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## **MODERN DEBTORS' PRISON IN THE STATE OF FLORIDA: HOW THE STATE'S BRAND OF CASH REGISTER JUSTICE LEADS TO IMPRISONMENT FOR DEBT**

*David Angley\**

### **INTRODUCTION**

Close your eyes and imagine this story. Late one evening, a man was wandering the dark streets of the town of his youth attempting to gain some perspective. He had only just returned from serving his country overseas, still haunted by dreams of what happened, and it seemed like a strange and unfamiliar place to him. He was destitute, living off the pittance provided to him for his service, an amount barely sufficient to provide for his room and board. Despite all of his attempts, he had been unable to find a job and had little hope for change in his life.

On this evening, the man let his despair overcome him and, caving to it, spent the evening draining what little money he had on a few drinks. Soon after, he was back on the streets, wandering in a haze of intoxication and unsure of where he was going. While walking, the man was spotted by a police officer. The police officer approached the man and found him intoxicated and upset over his situation and the treatment he had received after years of service. The police officer arrested the man and brought him to jail to sleep it off.

The next day, the man was awakened and brought before a judge who, in a matter of seconds, issued him a fine exceeding his monthly allowance to punish him for his night of overindulgence. The man desperately sought ways to pay the debt and the court even allowed some of the debt to be converted into community service. But, due to his limited means, the man was unable to keep paying and soon his debt was handed over to a private creditor hired by the state. The creditor immediately added forty percent interest to the debt and would not accept partial payments without a significant down payment. The creditor, unlike the court, would not allow him to convert any of his debt into community service as it would interfere with its profit; and, acting as an arm of the court, the creditor filed an order that initiated proceedings leading to an arrest warrant being issued for the man. Several days later when police encountered the man, he was immediately arrested and placed in jail with no release date on the horizon. The man had found himself in debtors' prison.

The above story might seem like an account of something that would have occurred one hundred years ago. However, while fictional, this story is all too real

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for many Florida residents. This article will examine the rising trend of modern debtors' prisons focusing on the State of Florida as a case example. Despite federal law and many State constitutions having banned the practice of imprisonment for debt, it still occurs today. Part II of this article examines the history of debtors' prisons, which began thousands of years ago and reached the shores of America in the 1700s. Part III examines the root causes behind the modern occurrence of debtors' prisons and the dependence of the Florida court system on fines, fees, and other court costs generated from criminal defendants. Part IV examines the occurrence of debtors' prison, how debtors' prisons are possible despite federal law, and suggestions for how to prevent them.

### I. HISTORICAL PRACTICES AND PROCEDURES OF IMPRISONMENT FOR DEBT

For over 3000 years, societies across the world have used imprisonment to collect debts held by the state and private individuals.<sup>1</sup> It is common today to hear someone say, "Those that fail to learn from history are doomed to repeat it."<sup>2</sup> Looking through the prism of history, it is evident that when it comes to imprisonment for debt, we have not learned history's lessons.

In ancient Rome, the Twelve Tables codified the oral practices of Roman law into written form.<sup>3</sup> The Twelve Tables covered all categories of the law, including debt.<sup>4</sup> Under the laws promulgated by the Twelve Tables, a debtor had thirty days to pay his debts.<sup>5</sup> If a debtor did not pay within the thirty-day window, the creditor

1. Richard Ford, *Imprisonment for Debt*, 25 MICH. L. REV. 24, 24–25 (1926).

2. Jim Johnson, *Be Responsible; Don't Repeat Mistakes*, COLUMBIA DAILY TRIBUNE (June 10, 2012), [http://www.columbiatribune.com/arts\\_life/community/be-responsible-don-t-repeat-mistakes/article\\_d93e8a2d-d7cb-519f-8f2c-e0f2e9fabdc7.html](http://www.columbiatribune.com/arts_life/community/be-responsible-don-t-repeat-mistakes/article_d93e8a2d-d7cb-519f-8f2c-e0f2e9fabdc7.html); see also GEORGE SANTAYANA, *THE LIFE OF REASON: THE PHASES OF HUMAN PROGRESS* 102 (1906) (The actual quote from Mr. Santayana's work is, "Those who cannot remember the past are condemned to repeat it," which has been morphed into the more common usage commonly used today).

3. See Richard A. Pacia & Raymond A. Pacia, *Roman Contributions to American Civil Jurisprudence*, 49 R.I. B.J. 5, 6 (2001) "In 451-450 B.C., a special commission drew up the earliest Roman code of seventy-six civil laws called the Twelve Tables, which were set up in the Roman Forum on twelve tables of bronze. . . . The Twelve Tables established a procedural framework for the prompt and efficient adjudication of civil disputes," including specific procedures governing the conduct of civil litigation. *Id.* "Significantly . . . the Twelve Tables preserved in the individual – and not the state – the primary responsibility for pursuing and pressing civil claims and rights." *Id.*

4. See *The Law of the Twelve Tables*, THE LATIN LIBRARY, <http://thelatinlibrary.com/law/12tables.html> (last visited Aug. 5, 2016). Table III provides that:

When debt has been acknowledged, or judgment about the matter had been pronounced in court, 30 days must be the legitimate time of grace. After that, then arrest of debtor may be made by laying on hands. Bring him into court. If he does not satisfy the judgment, or no one in court offers himself as surety on his behalf, the creditor may take the defaulter with him. He may bind him either in stocks or in chains; he may bind him with weight not less than fifteen pounds or with more if he shall so desire. The debtor, if he shall wish it, may live on his own. If he does not live on his own, the person [who shall hold him in bonds] shall give him one pound of grits for each day. He may give more if he shall so desire. On the third market-day creditors shall cut pieces (*partis secanto*). Should they have cut more or less than their due, it shall be with impunity.

*Id.*

5. John B. Mitchell & Kelly Kunsch, *Of Driver's Licenses and Debtor's Prison*, 4 SEATTLE J. FOR SOC. JUST. 439, 445 (2005).

could place the debtor on house arrest for an additional thirty days.<sup>6</sup> If the debtor failed to pay by the end of the second thirty-day period, the creditor could sell the debtor into slavery to recoup his money.<sup>7</sup> The Romans' laws and debt collection practices were spread throughout their empire, which included England.<sup>8</sup> After the Normans' victory at Hastings in 1066, the vestige of the Anglo-Saxon practice of slavery for debt was ended in England.<sup>9</sup> It was not until the thirteenth century that England, through a series of Acts of Parliament, "solidified a system of employing incarceration for debt collections which continued well into the twentieth century."<sup>10</sup>

Prior to the Acts of Parliament in the thirteenth century, arrests would only occur in actions of trespass, not in actions of debt.<sup>11</sup> The first statute passed by Parliament that permitted debt imprisonment was passed in 1267, known as the Statute of Marlbridge.<sup>12</sup> Under the English system, debtor imprisonment "was accomplished via a series of writs."<sup>13</sup> The first of these writs was called *Writ of Capias ad Respondendum*<sup>14</sup> and was obtained at the beginning of a suit that allowed the arrest of a debtor to "prevent the debtor from fraudulently hiding assets or fleeing."<sup>15</sup> "The arrested debtor could obtain freedom by turning over the disputed property he was alleged to be concealing and/or posting bail," as is common today, as an assurance against fleeing.<sup>16</sup> The second writ, called *Writ of Capias ad Satisfaciendum*,<sup>17</sup>

6. *Id.*

7. Ford, *supra* note 1, at 24–25.

8. 2 CHARLES PHINEAS SHERMAN, ROMAN LAW IN THE MODERN WORLD § 413, at 3–4 (1917); *see also* Pacia, *supra* note 3, at 6 ("The Twelve Tables were eventually implemented throughout all seventeen administrative provinces of the Roman Empire." At its peak, Rome was "the capital of the western world[,] and its empire included: "Italy, Spain, France, England, Austria, the countries on the Mediterranean including the Holy Land and Egypt as well as Germany to the Rhine River were all under its control.").

9. THEODORE F.T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 389 (5th ed. 1956).

10. Mitchell & Kunsch, *supra* note 5, at 445.

11. Ford, *supra* note 1, at 26.

12. *Id.* at 27; *see also* 1 J. CHITTY, A COLLECTION OF STATUTES OF PRACTICAL UTILITY, WITH NOTES 3 (1828). The Statute of Marlebridge stated:

[I]f bailiffs which ought to make account to their lords do withdraw themselves, and have no lands or tenements whereby they may be distrained; then they shall be attached by their bodies so that the sheriffs, in whose bailiwick they be found, shall cause them to come to make their account.

*Id.*

13. Mitchell & Kunsch, *supra* note 5, at 445.

14. *Capias ad Respondendum* (also known as *Mense*) is defined as:

A judicial writ . . . by which actions at law were frequently commenced; and which commands the sheriff to *take* the defendant, and him safely keep, so that he may have his body before the court on a certain day, to *answer* the plaintiff in the action. It notifies defendant to defend suit and procures his arrest until security for the plaintiff's claim is furnished.

BLACK'S LAW DICTIONARY 208 (6th ed. 1990)

15. Mitchell & Kunsch, *supra* note 5, at 445–46.

16. *Id.* at 446.

17. *Capias ad Satisfaciendum* is defined as:

A writ of execution . . . which commands the sheriff to *take* the party named, and keep him safely, so that he may have his body before the court on a certain day, to *satisfy* the damages or debt and damages in certain actions. It deprives the party taken of his liberty until he makes the satisfaction awarded. A body execution enabling judgment creditor in specified types of

ensured the collection of debt upon a valid judgment by the court.<sup>18</sup> If the debtor could not pay, he remained in prison until the debt was paid. “It was not unheard of for low-income debtors to die in prison when family and friends could not help.”<sup>19</sup> At the close of the nineteenth century, approximately 10,000 people (nearly all men) were imprisoned for debt each year in England.<sup>20</sup> The English system of debtors’ prison crossed the Atlantic and was established in America with the colonists.<sup>21</sup>

In America, at the opening of the 1700s, debtors’ prison was already an established institution.<sup>22</sup> Despite this, during the early 1700s, imprisonment for debt was impractical because of labor shortages in the market and the need to build and protect new communities.<sup>23</sup> However, with the economic growth of America in the late 1700s and the founding of a new nation, creditors once again began to avail themselves of debtors’ prisons.<sup>24</sup> As colonization prospered, so did peoples’ faith in their own capacities; debt grew with those higher expectations of success, and with increasing debt came increasing default.<sup>25</sup> In contrast to the practice in England of a separate prison for debtors, debtors in the United States were “thrown into the same jails with criminals.”<sup>26</sup> For example, in the 1830s, in States such as Massachusetts, New York, Pennsylvania, and Maryland, “three to five times as many persons were imprisoned for debt as for crime.”<sup>27</sup>

Some might think that imprisonment for debt is a long forgotten practice that has no relevance in America today. However, it was not until the 1920s that most States, whether by constitution or statute, had abolished imprisonment for debt.<sup>28</sup> Despite imprisonment for debt having been abolished, the practice continues today, creating so-called modern day debtors’ prisons through the imposition of legal financial obligations.

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actions to cause arrest of judgment debtor and his retention in custody until he either pays judgment or secures his discharge as insolvent debtor.

BLACK’S LAW DICTIONARY 208 (6th ed. 1990).

18. Mitchell & Kunsch, *supra* note 5, at 446.

19. *Id.*

20. V. MARKHAM LESTER, VICTORIAN INSOLVENCY: BANKRUPTCY, IMPRISONMENT FOR DEBT, AND COMPANY WINDING-UP IN NINETEENTH CENTURY ENGLAND 97 (1995). One quarter of these were arrested before trial. *Id.*

21. PETER J. COLEMAN, DEBTORS AND CREDITORS IN AMERICA 4-5, 37 (1974). (The legal writs and processes of *Capias ad Respondendum* and *Capias ad Satisfaciendum*, came as well. *Id.*

22. *Id.* at 249.

23. *Id.* at 250. Other factors include: (1) imprisonment rarely had the effect of recovering property; (2) since most debtors were already insolvent, imprisonment only worsened their condition by adding on court and jail costs to the initial debt; and (3) the community was left with the cost of caring for the debtor’s dependents. *Id.*

24. *Id.* at 251–52.

25. *Id.*

26. Mitchell & Kunsch, *supra* note 5, at 446; *see also* Coleman, *supra* note 21, at 254 (“The poor were the chief victims. About sixty percent of the prisoners owed no more than ten dollars. Most of them were too poor to stay out on bail until final execution or, when imprisoned, to give bond to enjoy the liberty of the jail bounds. They remained in close custody until ransomed, discharged because the creditor did not pay the jail fees, or until they qualified for relief under the general laws. In some cases confinement dragged on for years, and inevitably there were instances of the grossest inhumanity—nursing mothers deprived of their liberty, aged Revolutionary veterans jailed for trifling amounts, prisoners crowded into tiny, foul cells, and cases of exploitation, brutality, and death.”).

27. Mitchell & Kunsch, *supra* note 5, at 446–47 n.51 (“Interestingly, in the South, though the institution of slavery flourished, imprisonment for debt was all but nonexistent.”); *see also* Ford, *supra* note 1, at 28–29.

28. Mitchell & Kunsch, *supra* note 5, at 446.

## II. LEGAL FINANCIAL OBLIGATIONS, COURT RELIANCE FOR FUNDING, AND THE REASON FLORIDA CITIZENS ARE IMPRISONED FOR DEBT

To understand how individuals are sent to debtors' prison, one must first understand how this process is accomplished and its history. This section examines the specific practices found in Florida and demonstrates how Florida courts rely on the imposition of fees, fines, and court costs to fund the court system. Lastly, this paper lays the foundation for understanding the processes behind modern debtors' prisons.

There is a growing trend in the American criminal justice system for courts to impose a number of financial burdens on criminal defendants.<sup>29</sup> “The payment demands [on defendants moving through the criminal justice system] have become so numerous and complex that they have earned their own acronym: LFOs, or ‘legal financial obligations.’”<sup>30</sup> “These [legal financial obligations] generally fall into three distinct categories:<sup>31</sup> fines,<sup>32</sup> restitution,<sup>33</sup> or ‘user fees.’”<sup>34</sup> Increasingly, criminal justice actors have used the income gained through the imposition of LFOs to fund their system operations.<sup>35</sup> This article focuses on LFOs connected to low-level misdemeanors and infractions that lead to American citizens being imprisoned for debt; “[s]uch LFOs thrive in dimly lit institutional environments, attracting less attention than felonies, and typically are imposed by local governments that attract less public scrutiny.”<sup>36</sup> For example, in the State of Florida “[f]rom 1996 through 2007, the Florida Legislature [imposed] more than 20 new categories of [LFOs] . . . related to criminal cases and violations.”<sup>37</sup> The modern practice of extracting payments from suspects and convicts reflects a return to the earliest practices of American criminal justice.

The English system of granting fees and awards for the enforcement of criminal justice came to America with the colonists.<sup>38</sup> The practice in England became so

29. See Wayne A. Logan & Ronald F. Wright, *Mercenary Criminal Justice*, 2014 U. ILL. L. REV. 1175, 1176–86 (discussing pre-judgment LFOs, such as booking fees and bail). Logan & Wright state, “[t]he obligations are not a consequence of a criminal conviction; rather, they are the practical result that flows from a criminal charge, or sometimes from a potential charge.” *Id.* at 1186.

30. *Id.* at 1176–77; see also REBEKAH DILLER, THE HIDDEN COSTS OF FLORIDA’S CRIMINAL JUSTICE FEES 5 (2010), <http://www.brennancenter.org/sites/default/files/legacy/Justice/FloridaF&F.pdf>.

31. DILLER, *supra* note 30, at 6.

32. “Fines are imposed by the court as part of the judgment and sentence and are used to punish convicted offenders. Pursuant to statute, fines correlate, generally, to the severity of the crime involved.” *Id.*

33. Restitution is intended to compensate, typically victims, “for costs incurred as a result of the crime” and is typically a condition of probation or parole. *Id.*

34. “‘User fees’ comprise the fastest growing and largest category of LFOs.” *Id.* at 7. For example, in Florida, “‘user fees’ include a fee to apply for one’s constitutionally mandated public defender, fees to reimburse the costs of one’s prosecution, fees for the costs of one’s public defense, and numerous other court costs.” *Id.* Other fees include: “room and board costs, fees for medical care, probation supervision fees, substance abuse treatment costs, and the costs for other conditions of probation, such as electronic monitoring and urinalysis.” *Id.*

35. Logan & Wright, *supra* note 29, at 1177.

36. *Id.* at 1185.

37. DILLER, *supra* note 30, at 5. “These fees have been added continuously without any apparent consideration of their cumulative impacts on reentry or recidivism.” *Id.*

38. Logan & Wright, *supra* note 29, at 1180. (In the 1300s the English Crown created the office of “the justice of the peace (‘JP’) who assumed responsibility for local law enforcement,” moving away from local sheriffs. “The JPs and [under them] the constables, benefitted financially from their criminal justice work.”)

notorious that, “[t]he JP came to be known as the ‘trading justice,’ who sustained himself on the basis of fees.”<sup>39</sup> During the American colonial period, the amateurs that formed the early constabulary forces received payment through a mix of government and private rewards.<sup>40</sup> For example, sheriffs received fees when they issued subpoenas,<sup>41</sup> and JPs earned fees based on their work.<sup>42</sup> After independence, the American criminal justice system left these financial incentives in place. “Prior to the advent of full-time, professional police forces—which took root in places such as Boston in the mid-nineteenth century<sup>43</sup>—the fee and reward system held complete sway.”<sup>44</sup> “State and local governments developed fee schedules, [which would specify] the monetary benefit tied to solving different crimes.”<sup>45</sup> The fee and reward system created a situation whereby murders would receive “less attention than robberies and thefts, because the latter offered [a greater] financial benefit.”<sup>46</sup> The fee and award system was not limited only to the police force, but it also ran rampant through the national court and correction systems.<sup>47</sup>

In the late nineteenth century, public prosecutors were predominately paid on a fee-based system,<sup>48</sup> thus creating a financial incentive to pursue prosecutions. Prosecutors were not the only court officers to financially benefit. Judges financially benefited from payments associated with the fee and award system to an even greater extent<sup>49</sup>: “JPs and alderman, who presided over high-volume, low-level offense courts, secured private money in cases from start to finish.”<sup>50</sup> This is similar to today’s misdemeanor courts where high-volume, low-level offenses generate huge fees and associated costs that are then used to finance the court system.<sup>51</sup> Lastly, the correction systems, dating back to pre-colonial times, permitted jailers to recover the costs of incarceration.<sup>52</sup> “What . . . has [been] referred to as ‘pay-as-you-go’ justice predominated [the American criminal justice system] until the early part of the twentieth century.”<sup>53</sup> However, the growing use of LFOs in States across the nation,

39. *Id.*; see also NORMA LANDAU, LAW, CRIME AND ENGLISH SOCIETY: 1660–1830 46 (2002).

40. Logan & Wright, *supra* note 30, at 1182.

41. SAMUEL WALKER, POPULAR JUSTICE: A HISTORY OF AMERICAN CRIMINAL JUSTICE 19 (1980).

42. Landau, *supra* note 39, at 46.

43. See LAWRENCE M. FRIEDMAN, CRIME AND PUNISHMENT IN AMERICAN HISTORY 69 (1993).

44. Logan & Wright, *supra* note 29, at 1182.

45. *Id.*

46. *Id.*; see also JAMES F. RICHARDSON, THE NEW YORK POLICE: COLONIAL TIMES TO 1901 37–49 (1970).

47. Logan & Wright, *supra* note 29, at 1183–85.

48. See, e.g., *id.* at 1183. (“In New Jersey, for instance, prosecutors received \$10 for a guilty plea, \$15 for a jury-determined guilty outcome, and nothing at all if the jury acquitted the defendant.”).

49. *Id.* at 1184; see also James E. Pfander, *Judicial Compensation and the Definition of Judicial Power in the Early Republic*, 107 MICH. L. REV. 1, 8–14 (2008).

50. Logan & Wright, *supra* note 29, at 1184.

51. FLORIDA CLERKS & COMPTROLLERS, 2014 ANNUAL ASSESSMENTS AND COLLECTIONS REPORT: ANNUAL REPORT PAYMENT OF COURT-RELATED FINES OR OTHER MONETARY PENALTIES, FEES, CHARGES, AND COSTS 15–16 (2014), [https://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/Public\\_Documents\\_/2014\\_Clerks\\_A\\_and\\_C\\_Consolid.pdf](https://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/Public_Documents_/2014_Clerks_A_and_C_Consolid.pdf). In Florida, from the period of September 1, 2013 to September 30, 2014, the State has assessed mandatory payments for misdemeanors, criminal traffic, and ordinance violations in the amount of \$161,399,417 for associated fines, court costs, monetary penalties, fees, service charges and costs. *Id.* at 15.

52. Logan & Wright, *supra* note 29, at 1184.

53. *Id.*; see also ALLEN STEINBERG, THE TRANSFORMATION OF CRIMINAL JUSTICE: PHILADELPHIA, 1800–1880, 106 (1989).

especially Florida, has raised the specter of its return and helps explain why debtors' prisons have returned.

In 2010, the Brennan Center for Justice compiled a paper titled *The Hidden Costs of Florida's Criminal Justice Fees* that focused on the increasing reliance of states using “‘user fees’ and [other] surcharges to underwrite criminal justice costs and close budget gaps.”<sup>54</sup> The report specifically focused on Florida—“a state that relies so heavily on fees to fund its courts that observers have coined a term for it – ‘cash register justice.’”<sup>55</sup> Florida’s reliance on fee revenue to fund its criminal justice systems<sup>56</sup> is well founded as it coincides with the massive amount of Floridians with criminal convictions. Florida has the third-largest prison population of any state.<sup>57</sup> “Nearly 90 percent of the more than 100,000 people currently in Florida’s state prisons will be released, and, if past trends persist, nearly one-third will be re-incarcerated for a new crime.”<sup>58</sup> The imposition of LFOs and associated costs “affect not only [those] sentenced to state prison, but also those convicted of misdemeanors and [simple] criminal traffic violations,<sup>59</sup> many of whom are sentenced to county or court probation on the condition that they pay legal financial obligations.”<sup>60</sup> While a simple traffic citation for driving without a license may seem trivial to many, for a low-income individual it can have a dramatic effect, triggering “a vicious cycle of court-ordered fees, followed by failure to pay,” leading to more fees, more unlicensed driving, and ending, sometimes, in incarceration.<sup>61</sup> Florida has also removed many of the exemptions “traditionally granted to those who cannot afford pay.”<sup>62</sup>

The Florida Legislature has required that criminal defendants “pay the costs of their prosecution and public defense, regardless of their ability to pay.”<sup>63</sup> The mandate for indigent defendants to pay raises constitutional concerns.<sup>64</sup> The Supreme Court of Florida “has ruled that fees may be imposed initially, regardless of the ability to pay, but the state must make the determination of [the defendant’s] ability to pay prior to collection.”<sup>65</sup> In practice, “fees are imposed at sentencing and collection typically [proceeds] without further opportunity for a judicial determination of ability to pay.”<sup>66</sup> While many states may charge application fees for

54. See DILLER, *supra* note 30, at 1.

55. *Id.*

56. *Id.* at 4.

57. See E. Ann Carson, *Prisoners in 2013*, U.S. DEP’T OF JUSTICE, 3 (2014), <http://www.bjs.gov/content/pub/pdf/p13.pdf>. Florida has a prison population of 101,930 with only those of Texas (166,372), and California (134,534) being larger. See *id.*

58. DILLER, *supra* note 30, at 4.

59. See DEP’T OF HIGHWAY SAFETY AND MOTOR VEHICLES, 2014 FLORIDA UNIFORM TRAFFIC CITATIONS STATISTICS (2014), <https://services.flhsmv.gov/SpecialtyPlates/UniformTrafficCitationReport> (In 2014, the Florida Department of Highway Safety and Motor Vehicles reported 130,454 issued convictions for criminal traffic violations.).

60. DILLER, *supra* note 30, at 4.

61. *Id.*

62. *Id.* at 7.

63. *Id.*

64. *Id.*

65. *Id.*; see *State v. Beasley*, 580 So. 2d 139, 142 (Fla. 1991).

66. DILLER, *supra* note 30, at 7.

public defenders, Florida is one of only two states in the nation that, statutorily, does not waive the \$50 public defender application fee for indigent defendants.<sup>67</sup> This practice is out of step with the majority of the nation, raises serious constitutional concerns, and violates applicable American Bar Association guidelines.<sup>68</sup> The prevalence of LFOs in Florida, and other states, corresponds to the court system's increasing reliance on the funds generated through the imposition of various LFOs to fund the system's operation.<sup>69</sup>

Unlike other states, Florida has no personal income tax,<sup>70</sup> instead relying on the State sales tax<sup>71</sup> for more than three-quarters of its revenue.<sup>72</sup> From October 2013 to September 2014, the court clerks collected a total of \$967,945,450, of which \$158,920,614, or 16.4%, was collected from criminal cases in the county and circuit courts.<sup>73</sup> In 1998, through a constitutional referendum, voters approved a revision that shifted responsibility for funding the state court system from counties to the State.<sup>74</sup> Known as "Revision 7" to Article V of the Florida Constitution, the measure required that circuit and county clerk offices be funded by court fees and filing costs.<sup>75</sup> In 2009, the Florida Legislature increased State oversight of clerk budgets, requiring each clerk of court to submit a budget to the state Clerk of Court Operations

67. *Id.*; see also FLA. STAT. § 27.52(1)(b) (2015); N.C. GEN. STAT. § 7A-455.1(b) (2015) (North Carolina's non-waivable fee).

68. DILLER, *supra* note 30, at 7; see also ABA, *Guidelines On Contribution Fees for Costs of Counsel in Criminal Cases* 1 (2014), <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/rec110.pdf> (An American Bar Association guideline, adopted in 2004, states: "An accused person should not be ordered to pay a contribution fee that the person is financially unable to afford. Whenever an order for a contribution fee is under consideration, the accused person or counsel should be given an opportunity to be heard and to present information, including witnesses, concerning whether the fee can be afforded. If a contribution fee is ordered prior to providing counsel for the accused person, the decision to require a contribution fee should be subject to review at the request of counsel and counsel should be given an opportunity to be heard and to present information, including witnesses, concerning whether the fee can be afforded.")

69. Diller, *supra* note 30, at 9.

70. FLA. CONST. art. VII, § 5.

71. See FLA. STAT. § 212.05(1)(a) (2015) (The State sales tax rate is 6 percent.).

72. Liz Malm & Ellen Kant, *The Sources of State and Local Tax Revenues*, TAX FOUNDATION (Jan. 28, 2013), <http://taxfoundation.org/article/sources-state-and-local-tax-revenues>.

73. FLORIDA CLERKS & COMPTROLLERS, *supra* note 51.

74. DILLER, *supra* note 30, at 9.

75. *Id.*; see FLA. CONST. art. V, § 14(b) ("All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.").

Corporation (“CCOC”).<sup>76</sup> Whatever the intended effect of the measure, it “is likely to result in increased pressure to collect.”<sup>77</sup> The budgets submitted to the CCOC must include a projection of all court-related fees that will be collected,<sup>78</sup> and if the projected budget is higher than the projected fee revenue, the clerk is required to raise the court fee amounts, as permitted by law.<sup>79</sup> Collection rates for “[m]isdemeanors are supposed to yield at least 40 percent collection rates.”<sup>80</sup> The CCOC monitors the expenditures of clerks’ offices in the State but does not collect data reflecting the costs to collect the various fees.<sup>81</sup> “Structural reliance on fees to fund court operations goes against [the] best practices” of several institutions<sup>82</sup> and creates concerns that it interferes “with the judiciary’s independent constitutional role, diverts the courts’ attention away from their essential functions, and threatens the impartiality of judges and other court [officials] with personal or institutional, pecuniary incentives.”<sup>83</sup>

Of even greater concern than Florida and other States increasing their reliance on LFOs to fund the operation of their court systems is the practice of assigning the collection of these debts to private for-profit collection and offender service companies. If at the time of conviction a defendant “cannot pay [his or her] legal financial obligations in full,” the court permits payment plans so the defendant can pay these obligations over a period of time.<sup>84</sup> The typical procedure is that after the judge orders enrollment in a payment plan, upon a determination of an inability to pay, the court then sends the case to the clerk to administer collection and enforcement of the plan.<sup>85</sup> In Florida, a monthly payment amount is presumed to correspond to an individual’s ability to pay an amount that does not exceed two percent of the person’s annual net income.<sup>86</sup> However, “in practice, this presumption is often ignored and payment levels are set at fixed amounts. In Leon County, for example, persons enrolled in the collections program are expected to pay \$75 a month in fees related to a felony and \$50 a month for misdemeanors.”<sup>87</sup> Payment plans generate their own income as state law authorizes clerks to charge debtors either \$25 to enroll in the payment plan or an additional \$5 charge per month.<sup>88</sup>

Enforcement and collection of payment plans has increasingly been privatized in the state. As a result of legislation passed in 2009, Florida law requires clerks to

76. See FLA. STAT. § 28.36(2) (2015) (The Clerk of Court Operations Corporation is a legislatively created entity that oversees clerk operations under state oversight.).

77. DILLER, *supra* note 30, at 9.

78. See FLA. STAT. § 28.36(2) (2015).

79. *Id.*

80. DILLER, *supra* note 30, at 9.

81. *Id.*

82. *Id.* (listing the American Bar Association, the National Center for State Courts, and “other justice experts, who have cautioned against relying on fees to create self-supporting court operations”).

83. *Id.*; see also CONFERENCE OF STATE COURT ADMINISTRATORS, POSITION PAPER ON STATE JUDICIAL BRANCH BUDGET IN TIMES OF FISCAL CRISIS 14–15 (2003), <http://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/BudgetWhitePaper.ashx>.

84. DILLER, *supra* note 30, at 14; see also FLA. STAT. § 28.246(4) (2015).

85. DILLER, *supra* note 30, at 14.

86. FLA. STAT. § 28.246(4).

87. DILLER, *supra* note 30, at 14.

88. FLA. STAT. § 28.24(26)(b), (c) (2015).

use collection agents for uncollected fees after ninety days.<sup>89</sup> Before a clerk may assign the debt to the collections agency or private attorney, the clerk must attempt to collect the unpaid amount through “cost effective” collections processes established by the court.<sup>90</sup> Under that same law, the private attorney or collection agency who assumes the debt can add up to a forty percent surcharge to the amount it collects from delinquent payments.<sup>91</sup> This surcharge would violate laws on usury had the Florida Legislature not passed a statutory exception to the rule. Further, the statute, which allows private companies to collect criminal debt, requires no reporting mechanism from the company or the costs of collection. This automatic transfer process often produces severe consequences.<sup>92</sup> For example, in Orange County, once an account has been transferred to a private debt collector, the court clerk automatically suspends the debtor’s driver’s license.<sup>93</sup> “The clerk will only restore” the debtor’s license once full payment has been made to the private debt collector.<sup>94</sup> The effect of this practice is to dramatically expand the number of debtors with license suspensions arising from failure to pay court debts. “Previously, those making payments under a payment plan were able to avoid license suspensions. Now, the debtor must pay the collection agency in full before the clerk will restore a driver’s license.”<sup>95</sup>

This is exactly what happened to Sam, a resident of Orange County, who “had been making regular debt payments on his total debt of \$4,000 in Orange County Collections Court.”<sup>96</sup> After his debt was transferred to Alliance One, a private for-profit collection agency, Sam’s driver’s license was immediately suspended<sup>97</sup> and he was informed that “it would only be restored when” he paid his debt in full.<sup>98</sup> Additionally, Sam states that Alliance One is “incorrectly seeking an additional \$44,705 that was previously voided by the court.”<sup>99</sup> However, because “the matter is in private hands, Sam has been unable to appeal this error anywhere.”<sup>100</sup> Sam is also facing “a 30 percent surcharge on the inflated amount, bringing his debt to nearly \$64,000.”<sup>101</sup> As Sam waits, the suspension of his drivers license, his key to earning income, and thus, his ability to service his debt, hangs in the balance.<sup>102</sup> Florida’s fixation with LFOs and the privatization of criminal debt has led to the re-occurrence of debtors’ prisons in the state. The next section seeks to identify how it occurs, how

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89. FLA. STAT. § 28.246(6).

90. *Id.*

91. *Id.* (“The collection fee, including any reasonable attorney’s fee, paid to any attorney or collection agent retained by the clerk may be added to the balance owed in an amount not to exceed 40 percent of the amount owed at the time the account is referred to the attorney or agent for collection.”).

92. DILLER, *supra* note 30, at 22.

93. *Id.* at 21–22; *see also* FLA. STAT. § 322.245(1) (2015).

94. DILLER, *supra* note 30, at 22.

95. *Id.*

96. *Id.* (Sam’s last name was omitted at his request in the Brennan Law Center Report and this information was gathered during a phone interview with the Law Center.).

97. *See generally* FLA. STAT. § 322.245(1) (2015) (defining when a driver’s license may be suspended).

98. DILLER, *supra* note 30, at 22.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

states are able to wiggle around federal law, and it suggests solutions for how to address the problem.

### III. MODERN DEBTORS' PRISON, THE BEARDEN RULE, AND SUGGESTED ACTIONS TO PREVENT FUTURE IMPRISONMENT FOR DEBT

This section provides vivid examples of occurrences of debtors' prisons in the State of Florida and how this process is carried out on a procedural and personal level. Next, it examines current federal law banning imprisonment for debt and how some State courts skirt the spirit, if not the letter, of the law. Lastly, suggestions are offered for how to avoid debtors' prisons and fix Florida's reliance on LFOs.

Not many people have heard the story of Larry Thompson, a sixty-one-year-old resident of Orange County, Florida.<sup>103</sup> On August 4, 2015, Mr. Thompson, a hospice patient, needed to make a trip to the bank to deposit a check before a doctor's appointment.<sup>104</sup> A friend offered to give him a ride due to his chronic obstructive pulmonary disease and need for an oxygen tank to pump enough air into his lungs for him to breathe.<sup>105</sup> However, Mr. Thompson was never able to cash the check.<sup>106</sup> While at the bank, the teller flagged the check and contacted the Orlando Police Department ("OPD").<sup>107</sup> When the officers arrived, they promptly arrested Mr. Thompson on a judge-ordered writ based on his failure to pay court costs related to a 2010 charge of driving on a revoked license.<sup>108</sup> The charge against Mr. Thompson was *contempt of court*.<sup>109</sup> The police attempted to bring him to jail, but the jail refused, citing his medical condition.<sup>110</sup> Instead, he was taken to the hospital with two guards.<sup>111</sup> Despite his medical condition, Mr. Thompson was, however, assigned an additional \$210 for the "privilege" of being arrested, bringing his total balance to \$885.<sup>112</sup> Mr. Thompson stayed at the hospital for two days before being brought to jail for processing and bailing out.<sup>113</sup> It was only due to Mr. Thompson's illness that

103. Elyssa Cherney, *OPD Arrested Hospice Patient for Failing to Pay Court Fees, Records Show*, ORLANDO SENTINEL (Aug. 7, 2015), <http://www.orlandosentinel.com/news/breaking-news/os-hospice-arrest-court-fees-20150807-story.html>.

104. *Id.* (Mr. Thompson's other medical conditions include: asthma, chronic bronchitis, and HIV).

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*; see also John Oliver, *Last Week Tonight*, Season 2 Episode 27 (Sept. 9, 2015), [www.hbo.com](http://www.hbo.com). (Mr. Thompson's case was cited to recently by comedian and HBO star John Oliver during his show about public defenders. In 2010, Mr. Thompson was charged with a felony, due to repeated driving violations, and he spent fifty-nine days in jail before pleading no contest to the charge. After pleading no contest, the court imposed a total of \$675 in associated fines and fees, which, in part, included: a mandatory public defender's fee of \$50 of fee pursuant to section 27.52(1)(b) of the Florida Statutes; the cost of prosecution of \$100 pursuant to section 938.27; and finally \$5 service charges for his partial payments made in 2010 pursuant to section 28.246(6)).

109. Cherney, *supra* note 104 (Mr. Thompson was charged with contempt of court for his failure to appear in collection court and his failure to continue paying towards his court ordered payment plan. His initial payment plan was for \$5 a month and he made six months of payments before stopping in December 2010.).

110. *Id.*

111. *Id.*

112. *Id.*; see Amended Administrative Order Governing a Collections Court Program in Orange County, No. 07-99-26-4 (Fla. Cir. Ct. Aug. 15, 2017), <http://www.ninja9.org/adminorders/orders/07-99-26-4%20-%20amended%20order%20governing%20collections%20court.pdf>.

113. Cherney, *supra* note 104.

he was not placed in what essentially was a debtors' prison, due to his failure to pay his LFOs.<sup>114</sup> If not for a Good Samaritan hearing this story and paying Mr. Thompson's entire legal financial obligation,<sup>115</sup> Mr. Thompson's payment plan would be now \$30 a month.<sup>116</sup> Mr. Thompson's story is not unique and demonstrates how States like Florida continue to imprison their citizens for debt in violation of the spirit, if not the letter, of federal law.

In *Bearden v. Georgia*,<sup>117</sup> the Supreme Court of the United States definitively held that, "if the State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because he lacked the resources to pay it."<sup>118</sup> It is only when the debtor has willfully refused to pay the fine or restitution, despite having the means to pay, or has failed to make a bona fide effort to pay, that the State is justified in using imprisonment as a sanction to enforce collection.<sup>119</sup> If, on the other hand, the debtor has made all reasonable bona fide efforts to pay off the fine and, "through no fault of his own," cannot do so, it is a violation of fundamental fairness to revoke the debtor's "probation automatically without considering whether adequate alternative methods" of punishment are available to meet the State's interest in punishment and deterrence.<sup>120</sup> The Supreme Court, "[b]y requiring a finding of willfulness, . . . prevented a revival of debtors' prison for criminal defendants."<sup>121</sup>

Despite the constitutional ban on imprisonment for debt, many States have devised creative methods for continuing to imprison debtors.<sup>122</sup> Beginning in the 1990s, courts have attempted to create exceptions to the *Bearden* rule by distinguishing between a judge-imposed sentence, as used in *Bearden*, from one agreed to in a plea bargain.<sup>123</sup> These courts have argued that a plea-bargained sentence requires no finding of willfulness since the defendant affirmatively agreed

114. *Id.*

115. Elyssa Cherney, *Hospice Patient Who Was Arrested Pays off Court Fees with Donations*, ORLANDO SENTINEL (Aug. 18, 2015), <http://www.orlandosentinel.com/news/os-larry-thompson-hospice-donations-20150818-story.html>.

116. Cherney, *supra* note 104.

117. *Bearden v. Georgia*, 461 U.S. 660 (1983). *Bearden* pled guilty to burglary and theft but the court did not enter a judgment of guilt and, instead, sentenced him to probation on the condition that he pay a \$500 fine and \$250 restitution (total \$750), with the balance to be paid within four months. *Id.* at 662. *Bearden* was able to pay the first \$200, but was laid off shortly after and despite his efforts unable to find other work. *Id.* at 662–63. After notifying the probation office that the payment would be late, the State filed a petition revoking his probation for failure to pay, and the trial court, after a hearing, revoked his probation, entered a conviction, and sentenced him to prison. *Id.* at 663. The record of the hearing disclosed that *Bearden* had no assets or income and had been unable to find work. *Id.*

118. *Id.* at 667–68.

119. *Bearden*, 461 U.S. at 668–69.

120. *Id.*

121. Ann K. Wagner, *Conflict Over Bearden v. Georgia in State Courts: Plea-Bargaining Probation Terms and the Specter of Debtors' Prison*, 2010 U. CHI. LEGAL F. 383, 385 (2010).

122. See generally Richard E. James, *Putting Fear Back Into the Law and Debtors Back Into Prison: Reforming the Debtors' Prison System*, 42 WASHBURN L.J. 143 (2002) (arguing that, although currently unconstitutional, de facto debtors' prisons still exist in America and that they should be formalized so as to create a standardized system for instilling fear in debtors).

123. Wagner, *supra* note 122, at 386–87 ("Bearden contained no explicit exception for plea bargains, and the courts that have deviated from its mandate often refer to pre-Bearden state precedent to bolster their holdings.").

to pay the fine by accepting the plea bargain.<sup>124</sup> Courts have also justified their holding, by analogy, that a defendant's agreement to a plea bargain is similar to the establishment of a private contract between the probationer and the State, thus granting the courts leeway in enforcing this "contract."<sup>125</sup> However, these courts fail to distinguish the critical difference between plea-bargained probation terms and ordinary contracts: "[T]he penalty for breach of a contract has long since ceased to be a prison sentence."<sup>126</sup> The economic climate of the past seven years has exacerbated the situation. During economic downturns, such as the Great Recession, plea bargaining increases just as budgets for prosecutors' and public defenders' offices are cut.<sup>127</sup> Fewer staff and increased caseloads make it less likely that plea deals reflect a defendant's understanding of what is being bargained for as well as the terms of the payment plans associated with their plea bargain.<sup>128</sup> A defendant who pleads guilty to a misdemeanor in Florida, such as driving without a license, is placed on a court-ordered payment plan as part of the defendant's plea agreement and can find himself or herself imprisoned for debt.

Amy is on her way to work but is running late and runs through a stop sign. A police officer observes this, pulls her over, and writes her a traffic citation wishing her a better day. Occupied with her busy life, Amy discards the ticket and quickly forgets about it in the hustle and bustle of her busy life. However, due to her failure to pay, her license is promptly suspended by the State, all the while her fees are increasing, and will soon be sent to a private collection company. Some months later, Amy is on her way to work and is pulled over for speeding. The police officer runs her license information and sees that she is driving on a suspended license, a misdemeanor offense. Amy receives a ticket for driving without a license, a non-violent misdemeanor in Florida. At her court appearance, Amy pleads no contest to the charge and is assessed LFO. But, because she is adjudged indigent, the court agrees to a payment plan. Amy makes partial payments, all the while incurring charges associated with her payments. Because her driver's license has been suspended, she is soon fired from her job since she cannot legally drive to work. Amy continues to miss her payments and is soon sent a notice to appear by collections court.<sup>129</sup> Amy misses her collection court hearing date and the judge

124. *Id.* ("Since *Bearden* addressed a fact pattern in which the defendant had been sentenced by a trial court judge, these courts have carved out an exception to *Bearden* in situations in which the probationer has affirmatively agreed to pay as part of a plea bargain.")

125. *Id.*

126. *Id.* at 387; *see, e.g.*, ROBERT J. STEINFELD, COERCION, CONTRACT, AND FREE LABOR IN THE NINETEENTH CENTURY 218 n.26 (Cambridge 2001) (describing the end of penal sanctions for breach of employment contracts in 1870's England).

127. Wagner, *supra* note 122, at 387; *see, e.g.*, Oliver, *supra* note 109 (discussing the Fresno California PD office where, under its own rules, a PD should not have more than 150 felony cases a year yet at that time it was averaging close to 1,000, and discussing a report out of New Orleans, Louisiana that notes the fact that some part-time PDs spend, on average, seven minutes with clients charged with misdemeanors).

128. *See* Deborah Hastings, *Nationwide, Public Defender Offices Are in Crisis*, SEATTLE TIMES (June 3, 2009), [http://www.nlada.org/DMS/Documents/1244125821.85/2009296598\\_apusnodefense.html](http://www.nlada.org/DMS/Documents/1244125821.85/2009296598_apusnodefense.html) ("[E]ven in the best of times, public defenders say a quick plea bargain is sometimes as good as it gets.")

129. As Diller notes:

Some counties – including Highlands, Leon, Orange, Osceola, Sarasota, and St. Lucie – have established specialized 'collections courts' to handle payment plans. Collections court

issues a *capias* warrant for her failure to appear. Several days later, Amy, who knows better but is desperate, drives to a job interview and is pulled over by the police. When the officer runs her license, he promptly arrests her and she is taken to jail.<sup>130</sup>

Incarcerations such as this hypothetical situation,<sup>131</sup> whether for failure to pay according to a plea agreement or probation term, “constitute a modern variation on debtors’ prison; at root, individuals are incarcerated for their failure or inability to make payments (though the technical reason is failure to appear in court).”<sup>132</sup> Florida’s addiction to funding the court system on the backs of criminal and often indigent defendants triggers additional hardships that, in turn, further undermine the ability of the debtor to pay, resulting in debtors’ prison in some instances.

Despite seeming like an almost insurmountable societal problem, solutions do exist and can be immediately enacted. First, the Florida Legislature should replace the exemptions for indigent defendants from having the burden of paying LFOs.<sup>133</sup> “An exemption system based on a rational determination of ability to pay would free officials from the burden of pursuing non-existent revenue and would relieve financial pressure on previously incarcerated individuals who are attempting to re-enter society.”<sup>134</sup> Second, when court-ordered payment plans are created they should be tailored to the individual’s ability to pay, as already required by state law.<sup>135</sup> Third, the Supreme Court of Florida should adopt new rules that, “in the absence of a prior finding” of the ability to pay, or the unwillingness to pay, failure to appear at an LFO debt hearing will not constitute cause for incarceration.<sup>136</sup> Fourth, Florida should change collection-court procedures or make it a State law that counsel should be provided “in all collections or LFO-related collection contempt proceedings that may result in incarceration.”<sup>137</sup> Fifth, courts should more frequently follow the option

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hearings are typically structured as ‘pay or appear’ hearings. If a defendant is able to make his payments by the payment deadline, there is no requirement to appear in court. However, if he fails to make a payment, he must appear before the collections court and explain why, with the possibility of being held in civil contempt for failing to pay. If he does not appear at that collections court hearing, a ‘*capias*’ or ‘writ of bodily attachment’ – a type of warrant that results in arrest – will typically issue and his driver’s license will often be suspended.

DILLER, *supra* note 30, at 15. If Amy had gone to a collections court hearing she would not be entitled to an attorney. *See id.* at 3.

130. *See, e.g.*, Amended Administrative Order Governing a Collections Court Program in Orange County, No. 07-99-26-4 (Fla. Cir. Ct. Aug. 15, 2007), <http://www.ninja9.org/adminorders/orders/07-99-26-4%20-%20amended%20order%20governing%20collections%20court.pdf> (In Orange County, for instance, a person arrested under a *capias* warrant is charged a total of \$210 once arrested, on top of any other associated LFOs, \$70 in additional costs and \$140 charge when the defendant is booked and held in the Orange County jail.).

131. *See, e.g.*, DILLER, *supra* note 30, at 19 (“We examined records for all individuals who were arrested and jailed solely for failure to appear at collections court between October 1, 2007 and September 30, 2008. In that one-year period, 838 total arrests were made in Leon County solely for failure to appear at Collections Court after failing to pay court fees and fines or falling behind in a payment plan. Some of the individuals who were arrested had outstanding, unpaid fines or fees related to more than one specific charge or incident.”).

132. *Id.* at 15.

133. *Id.* at 25.

134. *Id.*

135. *See* FLA. STAT. § 28.246(4).

136. DILLER, *supra* note 30, at 25.

137. *Id.* (“It should not be possible to end up in prison for LFO debt without having been represented by counsel.”).

under State law<sup>138</sup> that allows community service programs as “an alternative to payment for those unable to pay.”<sup>139</sup> Sixth, the method for evaluating the performance standards that court clerks use should be modified to be based not only on collection rates but more importantly on collection costs.<sup>140</sup> Seventh, the negative impact of driver’s license suspensions should be mitigated by court clerks only suspending licenses for those individuals that can afford to repay but refuse to do so.<sup>141</sup> Lastly, the Florida Legislature should overturn the statute<sup>142</sup> that allows private debt collectors to add up to a forty percent surcharge on debt and it should enact reforms to create oversight for these private for-profit debt collectors that are making unknown profits off of our criminal justice system.<sup>143</sup> This list of suggested reforms is not exclusive and there are many other changes the Florida courts, clerks, and legislature can make to prevent Florida citizens from being imprisoned for debt in the future due to the State’s reliance on LFOs.

#### IV. CONCLUSION

As this article identifies, the Florida courts rely heavily on the imposition and collection of LFOs to fund their system operations. This reliance in turn has led to an increase in the number of LFOs that can be imposed on a defendant, either by State statute or local court order. Additionally, Florida has privatized the collection of this criminal debt and has given it over to private collectors who, by statute, can charge interest rates up to forty percent. Florida has in effect created a return of debtors’ prisons, imprisoning its citizens for failure-to-appear (but in reality it is failure-to-pay) in conjunction with court-ordered payment plans. While this issue has been ongoing for a number of years, it seems to be gaining local<sup>144</sup> and national notice.<sup>145</sup> Some of the suggested solutions this article provides can and should be implemented to prevent more Florida citizens from being imprisoned for owing debts related to LFOs.

138. FLA. STAT. § 938.30(2) (2015) (“The judge may convert the statutory financial obligation into a court-ordered obligation to perform community service . . . after examining a person under oath and determining a person’s inability to pay.”).

139. DILLER, *supra* note 30, at 25; *see also* FLORIDA CLERKS & COMPTROLLERS, *supra* note 51 (reporting in the circuit criminal mandatory tab that only 16 of 67 counties reported converting any mandatory LFOs imposed in felony cases to community service).

140. DILLER, *supra* note 30, at 26 (“Current practice only looks at one side of the ledger – the revenue raised – without considering the expenses of collection.”).

141. *Id.* (“In addition, the Legislature should create a conditional driver’s license that permits driving to and from work for those whose licenses have been suspended.”).

142. *See* FLA. STAT. § 28.246(6).

143. DILLER, *supra* note 30, at 26.

144. *See, e.g.*, Elyssa Cherney, *Chief Judge Quashes 21,000 Arrest Orders, Ends Debt-Collection Policy*, ORLANDO SENTINEL (Sept. 16, 2015), <http://www.orlandosentinel.com/news/breaking-news/os-orange-arrests-collections-changes-20150916-story.html> (“Orange-Osceola Chief Judge Frederick Lauten announced Wednesday that he will quash more than 21,000 arrest orders for people who failed to appear at collections court, ending the long-standing practice of jailing the defendants when they are located.”).

145. *See id.*