

BRINGING ECONOMIC JUSTICE TO THE JUSTICE SYSTEM:

AN LWVIA STATE STUDY
2022-2024

This handout is a quick reference and companion guide to the full LWVIA state study, which may be found here: [LWVIA-Study-Bringing-Economic-Justice-to-the-Justice-System-Amended-Final.pdf](#).

LWVIA local leagues have concurred with these positions; state LWVIA board approval is pending.

ECONOMIC JUSTICE IN A NUTSHELL

What does it cost when an indigent (poor) person is charged with a crime? If they ask for a trial, which is their constitutional right, people charged with crimes are often released from jail by posting bail. But a person who is indigent cannot afford bail, and cannot even afford a bail bondsman's fee to have bail paid for them. They must therefore remain in jail until their case is heard. In Iowa they are often charged a fee for each day they are incarcerated in the jail – which they can't afford, either.

Incarceration awaiting trial sometimes means that the defendant loses a job, a place to live, and their possessions during an eviction. Obviously their debts then become an even more insurmountable burden.

The constitution requires that everyone charged with a criminal offense must have access to a lawyer to represent them, and if a person cannot afford a lawyer, one is appointed for them. In Iowa, state law then requires that in addition to other fines and fees that they cannot afford to pay, they must pay back the charges for that lawyer they could not afford in the first place. Even if the person is found not guilty and the case is dismissed, those charges must be repaid.

The LWVIA positions below are presented in two sections: Bail & Pretrial Alternatives, and Criminal Justice Debt.

There is little evidence to support the efficacy of monetary bail in achieving the intended goals of reducing community harm and increasing court appearances.

~ VERA Institute of Justice

Bail & Pretrial Alternatives

The LWVIA believes justice delayed is justice denied. We believe that bail is seldom necessary as most defendants do show up for trial and are not a danger to the public. We believe that holding nonviolent persons in jail pretrial is counterproductive, often compounding poverty for defendants, causing loss of job, car, schooling, and possessions.

The LWVIA **supports**:

- ✚ Funding the courts to provide indigent persons awaiting trial an adequate number of high-quality defense attorneys or contract attorneys to ensure a speedy trial.
- ✚ Providing prosecutors, defense attorneys, contract attorneys, and judges with regular training about the alternatives to jail for those awaiting trial, including pretrial diversion, pretrial supervision, and restorative justice programs. Funding for pretrial alternatives should not be assessed to indigent defendants.
- ✚ Amending Iowa Code 811.2 (which provides that judges consider the likelihood of a defendant's appearance in court and safety of others when ordering pretrial release) to add consideration of the risk of harm to the defendant and the defendant's family if the defendant were detained.

Of the 42 states that allow defendants to be billed for the services of a public defense attorney, Iowa assesses some of the highest fees in the nation.

~ National Legal Aid & Defender Association, 2022

Criminal Justice Debt

The LWVIA believes that just as the state has the responsibility to prove a defendant guilty, so does the state have the responsibility of proving that the defendant has the ability to pay fines and fees. The determination should be based on all relevant evidence and sources of information. The burden of proof should be with the state which has greater resources than an indigent defendant.

We believe that Iowa should institute a sliding scale for assessing fines based on an individual's ability to pay. Ability-to-pay policies must include a presumption that some individuals will not have the ability to pay any fine, fee or other monetary sanction. We believe that resources devoted to collecting fines and fees could be better spent on efforts that actually improve public safety.

We believe that after the court determines a person's ability to pay and assesses any fines, fees, or other monetary sanctions, it must allow payment plans as an acceptable payment method. The court should also consider converting the reduced amount to an alternative method of fulfillment such as community service. An individual should not face incarceration, have probation extended, be denied services, or have a driver's license suspended for missed payments or nonpayment of fines and fees.

The LWVIA **supports**:

- ✚ Providing free legal services of high quality for indigent defendants, and repealing Iowa Code Section 815.9(3) to make this possible.
- ✚ Eliminating fees assessed to indigent defendants whose charges are dismissed.
- ✚ Mandating use of a guideline for all judges and court clerks to apply in determining reasonable ability to pay.
- ✚ Requiring monthly payment amounts that do not exceed 2% of an individual's monthly net income (including wages and excluding any child support or Supplemental Security Income) or \$10-whichever is greater.
- ✚ Waiving or reducing fines, fees, or any other monetary sanctions after a court determines an individual's ability-to-pay. Courts should permit individuals to enroll in a payment plan and should offer community service as an alternative form of payment. Courts should be flexible and allow a wide range of activities to qualify as community service.
- ✚ Mandating that collected public defense fees be remitted to an indigent defense fund rather than the general fund (should indigent defendants continue to be charged these fees).
- ✚ Streamlining and simplifying forms, petitions and processes designed to determine indigency and ability to pay. The "Financial Affidavit and Request for Reasonable Ability to Pay Determination for Category B Restitution" form should be rescinded.

The LWVIA **opposes**:

- ✚ Incarceration, extension of probation, denial of services, or driver's license suspension as punishment for missed payments by an individual on a payment plan.
- ✚ Issuance or execution of warrants for any failure to pay.
- ✚ The use by some County Attorneys in making Category B restitution a factor in plea negotiations, such as requiring agreement to forgo a Reasonable-Ability-to-Pay determination.