

ASSESSING REFORMS TO THE COURT DEBT COLLECTION PROCESS IN RHODE ISLAND

RACHEL BLACK '16

CREDENTIALS – DEGREE IN PUBLIC POLICY

TAUBMAN CENTER
AMERICAN POLITICS & POLICY



THE POLICY PUZZLE

Rhode Island is a nationwide pioneer—cited as exemplary by the U.S. Justice Department¹—in developing standards for assessing criminal defendants’ ability to pay “court debts” (fees and fines assessed at sentencing) and offering protections for indigent debtors. Yet the state is not fully realizing its debt protection provisions, outlined in 2008 legislation; instead, it still incarcerates over 1,500 debtors annually, at least half of whom may be legally indigent.² In March 2016, the U.S. Justice Department reasserted that it is unlawful for state court systems to arrest and incarcerate debtors for failure to pay court debts without first assessing ability to pay. This brief offers a timely examination of Rhode Island’s implementation of 2008 reforms to its court debt collection policy regime. The analysis draws upon research conducted in 2015 including: a review of RI Department of Corrections data on court-debt related commitments, judicial appearances, and payments; a set of 21 interviews conducted with incarcerated debtors; and observations of 25 “ability to pay”

hearings at state district and superior courts. To fully protect indigent debtors from unlawful incarceration, and to realize the intent of the 2008 legislation, the brief recommends that the State of Rhode Island cease to issue arrest

“... the brief recommends that the State of Rhode Island cease to issue arrest warrants for debt nonpayment without first implementing “ability-to-pay” assessments at sentencing—so that judges make debt reduction and arrest decisions with each defendant’s income picture in mind.”

warrants for debt nonpayment without first implementing “ability-to-pay” assessments at sentencing—so that judges make debt reduction and arrest decisions with each defendant’s income picture in mind. Findings in this study support measures to this effect proposed in RI House Bill 5196, introduced in 2019.

THE PROBLEM

Each year, thousands of people in Rhode Island are assessed court debts ranging from \$93.50 for a single misdemeanor to over \$1,000 for violent, drug-related felonies.³ These debts, which include fines, restitution and fees assessed at sentencing, have increased in both size and scope over the last 30 years in the state.⁴ The Rhode Island judiciary

BY THE NUMBERS: RHODE ISLAND’S 2015 DEBT-RELATED COMMITMENTS

1,556	jailed for at least one day for court debts (18% of all jail commitments in the state that year)
50%	(estimated) should not have been assessed court debts under current law
44%	arrested debtors who were unemployed
58%*	arrested debtors who had previously experienced debt-related incarceration
3%*	cases where debts waived or reduced by magistrates

enforces debt payment by issuing arrest warrants for everyone who fails to pay in full or appear at monthly incremental payment dates in court. All who are arrested based on a warrant for “failure to appear” at a payment date can be jailed for up to 48 hours and brought before a judge to discuss their delinquency, create a payment plan, and begin the debt cycle anew. This practice violates current federal judicial precedent because the courts fail to make exceptions for those who may qualify as legally “indigent,” or unable to pay their debts.⁵ These periods of debt-related incarceration also jeopardize debtors’ employment and housing, damage key social ties, and push them even further into debt.⁶ Finally, because many arrested debtors cannot make payments regardless of any action taken against them, most debt-related commitments likely produce a net financial loss for the State.

WHAT HAS BEEN DONE?

RHODE ISLAND’S 2008 COURT DEBT REFORMS

In 2007, a study showed that debt-related commitments made up 18% of all commitments to the state’s central jail (roughly 24 arrests per day).⁷ In 2008, the Rhode Island General Assembly responded, passing measures designed to protect indigent defendants from the financial burden of court debts, and the harm caused by jail time for failure to appear at a payment date. These included:

- **Ability to pay assessments:** Judges and judicial administrators are required to assess a debtor’s ability to pay court debts either at or soon after sentencing using a standardized “financial assessment instrument” (§12-21-20).
- **Court cost abatements for indigent defendants:** Judges are authorized (at their discretion) to reduce or fully abate (waive) the court debts of anyone they find to be indigent; the legislation provided an initial list of conditions that should qualify a defendant for court debts to be waived, including qualification for/receipt of TANF, Social Security, Public Assistance, Disability Insurance, or food stamps (§12-20-10).
- **Prompt hearings:** To minimize jail time for arrested debtors, police officers must bring debtors directly to court if they are arrested while court is still in session; the judiciary must see all other debtors within 48 hours of their commitment to the Intake Center (Rhode Island’s central jail) (§12-6-7.1).⁸

FINDINGS: HAVE THINGS CHANGED?

PORTRAIT OF THE ARRESTED DEBTOR POPULATION IN 2015

This study’s analysis of debt-related arrests found that, seven years after the above legislative reforms, debtors still made up 16% of Rhode Island’s jail commitments in 2015. 1,556 Rhode Islanders were jailed that year for at least one day due to court debts. Review of this data supplemented by 21 qualitative interviews suggests that at least 50% of them should never have been assessed this debt as they had no consistent source of income available to make payments, and 44% of all arrested debtors were unemployed at time of their arrest.⁹ Among the 21 men interviewed for this study, ten received food stamps and five were homeless, qualifying them for debt waivers under current law. One interviewee remarked, “I had to blow my payment off, because it’s a choice of eat now or pay.” Yet debtors owed an average of \$1,000 in court debts, ranging from \$10 to over \$10,000. Though most spent 1-2 nights in jail, two people were jailed for over 20 days for their court debts.

Most debtors arrested in 2015 had a history of trying and failing to comply with court debt obligations. A review of judicial records for a random sample of 2015 arrestees showed that a majority of arrested debtors had actually made one or more prior payments on the case for which their warrant was issued, but that 58% had also previously experienced debt-related incarceration. Moreover, only 65% of arrested debtors in 2015 made a debt payment of any size within a month of their release from jail.¹⁰

WHAT THE ARRESTED DEBTOR PORTRAIT TELLS US

The jailed debtor population in Rhode Island in 2015 was predominantly low-income and composed of non-violent, misdemeanor offenders with a history of debt payment attempts and noncompliance. The widespread presence of indigent debtors in the Intake Center population signals that the judiciary did not systematically assess debtor ability to pay or abate the costs of those found to be legally indigent. The state criminal justice system did successfully reduce the length of most commitments for debt delinquency below 48 hours—but a significant portion of incarcerated low-income debtors should never have arrested in the first place. Moreover, the low payment rate by arrested debtors post-incarceration further emphasizes that incarceration is simply not effective as a debt collection mechanism.

ANALYSIS: WHY DEBT-RELATED COMMITMENTS HAVE NOT DECREASED

This analysis of the implementation of Rhode Island's 2008 reforms suggest that the state's courts are not systematically assessing ability to pay or waiving costs for those who qualify. The study also finds that the impact of these implementation shortfalls is exacerbated by multiple procedural injustices in the debtor arrest, hearing, and incarceration process.

“ABILITY TO PAY” HEARINGS ARE NOT SYSTEMATICALLY ADMINISTERED

- Interviews with three district and superior court administrators and two judges revealed that sentencing judges rarely assess defendants' ability to pay at sentencing; they only administer “ability to pay” hearings after a debtor is arrested for nonpayment.
- During observation of 25 “ability to pay” hearings held after an initial arrest for debt nonpayment, presiding magistrates never used a standardized financial assessment as required by law. While judges consistently inquired into arrested debtors' employment status and other details (for example, their housing situation), they almost never asked for information on public benefits receipt or other debt obligations, as required by law.¹¹

COURT DEBTS ARE RARELY WAIVED OR REDUCED FOR ELIGIBLE DEBTORS

- A systematic analysis of the payment records for a random sample of 270 debt-related commitments showed that magistrates only waived or reduced the costs of 3% of these debtors in 2015.¹²
- This is likely significantly lower than the total percentage of arrested debtors eligible for cost reduction, as 44% of all arrested debtors were unemployed at time of arrest and 10 out of 21 men in the arrested debtor interview sample received food stamps.

THE INCARCERATION EXPERIENCE IS OFTEN DISORIENTING AND DISRUPTIVE

- Although 88% of those arrested were released within two days¹³ (in line with the 2008 legislation), interviews for this study identified significant variation in the jailed debtors' experience of their arrest, incarceration and judicial processing.
- Multiple debtors interviewed did not know the reason they were in jail, or when they could expect to be released. Others had been denied the opportunity to make even one phone call, and believed their partners and family members did not know their whereabouts.

These procedural injustices exacerbated the negative impacts of court debts observed in this and other studies—namely job loss and feelings of criminalization and anxiety.¹⁴ In fact, implementation failures in the debt collection process made some jailed debtors *less* likely to pay their debts than they were before, due to frustration with the system and a perception that it was illegitimate or mismanaged.¹⁵

WHERE DO WE GO FROM HERE? RECOMMENDATIONS

Legislators and local criminal justice advocates should support measures that ensure the Rhode Island judiciary complies with the requirements of the 2008 legislation, and proactively protect indigent debtors from debt-related arrests & incarceration. Findings from this study support both procedural and structural changes in the debt collection system to realize these aims. The study also supports longer-term recommendations by which the State of Rhode Island can strengthen its court debt collection policy reforms.

PROCEDURAL RECOMMENDATIONS – IMPROVING THE DEBT-RELATED ARREST APPARATUS

- **Clearly distinguish court debt arrests:** The Judiciary should clearly distinguish bench warrants issued for unpaid court debts should from those for other types of offenses, so police and corrections officers can respond appropriately to questions and requests during a debtor’s arrest.
- **Fully inform arrested debtors:** Local police forces and the Department of Corrections must ensure arrested debtors are informed of the reason for their arrest and offered the opportunity to contact a family member, friend, or employer.

STRUCTURAL RECOMMENDATIONS – REDUCING ARRESTS OF LOW-INCOME DEBTORS

Note: the following two measures appear in RI House Bill 5196, introduced in 2019

- **Implement the requirement for the judiciary to create and use a “financial assessment tool” at or immediately after sentencing:** though concerns about the burdens of increased paperwork and of securing “proof of income” from defendants may have hampered the adoption of this measure, Bill 5196 recommends integrating the process with existing methods for determining public defender eligibility as a potential solution.
- **Prohibit the judiciary from issuing arrest warrants for any debtor whose ability to pay has not yet been assessed:** Such a prohibition is necessary to prevent the judiciary from assessing ability to pay only after a defendant is arrested for debt nonpayment and, like the measure above, is designed to simply reinforce the guidelines of the 2008 legislation.

LONG TERM RECOMMENDATIONS – PHASING OUT DEBT-RELATED ARRESTS OVERALL

- **Make debt abatement mandatory for all debtors who qualify as unable to pay under the existing legislation’s criteria:** While there are concerns that fully waiving debts for this population drastically reduces the punitive nature of each sentence, it is likely that debt-related incarceration currently yields a net financial loss for the state – and mandatory debt waivers could both reduce statewide incarceration spending and help low-income ex-offenders more successfully and permanently exit the criminal justice system
- **Pilot alternatives to jail time for debt nonpayment:** The legislature should consider studying and expanding community service requirements for indigent debtors currently piloted by select magistrates on a case by case basis in place of court debt payment.
- **Phase out court costs in the judiciary altogether:** Generating revenue through the criminal justice system increases the financial burden on a vulnerable population and raises ethical quandaries for judges who must also serve as tax collectors. The legislature could study recent court fee receipts to determine whether replacing this practice with alternatives is preferable.

APPENDIX

METHOD: EXAMINING THE COURT DEBT COLLECTION TERRAIN

This study analyzed both quantitative and qualitative data to investigate the implementation and impact of the debt collection policy regime in Rhode Island. First, Rhode Island Department of Corrections data were analyzed on all commitments to Rhode Island's central jail in 2015 to generate summaries of the demographics and criminal history for all 1,556 debt-related commitments. For a random sample of 270 of these 1,556 debt-related commitments, additional data was analyzed on defendants' debt payment history from the Rhode Island judiciary's CourtConnect database. In January 2016, 21 structured interviews were conducted with currently jailed debtors and 25 "ability to pay" hearings were observed in the 3rd and 6th District Courts and the Rhode Island Superior Court. All inmate interviews were audio recorded, transcribed, and coded for patterns in interaction with the criminal justice system and a set of impact themes. Courtroom observations were recorded using written notes and used to contextualize interviewee narratives of their experience with debt-related hearings.

For a complete discussion of the methods used in this study, please see Black, 2016.

ENDNOTES

1. Gupta, V., & Foster, L. (2016, March 14). Dear Colleague Letter Regarding Law Enforcement Fines and Fees. Retrieved from <https://www.justice.gov/crt/file/832461/download>; p.4.
2. RI General Laws (§12-20-10) articulate a broad definition of "indigency" as qualification for waiver of unpaid debts and offer several "prima facie evidence of indigency" including receipt of TANF, food stamps, social security, disability benefits, public assistance, or possession of other unpaid civil debts in excess of \$100. The research cited in this analysis (Black, 2016) found that 44% of inmates committed for debt nonpayment in 2015 were unemployed at time of arrest, and 50% of a sample of 21 interviewed inmates received food stamps.
3. Rhode Island Judiciary. (n.d.). Court Filing Fees: Superior Court. Rhode Island Judiciary. Retrieved from <https://www.courtsri.gov/Courts/SuperiorCourt/PDF/Fees.pdf>
4. Black, R. (2016). Protecting vs. Policing: Indigent Defendants in Rhode Island's Court Debt Collection Regime. Brown University AB Honors Thesis. Providence, RI. Pp.20-22. Retrieved from <https://www.documentcloud.org/documents/5956271-Rachel-Black-Thesis-Final-Draft-4-16.html>
5. Gupta & Foster (2016).
6. Sarah Alexander, Yelena Konanova, and Deuel Ross, "In For a Penny: The Rise of America's New Debtors' Prisons" (New York, NY: American Civil Liberties Union, October 2010); Nicholas Horton, "Court Debt and Related Incarceration in Rhode Island from 2005 through 2007" (Providence, RI: Rhode Island Family Life Center, April 2008).
7. Horton, N. (2008). Court Debt and Related Incarceration in Rhode Island from 2005 through 2007. Providence, RI: Rhode Island Family Life Center. Retrieved from <http://opendoorsri.org/sites/default/files/CourtDebt.pdf>
8. See R.I. Senate Bill 2234 enacted on 07/08/2008 amending portions of R.I. Gen. Laws § 12-20-10, § 12-20-10, § 12-6-7.1, § 12-18.1-3, § 12-19-34, and § 12-21-20
9. Analysis of RIDOC 2015 Commitments Data & Interviews with ACI inmates.
10. Analysis of R.I. judiciary CourtConnect Database records for a random sample of 270 arrested debtors in 2015. For more details, see Black (2016).
11. Black (2016). Pp. 61-64.
12. Black (2016). Pp. 65-66.
13. Analysis of RIDOC 2015 Commitments Data. For more information, see Black (2016).
14. Black (2016). Pp. 72-83. For related findings from other studies, see: debtor employment (Bannon, Nagrecha, & Diller, 2010; Beckett, Harris, & Evans, 2008; Pleggenkuhle, 2012; Vallas & Patel, 2012), wellbeing (Alexander, Konanova, & Ross, 2010; Diller, 2010; Martire, 2010; Richards & Jones, 2004), and ultimate recidivism risk (Blattenberger, Fowles, & Krantz, 2010; George, 2012; Martire, Sunjic, Topp, & Indig, 2011). For full bibliographic citations of these works, please see Black (2016). Pp. 104-114.
15. Black (2016). Pp. 76-77.