection system are important for a number of reasons, including the impact on those who owe the debts if costs of collection are imposed on them and the government assessment of whether the collection is fiscally prudent.

Collection of criminal justice debt becomes self-defeating from a government fiscal standpoint if the costs of collection are high in comparison to the amount collected. A 2019 study of ten counties in three states shows that these jurisdictions spent 41¢ for every dollar in criminal justice debt that they collected, and one **New Mexico** county spent \$1.17 for every dollar collected.<sup>120</sup> And these figures dramatically underestimate the actual cost of collection, as they count only the costs that are tracked, typically excluding the substantial costs of incarceration, time spent by police and sheriffs on warrant enforcement and on debt-based driver's license suspensions, and probation and parole resources devoted to fee and fine enforcement.

Since so many criminal justice debtors are indigent,<sup>121</sup> it is not surprising that costly efforts to enforce payment obligations yield so little. **Florida** data shows that only 9% of fees imposed in felony cases will ever be collected.<sup>122</sup> In the federal system, 91% of outstanding criminal restitution debt is uncollectable because the debtor lacks the ability to pay it.<sup>123</sup>

The costs of enforcement are even more counterproductive if they are charged to the debtor. Not only are they disproportionate to the revenue collected, but they can pile on so much that the debtor never makes progress in reducing the debt. Whatever collateral consequences of criminal justice debt the state imposes become lifetime sanctions. Allowing the cost of enforcement to be imposed on the debtor also encourages the court system to pursue non-existent revenue, and makes it appear cost-free to do so, even though the inability to collect the ever-mounting fees means that the court system, and ultimately the taxpayers, pay for these fruitless efforts.

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These same issues arise when civil enforcement methods are used. For example, the court costs that a party incurs, such as filing fees and costs of service, are uniformly added to the judgment debt. These costs alone can be quite high when a judgment creditor invokes civil enforcement methods. For example, in Franklin County, **Pennsylvania**, the sheriff's office requires a \$250 fee for executing on a judgment debtor's personal property.<sup>124</sup> The Cuyahoga County Court of Common Pleas (serving Cleveland, **Ohio**) charges a fee of \$80 for a bank garnishment and

\$85 for a wage garnishment.<sup>125</sup> These costs, which are added to the judgment debt, illustrate how resource-intensive these enforcement methods can be. In addition, the judgment creditor will incur costs to prepare the papers to invoke these enforcement methods and to attend any hearings that are required. A **Florida** study found that court clerks found the paperwork time-consuming and, in some cases, beyond their expertise, suggesting that it might be necessary for the court system to hire lawyers to pursue these collection methods—further increasing costs.<sup>126</sup>

If the government bears the cost of civil collection methods, high costs might conceivably protect debtors by acting as a disincentive to use these methods against debtors with few assets and limited income. However, if jurisdictions began using these methods and imposing the fees on debtors, the fees could easily pile on, serving as additional punishment and making the prospect of repayment hopeless for many debtors. The civil justice system routinely imposes court costs on the losing party, and some jurisdictions allow debt collectors to add collection fees to the amount of the debt.<sup>127</sup>

Since the costs of civil enforcement methods, and their comparison to the costs of criminal enforcement, vary from jurisdiction to jurisdiction, it is impossible to generalize about whether a switch to civil judgment enforcement methods will make a difference in collection costs. Advocates and policymakers will have to evaluate this question on a jurisdiction-by-jurisdiction basis. Advocates should urge their jurisdictions to record and publish the current costs and results of enforcement through the criminal justice system, and through the civil justice system to the extent that it is already being used. If a jurisdiction moves to civil judgment enforcement methods, it will be important to require it to track these costs and the revenue these methods produce, in order to evaluate whether these methods are cost-effective.

## Interest on judgments

Every state has a statute that provides for interest on judgments.<sup>128</sup> For debts that do not arise from a contract, these statutes authorize interest rates that range as high as 12%.<sup>129</sup> Even without compounding, at 12% a debt will double after nine years.

When interest accrues at a high rate, a debtor may find it impossible to pay off the debt. A debtor who pays \$100 a month on a \$10,000 criminal justice debt will not reduce the debt at all, ever, if it is growing by 12% a year. For a debtor who is able to afford only smaller payments, the interest rate will cause the debt to increase.

If a state's judgment interest rate already applies to criminal justice debts, switching to enforcement through the civil justice system will not make any difference. On the other hand, if the judgment interest rate does not already apply, moving to the civil justice system would further increase the costs of criminal justice debts on financially vulnerable people who cannot afford to pay the debt off quickly, particularly if the state's judgment interest rate is on the high end of the range among the states. Even in states that already allow criminal justice debts to be entered as civil

judgments, there may be laws on the books that provide that they bear a different interest rate than other civil judgments, so the state law details matter.<sup>130</sup>

## How long a civil judgment remains enforceable

Every state has a limit on the lifetime of a civil judgment—for what period of time it remains enforceable. These range greatly, from four years to twenty years.<sup>131</sup> In jurisdictions that have no limit<sup>132</sup> or longer limits on enforcement of criminal justice debts,<sup>133</sup> these civil judgment time limits could be a significant advantage of enforcing criminal justice debts only as civil judgments—if those time limits apply.

Laws treating criminal justice debts as civil judgments can be framed in either of two ways. If the law states that the obligation can be entered as a civil judgment, the laws placing limits on the period during which a judgment can be enforced will likely apply to that judgment. On the other hand, if the law merely states that the methods for enforcing a civil judgment are available for criminal justice debt, courts might find that the obligation is not subject to the state law that limits the period of time during which a civil judgment can be enforced.

Further, even if the civil judgment time limits do apply, the time limits may not be ironclad. In many states, the limitation period can be extended by filing a motion, weakening the protection and the promise of eventual freedom from enforcement. In some states there is no limit on the number of times the limit can be extended.<sup>134</sup> In addition, some states may already have special rules on the books that limit the application of time limits to criminal justice debts.<sup>135</sup>

Despite their weaknesses, applying the civil justice system's time limits on the collection of criminal justice debt would probably be an advantage to debtors in many or most states, compared to the status quo. Advocates should, however, evaluate their state's time limits for enforcement of both civil debts and criminal justice debts carefully, especially any provisions that allow the initial time period for enforcement of civil debts to be renewed or extended. Given advocacy to further limit criminal justice debt collection time limits, advocates should also consider including a provision in any reform bill specifying that for criminal justice debts, the applicable time limit is the shorter of the civil justice system's time limits or the relevant time limit on the criminal justice debts, and that repeal any statutory language that provides to the contrary.

## Credit reporting

A concern raised in the past is that entering a criminal justice as a civil judgment would mean it would show up on the debtor's credit report.<sup>136</sup> That may no longer be a concern. Thanks to a multi-state settlement with over thirty state attorneys general, supervision by the Consumer Protection Bureau (CFPB), and private lawsuits, as of 2017, the Big Three credit bureaus (Experian, TransUnion, and Equifax) stopped reporting civil judgments because they typically lack certain types of



personal identifying information (such as Social Security Numbers and dates of birth) that are critical for matching public records to the correct person.<sup>137</sup> Although it is possible that the Big Three credit bureaus could resume reporting civil judgments in the future if such reporting complied with the terms of the settlement, the CFPB has found that at least so far, “there have been no signs of a return.”<sup>138</sup>

Even if the civil judgment itself does not appear on an individual’s credit report, it may still cause credit reporting consequences. The fact that the debtor has fallen behind on the debt that underlies the civil judgment could be reported to the credit bureaus by the original creditor or a debt collector. Debt collection accounts are considered negative entries in a credit report that can remain for up to seven years and significantly lower someone’s credit score. A lower credit score can hurt an individual’s ability to secure housing and employment and reduce access to affordable credit. While government entities are unlikely to report the underlying debt, these debts are increasingly being referred to debt collectors, many of whom do provide information to credit bureaus. However, the same multi-state settlement noted above prohibits the reporting of debts that do not arise from a contract or agreement, which should prevent collectors from reporting criminal justice debt. We do not have any data on whether debt collectors are complying with this provision.

In addition, unless the underlying criminal record itself has been sealed or expunged, that record likely will show up on any tenant or employment screening report that a prospective landlord or employer obtains from a background screening company.<sup>139</sup>

## Financial incentives

A final issue is financial incentives. The events in Ferguson, **Missouri**, show the dangers that arise when governmental entities or offices that have the power to enforce criminal justice debt also use that revenue for their daily operations. These incentives can skew priorities regardless of whether the jurisdiction is using the criminal justice system or the civil justice system to collect the debt. In the civil justice system, particularly if the costs of collection can be successfully imposed on debtors, that sort of financial incentive could lead enforcement authorities to aggressively use civil judgment collection tools such as wage and bank account garnishment and auto and other property seizures, to find ways to deny exemptions, or to fit criminal justice debt into loopholes in the state’s prohibition of imprisonment for debt. Whatever methods the state authorizes for collection of criminal justice debt, advocates and policymakers should be on alert for any financial incentives that could lead to overuse or misuse of those methods.

## RECOMMENDATIONS

Moving to enforcement of criminal justice debt as a civil judgment—and out of the realm of the criminal justice system—could have significant benefits. A less coercive enforcement system, less reliant on the punitive tools of the criminal justice system—arrest, incarceration, extension of probation and parole, and, in many states, driver’s license suspension—would make it easier for people burdened by criminal justice debt to stabilize their lives, maintain employment, and avoid the devastations of incarceration. But the civil judgment enforcement system itself is in need of reform, and the degree to which it offers superior protections compared to the criminal justice collection system will vary by state. It is therefore critical that advocates assess the specifics of both the criminal justice debt collection and the civil judgment enforcement regimes in their state.

Policymakers and advocates who are considering a move to civil enforcement should evaluate the strength of the civil justice system’s protections. Given the wide variation from state to state, policymakers, and advocates should not assume that the civil justice system will bring the improvements they want to see (see [Table 2](#) for an at-a-glance guide to help determine if the civil justice system is appropriate). Key questions include:

- Are there exceptions to the state’s prohibition of imprisonment for debt that would allow imprisonment to continue to be used as a primary enforcement mechanism?
- What protections exist against use of *capias* warrants and civil contempt incarceration for nonpayment?
- What collection methods are available under the state’s civil judgment enforcement regime?
- Do the laws governing enforcement of civil judgments protect a living wage and the basic property necessary for decent living and to get and keep a job?
- Are the state’s exemption laws written to exclude criminal justice debts?
- What filing fees, sheriff’s service costs, and other costs must a litigant pay to invoke the civil justice system’s mechanisms for enforcing judgments, how do they compare to the costs imposed by the criminal justice system, who bears responsibility for these costs and do they get added to the debt, and what sort of incentives or disincentives do they create?
- How long do civil judgments remain enforceable and do these time limits apply to criminal justice debt? How does the time frame for enforcing civil judgments compare to the criminal justice system?
- Would the political landscape support alternative criminal justice collection reforms that would better protect individuals from harmful collection than the civil judgment collection system?

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If advocates and policymakers decide they should move collection of criminal justice debt to the civil justice system, they should make sure that their proposal:

- Identifies collection through the civil justice system as the exclusive method of collection, rather than as one that is allowed in addition to those made available through the criminal justice system.
- Makes the state's ban on imprisonment for civil debt watertight, and makes sure that it applies to criminal justice debt.
- Precludes use of warrants for failure to pay or failure to appear at a debt-related hearing.
- Precludes punishments for missed payments, including suspensions or renewal holds on driver's licenses or vehicle registrations and ensures any outstanding debts do not bar criminal record clearing.
- Builds in an analysis of the individual debtor's ability to pay criminal justice debt at both the time of imposition and the point of enforcement. (Ideally, jurisdictions should eliminate fees, costs, and surcharges altogether, with fines tailored to individual financial circumstances and the criminal conduct.)<sup>140</sup> Without such an evaluation, whatever collection efforts the state engages in—whether criminal or civil—are likely to be harmful and self-defeating, punishing and impoverishing those assessed monetary sanctions and, at the same time, wasting taxpayers' money.
- Preserves the sentencing court's authority to order remission of criminal justice debt, thereby providing an opportunity for the debt to be reduced or waived based on financial hardship.
- Protects a living wage, a basic amount in a bank account, and the property necessary for decent living.<sup>141</sup> Many state exemption schemes fall far short of this goal and need significant reform.
- Repeals any existing laws that deny the state's exemptions to criminal justice debt.
- Prohibits discharge from employment on account of wage garnishment, regardless of the number of debts involved.
- Prohibits the imposition of the costs of collection on criminal justice debtors, and mandates careful tracking and reporting of all the use of the various civil judgment methods, the revenue received, and the costs of these collection methods.
- Limits the period of time during which a criminal justice debt can be enforced to a reasonable period.
- Strips away any financial incentives that could lead to overuse or misuse of civil justice collection methods.

**TABLE 2: At a Glance: Will Moving Collection of Criminal Justice Debt to the Civil Justice Collection System Achieve the Improvements Advocates Seek?**

Using the civil justice system to collect criminal justice offers the hope of a fairer, less punitive, and less self-defeating system. But advocates and policymakers should not assume that the civil justice collection system in their state offers the improvements they seek. This table summarizes key goals and collection system features that advocates may be looking for in the civil collection system: (“goals”), common problems with state laws that may stand in the way of or undermine the desired goals (“concerns”), and possible steps to address those problems (“actions”).

GOALS	CONCERNS	ACTIONS
Bar arrest and imprisonment for debts	<ul style="list-style-type: none"> <li>■ The state’s existing ban on imprisonment for debt may have loopholes or exceptions that would still permit arrest warrants and imprisonment for nonpayment or nonappearance at hearings relating to debts that arose in the criminal justice system, or even for civil debts.</li> <li>■ Many states allow use of both the civil justice system and the criminal justice system to enforce criminal justice debt, creating a “worst of both worlds” situation.</li> </ul>	<ul style="list-style-type: none"> <li>✍ Research the state’s law carefully; close any loopholes and eliminate exceptions.</li> <li>✍ Make use of the civil justice system the exclusive method of enforcement, rather than an additional method of enforcement.</li> </ul>
Preserve subsistence income and essential property from collection	<ul style="list-style-type: none"> <li>■ Many states do not protect a living wage from garnishment to pay a civil debt. Additionally, some states permit employers to fire employees based on multiple garnishments.</li> <li>■ Many states fail to protect the debtor’s home, a running car, household goods, and a basic amount in a bank account from seizure to pay a civil debt.</li> <li>■ Some states make their exemption laws—which protect income and assets from collection—inapplicable or only partially applicable to criminal justice debt.</li> </ul>	<ul style="list-style-type: none"> <li>✍ Reform state wage garnishment laws to protect a living wage and to prohibit employers from taking any adverse action because of garnishment.</li> <li>✍ Reform the state’s exemption laws to protect essential property from seizure.</li> <li>✍ Amend the state’s exemption laws to eliminate any exceptions for criminal justice debt.</li> </ul>
Take the debtor’s ability to pay into account during collection	<ul style="list-style-type: none"> <li>■ Most states do not take the debtor’s financial circumstances into account when determining the amount of wages that can be garnished or when applying other civil collection methods, applying only minimal standardized protections.</li> <li>■ State laws regarding collection of civil debts do not provide a procedure like remission to waive the debt based on financial hardship.</li> </ul>	<ul style="list-style-type: none"> <li>✍ Amend the civil justice system’s enforcement provisions to improve protection of living wages and essential property, and require the debtor’s financial circumstances to be taken into account.</li> <li>✍ Retain (and improve upon) the criminal justice system’s remission procedures when moving to the civil justice system’s enforcement methods.</li> </ul>

GOALS	CONCERNS	ACTIONS
Prevent the amount of the debt from ballooning	<ul style="list-style-type: none"> <li>■ Many states allow civil debts to accrue interest, sometimes at high rates.</li> <li>■ Court costs and fees for obtaining a judgment and for enforcing it are commonly added to civil debts and charged to the debtor.</li> </ul>	<ul style="list-style-type: none"> <li>✗ Eliminate or reduce the judgment interest rate, and ensure that interest does not accrue during periods of incarceration.</li> <li>✗ Evaluate whether the added fees would be greater or less than those the criminal justice system imposes; reduce unnecessary or overly high fees or prohibit their addition to the debt.</li> <li>✗ Make sure that the state's law does not allow collection agency fees or collection attorney costs to be added to the debt.</li> </ul>
Apply reasonable time limits to efforts to enforce the debt	<ul style="list-style-type: none"> <li>■ How long a judgment debt remains enforceable varies by state and often by type of debt, and can be very long.</li> </ul>	<ul style="list-style-type: none"> <li>✗ Research the state's law carefully:</li> <li>✗ if the state's time limits for enforcement of civil debts are shorter than the time limits for criminal justice debts, ensure that the time limits for civil debts apply to criminal justice debts; if the time limits on enforcement may sometimes be shorter for criminal justice debts, then consider ways to ensure that the shorter of the applicable time limits applies.</li> </ul>
Reduce or eliminate collateral consequences of criminal justice debt	<ul style="list-style-type: none"> <li>■ Under many states' laws, criminal justice debt prevents the debtor from voting, obtaining or renewing a driver's license, obtaining an occupational license, or accessing criminal record clearing; collection as a civil judgment will not necessarily end these consequences.</li> </ul>	<ul style="list-style-type: none"> <li>✗ These laws may require separate amendment to ensure that criminal justice debt is treated as a civil judgment for all purposes and to eliminate collateral consequences of the debt.</li> </ul>
Eliminate financial incentives for local jurisdictions to pile on fees and use draconian enforcement methods	<ul style="list-style-type: none"> <li>■ State and local governments often use the criminal justice debt they collect to fund their legal systems and other government services; moving collection to the civil system would not necessarily address this problem.</li> <li>■ States may not track all (or any) of the costs of their enforcement methods, making it impossible to identify harsh yet unproductive methods.</li> </ul>	<ul style="list-style-type: none"> <li>✗ Examine legislative proposals carefully to ensure that they do not create financial incentives that would distort jurisdictions' priorities. Recognize that reforms beyond changes to collection practices are likely needed to address this concern.</li> <li>✗ Require jurisdictions to track and publish all the costs of enforcement of criminal justice debt, and the recoveries obtained.</li> </ul>

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## CONCLUSION

To the extent criminal justice debt continues to exist, moving away from use of the criminal punishment system—including arrests, incarceration, and probation—is an important goal. Removing the debt from the criminal enforcement system and instead into the civil judgment enforcement system is one potential way to approach this goal, and indeed many states already allow for use of the civil system. However, advocates should be aware that the civil enforcement system has flaws of its own, including both risk of debt-based “capias” arrests and imprisonment, and various mechanisms through which an individual’s wages or property can be involuntarily seized, putting their livelihood at risk, with relevant protection differing significantly across states. Additionally, some states appear to allow for a “worst of both worlds” situation where a criminal justice debt may be enforced simultaneously through both the criminal legal system and civil enforcement methods. Ultimately, advocates should carefully consider the details of the civil enforcement system and relevant protections in their state to assess whether to advocate for using this system (and potentially pursuing reforms of it) versus working to reform the criminal justice debt collection system itself.

## ENDNOTES

1. See, e.g., Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, & Noah Atchison, Brennan Center for Justice, [The Steep Costs of Criminal Justice Fines and Fees](#) (2019); Neil L. Sobol, [Charging the Poor: Criminal Justice Debt & Modern-Day Debtors' Prisons](#), 75 Md. L. Rev. 486 (2016); Abby Shafroth, David Seligman, Alex Kornya, Rhona Taylor, & Nick Allen, National Consumer Law Center, [Confronting Criminal Justice Debt: A Guide for Litigation](#) (2016); Andrea Marsh & Emily Gerrick, [Why Motive Matters: Designing Effective Policy Responses to Modern Debtors' Prisons](#), 34 Yale L. & Pol'y Rev. 93 (2015); Alice Bannon, Mitali Nagrecha, & Rebekah Diller, Brennan Center for Justice, [Criminal Justice Debt: A Barrier to Reentry](#) p. 27 n.196 (2010); Sharon Brett, Neda Khoshkhou, & Mitali Nagrecha, Criminal Justice Policy Program at Harvard Law School, [Paying on Probation: How Financial Sanctions Intersect with Probation to Target, Trap, and Punish People Who Cannot Pay](#) (2020); U.S. Commission on Civil Rights, [Targeted Fines and Fees Against Communities of Color](#) (2017).
2. See, e.g., sources cited supra note 1; see also Alexes Harris, Beth Huebner, Karin Martin, Mary Pattillo, Becky Pettit, Sarah Shannon, Bryan Sykes, & Chris Uggen, United States Systems of Justice, [Poverty and the Consequences of Non-Payment of Monetary Sanctions: Interviews from California, Georgia, Illinois, Minnesota, Missouri, Texas, New York, and Washington](#) (2017).
3. See, e.g., American Civil Liberties Union, [Reckless Lawmaking: How Debt-Based Driver's License Suspension Laws Impose Harm and Waste Resources](#) (2021).
4. The 45 jurisdictions in which we found statutes that allow or require a sentencing court's restitution order to be treated as a civil judgment (as opposed to statutes that merely allow a victim of crime to bring a civil suit) are listed in [Appendix A](#). We did not find such statutes in Illinois, Indiana, Kentucky, Massachusetts, Missouri, or New Hampshire. However, Illinois and Indiana have laws stating that a restitution order is a judgment lien in favor of the victim. 730 Ill. Comp. Stat. § 5/5-5-6(m); Ind. Code § 35-50-5-3(b). A provision of the Missouri Constitution provides that a crime victim has "[t]he right to restitution, which shall be enforceable in the same manner as any other civil cause of action, or as otherwise provided by law." Mo. Const. Art. I, § 32(1)(4). However, this provision does not clearly say that a sentencing court's restitution order can be entered as a civil judgment without the need for the victim to file a civil action, nor could we find a Missouri statute to that effect. New Hampshire is unique in specifically providing that "[a] restitution order is not a civil judgment." N. H. Rev. Stat. Ann. § 651:63(I). Additional laws that allow or require a sentencing court's restitution order to be treated as a civil judgment, or other state statutes relevant to this report, should be brought to the authors' attention.
5. See, e.g., Alaska Stat. 12.55.045(I); La. Crim. Proc. Art. 886; Ohio Rev. Code Ann. § 2929.18(D).
6. Wis. Stat. § 973.20(1r).
7. Vt. Stat. Ann. tit. 13, §§ 7180.
8. See National Consumer Law Center, [Collection Actions](#) § 16.3.4 (5th ed. 2020).
9. Haw. Rev. Stat. § 706-644(5). See also Or. Rev. Stat. § 137.450 (providing that a judgment against the defendant or complainant in a criminal action, so far as it requires the payment of a fine, fee, assessment, costs and disbursements, or restitution, may be enforced as a judgment in a civil action).
10. Fla. Stat. § 938.30.
11. Wis. Stat. § 973.05.
12. See, e.g., Alaska Stat. § 12.55.051(d) (fines or restitution).

13. See, e.g., Del. Code tit. 10, § 8603.
14. See, e.g., Alaska Stat. Ann. § 12.55.051(d) (“This subsection does not limit the authority of the court to enforce fines”); Del. Code Ann. tit. 10, § 8603 (“The court shall have the power to pursue civil enforcement to obtain the money due on behalf of the State, and to also pursue criminal remedies when civil means are not effective.”); Fla. Stat. § 938.30(14) (“The provisions of this section may be used in addition to, or in lieu of, other provisions of law for enforcing payment of court-imposed financial obligations in criminal cases”); La. Crim. Proc. Art. 886 (“Collection of the judgment may be enforced in either criminal or civil court, or both, in the same manner as a money judgment in a civil case. . . .”); N.Y. Crim. Proc. Law § 420.10(6)(a) (“Even if the defendant was imprisoned for failure to pay such fine, restitution or reparation, or has served the period of imprisonment imposed, such order after entry thereof pursuant to this subdivision may be collected in the same manner as a judgment in a civil action by the victim. . . .”); Ohio Rev. Code Ann. § 2929.28 (“The civil remedies authorized under division (E) of this section for the collection of the financial sanction supplement, but do not preclude, enforcement of the criminal sentence”); S.D. Codified Laws § 23A-27-25.6 (“If the defendant is in default on payment, the levy or execution for the collection of the fine, costs, or restitution, do not discharge a defendant committed to imprisonment for contempt pursuant to this chapter until the amount due has actually been collected”); Tenn. Code Ann. § 40-24-105(a) (fines may be enforced both by contempt and through the civil judgment enforcement system; costs and “litigation taxes” are enforceable only as civil judgments).
15. Haw. Rev. Stat. § 291C-171.5 (specifying that no person shall be imprisoned for failure to pay costs); Md. Code Ann. Cts. & Jud. Proc. § 7-505(a) (allowing fines and costs to be collected in same manner as civil judgment; providing that defendant may not be imprisoned for failure to pay costs).
16. Tenn. Code Ann. § 40-24-105(a).
17. See, e.g., Del. Code Ann. tit. 11, § 4104(c); 42 Pa. Stat. § 9730; Wis. Stat. § 973.05(4)(b). A wage assignment that is mandated by a court order is subject to the federal limits on wage garnishment. See, e.g., *Carrel v. Carrel*, 791 S.W.2d 831 (Mo. Ct. App. 1990); *Koethe v. Johnson*, 328 N.W.2d 293, 297 (Iowa 1982).
18. See, e.g., Fla. Stat. §§ 960.292, 960.294 (restitution; lien on all real and personal property); 725 Ill. Comp. Stat. § 5/124A-10 (lien on all non-exempt real and personal property of defendant, for fines and costs); N.J. Stat. Ann. 2A:158A-17 (public defender fees are a lien on all defendant’s property, present or future). See also Ark. Code Ann. § 5-4-204 (providing that fines and costs may be collected in the same manner as a civil judgment, and also providing that a judgment for fines or costs constitutes a lien on the defendant’s personal and real property).
19. See National Consumer Law Center, *Consumer Credit Regulation* Appx. D (3d ed. 2020).
20. See, e.g., Cal. Labor Code § 300; Nev. Rev. Stat. § 608.170; N.M. Stat. Ann. § 14-13-11.
21. Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, & Noah Atchison, Brennan Center for Justice, [The Steep Costs of Criminal Justice Fines and Fees](#) (2019).
22. *Id.* at 27.
23. Alice Bannon, Mitali Nagrecha, & Rebekah Diller, Brennan Center for Justice, [Criminal Justice Debt: A Barrier to Reentry](#) p. 27 n.196 (2010).
24. Alexes Harris, Beth Huebner, Karin Martin, Mary Pattillo, Becky Pettit, Sarah Shannon, Bryan Sykes, & Chris Uggen, United States Systems of Justice, [Poverty and the Consequences of Non-Payment of Monetary Sanctions: Interviews from California, Georgia, Illinois, Minnesota, Missouri, Texas, New York, and Washington](#) (2017). The report did not differentiate between states in which wage garnishment—a traditional civil judgment collection mechanism—and tax refund offset, which is a distinct process—were reported.



25. Alice Bannon, Mitali Nagrecha, & Rebekah Diller, Brennan Center for Justice, [Criminal Justice Debt: A Barrier to Reentry](#) p. 27 n.196 (2010).
26. Alabama Appleseed Center for Law & Justice, [Under Pressure: How fines and fees hurt people, undermine public safety, and drive Alabama's racial wealth divide](#) p.30 (2018). Nearly a quarter of those surveyed also reported having money taken from their state tax refunds, a topic not addressed in this report.
27. Alice Bannon, Mitali Nagrecha, & Rebekah Diller, Brennan Center for Justice, [Criminal Justice Debt: A Barrier to Reentry](#) p. 27 n.196 (2010).
28. Reimbursement Unit, ["FAQ," Oakland County, Michigan](#). The office also noted that it makes use of seizure of tax refunds.
29. Alice Bannon, Mitali Nagrecha, & Rebekah Diller, Brennan Center for Justice, [Criminal Justice Debt: A Barrier to Reentry](#) p. 27 n.196 (2010).
30. Alexis Harris, Beth Huebner, Karin Martin, Mary Pattillo, Becky Pettit, Sarah Shannon, Bryan Sykes, & Chris Uggen, United States Systems of Justice, [Poverty and the Consequences of Non-Payment of Monetary Sanctions: Interviews from California, Georgia, Illinois, Minnesota, Missouri, Texas, New York, and Washington](#) (2017). The report did not differentiate between states in which wage garnishment—a traditional civil judgment collection mechanism—and tax refund offset, which is a distinct process—were reported.
31. Bryan L. Adamson, [Debt Bondage: How Private Collection Agencies Keep the Formerly Incarcerated Tethered to the Criminal Justice System](#), 15 NW J. L & Soc. Pol'y 305, 322 (Spring 2020) ("What started out at \$3,400 in principal ballooned to over \$12,000 in LFOs, interest, and the 50% collection fee. The client was in his fifties and had child dependents and a job, but the DCA would accept nothing less than \$200.00 per month. He could not pay. As result, the DCA initiated garnishment proceedings such that he could no longer pay basic living expenses.")
32. San Francisco Financial Justice Project, [Criminal Justice Administrative Fees: High Pain for People, Low Gain for Government, SF Office of the Treasure & Tax Collector](#) (May 22, 2018).
33. San Francisco Judicial Council, ["AllianceOne Master Agreement for Collections Services for Court-Ordered and Other Debt"](#) (2018).
34. State of Florida, Office of Program Policy Analysis and Government Accountability, [Clerks of Courts are Generally Meeting the System's Collections Performance Standards](#) p. 5 (Jan. 2004).
35. Email from Laura Holland to Maggie Westberg (Feb. 15, 2021).
36. Telephone conversation with Alex Kornya, Iowa Legal Aid (March 17, 2021).
37. Iowa Code §§ 421.17A (accounts), 421.17B (wages).
38. S.F. 510, 84th Gen. Assemb. (Iowa 2015); S.F. 457 88th Gen. Assemb. (Iowa 2020).
39. Alex Kornya, "Summary of Recommendations to Iowa Department of Revenue: Comment to ARC 5272C," Iowa Legal Aid (Dec. 8, 2020).
40. See Iowa Code § 602.8107(4)(c) (assigning counties 28% of many types of debt collected, with an additional 5% bonus to the prosecutor's office for money collected over a population-based threshold).
41. See U.S. Dept. of Justice, Civil Rights Div., [Investigation of the Ferguson Police Dept.](#) (Mar. 4, 2015); [ArchCity Defenders: Municipal Courts White Paper](#) (Nov. 23, 2014).
42. Lee Rood, ["Overdue court debt costing Iowans millions of dollars in collection fees,"](#) Des Moines Register (Nov. 9, 2017).
43. Telephone conversation with Alex Kornya, Iowa Legal Aid (March 17, 2021).
44. Alex Kornya, "Summary of Recommendations to Iowa Department of Revenue: Comment to ARC 5272C," at 5 Iowa Legal Aid (Dec. 8, 2020).
45. Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, & Noah Atchison, Brennan Center for Justice, [The Steep Costs of Criminal Justice Fines and Fees](#) (2019).

46. Alexes Harris, Beth Huebner, Karin Martin, Mary Pattillo, Becky Pettit, Sarah Shannon, Bryan Sykes, & Chris Uggen, United States Systems of Justice, [Poverty and the Consequences of Non-Payment of Monetary Sanctions: Interviews from California, Georgia, Illinois, Minnesota, Missouri, Texas, New York, and Washington](#) pp.10-11, 28-29 (2017).
47. Alabama Appleseed Center for Law & Justice, [Under Pressure: How fines and fees hurt people, undermine public safety, and drive Alabama's racial wealth divide](#) p. 30 (2018).
48. National Consumer Law Center, [Collection Actions](#) § 16.3.1 (5th ed. 2020).
49. See, e.g., *Lavender v. City of Tuscaloosa*, 198 So. 459, 461 (Ala. Ct. App. 1940) (confining prohibition to debts arising out of contract); *Sentinel Offender Servs., L.L.C. v. Glover*, 766 S.E.2d 456, 468 (Ga. 2014) (revocation of convicted misdemeanor defendant's probation because of failure to pay costs of probation supervision provided by private company is not imprisonment for debt); Iowa Const. art. I, § 19; Ohio Const. art. I, § 15. See generally Courtney E. Lollar, [Eliminating the Criminal Justice Debt Exception for Debtors' Prisons](#), 98 N.C. L. Rev. 427, 429 (2020); Note, [State Bans of Debtors' Prisons and Criminal Justice Debt](#), 129 Har. L. Rev. 1024, 1037-1040 (2016) National Consumer Law Center, [Collection Actions](#) § 16.3.2 (5th ed. 2020).
50. *Connally v. State*, 458 S.E.2d 336, 336-337 (Ga. 1995) (because theft-by-conversion statute requires proof of criminal intent, it does not violate constitutional prohibition of imprisonment for debt; "the constitution does not forbid imprisonment for criminal conduct, even though the criminal conduct also results in a civil debt").
51. See, e.g., Fla. Const. art. I, § 11 ("No person shall be imprisoned for debt, except in cases of fraud"); *People v. Piskula*, 595 P.2d 219 (Colo. 1979) (prosecution for offense that requires proof of intent to defraud falls within fraud exception to constitutional prohibition against imprisonment for debt).
52. See National Consumer Law Center, [Collection Actions](#) § 16.3.2 (5th ed. 2020).
53. See, e.g., *Ex parte Silvas*, 140 P. 988 (Ariz. 1914) (upholding imprisonment for failure to pay fine for illegally selling liquor; "The prohibition in the Constitution [this section] against imprisonment for debt only applies to debts arising from contract, either express or implied. It has no application to fines imposed in criminal proceedings for violations of the criminal laws of the state."); *State v. Dowling*, 110 So. 522, 525 (Fla. 1926) (debts to which constitutional prohibition against imprisonment for debt applies are "those arising exclusively from actions ex contractu, and was never meant to include damages arising in actions ex delicto, or fines, penalties, and other impositions imposed by the courts in criminal proceeding as punishments for crimes"); *Makarov v. Commonwealth*, 228 S.E.2d 573 (Va. 1976) (although there is no state constitutional prohibition, "it is nevertheless established in this state that a person may not be imprisoned, absent fraud, for mere failure to pay a debt arising from contract or for mere failure to pay a judgment for a debt founded on contract").
54. Note, [State Bans of Debtors' Prisons and Criminal Justice Debt](#), 129 Har. L. Rev. 1024, 1038-1043 (2016) (arguing that costs, fines for "regulatory offenses" such as traffic tickets, and penalties for offenses classified as civil do not fall within these exceptions).
55. Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, & Noah Atchison, Brennan Center for Justice, [The Steep Costs of Criminal Justice Fines and Fees](#) p. 9 (2019).
56. See, e.g., *State v. Bartos*, 423 P.2d 713 (Ariz. 1967) ("sewer rental charge" arises out of a contract with the city for sewer service, so delinquent debtor cannot be imprisoned even though statute declares non-payment to be a crime); *Turner v. State ex rel. Gruver*, App. 3 Dist., 168 So.2d 192 (Fla. Dist. Ct. App. 1964) (constitutional prohibition against imprisonment for debt cannot be defeated by mere form; imprisonment for non-payment of city waste collection fee is violation even though statute declares it a crime). Note, however, that in both of these cases the courts looked to the underlying nature of the debt in order to prevent evasion of the prohibition against imprisonment for debt. There is an argument that these prohibitions should be interpreted in a way that favors individual liberty, so courts might be more willing to accept

- relabeling when they protect against imprisonment. See *State v. Riggs*, 807 S.W.2d 32 (Ark. 1991) (noting that all doubt must be resolved in favor of the citizen when interpreting a constitutional protection for civil liberties)
57. See, e.g., Me. Rev. Stat. Ann. tit. 14, §§ 3126-A (allowing court to order payment of civil debt in installments), 3136 (allowing debtor who has ability to comply with court order to be held in civil contempt for failing to do so); Mass. Gen. Laws Ch. 224, § 16 (allowing court, after determining that debtor has the ability to pay a civil debt, to order installment payments; specifying that failure to obey is contempt); Vt. Nat'l Bank v. Taylor, 445 A.2d 1122 (N.H. 1982) (a defendant who has been found able to pay a civil judgment and is ordered to pay it but fails to do so can be held in contempt); Mason Furniture Corp. v. George, 362 A.2d 188 (N.H. 1976) (court may, after considering a number of factors, imprison judgment debtor for failing to make installment payment under an existing order); N.J. Stat. Ann. §§ 2A:17-64 (allowing court to order debtor to make installment payments), 2A:17-78 (West) (allowing court to cause debtor who has ability to pay to be arrested for failure to pay). See also *Albarran v. Liberty Healthcare Mgmt.*, 431 S.W.3d 310 (Ark. Ct. App. 2013) (imprisonment for civil contempt, for failure to obey court order to pay money judgment, does not violate state constitutional ban on imprisonment for debt when debtor presented no evidence of inability to pay); 735 Ill. Comp. Stat. § 5/2-1402(c)(2) (allowing court to order a debtor to make installment payments out of non-exempt income; no explicit authorization to hold debtor in contempt for failure to pay). *But cf.* *State v. Riggs*, 807 S.W.2d 32 (Ark. 1991) (where constitutional provision allows imprisonment only if debt was incurred by fraud, willful non-payment is insufficient). See generally National Consumer Law Center, *Collection Actions* § 16.3.3 (5th ed. 2020); American Civil Liberties Union, *A Pound of Flesh: The Criminalization of Private Debt* p. 13 (2018). (“In some states, debtors can also be jailed when they fall behind on payments promised under court-ordered payment plans. If they fail to keep up with the payment plan, they may be arrested for contempt of court.”).
  58. *Turner v. Rogers*, 564 U.S. 431, 131 S. Ct. 2507, 2516, 2518, 180 L. Ed. 2d 452 (2011) (“[A]n incorrect decision (wrongly classifying the contempt proceeding as civil) can increase the risk of wrongful incarceration by depriving the defendant of the procedural protections (including counsel) that the Constitution would demand in a criminal proceeding.”). See, e.g., *Dixon*, 509 U.S., at 696, 113 S. Ct. 2849 (proof beyond a reasonable doubt, protection from double jeopardy); *Codispoti v. Pennsylvania*, 418 U.S. 506, 512–513, 517, 94 S.Ct. 2687, 41 L.Ed.2d 912 (1974) (jury trial where the result is more than six months’ imprisonment.”); *Hicks v. Feiock*, 485 U.S. 624, 631, 108 S. Ct. 1423, 99 L. Ed. 2d 721 (1988). See also *In re Birchall*, 913 N.E.2d 799, 812 (Mass. 2009) (debtor who has ability to pay but willfully refuses to do so can be sentenced to imprisonment for criminal contempt upon proof beyond a reasonable doubt).
  59. *Turner v. Rogers*, 564 U.S. 431, 131 S. Ct. 2507, 2518, 180 L. Ed. 2d 452 (2011) ; *Hicks v. Feiock*, 485 U.S. 624, 631, 638 n.9, 108 S. Ct. 1423, 99 L. Ed. 2d 721 (1988); National Consumer Law Center, *Collection Actions* § 16.3.3 (5th ed. 2020).
  60. *Turner v. Rogers*, 564 U.S. 431, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011) (holding that appointed counsel is unnecessary in civil contempt proceeding to enforce child support order where other parent is unrepresented and state provides alternate procedural safeguards, but noting that the constitutional requirements may be different if the debt is owed to the state and the state has counsel or some other competent representation).
  61. See National Consumer Law Center, *Collection Actions* § 16.2 (5th ed. 2020); American Civil Liberties Union, *A Pound of Flesh: The Criminalization of Private Debt* (2018) (describing this and other ways in which debtors are imprisoned for civil debt; examples involving imprisonment for failure to obey an installment payment order are found on pp. 49 (Ms. C), 51 (Iheanyi Daniel Okoroafor), and 54 (Mr. M)).
  62. See, e.g., American Civil Liberties Union, *A Pound of Flesh: The Criminalization of Private Debt* p. 50 (2018) (James Davis case).

63. See American Civil Liberties Union, [A Pound of Flesh: The Criminalization of Private Debt](#) p. 18 (2018).
64. Rebekah Diller, Brennan Center for Justice, [The Hidden Costs of Florida's Criminal Justice Fees](#) pp. 15-19 (2010) (documenting 838 arrests for failure to appear at collection court hearings from October 1, 2007 to September 30, 2008).
65. 15 U.S.C. § 1673.
66. National Consumer Law Center, [No Fresh Start 2020: Will States Let Debt Collectors Push Families Into Poverty in the Wake of a Pandemic?](#) Appx. F (state-by-state summaries, showing the amount protected from garnishment) (Oct. 2020).
67. See, e.g., Del. Code Ann. tit. 11, § 4104(c); 42 Pa. Stat. § 9730; Wis. Stat. § 973.05(4)(b). A wage assignment that is mandated by a court order is subject to the federal limits on wage garnishment. See, e.g., Carrel v. Carrel, 791 S.W.2d 831 (Mo. Ct. App. 1990); Koethe v. Johnson, 328 N.W.2d 293, 297 (Iowa 1982).
68. See note 86, *supra*.
69. 15 U.S.C. § 1674.
70. 15 U.S.C. § 1677.
71. See Barbara Kate Repa, Nolo, [State Laws on Wage Garnishment](#) (last visited Feb. 11, 2021) (listing state protections; about 40% have a protection against discharge that exceeds the federal protection in some way and is not confined to child support garnishments or other limited categories).
72. National Consumer Law Center, [No Fresh Start 2020: Will States Let Debt Collectors Push Families Into Poverty in the Wake of a Pandemic?](#) pp. 26-31, Appx. D (Oct. 2020).
73. Melissa Sanchez and Sandhya Kambhampati, [Driven into Debt: How Chicago Ticket Debt Sends Black Motorists Into Bankruptcy](#), ProPublica (Feb. 27, 2018).
74. See Abby Shafroth, National Consumer Law Center, [Criminal Justice Debt in the South: A Primer for the Southern Partnership to Reduce Debt](#) 3 (Dec. 2018); Abby Shafroth, David Seligman, Alex Kornya, Rhona Taylor, & Nick Allen, National Consumer Law Center, [Confronting Criminal Justice Debt: A Guide for Litigation](#) § 1.2 (Sept. 2016); Abby Shafroth & Larry Schwartzol, National Consumer Law Center & Criminal Justice Policy Program at Harvard Law School, [Confronting Criminal Justice Debt: The Urgent Need for Comprehensive Reform](#) 3 (Sept. 2016). See also Matthew Impelli, In Minneapolis, Where George Floyd Was Killed, Black Drivers Are Five Times More Likely to be Stopped by Police Than White Drivers: Analysis, Newsweek (Sept. 9, 2020) (study showing Black drivers are much more likely to be searched when stopped by police than white Americans); U.S. Commission on Civil Rights, [Targeted Fines and Fees Against Communities of Color](#) 72 (Sep. 2017); Shaun Ossei-Owusu, [Race and the Tragedy of Quota-Based Policing Arrest targets compound the risk of racially biased stop-and-frisk](#), The American Prospect (Nov. 3, 2016).
75. See Racial Justice & Equal Econ. Opportunity Project, National Consumer Law Center, [Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination](#) (May 2016) (describing racial disparities in credit reporting and credit scores). See also Chi Chi Wu, [Reparations, Race, and Reputation in Credit: Rethinking the Relationship Between Credit Scores and Reports with Black Communities](#), Medium (Aug. 7, 2020).
76. Kriston McIntosh, Emily Moss, Ryan Nunn, & Jay Shambaugh, [Examining the Black-white wealth gap](#), Brookings (Feb. 27, 2020).
77. Paul Kiel & Annie Waldman, [The Color of Debt: How Collection Suits Squeeze Black Neighborhoods](#), ProPublica (Oct. 8, 2015).
78. See National Consumer Law Center, [Collection Actions](#) § 13.3.1 (5th ed. 2020), .
79. 42 U.S.C. §§ 407(a), 1383(d)(1). SSI is a need-based program for elderly and disabled individuals, administered by the Social Security Administration.

80. National Consumer Law Center, [No Fresh Start 2020: Will States Let Debt Collectors Push Families Into Poverty in the Wake of a Pandemic?](#) pp. 15-19 (Oct. 2020).
81. See Christy Visher, Sara Debus, & Jennifer Yahner, Urban Institute, [Employment after Prison: A Longitudinal Study of Releases in Three States](#) (2008) (finding and maintaining a legitimate job can reduce formerly incarcerated peoples' chances of reoffending, and the higher the wage, the less likely recidivism occurs). People with criminal records face substantial barriers to finding employment, and prior to the COVID-19 pandemic, formerly incarcerated people faced a 27% unemployment rate—nearly five times higher than the general unemployment rate. Lucius Couloute & Daniel Kopf, Prison Policy Initiative, [Out of Prison & Out of Work: Unemployment among formerly incarcerated people](#) (2018); Kenny Lo & Akua Amaning, Center for American Progress, [Update to 'News You Can Use: Research Roundup for Re-Entry Advocates'](#) (June 2018). People with justice system involvement also “tend to earn significantly less over the course of their lives than otherwise would be the case,” and these earning losses exacerbate the racial wealth gap. Terry-Ann Craigie, Ames Grawert & Cameron Kimble, Brennan Center for Justice, [Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality](#) (2020).
82. United States Census, American Community Survey, [Means of Transportation to Work by Vehicles Available](#) (2018) (showing that 76.5% drove alone to work and another 8.5% car-pooled); See, e.g., Fines & Fees Justice Center, [Free to Drive Fact Sheet, Poverty Should Never Determine Who is Free to Drive](#); Mario Salas and Angela Ciolfi, Legal Aid Justice Center, [Driven by Dollars](#) (2017).
83. Ark. Const. art. 9, § 2 (exempting personal property of \$500, plus wearing apparel, if debtor is married; for unmarried debtor, § 1 provides that exemption is \$200).
84. Del. Code Ann. tit. 10, § 4903 (head of family may exempt \$500 of personal property; § 4902 also exempts a family bible, pew, burial plot, wearing apparel, school books, a family library, sewing machines, up to \$75 in work tools, and rented pianos).
85. N.J. Stat. Ann. §§ 2A:17-19 (\$1000 exemption for goods and chattels; wearing apparel also exempt).
86. 42 Pa. Cons. Stat. § 8123 (\$300 exemption for property; § 8124 also exempts wearing apparel, bibles, school books, sewing machines, and military uniforms and accoutrements).
87. National Consumer Law Center, [Collection Actions](#) Appx. H (5th ed. 2020) (Pa. summary).
88. Compare Del. Code Ann. tit. 10, §§ 4902, 4903 (non-bankruptcy), with Del. Code Ann. tit. 10, §§ 4914 (bankruptcy).
89. See *In re Bova*, 326 F.3d 300 (1st Cir. 2003) (where party to whom restitution was owed brought suit against the debtor to enforce the restitution order in a civil proceeding, and was awarded a civil judgment for the balance, the debt remained non-dischargeable).
90. 11 U.S.C. § 523(a)(7). See National Consumer Law Center, [Clearing the Path to a New Beginning: A Guide to Discharging Criminal Justice Debt in Bankruptcy](#) (Oct. 2020).
91. 11 U.S.C. § 1328(a)(3). See generally National Consumer Law Center, [Clearing the Path to a New Beginning: A Guide to Discharging Criminal Justice Debt in Bankruptcy](#) (Oct. 2020).
92. 11 U.S.C. § 522(c). In re *Cunningham*, 513 F.3d 318, 323 (1st Cir. 2008). See National Consumer Law Center, [Consumer Bankruptcy Law and Practice](#) § 10.5 (12th ed. 2020).
93. In re *Wiggins*, 2019 WL 4267726 (Bankr. W.D. Mich. Aug. 26, 2019), *aff'd* 621 B.R. 213 (W.D. Mich. 2020). Advocates should note that there are limited exceptions to this general rule for certain federal criminal fines. 18 U.S.C. § 3613; *United States v. Hyde*, 497 F.3d 103 (1st Cir. 2007).
94. Tenn. Code. Ann. § 26-2-306 (making exceptions “for fines and costs for voting out of the civil district, precinct or ward in which the voter lives; or for carrying deadly or concealed weapons contrary to law; or for giving away or selling intoxicating liquors on election day”). Some states also specify that exemptions commonly applicable to civil debtors must be applied to indigent

- defense fees. See, e.g., Ind. Code § 33-37-2-3 (“A person ordered to pay part of the cost of representation [by a public defender] under subsection (e) has the same rights and protections as those of other judgment debtors under the Constitution of the State of Indiana and Indiana law.”).
95. James v. Strange, 407 U.S. 128, 92 S. Ct. 2027, 32 L. Ed. 2d 600 (1972).
  96. See discussion in National Consumer Law Center, [Confronting Criminal Justice Debt: A Guide for Litigation](#) pp. 15-16, 86-88 (2016).
  97. National Consumer Law Center, [Collection Actions](#) § 11.2.2 (5th ed. 2020). See also National Consumer Law Center, [Confronting Criminal Justice Debt: A Guide to Litigation](#), §§ 2.4, 6.1 (2016).
  98. Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, & Noah Atchison, Brennan Center for Justice, [The Steep Costs of Criminal Justice Fines and Fees](#) p. 9 (2019).
  99. State v. Beasley, 580 So. 2d 139, 142 (Fla. 1991).
  100. Litigation around whether the constitution requires ability-to-pay determinations prior to some of these nonpayment penalties, including drivers’ license suspension, is ongoing. See, e.g., Mendoza v. Garrett, 3:18-cv-01634-HZ (D. Or.); [Robinson, et al. v. Long, No. 18-6121](#) (6th Cir. May 20, 2020).
  101. See generally National Consumer Law Center, [Confronting Criminal Justice Debt: A Guide to Litigation](#), § 3.3 (2016) (discussing requirements to conduct ability-to-pay determinations prior to imposition of fines and fees in some states).
  102. Ariz. Rev. Stat. Ann. § 1598.10(F); Cal. Civ. Pro. Code § 706.051; D.C. Code § 16-572a; Ind. Code § 24-4.5-5-105 (made applicable by § 24-4.5-5-102 only to proceedings to enforce rights arising from consumer credit sales, consumer leases, and consumer loans); Iowa Code § 537.5105 (applies only to garnishment for judgments arising from consumer credit transactions); N.D. Cent. Code § 28-25-11 (allowing head of household to exempt all of earnings for 60 days preceding the order if needed to support family); Okla. Stat. tit. 31, § 1.1; Vt. Stat. Ann., tit. 12 § 3170(b)(3); W. Va. Code §§ 38-5A-6 (wage garnishment can be modified as court deems just), 46A-2-130 (judge can reduce or temporarily remove a wage garnishment arising from a from a consumer credit sale, consumer lease or consumer loan from a consumer credit sale, consumer lease or consumer loan if undue hardship is shown). See generally National Consumer Law Center, [No Fresh Start 2020: Will States Let Debt Collectors Push Families Into Poverty in the Wake of a Pandemic?](#) Appx. A (Oct. 2020).
  103. See, e.g., Ind. Code § 24-4.5-5-105 (allowing court to reduce garnishment for consumer credit obligation from 25% to 10% of wages upon showing of good cause).
  104. See, e.g., Mo. Rev. Stat. § 525.030 (protecting 90% of wages from garnishment if debtor is head of household); Neb. Rev. Stat. § 25-1558 (protecting 85% of wages if debtor is head of household).
  105. Tenn. Code Ann. §§ 26-2-106, 26-2-107 (protecting an additional \$2.50 per week for each dependent child under age 16); N.D. Cent. Code § 32-09.1-03 (protecting an addition \$20 per dependent); S.D. Codified Laws § 21-18-51 (protecting an additional \$25 per dependent); Va. Code Ann. §§ 34-29(a), 34-4.2 (protecting an additional \$34 per week for one dependent child, \$52 per week for two, and \$66 per week for three or more).
  106. Minn. Stat. § 550.37(14) (for eligible recipient of government assistance based on need, wages exempt from garnishment until six months after all public assistance has been terminated).
  107. N.Y. Soc. Serv. Law § 137-a (McKinney) (wage garnishment forbidden if debtor is receiving public assistance or would qualify for public assistance if the garnishment were implemented).
  108. R.I. Gen. Laws § 9-26-4(8) (if debtor has received public assistance, wages are exempt until one year after it has been terminated).
  109. 735 Ill. Comp. Stat. § 5/2-1402(c)(2) (allowing court to order a debtor to make installment payments out of non-exempt income); Me. Rev. Stat. Ann. tit. 14, §§ 3126-A (allowing court to order payment of civil debt in installments); Mass. Gen. Laws Ch. 224, § 16 (allowing court,

- after determining that debtor has the ability to pay a civil debt, to order installment payments; specifying that failure to obey is contempt); N.H. Rev. Stat. Ann. § 524:6-a (court may order such periodic payments “as the court in its discretion deems appropriate” on a civil judgment; failure to make payments is civil contempt unless court finds it was due to change in circumstances, or was not intentional or in bad faith, or for other good cause); N.J. Stat. Ann. §§ 2A:17-64 (allowing court to order debtor to make installment payments).
110. See, e.g., *In re Birchall*, 913 N.E.2d 799, 812 (Mass. 2009); *Mason Furniture Corp. v. George*, 362 A.2d 188 (N.H. 1976).
  111. National Consumer Law Center, [Confronting Criminal Justice Debt: A Guide for Litigation](#), § 4.3 (2016).
  112. Tex. Prop. Code Ann. § 42.001(a).
  113. New Jersey provides a \$1,000 wildcard exemption (one that can be used to protect any property of the debtor’s choice), but it is limited to personal property. N.J. Stat. Ann. § 2A:17-19. The more generous federal bankruptcy exemptions are available to a New Jersey debtor who files bankruptcy.
  114. Del. Code Ann. tit. 10, § 4903; 42 Pa. Cons. Stat. § 8123. In both states, more generous exemptions are available to debtors who file bankruptcy.
  115. National Consumer Law Center, [No Fresh Start 2020: Will States Let Debt Collectors Push Families Into Poverty in the Wake of a Pandemic?](#) pp. 19-23, Appx. B (Oct. 2020).
  116. 15 U.S.C. § 1673.
  117. N.C. Gen. Stat. § 1-362; S.C. Code Ann. §§ 15-39-410, 15-39-410; Tex. Prop. Code Ann. § 42.001.
  118. 42 Pa. Cons. Stat. § 8127.
  119. Alaska Stat. §§ 09.38.030, 09.38.050; 09.38.115; Alaska Admin. Code tit. 8, § 95.030; Fla. Stat. § 222.11.
  120. Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, & Noah Atchison, Brennan Center for Justice, [The Steep Costs of Criminal Justice Fines and Fees](#) pp. 5, 9 (2019).
  121. Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, & Noah Atchison, Brennan Center for Justice, [The Steep Costs of Criminal Justice Fines and Fees](#) p. 6 (2019); Alice Bannon, Mitali Nagrecha, & Rebekah Diller, Brennan Center for Justice, [Criminal Justice Debt: A Barrier to Reentry](#) p. 4 (2010).
  122. Rebekah Diller, Brennan Center for Justice, [The Hidden Costs of Florida’s Criminal Justice Fees](#) p. 1 (2010).
  123. U.S. Government Accountability Office, [Federal Criminal Restitution: Most Debt Is Outstanding and Oversight of Collections Could Be Improved](#) (Feb. 2018). See also Courtney E. Lollar, [Eliminating the Criminal Justice Debt Exception for Debtors’ Prisons](#), 98 N.C. L. Rev. 427, 430 (2020) (82% of individuals at the state level and 73% at the federal level were indigent before they were arrested and charged with a crime).
  124. Franklin County Sheriff’s Office, [2020 Fee Schedule](#) (last visited Jan. 31, 2021).
  125. Cuyahoga County Clerk of Courts, [Deposits for Costs & Filing Fees](#) (last visited Jan. 31, 2021).
  126. State of Florida, Office of Program Policy Analysis and Government Accountability, [Clerks of Courts are Generally Meeting the System’s Collections Performance Standards](#) at p. 5 (Jan. 2004).
  127. National Consumer Law Center, [Collection Actions](#) § 6.6 (5th ed. 2020).
  128. National Consumer Law Center, [Collection Actions](#) § 6.7.2 (5th ed. 2020).
  129. See, e.g., Mass. Gen. Laws Ch. 231, §§ 6B, 6C, 6H; R.I. Gen. Laws § 6-26-1. See generally Mike Baker, Seattle Times, [Debt collectors that ‘sue, sue, sue’ can squeeze Washington state consumers for more cash](#) (Mar. 25, 2019) (50-state map of judgment interest rates; since its publication, Washington State has lowered its judgment interest rate to 9%, Illinois has lowered its to 5%, and other states, including Florida, North Dakota, and Wisconsin, peg the judgment

- interest rate to a federal rate, so it fluctuates from year to year); National Consumer Law Center, [Consumer Credit Regulation Appx. B](#) (3d ed. 2015) (citations to state judgment interest laws).
130. See, e.g., Ariz. Rev. Stat. Ann. § 13-805(E) (interest at 10% a year when a restitution order is enforced by or on behalf of the person entitled; by comparison, the general rule under § 44-1201(B) for interest on judgments is that it is the lesser of 10% or a rate based on a Treasury rate).
  131. National Consumer Law Center, [Collection Actions](#) § 13.6.2 (5th ed. 2020).
  132. See, e.g., Cal. Penal Code § 1214(e) (West); Miss. Const. art. 4, § 104; Vt. Stat. Ann. tit. 13, § 7179.
  133. See generally National Consumer Law Center, [Collection Actions](#) § 11.3.9.1 (5th ed. 2020).
  134. See, e.g., Nev. Rev. Stat. §§ 11.190(1)(a), 17.214.
  135. See, e.g., Ariz. Rev. Stat. Ann. § 13-805(E) (authorizing entry of a civil judgment for restitution, but providing that “a criminal restitution order does not require renewal pursuant to § 12-1611 or 12-1612”; this creates an exception to Arizona’s usual rule that a civil judgment is enforceable for only ten years unless an affidavit of renewal is filed within 90 days from the expiration of the original ten-year period).
  136. Alice Bannon, Mitali Nagrecha, & Rebekah Diller, Brennan Center for Justice, [Criminal Justice Debt: A Barrier to Reentry](#) p. 27 (2010).
  137. See Chi Chi Wu, “[Big Changes for Credit Reports, Improving Accuracy for Millions of Consumers](#),” National Consumer Law Center (July 2017). The new public record data standards adopted by the Big Three credit bureaus also only permit the inclusion of civil judgments on a credit report if they are refreshed every 90 days. See *id.*
  138. Consumer Financial Protection Bureau, [Quarterly Consumer Credit Trends: Public records, credit scores, and credit performance](#) 2–3 (2019) (stating that all civil judgments had been removed by the end of July 2017 but noting that, although there have been no signs of a return, it is possible that civil judgments could be reported in the future if the reporting complies with the terms of the settlement).
  139. See Ariel Nelson, National Consumer Law Center, [Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing](#) pp. 6, 9, 19 (2019) (discussing prevalence of criminal background checks and their contents; noting that background screening companies also erroneously report expunged or sealed records).
  140. For guidance on how such ability-to-pay determinations should look, see [Fines and Fees Justice Center](#); and CJPP, [Proportionate Financial Sanctions](#).
  141. See National Consumer Law Center, [Model Family Financial Protection Act](#) (Dec. 2020) (recommendations).



## APPENDIX A

# STATE LAWS ALLOWING RESTITUTION OBLIGATION TO BE TREATED AS A CIVIL JUDGMENT

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
Ala. Code § 15-18-78(a)	“(a) A restitution order in a criminal case shall be a final judgment and have all the force and effect of a final judgment in a civil action under the laws of the State of Alabama. The victim on whose behalf restitution is ordered, the executor or administrator of the victim’s estate, or anyone else acting on behalf of the victim, shall be entitled to all the rights and remedies to which a plaintiff would be entitled in a civil action under the laws of this state as well as any other right or remedy pertaining to such restitution order as may be provided by law.”	Yes	None.
Alaska Stat. Ann. 12.55.045(l)	“An order by the court that the defendant pay restitution is a civil judgment for the amount of the restitution. [...] The victim or the state on behalf of the victim may enforce the judgment through any procedure authorized by law for the enforcement of a civil judgment. If the victim enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded. If the state on the victim’s behalf enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded, up to a maximum of twice the amount of restitution owing at the time the civil process was initiated. This section does not limit the authority of the court to enforce orders of restitution.”	Yes	Alaska Stat. Sec. 09.38.065(3) severely limits the exemptions available to a debtor in an action “to enforce the claim of a victim, including a judgment of restitution on behalf of a victim of a crime or a delinquent act, if the claim arises from conduct of the debtor that results in a conviction of a crime or an adjudication of delinquency.”
Ark. Code § 5-4-205	“(g)(1) The court shall enter a judgment against the defendant for the amount determined under subdivision (b)(4) of this section. (2) The judgment may be enforced by the state or a beneficiary of the judgment in the same manner as a judgment for money in a civil action.”	Yes	
Ariz. Rev. Stat. Ann. § 13-805(E)	“A criminal restitution order may be recorded and is enforceable as any civil judgment. . . .”	Yes	§ 13-805(E) also provides that “a criminal restitution order does not require renewal pursuant to § 12-1611 or 12-1612,” which appears to have the effect that it does not expire, and for interest at 10% a year when a restitution order is enforced by or on behalf of the person entitled (4% if enforced by the state).

## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
<p>Cal. Pen. Code §§ 1214(b) and (d), and 1191.2</p>	<p>§ 514(b)“In any case in which a defendant is ordered to pay restitution, the order to pay restitution (1) is deemed a money judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution ordered, and (2) shall be fully enforceable by a victim as if the restitution order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. [...] A victim shall have access to all resources available under the law to enforce the restitution order, including, but not limited to, access to the defendant’s financial records, use of wage garnishment and lien procedures, information regarding the defendant’s assets, and the ability to apply for restitution from any fund established for the purpose of compensating victims in civil cases. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation, parole, post release community supervision under <a href="#">Section 3451</a>, or mandatory supervision imposed pursuant to <a href="#">subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170</a> or after a term in custody pursuant to <a href="#">subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170</a> is enforceable by the victim pursuant to this section.”</p> <p>[...]</p> <p>“(d) Except as provided in subdivision (d), and notwithstanding the amount in controversy limitation of Section 85 of the Code of Civil Procedure, a restitution order or restitution fine that was imposed pursuant to Section 1202.4 in any of the following cases may be enforced in the same manner as a money judgment in a limited civil case:</p> <ol style="list-style-type: none"> <li>(1) In a misdemeanor case.</li> <li>(2) In a case involving violation of a city or town ordinance.</li> <li>(3) In a noncapital criminal case where the court has received a plea of guilty or nolo contendere.</li> </ol> <p>[...]</p>	<p>Yes</p>	<p>§ 514(e) provides that Cal. Civ. Pro. Code § § 683.010, et. seq., which provides for expiration and renewal of judgments, do not apply to restitution judgments.</p>

## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
<p>Colo. Rev. Stat. §§ 15-18.5-105, 16-18.5-197, 16-18.5-111 and 16-18.5-112</p>	<p>§ 16-18.5-105 An order of restitution may be recorded as a lien on real estate, personal property or a motor vehicle, and is enforceable in favor of the state, the victim or an assignee of the state or the victim.</p> <p>§ 16-18.5-107 (1) “Any victim in whose name a restitution order has been entered shall have a right to pursue collection of the amount of restitution owed to such own name.” If a victim notifies the court of an intent to do so, the collections investigator and the department of corrections must cease collection efforts. But a victim’s decision to pursue collection and subsequent collection efforts “do not alter a court’s order that restitution is a condition of the defendant’s probation, and such probation may still be revoked by the court upon a finding of failure to pay restitution.”</p> <p>(2) A victim who chooses to collect may petition the court for an earnings assignment and a writ of execution or other civil process.</p>	<p>Yes</p>	
<p>Conn. Gen. Stat. § 53a-28a</p>	<p>Restitution “may be enforced in the same manner as a judgment in a civil action by the party or entity to whom the obligation is owed.”</p>	<p>Yes</p>	
<p>Del. Code tit. 11, § 4101</p>	<p>(b) A sentence to pay restitution “shall be a judgment against the convicted person for the full amount of the [...] restitution [...]” The judgment is immediately executable, enforceable or transferable “by the State or by the victim to whom such restitution is ordered in the same manner as other judgments of the court. If not paid promptly upon its imposition or in accordance with the terms of the order of the court, or immediately if so requested by the State, the clerk or Prothonotary shall cause the judgment to be entered upon the civil judgment docket.” The judgment is exempt from the statutory provisions regarding expiration and renewal.</p> <p>(c) “The provisions of this section are cumulative and shall not impair any judgment given upon any conviction.”</p>	<p>Yes</p>	

## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
D.C. Code § 16-711.01(a), (b)	<p>“(a) An order of restitution or reparation requiring a person convicted of the criminal conduct to pay restitution or reparation constitutes a judgment and lien against all property of a liable defendant for the amount the defendant is obligated to pay under the order and may be recorded in any office for the filing of liens against real or personal property.</p> <p>(b) A judgment of restitution or reparation may be enforced by the United States Attorney for the District of Columbia, the Attorney General for the District of Columbia, a victim entitled under the order to receive restitution or reparation, a deceased victim’s estate, or any other beneficiary of the judgment in the same manner as a civil judgment.”</p>	Yes	
Fla. Stat. § 775.089(5)	<p>“An order of restitution may be enforced by the state, or by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action. The outstanding unpaid amount of the order of restitution bears interest in accordance with s. 55.03, and, when properly recorded, becomes a lien on real estate owned by the defendant. If civil enforcement is necessary, the defendant shall be liable for costs and attorney’s fees incurred by the victim in enforcing the order.”</p>	Yes	In addition, Fla. Stat. § 938.30 provides that the court may enter judgment upon any court-imposed financial obligation and “issue any writ necessary to enforce the judgment in the manner allowed in civil cases.”
Ga. Code Ann. § 42-8-34.2(a)	<p>“(a) In the event that a defendant is delinquent in the payment of fines, costs, or restitution or reparation, as was ordered by the court as a condition of probation, the defendant’s officer shall be authorized, but shall not be required, to execute a sworn affidavit wherein the amount of arrearage is set out. In addition, the affidavit shall contain a succinct statement as to what efforts DCS has made in trying to collect the delinquent amount. The affidavit shall then be submitted to the sentencing court for approval. Upon signature and approval of the court, such arrearage shall then be collectable through issuance of a writ of fieri facias by the clerk of the sentencing court; and DCS may enforce such collection through any judicial or other process or procedure which may be used by the holder of a writ of execution arising from a civil action.</p> <p>“(b) This Code section provides the state with remedies in addition to all other remedies provided for by law; and nothing in this Code section shall preclude the use of any other or additional remedy in any case.”</p>	Statute is silent	Treated as civil judgment only if payment of restitution is condition of probation and defendant is delinquent in payments.

## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
Haw. Rev. Stat. Ann. § 706-644(5)	“Unless discharged by payment or, in the case of a fee or fine, service of imprisonment pursuant to subsection (3), an order to pay a fee, fine, or restitution, whether as an independent order, as a part of a judgment and sentence, or as a condition of probation or deferred plea pursuant to chapter 853, may be collected in the same manner as a judgment in a civil action. The State or the victim named in the order may collect the restitution, including costs, interest, and attorney’s fees, pursuant to <a href="#">section 706-646</a> . The State may collect the fee or fine, including costs, interest, and attorney’s fees pursuant to <a href="#">section 706-647</a> .”	Yes	
Idaho Code § 19-5305	“(1) After forty-two (42) days from the entry of the order of restitution or at the conclusion of a hearing to reconsider an order of restitution, whichever occurs later, an order of restitution may be recorded as a judgment and the victim may execute as provided by law for civil judgments. (2) The clerk of the district court may take action to collect on the order of restitution on behalf of the victim and, with the approval of the administrative district judge, may use the procedures set forth in section 19-4708, Idaho Code, for the collection of the restitution”.	Yes	42-day delay period before order of restitution can be entered as civil judgment.
Iowa Code § § 910.3B, 910.7A, 910.10, 910.15 and 915. 100.	§ 910.7A (1) “An order requiring an offender to pay restitution constitutes a judgment and lien against all property of a liable defendant for the amount the defendant is obligated to pay under the order [...] (2) 2. A judgment of restitution may be enforced by the state, a victim entitled under the order to receive restitution, a deceased victim’s estate, or any other beneficiary of the judgment in the same manner as a civil judgment.” 910.10(3) “A restitution lien may be filed by the state or a victim. (4) The filing of a restitution lien in accordance with this section creates a lien in favor of the state and the victim in any personal or real property identified in the lien to the extent of the interest held in that property by the person named in the lien. 5. This section does not limit the right of the state or any other person entitled to restitution to obtain any other remedy authorized by law.” § 915.100(f) “A judgment of restitution may be enforced by a victim entitled under the order to receive restitution, or by a deceased victim’s estate, in the same manner as a civil judgment.”	Yes.	

## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
Kan. Stat. Ann. § 60-4301	<p>“A certified copy of any judgment of restitution, established pursuant to subsection (d) of <a href="#">K.S.A. 22-3424</a>, and amendments thereto, shall be filed in the office of the clerk of the district court of the county where such restitution was ordered. Such copy may be filed by or on behalf of any person who is awarded restitution in the judgment. The clerk of the district court shall record the judgment of restitution in the same manner as a judgment of the district court of this state pursuant to the code of civil procedure. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings as a judgment of a district court of this state and may be enforced or satisfied in like manner, except a judgment of restitution shall not constitute an obligation or liability against any insurer or any third-party payor.”</p>	Yes	<p>In addition, Kan. Stat. Ann. § 21-6604(b)(2) provides that restitution shall be a judgment against the defendant that may be collected by the court by garnishment or other execution as on judgments in civil cases, and that, if the victim does not initiate proceedings to enforce the judgment under § 60-4301, the court shall assign an agent to collect it on behalf of the victim.</p>
La. Crim. Proc. Art. 886	<p>“In the event of nonpayment of a fine, nonpayment of restitution to the victim, or nonpayment of a fine and costs, within sixty days after the sentence was imposed, and if no appeal is pending, the court which imposed the sentence may sign a judgment against the defendant in a sum equal to the fine or restitution plus judicial interest to begin sixty days after the sentence was imposed plus all costs of the criminal proceeding and subsequent proceedings necessary to enforce the judgment in either civil or criminal court, or both. Collection of the judgment may be enforced in either criminal or civil court, or both, in the same manner as a money judgment in a civil case. . . .”</p>	Yes in the case of felonies, at the end of the period of supervision, under La. Crim. Proc. Art. 875.1(F).	<p>For felonies, La. Crim. Proc. Art. 875.1(F) provides: “If, at the termination or end of the defendant’s term of supervision, any restitution ordered by the court remains outstanding, the balance of the unpaid restitution shall be reduced to a civil money judgment in favor of the person to whom restitution is owed, which may be enforced in the same manner as provided for the execution of judgments pursuant to the Code of Civil Procedure. For any civil money judgment ordered under this Article, the clerk shall send notice of the judgment to the last known address of the person to whom the restitution is ordered to be paid.”</p>

## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
Maine Rev. Stat. Ann. tit. 17-A, § 2019	<p>“Upon the request of the attorney for the State or a person entitled to restitution under an order of restitution, the clerk shall enter the order of restitution in the same manner as a judgment in a civil action. When entered under this section, the order of restitution is deemed to be a money judgment. Upon default, the order to make restitution is enforceable in accordance with Title 14, chapter 502 by any person entitled to restitution under the order.”</p>	Yes	<p>In addition, Maine Rev. Stat. Ann. tit. 17-A, § 2015(5) provides: “Upon any default, execution may be levied and other measures authorized for the collection of unpaid civil judgments may be taken to collect the unpaid restitution. A levy of execution does not discharge an offender confined to a county jail under subsection 3 for unexcused default until the full amount of the restitution has been collected.”</p>
Md. Code, Crim. Proc. § 11-608	<p><b>“Judgment of restitution as money judgment</b>            (a) A judgment of restitution is a money judgment in favor of the person, governmental unit, or third-party payor to whom the restitution obligor has been ordered to pay restitution.</p> <p><b>Enforcement by person, governmental unit, or third-party payor</b>            (b) The judgment of restitution may be enforced by the person, governmental unit, or third-party payor to whom the restitution obligor has been ordered to pay restitution in the same manner as a money judgment in a civil action.</p> <p><b>Persons, governmental units, or third-party payors as money judgment creditors</b>            (c) Except as otherwise expressly provided under Part I of this subtitle, a person, governmental unit, or third-party payor to whom a restitution obligor has been ordered to pay restitution has all the rights and obligations of a money judgment creditor under the Maryland Rules, including the obligation under Maryland Rule 2-626 or 3-626 on receiving all amounts due under the judgment to file a statement that the judgment has been satisfied.”</p>	Yes	

## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
Mich. Comp. Law § 780.766(13)	“An order of restitution entered under this section remains effective until it is satisfied in full. An order of restitution is a judgment and lien against all property of the defendant for the amount specified in the order of restitution. The lien may be recorded as provided by law. An order of restitution may be enforced by the prosecuting attorney, a victim, a victim’s estate, or any other person or entity named in the order to receive the restitution in the same manner as a judgment in a civil action or a lien”.	Yes	
Minn. Stat. 611A.04(3)	“An order of restitution may be enforced by any person named in the order to receive the restitution, or by the Crime Victims Reparations Board in the same manner as a judgment in a civil action.[..]”	Yes	
Miss. Code Ann. 99-37-13	“A default in the payment of a fine or costs or failure to make restitution or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or restitution shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or restitution has actually been collected.”	No	Can be enforced as a civil judgment only after failure to pay.
Mont. Code § 46-18-249(1)	“The total amount that a court orders to be paid to a victim may be treated as a civil judgment against the offender and may be collected by the victim at any time, including after state supervision of the offender ends, using any method allowed by law, including execution upon a judgment, for the collection of a civil judgment. However, 46-18-241 through 46-18-248 and this section do not limit or impair the right of a victim to sue and recover damages from the offender in a separate civil action.”	Yes	
Neb. Rev. Stat. § 29-2286	“An order of restitution may be enforced by a victim named in the order to receive the restitution or the personal representative of the victim’s estate in the same manner as a judgment in a civil action. If the victim is deceased and no claim is filed by the personal representative of the estate or if the victim cannot be found, the Attorney General may enforce such order of restitution for the benefit of the Victim’s Compensation Fund.”	Yes	Neb.Rev.St. § 29-2284 also authorizes revocation of probation or parole if a defendant fails to comply with a restitution order.



## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
<p>Nev. Rev. Stat. Ann. § 176.275</p>	<p>“1. A judgment which imposes a fine or administrative assessment or requires a defendant to pay restitution or repay the expenses of a defense constitutes a lien in like manner as a judgment for money rendered in a civil action.            2. A judgment which requires a defendant to pay restitution:            (a) May be recorded, docketed and enforced as any other judgment for money rendered in a civil action.            (b) Does not expire until the judgment is satisfied.            3. An independent action to enforce a judgment which requires a defendant to pay restitution may be commenced at any time.”</p>	<p>Statute is silent.</p>	<p>In addition, Nev. Rev. Stat. Ann. § 176.064(3) (a) provides: “The court may, on its own motion or at the request of a state or local entity that is responsible for collecting the delinquent fine, administrative assessment, fee or restitution, take the following actions:            (a) Enter a civil judgment for the amount due in favor of the state or local entity that is responsible for collecting the delinquent fine, administrative assessment, fee or restitution. A civil judgment entered pursuant to this paragraph may be enforced and renewed in the manner provided by law for the enforcement and renewal of a judgment for money rendered in a civil action. If the court has entered a civil judgment pursuant to this paragraph and the person against whom the judgment is entered is not indigent and has not satisfied the judgment within the time established by the court, the person may be dealt with as for contempt of court.”</p>
		<p>No</p>	

## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
N.J. Stat. Ann. § 2C:46-2(b), (c)	“b. Upon any default in the payment of a fine, assessment imposed pursuant to section 2 of P.L.1979, c. 396 (C.2C:43-3.1), monthly probation fee, a penalty imposed pursuant to section 1 of P.L.1999, c. 295 (C.2C:43-3.5), a penalty imposed pursuant to section 11 of P.L.2001, c. 81 (C.2C:43-3.6), a penalty imposed pursuant to section 1 of P.L.2005, c. 73 (C.2C:14-10), other financial penalties, restitution, or any installment thereof, execution may be levied and such other measures may be taken for collection of it or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against the defendant in an action on a debt. c. Upon any default in the payment of restitution or any installment thereof, the victim entitled to the payment may institute summary collection proceedings authorized by subsection b. of this section.”	Yes	Procedures for collection of a civil judgment are available only if defendant defaults in payment.
N.M. Stat. Ann. § 31-17-1(D)	“An order requiring an offender to pay restitution, validly entered pursuant to this section, constitutes a judgment and lien against all property of a defendant for the amount the defendant is obligated to pay under the order and may be recorded in any office for the filing of liens against real or personal property, or for garnishment. A judgment of restitution may be enforced by the state, a victim entitled under the order to receive restitution, a deceased victim’s estate or any other beneficiary of the judgment in the same manner as a civil judgment. An order of restitution is enforceable, if valid, pursuant to this section, the Victims of Crime Act or <a href="#">Article 2, Section 24 of the constitution of New Mexico</a> . Nothing in this section shall be construed to limit the ability of a victim to pursue full civil legal remedies.”	Yes	Statute also provides that failure to comply with a restitution plan approved by the court may constitute a violation of the terms of probation or parole. § 31-17-1(H0).
N.Y. Crim. Proc. Law § 420.10 (6) (a)	“A fine, restitution or reparation imposed or directed by the court shall be imposed or directed by a written order of the court [...] Such order shall be entered by the county clerk in the same manner as a judgment in a civil action [...]The entered order shall be deemed to constitute a judgment-roll as defined in <a href="#">section five thousand seventeen of the civil practice law and rules</a> and immediately after entry of the order, the county clerk shall docket the entered order as a money judgment pursuant to section five thousand eighteen of such law and rules. [...] a restitution or reparation order, when docketed shall be a first lien upon all real property in which the defendant thereafter acquires an interest, having preference over all other liens, security interests, and encumbrances [with certain exceptions].”	Yes	

## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
N.C. Gen. Stat. § 15A-1340.38	<p>“(a) In addition to the provisions of <a href="#">G.S. 15A-1340.36</a>, when an order for restitution under <a href="#">G.S. 15A-1340.34(b)</a> requires the defendant to pay restitution in an amount in excess of two hundred fifty dollars (\$250.00) to a victim, the order may be enforced in the same manner as a civil judgment, subject to the provisions of this section. (b) The order for restitution under <a href="#">G.S. 15A-1340.34(b)</a> shall be docketed and indexed in the county of the original conviction in the same manner as a civil judgment pursuant to <a href="#">G.S. 1-233, et seq.</a>, and may be docketed in any other county pursuant to <a href="#">G.S. 1-234</a>. The judgment may be collected in the same manner as a civil judgment unless the order to pay restitution is a condition of probation. If the order to pay restitution is a condition of probation, the judgment may only be executed upon in accordance with subsection (c) of this section.”</p>	Statute is silent.	<p>When payment of restitution is a condition of probation, subsection (c) allows it to be enforced as a civil judgment only after certain special procedures. N.C. Gen. Stat. Sec. 1C-1601(e) provides: State exemptions do not apply: ... “(10) For criminal restitution orders docketed as civil judgments pursuant to <a href="#">G.S. 15A-1340.38</a>.”</p>
N.D Cent. Code § 29-26-22.1	<p>“The court, within ten years of the date of entry of a judgment that imposes a fine, imposes a requirement that restitution or reparation be paid, or assesses costs against a defendant, may order the judgment to be docketed by the clerk of court in the judgment docket maintained pursuant to section 28-20-13 in the same manner in which a civil judgment for money is docketed. The docketing of the judgment has the same effect as the docketing of a civil judgment. [...]The court may direct a judgment be entered in favor of a person to whom restitution or reparation is ordered to be paid. That person may enforce the judgment as a civil judgment.”</p>	Yes	<p>Treatment as civil judgment is not mandatory. § 12.1-32-08(1) also gives the victim the right at any time to record and enforce the restitution order as a civil judgment.</p>

## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
Ohio Rev. Code § 2929.18(D)	<p>“A financial sanction of restitution imposed pursuant to division (A)(1) or (B)(8) of this section is an order in favor of the victim of the offender’s criminal act that can be collected through a certificate of judgment as described in division (D)(1) of this section, through execution as described in division (D)(2) of this section, or through an order as described in division (D)(3) of this section, and the offender shall be considered for purposes of the collection as the judgment debtor. Imposition of a financial sanction and execution on the judgment does not preclude any other power of the court to impose or enforce sanctions on the offender. Once the financial sanction is imposed as a judgment or order under this division, the victim, private provider, state, or political subdivision may do any of the following: (1) Obtain from the clerk of the court in which the judgment was entered a certificate of judgment that shall be in the same manner and form as a certificate of judgment issued in a civil action ...”</p>	Yes	The statute goes on to describe a host of civil enforcement mechanisms that the victim, private provider, state, or political subdivision may invoke.
Okla. Stat. tit. 22, § 991f(N)	<p>“If the defendant is without means to pay the restitution, the judge may direct the total amount due, or any portion thereof, to be entered upon the court minutes and to be certified in the district court of the county where it shall then be entered upon the district court judgment docket and shall have the full force and effect of a district court judgment in a civil case. Thereupon the same remedies shall be available for the enforcement of the judgment as are available to enforce other judgments; provided, however, the judgment herein prescribed shall not be considered a debt nor dischargeable in any bankruptcy proceeding.”</p>	Statute is silent	In addition, § 991f(M) provides that restitution obligation may also be entered as a civil judgment if the defendant is financially able to pay it but neglects or refuses to do so.
Or. Rev. Stat. § 137.450	<p>“A judgment against the defendant or complainant in a criminal action, so far as it requires the payment of a fine, fee, assessment, costs and disbursements of the action or restitution, may be enforced as a judgment in a civil action.”</p>	Statute is silent	

## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
42 Pa. Stat. Ann. §§ 9728(b)(1). 9730(d)	<p>§ 9728(b)(1): “The county clerk of courts [the term in Pennsylvania for the clerk of the criminal side of the court of common pleas] shall, upon sentencing, pretrial disposition or other order, transmit to the prothonotary [the term in Pennsylvania for the clerk of the civil side of the court of common pleas] certified copies of all judgments for restitution, reparation, fees, costs, fines and penalties which, in the aggregate, exceed \$1,000, and it shall be the duty of each prothonotary to enter and docket the same of record in his office and to index the same as judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof.”</p> <p>§ 9730(d): <b>Imprisonment.</b>--Nothing in this subchapter limits the ability of a judge to imprison a person for nonpayment, as provided by law; however, imprisonment for nonpayment shall not be imposed without a public hearing under section 9730(b)(1).</p>	Statute is silent.	42 Pa. Cons. Stat. § 8127(a), which generally forbids wage garnishment allows it for: “(5) For restitution to crime victims, costs, fines or bail judgments pursuant to an order entered by a court in a criminal proceeding”.
R.I. Gen. Laws §12-28-5.1	“When the court orders a defendant to make financial restitution to the victim of a crime of which the defendant has been convicted or to which the defendant has pleaded guilty or nolo contendere, a civil judgment shall automatically be entered by the trial court against the defendant on behalf of the victim for that amount. If payment is not made by the defendant within the period set by the court, the civil judgment for the amount of the restitution ordered, plus interest at the statutory amount from the date of the offense, plus costs of suit, including reasonable attorney’s fees, shall be enforceable by any and all means presently available in law for the collection of delinquent judgments in civil cases generally.”	Yes	Appears to be enforceable by the victim because the civil judgment is to be entered “on behalf of the victim.” In addition, R.I. Gen. Laws § 12-28-5 provides that a upon conviction of a felony after a trial by jury, a civil judgment shall automatically be entered against the defendant, conclusively establishing the defendant’s liability for any personal injury or loss of property sustained by the victim as a result of the felony. The victim still has to establish damages in an “appropriate judicial proceeding.”

## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
S.C. Code § 17-25-323	If defendant is delinquent on court ordered payments, court may, after a hearing, enter a civil judgment in favor of the state for any fines, costs, fees, surcharges or assessments or, for restitution, a judgment in favor of the victim, including costs and reasonable attorney fees.	Yes (statute specifies that judgment is to be in favor of the victim).	Allowed only if defendant is delinquent on court-ordered payments. However, in addition, S.C. Code § 17-25-325 provides: "The sentence and judgment of the court of general sessions in a criminal case against an individual may be enforced in the same manner by execution against the property of the defendant as is provided by law for enforcing the judgments of the courts of common pleas in civil actions."
S.D. Codified Laws § 23A-27-25.6	"If the sentence includes a fine, costs, or restitution, execution may issue thereon as a judgment against the convicted defendant in a civil action. Such a judgment is a lien and may be docketed and collected in the same manner. If the defendant is in default on payment, the levy or execution for the collection of the fine, costs, or restitution, do not discharge a defendant committed to imprisonment for contempt pursuant to this chapter until the amount due has actually been collected."	Statute is silent.	
Tenn. Code Ann. § 40-35-304(h) (1), (7)	<p>"(h)(1) Notwithstanding any law to the contrary, upon expiration of the time of payment or the payment schedule imposed pursuant to subsection (c) or (g), if any portion of restitution remains unpaid, then the victim or the victim's beneficiary may convert the unpaid balance into a civil judgment in accordance with the procedure set forth in this subsection (h).</p> <p>...</p> <p>(7) A civil judgment entered pursuant to this subsection (h) shall remain in effect from the date of entry until it is paid in full or is otherwise discharged and shall be enforceable by the victim or the victim's beneficiary in the same manner and to the same extent as other civil judgments are enforceable."</p>	Yes	Treatment as a civil judgment is not automatic. Allowed only after expiration of payment period, and victim must take affirmative action to make it a civil judgment. § 40-35-304(h)(5) and (6) require a hearing to determine how much restitution remains owing, and provide that the judgment entered is to be in favor of the victim and against the defendant.

## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
<p>Tex. Crim. Proc. Code § § 42.037, 42.22</p>	<p>§ 42.037(m) “An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.”</p> <p>§ 42.22 Restitution liens [...]</p> <p>“(2)(a) The victim of a criminal offense has a restitution lien to secure the amount of restitution to which the victim is entitled under the order of a court in a criminal case.</p> <p>(5) The following persons may file an affidavit to perfect a restitution lien: [...]</p> <p>(2) a victim in a criminal case determined by the court to be entitled to restitution.</p> <p>(8) A restitution lien extends to: (1) any interest of the defendant in real property whether then owned or after-acquired located in a county in which the lien is perfected by the filing of an affidavit with the county clerk; (2) any interest of the defendant in tangible or intangible personal property whether then owned or after-acquired other than a motor vehicle if the lien is perfected by the filing of the affidavit with the secretary of state; or (3) any interest of the defendant in a motor vehicle whether then owned or after-acquired if the lien is perfected by the filing of the affidavit with the department.</p> <p>(11) If a defendant fails to timely make a payment required by the order of the court entering the judgment creating the restitution lien, the person having an interest in the lien may file suit in a court of competent jurisdiction to foreclose the lien. If the defendant cures the default on or before the 20th day after the date the suit is filed and pays the person who files the suit costs of court and reasonable attorney’s fees, the court may dismiss the suit without prejudice to the person. The person may refile the suit against the defendant if the defendant subsequently defaults.”</p>	<p>Yes</p>	<p>Lien foreclosure is available only if defendants defaults. Although statute is not entirely clear, the provisions for restitution liens may allow seizure of property that would otherwise be protected by the state’s exemption laws.</p>

## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
Utah Code § 77-38a-401	<p>“(1) Upon the court determining that a defendant owes restitution, the clerk of the court shall enter an order of complete restitution as defined in Section 77-38a-302 on the civil judgment docket and provide notice of the order to the parties.</p> <p>(2) The order shall be considered a legal judgment, enforceable under the Utah Rules of Civil Procedure. In addition, the department may, on behalf of the person in whose favor the restitution order is entered, enforce the restitution order as judgment creditor under the Utah Rules of Civil Procedure.</p> <p>(3) If the defendant fails to obey a court order for payment of restitution and the victim or department elects to pursue collection of the order by civil process, the victim shall be entitled to recover collection and reasonable attorney fees.</p> <p>(4) Notwithstanding Subsection 77-18-6(1)(b) and Sections 78B-2-311 and 78B-5-202, a judgment ordering restitution when entered on the civil judgment docket shall have the same effect and is subject to the same rules as a judgment in a civil action and expires only upon payment in full, which includes applicable interest, collection fees, and attorney fees. Interest shall accrue on the amount ordered from the time of sentencing, including prejudgment interest.”</p>	Yes	§ 77-38a-401(3) refers to the victim’s right to enforce the order by civil process. In addition, § 77-18-6 provides that the clerk is to record restitution as a judgment in favor of the victim.
Vt. Stat. Ann. tit. 13, § 7043	<p>The court may make restitution a condition of probation, supervised community sentence, furlough, preapproved furlough, or parole, but may not charge an offender with a violation of probation, furlough, or parole for nonpayment of a restitution obligation. Instead, the statute allows the Restitution Unit to bring a civil action to seek a civil judgment on a restitution award. If the offender fails to comply with the restitution order, the court may, inter alia, order the disclosure, attachment, and sale of assets and accounts owned by the offender or order garnishment (called trustee process in Vermont) of the offender’s wages, and may charge the debtor with civil contempt.</p>	No	



## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
Va. Code Ann. § 19.2-305.2(B)	“An order of restitution may be docketed as provided in § 8.01-446 [docket of money judgments] when so ordered by the court or upon written request of the victim and may be enforced by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action. Enforcement by a victim of any order of restitution docketed as provided in § 8.01-446 is not subject to any statute of limitations. Such docketing shall not be construed to prohibit the court from exercising any authority otherwise available to enforce the order of restitution.”	Yes	
Wash. Rev. Code Ann. § 9.94 A.760(5)	“Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. [...]”	Yes	“Legal financial obligation” is defined by § 9.94A.030 to include restitution. This statute appears to give only the person to whom restitution is owed, not the court, the ability to enforce a restitution order as a civil judgment. However, it authorizes the court to use certain civil judgment enforcement methods: the court may order a payroll deduction at sentencing, the department of corrections may seek a wage assignment if the offender is more than 30 days late.
W. Va. Code § 61-11A-4(h)	“An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.”	Yes	
Wis. Stat. § 973.20(1r)	“[...]After the termination of probation, extended supervision, or parole, or if the defendant is not placed on probation, extended supervision, or parole, restitution ordered under this section is enforceable in the same manner as a judgment in a civil action by the victim named in the order to receive restitution or enforced under ch. 785.”	Yes	Enforceable as a civil judgment by the victim only after termination of probation, extended supervision, or parole, or if the defendant is not placed on such. The statute does not appear to give the state the same ability to enforce a restitution order as a civil judgment.

## APPENDIX A (cont.)

CITATION	TEXT	CAN VICTIM ENFORCE?	RESTRICTIONS & COMMENTS
Wyo. Stat. Ann. § 7-9-103(d)	“Any order for restitution under this chapter constitutes a judgment by operation of law on the date it is entered. To satisfy the judgment, the clerk, upon request of the victim, the division of victim services or the district attorney, shall issue execution in the same manner as in a civil action.”	Yes	

## APPENDIX B

# STATUTES ALLOWING FINES, COURT COSTS, OR INDIGENT DEFENSE COSTS TO BE TREATED AS CIVIL JUDGMENTS

CITATION	TEXT OR SUMMARY	TYPE OF FINANCIAL OBLIGATION
Alaska Stat. Ann. § 12.55.051(d)	“The state may enforce payment of a fine against a defendant under AS 09.35 as if the order were a civil judgment enforceable by execution. This subsection does not limit the authority of the court to enforce fines.”	Fines.
Ark. Code Ann. § 5-4-204	“(a) When a defendant sentenced to pay a fine or costs defaults in the payment of the fine or costs or of any installment, the fine or costs may be collected by any means authorized for the enforcement of a money judgment in a civil action. (b) A judgment that the defendant pay a fine or costs constitutes a lien on the real property and personal property of the defendant in the same manner and to the same extent as a money judgment in a civil action.”	Fines and costs.
Del. Code tit. 11, § 4104(b)	“Immediately upon imposition by a court, including a justice of the peace, of any sentence to pay a fine, costs, restitution or all 3, the same shall be a judgment against the convicted person for the full amount of the fine, costs, restitution or all 3, assessed by the sentence. Such judgment shall be immediately executable, enforceable and/or transferable by the State or by the victim to whom such restitution is ordered in the same manner as other judgments of the court. If not paid promptly upon its imposition or in accordance with the terms of the order of the court, or immediately if so requested by the State, the clerk or Prothonotary shall cause the judgment to be entered upon the civil judgment docket of the court. . . .”	Fine, costs, and restitution.
Del. Code tit. 10, § 8603	Statute allows court to use its contempt power to enforce an order to pay defense costs. It also provides: “(e)A default in the payment of defense costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of such payment shall not discharge a defendant committed for imprisonment for contempt until the full amount of the fine has actually been collected. The court shall have the power to pursue civil enforcement to obtain the money due on behalf of the State, and to also pursue criminal remedies when civil means are not effective.”	Indigent defense costs.
Fla. Stat. § 938.30	Statute provides that the court may enter judgment upon any court-imposed financial obligation and issue any writ necessary to enforce the judgment in the manner allowed in civil cases. It also provides that “The provisions of this section may be used in addition to, or in lieu of, other provisions of law for enforcing payment of court-imposed financial obligations in criminal cases. “	Any court-imposed financial obligation.

## APPENDIX B (cont.)

CITATION	TEXT OR SUMMARY	TYPE OF FINANCIAL OBLIGATION
Haw. Rev. Stat. § 291C-171.5	Fines and court costs can be collected in the same manner as a civil judgment, including recovery of court costs and reasonable attorney fees. Specifies that no person shall be imprisoned for failure to pay costs.	Fines and court costs.
Haw. Rev. Stat. § 706-644(5)	Fees, fines, costs or restitution may be collected in the same manner as a civil judgment.	Fees, fines, costs, and restitution.
Iowa Code Ann. § 909.6(1)	“Whenever a court has imposed a fine on any defendant, the judgment in such case shall state the amount of the fine, and shall have the force and effect of a judgment against the defendant for the amount of the fine. The law relating to judgment liens, executions, and other process available to creditors for the collection of debts shall be applicable to such judgments; provided, that no law exempting the personal property of the defendant from any lien or legal process shall be applicable to such judgments.”	Fines.
Iowa Code § 815.9(7), (8)	Statute provides that a judgment for unpaid indigent defense fees may be enforced in the same manner as a civil judgment, and that a defendant who is employed must execute a wage assignment.	Indigent defense fees.
La. Crim. Proc. Art. 886	“In the event of nonpayment of a fine, nonpayment of restitution to the victim, or nonpayment of a fine and costs, within sixty days after the sentence was imposed, and if no appeal is pending, the court which imposed the sentence may sign a judgment against the defendant in a sum equal to the fine or restitution plus judicial interest to begin sixty days after the sentence was imposed plus all costs of the criminal proceeding and subsequent proceedings necessary to enforce the judgment in either civil or criminal court, or both. Collection of the judgment may be enforced in either criminal or civil court, or both, in the same manner as a money judgment in a civil case. . . .”	Fine, fine and costs, or restitution.
Md. Cts. & Jud. Proc. § 7-505(a)	“Unpaid and undischarged fines and unpaid costs may be levied, executed on, and collected in the same manner as judgments in civil cases.” Also provides that costs are not part of the penalty, and a defendant may not be imprisoned for failure to pay costs.	Fines and costs.
Miss. Code Ann. 99-37-13	“A default in the payment of a fine or costs or failure to make restitution or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or restitution shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or restitution has actually been collected.”	Fines, costs, or restitution.
Mo. Stat. Ann. § 558.006	Statute provides: “In case of default, payment of a fine or installment may be collected by any means authorized for the collection of money judgments, other than a lien against real estate, or may be waived in the discretion of the sentencing judge.” The reference to “installment” appears to be a reference to § 558.004, which allows the court to order installment payments on fines.	Fine.

## APPENDIX B (cont.)

CITATION	TEXT OR SUMMARY	TYPE OF FINANCIAL OBLIGATION
N.J. Stat. Ann. § 2C:46-2(b)	“Upon any default in the payment of a fine, assessment imposed pursuant to section 2 of P.L.1979, c. 396 (C.2C:43-3.1), monthly probation fee, a penalty imposed pursuant to section 1 of P.L.1999, c. 295 (C.2C:43-3.5), a penalty imposed pursuant to section 11 of P.L.2001, c. 81 (C.2C:43-3.6), a penalty imposed pursuant to section 1 of P.L.2005, c. 73 (C.2C:14-10), other financial penalties, restitution, or any installment thereof, execution may be levied and such other measures may be taken for collection of it or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against the defendant in an action on a debt.”	Fines, various specified assessments, probation fees, other financial penalties, and restitution.
N.Y. Crim. Proc. Law § 420.10 (6)(a)	“A fine, restitution or reparation imposed or directed by the court shall be imposed or directed by a written order of the court [...] Such order shall be entered by the county clerk in the same manner as a judgment in a civil action [...] The entered order shall be deemed to constitute a judgment-roll as defined in section five thousand seventeen of the civil practice law and rules and immediately after entry of the order, the county clerk shall docket the entered order as a money judgment pursuant to section five thousand eighteen of such law and rules.”	Fine, restitution, or reparation.
Ohio Rev. Code § 2929.18(D)	“Except as otherwise provided in this division, a financial sanction imposed pursuant to division (A) or (B) of this section is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located, and the offender subject to the financial sanction is the judgment debtor. . . . Imposition of a financial sanction and execution on the judgment does not preclude any other power of the court to impose or enforce sanctions on the offender.” Subsection (D)(1) specifies that the state or the victim may use all the procedures available to enforce a civil judgment, including garnishment, execution and property liens. § 2929.18 deals with felonies; § 2929.28 has similar provisions regarding misdemeanors, and provides: “The civil remedies authorized under division (E) of this section for the collection of the financial sanction supplement, but do not preclude, enforcement of the criminal sentence.”	Fines, court costs, supervision fees, costs of confinement, many other fees, restitution.
Or. Rev. Stat. § 137.450	“A judgment against the defendant or complainant in a criminal action, so far as it requires the payment of a fine, fee, assessment, costs and disbursements of the action or restitution, may be enforced as a judgment in a civil action.”	Fine, fee, assessment, costs and disbursements, or restitution.
42 Pa. Stat. Ann. § 9728(b) (1)	“The county clerk of courts [the term in Pennsylvania for the clerk of the criminal side of the court of common pleas] shall, upon sentencing, pretrial disposition or other order, transmit to the prothonotary [the term in Pennsylvania for the clerk of the civil side of the court of common pleas] certified copies of all judgments for restitution, reparation, fees, costs, fines and penalties which, in the aggregate, exceed \$1,000, and it shall be the duty of each prothonotary to enter and docket the same of record in his office and to index the same as judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof.” If the amount is less than \$1,000, § 9728(b)(2) provides that transmitting the order for entry as a civil judgment is allowed, but not mandatory.	Fines, penalties, fees, costs, restitution, and reparation.

## APPENDIX B (cont.)

CITATION	TEXT OR SUMMARY	TYPE OF FINANCIAL OBLIGATION
S.C. Code § § 17-25-323	If defendant is delinquent on court ordered payments, court may, after a hearing, enter a civil judgment in favor of the state for any fines, costs, fees, surcharges or assessments or, for restitution, a judgment in favor of the victim, including costs and reasonable attorney fees. This must be done before the defendant's period of probation or parole expires.	Fines, costs, fees, surcharges, assessments, and restitution.
S.C. Code § § 17-25-325	"The sentence and judgment of the court of general sessions in a criminal case against an individual may be enforced in the same manner by execution against the property of the defendant as is provided by law for enforcing the judgments of the courts of common pleas in civil actions."	
S.D. Codified Laws § 23A-27-25.6	"If the sentence includes a fine, costs, or restitution, execution may issue thereon as a judgment against the convicted defendant in a civil action. Such a judgment is a lien and may be docketed and collected in the same manner. If the defendant is in default on payment, the levy or execution for the collection of the fine, costs, or restitution, do not discharge a defendant committed to imprisonment for contempt pursuant to this chapter until the amount due has actually been collected." In addition, § 23A-27-26 provides that payment of costs may be enforced as a civil judgment.	Fines, costs, or restitution.
Tenn. Code Ann. § 40-24-105(a)	"Unless discharged by payment or service of imprisonment in default of a fine, a fine may be collected in the same manner as a judgment in a civil action. The trial court may also enforce all orders assessing any fine remaining in default by contempt upon a finding by the court that the defendant has the present ability to pay the fine and willfully refuses to pay. Costs and litigation taxes due may be collected in the same manner as a judgment in a civil action, but shall not be deemed part of the penalty, and no person shall be imprisoned under this section in default of payment of costs or litigation taxes."	Fines, costs, and litigation taxes.
Utah Code § 77-18-6	In cases not supervised by the Department of Corrections, the court clerk is to transfer responsibility to collect delinquent fines, forfeitures, surcharges, costs or fees to the Office of State Debt Collection and record a civil judgment in favor of that Office for the amount due. For restitution, the clerk records judgment in favor of the victim. "(b)(2) When a fine, forfeiture, surcharge, cost, fee, or restitution is recorded in the registry of civil judgments, the judgment: (a) constitutes a lien; (b) has the same effect and is subject to the same rules as a judgment for money in a civil action; and (c) may be collected by any means authorized by law for the collection of a civil judgment." In addition, § 77-19-1 provides that when a fine or costs are not paid as ordered, execution or garnishment may be issued as on a judgment in a civil action. § 77-18-7 provides: "Unless specifically authorized by statute, a defendant shall not be required to pay court costs in a criminal case either as a part of a sentence or as a condition of probation or dismissal."	Fines, forfeitures, surcharges, costs, fees, and restitution.

## APPENDIX B (cont.)

CITATION	TEXT OR SUMMARY	TYPE OF FINANCIAL OBLIGATION
Vt. Stat. Ann. tit. 13, § 7173	<p>“A mittimus issued by a court for the collection of a penalty, and fine in criminal prosecutions, in the discretion of such court, in addition to the prescribed form, may be issued against the goods, chattels, or lands of the respondent in the form in which executions are issued. Such mittimus may be levied upon the goods, chattels, or lands of the respondent, and the same sold in satisfaction thereof as in the sale of personal property or real estate upon execution.”</p> <p>In addition, Vt. Stat. Ann. tit. 13, § 7180 allows the use of civil contempt for nonpayment of “all financial assessments, including penalties, fines, surcharges, court costs, and any other assessments imposed by statute as part of a sentence for a criminal conviction.”</p>	Penalty and fine.
Wash. Rev. Code Ann. § 10.82.010	<p>“Upon a judgment for fine and costs, and for all adjudged costs, execution shall be issued against the property of the defendant, and returned in the same manner as in civil actions.”</p>	Fine and costs.
W. Va. Code § 62-5-7	<p>“In every criminal case the clerk of the court in which the accused is convicted shall, as soon as may be, make up a statement of all the expenses incident to the prosecution, including such as are certified to him by a justice under the preceding section; and execution for the amount of such expenses shall be issued and proceeded with, and article four of this chapter shall apply thereto in like manner as if, on the day of completing such statement, there was judgment in such court in favor of the State against the accused for such amount as a fine.”</p>	Expenses incident to the prosecution.
Wis. Stat. § 973.05	<p>“(4) If a defendant fails to pay the fine, surcharge, costs, or fees within the period specified under sub. (1) or (1m), the court may do any of the following:</p> <p>(a) Issue a judgment for the unpaid amount and direct the clerk to file and docket a transcript of the judgment, without fee. If the court issues a judgment for the unpaid amount, the court shall send to the defendant at his or her last-known address written notification that a civil judgment has been issued for the unpaid fine, surcharge, costs, or fees. The judgment has the same force and effect as judgments docketed under <a href="#">s. 806.10 [which deals with civil judgments]</a>.”</p>	Fine, surcharge, costs, or fees.
Wyo. Stat. Ann. § 7-13-109(b)	<p>“An order to pay room and board costs [for jail] under this section shall be included as a special order in the judgment of conviction. To satisfy the order, the clerk of the sentencing court, upon request of the sheriff or prosecuting attorney, may issue execution against any assets of the defendant including wages subject to attachment, in the same manner as in a civil action.”</p>	Jail costs.



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