



ASSESSING THE COST

Criminal Fines, Court Costs, and
Procedure versus Practice in Tulsa County

April 2014

QUINN COOPER | LINDSEY FINE | SARAH HARP | CLINT WILSON

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LOBECK TAYLOR
COMMUNITY ADVOCACY CLINIC



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About the Contributors

THE AUTHORS

Four students with the Lobeck Taylor Community Advocacy Clinic, Quinn Cooper, Lindsey Fine, Sarah Harp, and Clint Wilson (the Research Team) developed this report for the Oklahoma Assets Network in Spring 2014. The Research Team made findings and recommendations based on policy research, literature reviews, personal attendance at Tulsa County District Court dockets, and interviews with key stakeholders within the Tulsa County judicial, legal, and detention systems. The team conducted their research between January and April 2014.

THE LOBECK TAYLOR COMMUNITY ADVOCACY CLINIC

The Lobeck Taylor Community Advocacy Clinic at The University of Tulsa College of Law is an intensive, one-semester course in which student attorneys engage the skills and values of effective lawyering by solving real-life legal problems in a structured learning environment. Clinic student attorneys serve the community by providing representation that increases access to justice for low-income individuals and families, as well as advocacy, capacity-building, and systemic reform on behalf of non-profit organizations and community groups.

THE OKLAHOMA ASSETS NETWORK

The Oklahoma Assets Network, which includes the ACLU of Oklahoma, the Oklahoma Policy Institute, and the YWCA of Tulsa, promotes policies that help Oklahomans save and invest for the future. Oklahoma Assets Network members are experienced and committed professionals from a broad range of fields, including non-profit and for-profit organizations, government agencies, and American Indian Nations.

Preface

Emily Brown is a mother of eight, a grandmother of nine, and her only source of income is the \$400 she receives from her tribe each month.¹ In 2010, Emily made a poor decision and was arrested for driving under the influence.² Emily was only a few days away from her 40th birthday and had never run afoul of the law before, with the exception of a few traffic tickets. As a result, Emily was given an eighteen month deferred sentence, meaning that if she completed all the conditions of her probation, including paying fines and court costs, the matter would be dismissed.³ As punishment for the charge of driving under the influence, the court ordered Emily to pay a \$100 fine and \$100 to the Crime Victims' Compensation Fund—a total of \$200 and half of Emily's monthly income.⁴ In addition to the fine, Emily was charged a number of "court costs," which are legislatively-mandated charges assessed to criminal defendants.

After the Tulsa County District Court Cost Administration Department (Cost Administration) added court costs to Emily's balance sheet, she owed the court 31 different fees ranging in amount from just one dollar to more than \$300,

for a grand total of \$1,300.50—an amount that is over three times larger than her monthly income.⁵

More than three years after her initial contact with the court and as of the writing of this report, Emily is an inmate at David L. Moss Criminal Justice Center, Tulsa County's jail. She now owes the county an additional \$80 because a warrant for her arrest was issued, in addition to the \$1,300.50 previously assessed against her. Emily has not been able to pay off her legal debt because her monthly income is so low. She has not been charged with a new crime and has complied with all other requirements of her probation, yet she found herself in jail based on her inability to pay—in effect, because she is poor.⁶ If Emily could raise just \$500 in bond money she would be immediately released from jail and ordered to set up a payment plan with Cost Administration. But Emily does not have \$500, nor does she know anyone who could lend her that sum of money. As of this writing, all Emily can do is wait for a hearing in front of a judge to explain her situation, a hearing scheduled for 10 days after she first arrived in jail.⁷

Housing Emily as an inmate at the David L. Moss Criminal Justice Center costs Oklahoma taxpayers approximately \$64.23 per day, or an expected total amount of \$642.30, if she remains for a

full ten days, an expenditure of taxpayer dollars unlikely to be recouped given that Emily may not be able to pay off her legal debt.⁸

Introduction

In November 2013, the Tulsa World ran a story raising the question of whether or not Tulsa County was running a debtors' prison by incarcerating indigent people for failure to pay court costs and fines related to criminal convictions.⁹ The reporters reviewed booking data from the David L. Moss Criminal Justice Center and ultimately found that in 2008, 26 percent of bookings involved a failure to pay warrant.¹⁰ This article caught the attention of the Oklahoma Assets Network, who reached out to the Lobeck Taylor Community Advocacy Clinic at the University of Tulsa College of Law. Four clinic students formed a Research Team to perform legal and policy research, conduct interviews, and collect data in an effort to shed light on the practices of the Tulsa County District Court with respect to the assessment of court costs and fines in criminal cases, the collection of subsequent legal debt, and whether individuals are imprisoned for failure to pay legal debt.¹¹

The Research Team did not find evidence that Tulsa County systematically or routinely sentences individuals to time in jail solely for failure to pay legal debt. However, the Team did find that individuals who owe legal debt and

cannot or do not pay are routinely arrested, booked, and end up spending days or weeks in jail while waiting to see a judge or be released on a bond. The Research Team found, after research into applicable law, that legal procedures related to the assessment and collection of legal fines and court costs are not adequately followed in Tulsa County. The Research Team concluded that the resulting system creates unnecessary costs for Tulsa County and its taxpayers, as well as for individuals involved in the criminal justice system. In response to these findings, this report offers recommendations for reform in Tulsa County. In summary, the following steps would improve the existing system:

- The Tulsa County District Court can begin to hold hearings to determine an individual's ability to pay court costs and fines, as required by Oklahoma law.
- The court can develop uniform guidelines to determine when waivers of court costs and fines should be granted based on poverty or disability, as provided in Oklahoma law.

- The court can issue subpoenas, rather than arrest warrants, when an individual fails to pay legal debt.
- The Oklahoma legislature can review and lower court costs and fines.

Part I of this report gives a brief overview of the legal standards and procedural rules governing a courts' authority and defendants' rights with regard to the assessment of costs and fines, payment of legal debt, and incarceration for failure to pay legal debt. Part II of this report describes Tulsa County's criminal justice system, specifically, the process criminal defendants go through after they are convicted of a crime, sentenced, and assessed court costs and fines, which

may result in legal debt. This Part also examines courts' options when defendants fail to pay legal debt and describes existing practices in Tulsa County, which diverge from the requirements of state law. Part III offers insight into the discretionary, procedural, and statutory issues in the criminal system that create adverse effects for some defendants. Part IV recommends steps Tulsa County can take to begin to follow the procedures in state law, alleviate the struggles faced by individuals who are too poor to pay legal debt, and improve the existing system for the benefit of Tulsa County taxpayers.

Part I: Legal and Procedural Background

Before describing existing practices in Tulsa County, this Part offers a brief overview of the legal standards applicable to the assessment of court costs and fines in criminal cases, the collection of subsequent legal debt, and whether individuals may be imprisoned for failure to pay. There is little case law from federal or Oklahoma courts regarding the assessment of court costs and fines or the imprisonment of defendants for nonpayment of legal debt. However, at least three legal standards are critical for an understanding of the legal framework for these issues.

First, the United States Supreme Court articulated a standard, in *Bearden v. Georgia*, which bars the imprisonment of an individual for failure to pay legal debt without a finding that the failure to pay was willful. Second, the Court of Criminal Appeals of Oklahoma has outlined, in *Hubbard v. State*, the process that criminal defendants may follow in challenging the assessment of costs of incarceration.¹² Third, and most importantly for the purposes of this report, Oklahoma law sets out a process that courts must follow when a criminal defendant is assessed court costs and fines, a process that includes a hearing

and judicial finding regarding ability to pay, as well as the potential for a waiver of payment based on poverty or disability. As discussed later, the Research Team found that this process is not systematically followed in Tulsa County.

In 1983, the United States Supreme Court decided *Bearden v. Georgia*, a case that outlawed debtors' prisons in the U.S. The Court held that imprisoning a person and revoking probation for failure to pay fines and court costs in a criminal matter, without first holding a hearing to establish whether the failure was willful, is barred by the Constitution.¹³ In addition, the Court held that sentencing courts may not revoke a person's probation and imprison that person solely for failure to pay legal debt without an explicit finding that the nonpayment was willful.¹⁴

Danny Bearden was convicted of burglary and theft and ordered to pay fines and court costs as a result.¹⁵ He made a good faith effort and began paying his debt almost immediately.¹⁶ Bearden was eventually laid off from his job and was unable to keep making payments to the court.¹⁷ The court held a hearing and the hearing record reflected that Bearden was indigent, or a poor person, but still

sent Bearden to jail for failing to pay his fines and court costs.¹⁸

Bearden took his case to the United States Supreme Court, which held that no court may revoke probation and incarcerate a person solely for failing to pay fines and court costs “absent evidence and findings that he was somehow responsible for the failure or that alternative forms of punishment were inadequate to meet the State’s interest in punishment and deterrence.”¹⁹ The critical principle articulated in *Bearden* is that when a court has decided that a defendant poses no threat to society and can be properly punished through payment of court costs, fines, and a period of probation, and at some later point after sentencing that person cannot, for lack of funds, make payments on the legal debt, the court cannot put the defendant in jail solely for the failure to pay.²⁰

The Court of Criminal Appeals of Oklahoma articulated a related standard in *Hubbard v. State*, although this case is limited only to costs of incarceration, as opposed to other court costs and fines.²¹ The holding in *Hubbard* creates a procedure that defendants may follow in challenging the assessment of incarceration costs and requires the

courts to respond to a defendant’s challenge.

In the case, Ray Hubbard was convicted of murder and was ordered to pay fines and court costs as well as the cost of incarceration.²² Hubbard challenged the costs of incarceration.²³ The court held that before costs are assessed in a case, the defendant should have the opportunity to submit an affidavit regarding his or her ability to pay incarceration costs to the sentencing court.²⁴ The court should then consider the affidavit and determine if the costs would impose “manifest hardship on him or his dependents.”²⁵ In the event that the court declines to accept the defendant’s affidavit, the defendant is still entitled to a judicial hearing regarding the costs of incarceration.²⁶ In summary, *Hubbard* offers a clear procedural path that defendants may use, and courts must follow, in challenging the assessment of incarceration costs.

Finally, through statute, the Oklahoma legislature has articulated a procedure for courts to follow when assessing court costs and fines to defendants as part of a criminal sentence. The procedure is provided by Oklahoma Rule of Criminal Procedure 8.1 through 8.8.²⁷ Rule 8.1 states:

When the Judgment and Sentence of a court, either in whole or in part, imposes a fine and/or costs upon a defendant, a judicial hearing shall be conducted and judicial determination made as to the defendant's ability to immediately satisfy the fine and costs.²⁸

Following a hearing, a judge will have the necessary information to decide whether the defendant can pay, can make payments to the court in monthly installments, or cannot pay and should have fines and court costs waived.²⁹ Under the rules, the defendant “*must* be relieved of the fine and/or costs” (emphasis added) if the defendant is unable to pay because of a physical disability or poverty.³⁰ If the court determines that the defendant can pay, but refuses or neglects to do so, he or she can be arrested and incarcerated. If the court finds that a defendant can pay via installment, the court will set the amount of each payment and the date each month the defendant shall pay.³¹ In the event that a defendant is ordered to pay via installment and fails to do so, the defendant must be given an opportunity to be heard regarding why he or she failed to pay.³² Arrest and incarceration can occur if the defendant

fails to adequately explain why he or she failed to pay.³³

It is important to note that the Research Team found, based on court observations, court record searches, and interviews with court officials, that Tulsa County is in compliance with the rule articulated in *Bearden v. Georgia*. Our research suggests it is not the practice of the Tulsa County District Court, when a defendant fails to pay, to revoke probation and sentence that person to jail or prison *solely* for failure to pay legal debt. However, as described in the next section, some defendants do end up waiting in jail, for days or weeks, pending a court hearing on their failure to pay. In addition, Tulsa County is not following the procedure mandated by the Oklahoma Legislature in Rule 8. At the time of or before sentencing, the Tulsa County District Court does not routinely hold hearings and make judicial findings regarding a defendant’s ability to pay court costs and fines. Finally, the Research Team found no evidence that the court assesses defendants for a waiver based on poverty or disability.

Part II: The System in Tulsa County

Assessment and Collection of Court Costs and Criminal Fines

The Research Team learned that there is a disconnect between the requirements of state law and the actual practice of the Tulsa County District Court when it comes to assessing defendants' ability to pay fines and court costs related to criminal convictions. In Tulsa County, when a defendant is convicted and sentenced based on a criminal charge, the Research Team found no evidence that the court holds a hearing to inquire whether the defendant has the ability to pay court costs and fines as required by the Oklahoma Rules of Criminal Procedure.³⁴

The Research Team assessed Tulsa County's practices by collecting case data from the Oklahoma State Courts Network (OSCN), observing hearings at the Tulsa County District Court, and interviewing the following individuals: the Honorable William J. Hiddle, Special Judge, Tulsa County District Court; Janice Maggard, Head, Tulsa County District Court Cost Administration Department; Isaac Shields, Assistant District Attorney, Tulsa County District Attorney's Office; Jack Zanderhaft, Chief Public Defender, Tulsa County Public Defender's Office; and

Undersheriff Tim Albin, Tulsa County Sheriff's Office.³⁵

As a general matter in criminal cases, a judge has the authority to impose a fine against a defendant for each criminal charge based upon a range of punishment established by the legislature for the specific crime. In addition to fines, the judge may also order a defendant to pay court costs, which are statutorily imposed fees pursuant to a statutory fee schedule.³⁶ Court costs accompany each and every charge a defendant is convicted of in Tulsa County.³⁷ In addition to these fines and costs, defendants in Tulsa County who are placed on probation must also pay a \$40 District Attorney Supervision Fee on a monthly basis.³⁸

When an individual is convicted of a crime and sentenced to a punishment that includes court costs or fines, the Oklahoma Rules of Criminal Procedure require that the court hold a hearing and that the judge make a determination regarding a defendant's ability to pay fines and costs.³⁹ However, in practice, the Tulsa County District Court does not routinely hold hearings on ability to pay and does not make a judicial

determination based on the results of a hearing on ability to pay.⁴⁰

Instead, the practice is for the court to ask the defendant to sign a form titled “Order of the Court—Rule 8 Hearing” (Rule 8 form). Typically, the defendant’s attorney or the judge’s clerk completes the Rule 8 form before it is signed by the judge.⁴¹ The Rule 8 form, once signed by the court and entered into the record, may technically be a judicial determination regarding the defendant’s ability to pay, however, it is not preceded by a hearing as required by Oklahoma law. The Research team found no evidence that the court’s sentencing judges hold hearings regarding ability to pay as a matter of regular practice. The Research Team concluded that the Tulsa County criminal system relies on the Rule 8 form in lieu of a hearing and subsequent judicial determination.

Once the Rule 8 form is completed, the defendant must take it to the Cost Administration Department, an office charged with setting up a payment plan for the defendant. A typical payment plan provides that the defendant will make a set payment to the court by the same day every month by postal mail or in person.⁴² Once an individual has been given a payment plan, the Research

Team learned that one of three things typically happens: the individual pays the full amount, individual cannot pay and notifies the court, or the individual cannot pay and fails to notify the court—the section that follows describes the consequences of each.

1. Individual Pays the Full Amount

When an individual has the ability to pay and fulfills his or her obligation to the court by paying the full amount of his or her fines and costs, whether that be through a lump sum payment or through monthly installments, he or she will not encounter future fines and cost issues in relation to the particular case for which payment was fulfilled. It was the Research Team’s initial assumption that most of the people who paid their fines and costs were those with the greatest financial ability to do so. However, Janice Maggard, Head of the Cost Administration Department, suggests, based on anecdotal experience that low-income defendants have a higher rate of making payments. Further research would be necessary to assess the actual economic circumstances of defendants who pay as compared to those who do not.

2. Individual Cannot Pay and Notifies the Court

In some cases, an individual may recognize that he or she will be unable to make a payment and notifies the court of the circumstances before the payment is due. For people in these situations, the criminal system can make arrangements, such as adjusting a payment plan, suspending a monthly payment(s), and allowing work hours in lieu of making payments. The Research Team spoke with Tulsa County court officials, including the judge who handles a docket dedicated to those who cannot pay (court cost docket) and the Head of the Cost Administration Department (Cost Administration), and learned that the court exercises a great deal of discretion in determining how each case is handled.

Cost Administration can assist individuals who owe legal debt adjusting payment plans, suspending payments, and allowing the individual to participate in a work program in lieu of payment.⁴³ A payment plan adjustment is when the Cost Administration Department reduces the monthly payment amount from \$50 to something lower, such as \$25, so the individual can continue to make payments without violating the terms of their payment plan.⁴⁴ Currently, when

Cost Administration wants to lower an individual's payment to less than \$50 per month, typically \$25 per month, Cost Administration forwards the request to the cost docket judge.⁴⁵

Additionally, there are occasions when an individual cannot make a payment and Cost Administration suspends payment temporarily so that he or she can acquire the means to make payments.⁴⁶ A suspension is typically granted for a month at a time and is usually not longer than three consecutive months.⁴⁷

An individual may ask to enter the Tulsa County Work Program in lieu of making monetary payments.⁴⁸ Through this program, hours worked will satisfy a defendant's debt at a rate of \$8.50 per hour.⁴⁹ The work is completed in the community by doing general custodial duties. There is no cap on the amount of work hours an individual can complete.⁵⁰ The Head of the Cost Administration Department stated that she approves nearly all requests for payment adjustment, suspension, or work hours in lieu of payments.⁵¹ On occasion, a request may be denied if Cost Administration believes the request will not assist the individual in making payments or the individual is abusing the system, but there are no guidelines to

direct the discretionary decisions of Cost Administration.⁵²

Individuals who cannot pay may appear before a judge at a weekly set of hearings known as the “cost docket.” The cost docket is not a substitute for the hearing regarding ability to pay that is required by Rule 8 of the Oklahoma Rules of Criminal Procedure.⁵³ Cost docket hearings are held well after sentencing, not before or concurrent with sentencing as required by Rule 8. In addition, the court does not make a formal determination regarding each individual’s ability to pay and the Research Team found no evidence that the court has the practice of waiving costs or fines based on poverty or disability.⁵⁴ There is a box on the Rule 8 form that may be checked if the court determines the defendant is too poor to pay, but the Research Team’s assessment suggests that it is rarely used.

At the beginning of the cost docket hearings the Research Team observed, the judge opened the hearing by asking if there was anyone present with cost issues. After this, the judge asked the people, as a group, to step up to the front of the courtroom. The individuals lined up and each was given the chance to explain

why he or she was in court that day. Some asked the judge for a reduction on their monthly payment, for reasons including a reduction in hours at work or because of a lost job. Some asked the judge to postpone payments due for a period of time until the individual could find new work. During one hearing, after one or two defendants asked for some sort of adjustment, the judge addressed the entire courtroom, making remarks regarding fines and court costs as necessary consequences of poor choices.⁵⁵ According to the judge, paying fines and costs off is not desirable, but must be done, even if that means taking on a second or third job.⁵⁶ At one point the judge noted, speaking to the courtroom, the opportunities for part-time work available in Tulsa. He then noted that, as a child, he had grown up poor and began working at a young age to provide food for his family. He discussed how his own children are able to come up with \$50 a month by mowing lawns.⁵⁷ Presumably, the judge shared these stories suggest that work is available and finding the means to pay the court fines and costs should not be difficult.

In every interaction the Research Team observed where an individual asked the court for help, the judge adjusted that

person's payment plan in some way. One woman told the judge she was the sole provider for her family and recently her hours at work were cut from 40 hours a week to just 30. She was afraid she would be unable to make ends meet and requested the judge lower her monthly payment from \$50 to \$25. The judge commended the woman for providing for her family and for working hard and lowered her payments to the requested amount.⁵⁸

Another man owed both the court and Aberdeen Enterprises II, Inc.—a debt collection agency where the court sends delinquent legal debt accounts—money and told the judge he was looking for work but had been released from jail only a few days ago.⁵⁹ The man listed the places he had applied, the judge waived some of the fees he owed, and referred the man to work days while he sought employment.⁶⁰

The individuals who come to the weekly cost docket are not required to be there. Each person the Research Team observed appeared of his or her own volition to seek the assistance and speak to the court. Not one individual observed was sentenced to jail for a failure to pay, even where there had been no payment on the account for months.

In interviews with the Research Team, Judge Hiddle, who handles the cost docket, and Jannice Maggard, the Head of the Cost Administration Department, articulated a willingness to help individuals in paying court costs and fines.⁶¹ Both indicated that they will work with defendants to adjust payment plans.⁶² Judge Hiddle and Ms. Maggard stated that they did not want individuals to go to jail for failure to pay, but would rather have individuals meet with them to arrange an adjustment to the payment plan to meet their needs.⁶³

However, Judge Hiddle and Ms. Maggard both noted that individuals typically do not seek assistance until after they have already violated the terms of their payment plan, which they said limits the assistance the court ultimately offers those individuals. In addition, according to Ms. Maggard, those who violate payment plans have a propensity to acquire additional court costs and fines, compounding pre-existing payment troubles.⁶⁴

3. Individual Cannot Pay and Does Not Notify Court

If an individual is unable to pay, or stops payments without fully discharging the debt and fails to provide notice to the court, the court will issue an arrest

warrant against the individual for failure to pay.⁶⁵ Sometimes, the warrant accompanies an application to revoke probation that has been issued by the District Attorney's Office for failure to meet all conditions of probation, one of which is paying all fines and costs owed to the court.⁶⁶ At this point, it is only a matter of time before the individual will encounter law enforcement and be arrested, which may happen when the Tulsa Police Department performs a "warrant sweep" and arrests the individual.⁶⁷ Once an individual has been arrested he or she is transported to the county jail, where he or she will be detained until he or she can either pay the bond set by the court, or until the court approves his or her release.

According to Cost Administration, typically, individuals are released when they sign an agreement prepared by the cost docket clerk that requires the individual to contact Aberdeen, a private court debt collection agency, within 48 hours of release.⁶⁸ The usual practice is for the judge to sign the agreement and send it to the jail for the defendant to sign. Cost Administration asserted, in an interview with the Research Team, that this process meets the requirements of Oklahoma law.⁶⁹ However, the analysis in this report shows that this practice does not comply with the requirements of the Oklahoma Rules of Criminal Procedure.

Part III: Findings and Recommendations

This section presents findings and recommendations based on the Research Team's research and examines the costs borne by individuals who owe legal debt. This section also examines the cost to Tulsa County more broadly as a consequence of the current practice of assessing court costs and fines and collecting legal debt in Tulsa County.

The Research Team found five key issues: first, defendants in Tulsa County are currently not given a hearing to determine ability to pay before or at the same time that court costs and fines are assessed, a practice that is contrary to the requirements of Oklahoma law. Instead of a hearing to determine ability to pay, the Tulsa County District Court (the court) uses a form as a substitute for a hearing. Second, the court does not assess individuals for a poverty or disability waiver as required by Rule 8. Third, the court's judges and Cost Administration Department exercise discretion over decisions to adjust debts and payment schedules without any uniform guidelines to direct their discretion. Fourth, the court issues arrest warrants for failure to pay when defendants cannot or do not pay high

court costs and fines. This practice contributes to jail overcrowding.

To resolve these issues, the Research Team offers four recommendations. First, that defendants be afforded a Rule 8 hearing to determine ability to pay before or at the same time as the assessment of court costs and fines as required by Rule 8. Second, the Research Team recommends that guidelines on what constitutes poverty and disability as used in Rule 8.5 be established. Third, that subpoenas be issued for nonpayment of costs and fines in lieu of arrest warrants. Fourth, that court costs and fines be reviewed and lowered by the legislature.

1. Hold Hearings to Determine Ability to Pay as Required by Oklahoma Law

Tulsa County does not hold hearings to assess an individual's ability to pay before or at the same time that fines and court costs are assessed as required by Rule 8 of the Oklahoma Rules of Criminal Procedure.⁷⁰ Instead, all criminal defendants in Tulsa County sign a form titled "Order of the Court—Rule 8 Hearing" (Rule 8 form) that is filled out by either the defense attorney or minute clerk, or, on rare occasion, a judge.⁷¹ After the

Rule 8 form is completed, the defendant's attorney hands it to the judge for him or her to sign. Typical practice is for the judge to accept the form without further inquiry into the basis on which the form was completed.⁷² Although no formal hearing process occurs, each defendant signs the Rule 8 paperwork prior to the issuance of court cost and fines.⁷³

Additionally, the current process provides no meaningful way for a defendant to request the court to waive costs and fines, which is in conflict with Oklahoma Rule of Criminal Procedure 8.⁷⁴ The form does include a checkbox that the court may mark if it finds an individual "indigent" and unable to pay, but there is no checkbox related to disability. The court is supposed to conduct a hearing to determine an individual's ability, or inability, to pay court costs and fines and to make a finding based on this hearing.⁷⁵ According to Rule 8, this determination should be based on whether a defendant will be incarcerated or given a deferred or suspended sentence, current ability to pay, and ability to pay in the future, before payment requirements are determined.⁷⁶

In addition to the lack of a formal hearing, the lack of a waiver option on the Rule 8 form is a major concern because it is inconsistent with Rule 8.5 that states, "In the event the defendant, because of physical disability or poverty, is unable to pay fine and/or costs either immediately or in installment payments, he/she must be relieved of the fine and/or costs . . .".⁷⁷ The form does include a checkbox that the court may mark if it finds an individual "indigent" and unable to pay, but there is no checkbox related to disability.⁷⁸ In addition, the Research Team found no evidence that the court ever checks the "indigent" box. Thus, there is no meaningful waiver option currently in place in Tulsa County. The absence of the waiver option contradicts both the spirit and the letter of state law.

In order to comply with Rule 8, the court must begin holding hearings before court costs and fines are assessed.⁷⁹ Today, there is no formal Rule 8 hearing process in Tulsa County and while there is a weekly cost docket, the judge did not make a determination of indigence during the proceedings the Research Team observed. Moreover, individuals who voluntarily appear for the cost docket have already received sentences, including court costs and fines, and have been given a payment plan.⁸⁰

2. Develop Uniform Guidelines on Waiver of Costs and Fines and Adjusting Payment Plans Based on Poverty or Disability

The Research Team recommends the court create a set of guidelines for judges to follow in making findings of poverty or disability in the context of Rule 8 hearings, and to guide the cost docket judge and Cost Administration in adjusting payment plans. Currently, there are no formal guidelines for making such determinations, all decisions are discretionary.

Rule 8 allows a judge to waive costs and fines, issue payment plans, and lower monthly payments based on individual circumstances, but there are no clear guidelines in Rule 8 for determining when a defendant's inability to pay warrants a decision to waive all or a portion of the court costs and fines, to stay a payment plan, or to lower the required monthly payment.⁸¹ Rule 8.5 states that in the event of physical disability or poverty a defendant's costs and/or fines must be waived or a defendant can be ordered back to court for a reassessment of their financial situation at a later date.⁸² However, what constitutes poverty or disability is not defined and there are no

guidelines in place at the Tulsa County District Court.

Similarly, although the Cost Administration Department exercises discretion to lower monthly payments due to economic hardship, there is no guidance to set the parameters of these decisions.⁸³ This has strong potential to lead to inconsistent treatment among similarly situated individuals.

To ensure consistency, fairness, and transparency, the Research Team recommends Tulsa County establish clear guidelines to assist the court in making determinations regarding the waiver of costs and fines, or the adjustment of payment plans, due to poverty or disability, as required by Oklahoma Law.⁸⁴

3. Issue Subpoenas Rather Than Arrest Warrants When Defendants Fail to Pay

The Research Team found that the current practice of issuing arrest warrants is a costly measure for Tulsa County and recommends the use of subpoenas instead. The Research Team found that where the court issued arrest warrants based on an individual's nonpayment of legal debt, almost all subsequent arrests based on those warrants were in connection to new

crimes committed by the individual.⁸⁵ However, a small percentage of arrests were based solely on a failure to make a payment.⁸⁶ After analyzing the court records of every person charged with a crime in the Tulsa County District Court during the first week of the year in 2012, the Research Team found that 3.8 percent of the arrests were based solely on a defendant's failure to pay a fine or cost.⁸⁷ Although this is a relatively small percentage of total arrests, it represents the cycle that defendants can become embroiled in due to the current system of assessing and collecting legal debt.

If a defendant cannot pay the initial costs and fines assessed, and a warrant is issued, the amount owed by the defendant is automatically increased because the defendant then has to pay the cost of the warrant, which is \$83.⁸⁸ Furthermore, the Tulsa Police Department does not have the authority to recall a warrant issued by a judge so once an officer becomes aware the person has a warrant, they will be arrested and taken to the county jail to be held until they are released by the court.⁸⁹ This means that defendants are unable to work, pay bills, or take care of their children while they are awaiting their hearing, and the state must pay to house the inmate. The county also pays

for the Police Department and to conduct warrant sweeps during which the officers go out into the community and look for individuals with warrants.⁹⁰ Furthermore, it is estimated that in Tulsa County, taxpayers spend \$64.23 per day to incarcerate a single inmate.⁹¹ In Emily Brown's case, Oklahoma taxpayers are currently spending \$642.30 to house her as she awaits release.⁹² A potential solution to this problem is the issuance of subpoenas as opposed to warrants.

The Research Team learned that one Tulsa County District Court Judge routinely issues subpoenas requiring defendants appear in court rather than issuing arrest warrants for failure to pay.⁹³ A subpoena is an order requiring the person to whom it is directed to appear in court at a specific date and time.⁹⁴ In this way, the judge requires an individual to appear and state why he or she is unable to make the requisite payments instead of ordering an arrest (adding an additional \$83 to the amount owed).⁹⁵ If the individual appears, he or she can explain their current situation to the judge and the judge might be able to make a payment plan adjustment.⁹⁶ If the defendant fails to appear, the judge can hold him or her in contempt of court and/or issue a warrant as a last resort.⁹⁷

According to Tulsa County Undersheriff, Tim Albin, one possible reason judges do not already issue subpoenas in lieu of warrants is because they do not want to relinquish the control over an individual that a warrant provides. If a person comes in contact with law enforcement and there is no warrant, they cannot be automatically detained, thus possibly causing a missed opportunity for the county to recover the debt owed by the defendant.⁹⁸ Additionally, if an individual ignores the subpoena, the court may ultimately decide to issue an arrest warrant.

However, the process of issuing subpoenas is less expensive for the defendant and the county than issuing a warrant, as issuing a warrant results in an additional \$83 fee for the person who is the subject of the warrant, while there is no fee for a subpoena, which can be mailed.⁹⁹ Defendants would benefit from not having the cost of a warrant imposed on them and would be afforded the opportunity to be heard without being detained.

Tulsa County would save money because it would no longer bear the cost of housing defendants after they are arrested but before they are brought before the judge. Jail overcrowding is

also a major concern in Tulsa County. The David L. Moss Criminal Justice Center has been over-capacity and in violation of the fire code for extended periods of time in recent years.¹⁰⁰ This has led to a recent increase in taxes in order to expand the jail so it can safely hold more inmates.¹⁰¹ If judges would issue subpoenas instead of warrants, the jail would have fewer inmates to house.

4. Lower Court Costs and Fines

Once a defendant has been sentenced, he or she may be punished wholly or in part by the assessment of a fine. In addition, the Oklahoma Legislature imposes a variety of costs on criminal defendants at sentencing.¹⁰² For instance, a criminal defendant is mandated to pay \$98 for a misdemeanor conviction, \$108 for a felony conviction, \$50 for a sheriff's fee for service, \$25 to the Oklahoma Court Information System Revolving Fund, \$10 to the Sheriff's Service Fee Account, \$6 to the Law Library Fund, \$3 to the Office of the Attorney General Victim Services Unit, and \$3 to the Child Abuse Multidisciplinary Account, just to name a few.¹⁰³ While this list is certainly not exhaustive, it illustrates the number of fees imposed on criminal defendants,

which they must pay in addition to the fine assessed as punishment.

These fees fund a variety of law enforcement endeavors and reducing or eliminating all or some of the fees would likely receive opposition from law enforcement and within the legislature because of the concern that taxes would have to be raised in order to compensate for the lost income.

Undersheriff Albin suggests that lowering court costs and fines would result in greater net income for the state because defendants would be more likely to pay fines and court costs that are actually within their means, as opposed to facing an amount that could be many times their monthly income, which may be ignored due to their looming debt.¹⁰⁴

Lowering court costs and fines is also part of a better public policy on taxes as

a general matter. Concerns have been raised by the Oklahoma Policy Institute and others that Oklahoma's elected officials will continue to lower taxes while the jail population simultaneously rises, creating a burden on the system that then compensates by transferring the cost of the system to defendants.¹⁰⁵ Individuals who have been incarcerated, or are incarcerated, are often the most poverty stricken members of society and tasking them with paying for the criminal justice system will only ensure that the system becomes overburdened and will never have the resources to function properly.¹⁰⁶

Conclusion

After conducting court observations, gathering data from court files, researching relevant law and policy, and interviewing stakeholders in the criminal justice system, the Research Team concluded that Tulsa County's current practices of assessing court costs and fines in criminal cases and collecting legal debt are not entirely consistent with Oklahoma law. However, the Team found no evidence that the Tulsa County District Court sentences individuals to jail terms *solely* for failure to pay legal debt connected to criminal convictions. At the same time, the research did clearly show that some individuals end up spending time in jail as a *consequence* of legal debt. This is because Tulsans who owe legal debt may be arrested, pursuant to an arrest warrant issued by the court, and held in the county jail pending a hearing before a judge.

The Research Team concluded that Tulsa County does not, as a matter of practice, hold hearings to determine an individual's ability to pay before sentencing, leading to high costs for individuals, Tulsa County government, and taxpayers.

The Research Team recommends Tulsa County take a number of steps to improve the existing system, including holding hearings at or before sentencing to determine criminal defendants' ability to pay legal debt; developing uniform guidelines for determining when individuals may have costs or fees waived or payment plans adjusted; issuing subpoenas rather than arrest warrants when individuals fail to pay legal debt; and pushing the legislature to review and lower court costs and fines.

Endnotes

¹ Name has been changed to protect privacy. Based on interview with inmate at the David L. Moss Correctional Facility, in Tulsa, Okla. (Apr. 15, 2014); confidential statements made by inmate were verified by authors via court record search. The interviewee is a member of a Native American Tribe in Oklahoma.

² Tulsa County Dist. Ct. Docket.

³ *Id.*

⁴ *Id.*

⁵ *Id.*; the fines and costs accrued by Ms. Brown are as follows:

- 2 Bond Initial Filing Jail Fund Fees, \$25 each
- 2 Court Clerk Administration Fees, \$2.50 each
- Traffic Costs, \$88
- Trauma Care Assistance Revolving Fund, \$10
- 2 Law Library Fees, \$6 each
- Court Clerk Administration Fee on Collections, \$1
- Court Costs on DUI, \$333
- DPS Patrol Vehicle Fund Fee Assessments, \$155
- Trauma Care Assistance Revolving Fund, \$100
- Oklahoma Court Information System Revolving Fund, \$25
- DA Council Prosecution Assessment for Misdemeanors, \$15
- Medical Expense Liability Revolving Fund, \$25
- Sheriff's Service Fee for Court House Security, \$10
- Cleet Penalty Assessment, \$9
- Forensic Science Improvement Assessments, \$5
- Sheriff's Service Fee on Arrests, \$5
- AFIS Fee, \$5
- Attorney General Victim Services Unit, \$3
- C.H.A.B. Statutory Fee, \$3
- Court Fund Assessment, \$100
- Victim's Compensation Assessment, \$100
- Court Clerk Administrative Fee on Collections, \$31.50
- Sheriff's Service Fee on Arrest, \$10
- Bench Warrant for Failure to Pay, \$50
- Clerk's Bench Warrant Fee, \$5
- Oklahoma Court Information System Revolving Fund, \$25
- Addition of 10% for Warrant Collection, \$5

⁶ *Id.*

⁷ *Id.*

⁸ Kevin Canfield, *City Not Sold on Study's Finding of Tulsa Jail Inmate Cost*, TULSA WORLD, Feb. 14, 2014 (noting that an independent research group found the cost of incarcerating individual inmates to be \$64.23 per day—within the range of \$50-\$80 per day at comparably sized jails—and that the city of Tulsa has not accepted those findings).

⁹ Casey Smith and Cary Aspinwall, *Increasing Number Going to Jail For Not Paying Fines*, TULSA WORLD, November 3, 2013; For the purposes of this report a "debtors prison" refers to the jailing of indigent defendants for failure to pay costs and fines without a hearing on their ability to pay, and an inquiry into alternative forms of punishment.

¹⁰ Casey Smith and Cary Aspinwall, *Increasing Number Going to Jail For Not Paying Fines*, TULSA WORLD, November 3, 2013.

¹¹ This report focuses on the practices of the Tulsa County District Court. The research team did not assess the procedures of Tulsa Municipal Court.

¹² *Bearden v. Georgia*, 461 U.S. 660 (1983); *Hubbard v. State*, 45 P.3d 96 (2002); OKLA. STAT. tit. 22, ch. 18, § 8 (1995).

¹³ *Bearden v. Georgia*, 461 U.S. 660 (1983).

¹⁴ *Id.*

¹⁵ *Id.*, at 662.

¹⁶ *Id.*

¹⁷ *Id.*, at 663.

¹⁸ *Bearden v. Georgia*, 461 U.S. 660, 663 (1983).

¹⁹ *Id.*, at 664.

²⁰ *Id.*

²¹ *Hubbard v. State*, 45 P.3d 96 (2002).

²² *Id.*

²³ *Id.*, at 98.

²⁴ *Id.*

²⁵ *Id.*, at 100.

²⁶ *Hubbard v. State*, 45 P.3d 96, 100 (2002).

²⁷ OKLA. STAT. tit. 22, ch. 18, § 8.1 (1995).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*, at 8.5.

³¹ *Id.*, at 8.3.

³² OKLA. STAT. tit. 22, ch. 18, § 8.4 (1995).

³³ *Id.*

³⁴ OKLA. STAT. tit. 22, ch. 18, § 8 (1995).

³⁵ Interview with the Honorable William J. Hiddle, Special Judge, Tulsa Co. Ct. House, in Tulsa, Okla. (Mar. 28, 2014); Interview with Janice Maggard, Dept. Head, Tulsa Co. Ct. Clerk, in Tulsa, Okla. (Apr. 1, 2014); Interview with Isaac Shields, Assistant District Attorney, in Tulsa, Okla. (March 28, 2014); Interview with Jack Zanderhaft, Chief Public Defender, in Tulsa, Okla. (Mar. 26, 2014); Interview with Tim Albin, Tulsa Co. Undersheriff, in Tulsa, Okla. (Apr. 15, 2014).

³⁶ Uniform Fee Schedule for District Courts Criminal Actions, OKLA. CT. RULES AND PROCEDURE (2013).

³⁷ *Id.*

³⁸ OKLA. STAT. tit. 22, § 991d (2000); OKLA. STAT. tit. 22, § 305.2 (2000).

³⁹ OKLA. STAT. tit. 22, ch. 18, § 8.1 (1995).

⁴⁰ Maggard, *supra* note 35; Hiddle, *supra* note 35; Zanderhaft, *supra* note 35; Observations of the Research Team, February 21, 2014 and February 28, 2014; The research team considered misdemeanor and felony cases filed in Tulsa County from January 3, 2012 to January 6, 2012. This data was gathered from researching docket information on the Oklahoma State Court Network website; Observations of Sarah Harp, former Tulsa Co. Public Defender Intern.

⁴¹ Interview with Janice Maggard, Dept. Head, Tulsa Co. Ct. Clerk, in Tulsa, Okla. (Apr. 1, 2014); Based on the observations of Sarah Harp, former Tulsa Co. Public Defender Intern.

⁴² The Cost Administration Department generally sets all payments at \$50 a month. Maggard, *supra* note 35.

⁴³ The Tulsa County Work Program is located in the basement of the Tulsa County Courthouse and supervises the work hours. Defendants can work off their debt at \$8.50

an hour and do work such as picking up litter, cleaning bathrooms, and other custodial jobs. Maggard, *supra* note 35.

⁴⁴ *Id.*

⁴⁵ Maggard, *supra* note 35.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Maggard, *supra* note 35.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*, Janice Maggard informed the Research Team that a denial would involve a defendant that had already been granted multiple approved requests and that still had a history of non-payment constituting an abuse of the system.

⁵³ OKLA. STAT. tit. 22, ch. 18, § 8 (1995).

⁵⁴ OKLA. STAT. tit. 22, ch. 18, § 8.1 (1995); OKLA. STAT. tit. 22, ch. 18, § 8.5 (1995); The Research Team attended and observed the cost docket on February 21, 2014 and February 28, 2014.

⁵⁵ Based on the observation of the Research Team, February 21, 2014.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Tulsa County turns a defendant's debt over to the collection agency Aberdeen Enterprises II, Inc. after a defendant has failed to make payments for a period of time. For more information regarding Aberdeen, please see their website at <http://www.aberdeen-2.com>.

⁶⁰ Based on the observation of the Research Team, February 21, 2014.

⁶¹ Hiddle, *supra* note 35; Maggard, *supra* note 35.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Maggard, *supra* note 35.

⁶⁵ OKLA. STAT. tit. 22, § 966A (1995).

⁶⁶ OKLA. STAT. tit. 22, § 991b (2012).

⁶⁷ Matt Trotter, *Tulsa Police Begin Municipal Warrant Sweep*, <http://publicradiotulsa.org/post/tulsa-police-begin-municipal-warrant-sweep>, (March 10, 2014).

⁶⁸ Maggard, *supra* note 35.

⁶⁹ Maggard, *supra* note 35.

⁷⁰ OKLA. STAT. tit. 22, ch. 18, § 8 (1995).

⁷¹ Based on the observations of Sarah Harp, former Tulsa Co. Public Defender Intern.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ OKLA. STAT. tit. 22, ch. 18, § 8 (1995).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ OKLA. STAT. tit. 22, ch. 18, § 8.5 (1995).

⁷⁸ See Appendix B for a blank copy of the Rule 8 form.

⁷⁹ OKLA. STAT. tit. 22, ch. 18, § 8 (1995).

⁸⁰ Zanderhaft, *supra* note 35.

⁸¹ OKLA. STAT. tit. 22, ch. 18, § 8 (1995).

⁸² *Id.* at § 8.5.

⁸³ *Id.*; Maggard, *supra* note 35.

⁸⁴ OKLA. STAT. tit. 22, ch. 18, § 8.5 (1995).

⁸⁵ The research team considered misdemeanor and felony cases filed in Tulsa County from January 3, 2012 to January 6, 2012. This data was gathered from researching docket information on the Oklahoma State Court Network website. 105 cases were considered. Of the 105 cases considered, 4 defendants were jailed for failure to pay

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Uniform Fee Schedule for District Courts Criminal Actions, OKLA. CT. RULES AND PROCEDURE (2013).

⁸⁹ Albin, *supra* note 35.

⁹⁰ Dylan Goforth, Tulsa Police Conducting Week-Long Warrant Sweep, TULSA WORLD, Mar. 11, 2014.

⁹¹ Canfield, *supra* note 8.

⁹² *Id.*

⁹³ Albin, *supra* note 35.

⁹⁴ OKLA. STAT. tit. 12, § 2004.1 (2002).

⁹⁵ Albin, *supra* note 35.

⁹⁶ *Id.*

⁹⁷ OKLA. STAT. tit. 12, § 2004.1 (2002).

⁹⁸ Albin, *supra* note 35.

⁹⁹ Albin, *supra* note 35; Maggard, *supra* note 35.

¹⁰⁰ Breanne Palmerini, *Tulsa County Jail Overcrowding Violates Fire Code, Could End Up Costing Tax Payers*, KJRH (May 8, 2013).

¹⁰¹ *Tulsa Voters Pass Propositions for Jail Expansion, New Juvenile Center; Green Country Results*, KJRH (Apr. 1, 2014).

¹⁰² OKLA. STAT. tit. 28, § 153 (2008).

¹⁰³ *Id.*

¹⁰⁴ Albin, *supra* note 35. *See also* page 5 for story of Emily Brown).

¹⁰⁵ Gene Perry, *The Life and Death of Justice Reinvestment*, OK POLICY BLOG (May 7th, 2013).

¹⁰⁶ Paul Wright, *The Crime of Being Poor*, PRISON LEGAL NEWS (APRIL 23, 2014).

Appendix A: Oklahoma Rule of Criminal Procedure 8

Oklahoma Statutes, Title 22, Chapter 18, Rules 8.1 – 8.8

Rule 8.1—Judicial Hearings

When the Judgment and Sentence of a court, either in whole or in part, imposes a fine and/or costs upon a defendant, a judicial hearing shall be conducted and judicial determination made as to the defendant's ability to immediately satisfy the fine and costs.

Rule 8.2—Immediate confinement on refusal or neglect to pay fine and/or costs

If the defendant, by judicial finding, is financially able but refuses or neglects to pay the fine and/or costs in accordance with the court order, he/she may be immediately confined.

Rule 8.3—Ordering installment payments and fixing the date

After a judicial finding that the defendant may be able to pay the fine and/or costs in installments, the court may order the defendant to make payment of installments in reasonable amounts and fix the due date of each payment, and may order the defendant to appear before the court on each due date. In event of imprisonment as a part of the judgment rendered, a determination shall be made as to the defendant's ability to make installment payments after completion of the term of imprisonment.

Rule 8.4—Failure to make installment payments when due

If the defendant fails to make an installment payment when due, he/she must be given an opportunity to be heard as to the refusal or neglect to pay the installment when due. If no satisfactory explanation is given at the hearing on failure to pay, the defendant may then be incarcerated. If a defendant has the ability to pay but due to exigent circumstances or misfortune fails to make payment of a particular installment when due, he/she may be given further opportunity to satisfy the fine and/or costs, at the discretion of the court, to be governed by the facts and circumstances of each particular case.

Rule 8.5—Inability to pay installments because of physical disability or poverty

In the event the defendant, because of physical disability or poverty, is unable to pay fine and/or costs either immediately or in installment payments, he/she must be relieved of the fine and/or costs; or, in the alternative, be required to report back to the court at a time fixed by the court to determine if a change of condition

has made it possible for the defendant to commence making installment payments toward the satisfaction of fine and/or costs.

Rule 8.6—Change of conditions; Incarceration for failure to appear or satisfy fine and/or costs

At any time so fixed by the court for the defendant to appear on due date of installment or to appear for examination to determine change of condition set out in Rule 8.5, and the defendant fails to appear, he/she may be incarcerated to satisfy the fine and/or costs. In addition, if the defendant fails to pay fine and/or costs in accordance with the court's order, and the court determines the failure to pay was willful in accordance with Rules 8.1, 8.2, 8.3 and 8.4, the defendant may be incarcerated to satisfy the fine and/or costs.

Rule 8.7—Court reporter; Judicial order reduced to writing and filed of record; Contents of order

A court reporter shall be present and report all such judicial hearings required by this Section, provided however, a court reporter is not required to be present if the proceedings were preserved in accordance with Section 106.4(a) of Title 20. Any order of the court, whether there be a court reporter in attendance or not, shall be reduced to writing and filed of record in the case. The order shall set forth the findings of the court regarding the defendant's ability or inability to pay the fine and/or costs, the refusal or neglect to do so, if that be the case, the amount of the installments and due dates, if so ordered, and all other findings of facts and conclusions of law necessary to support the order of the court. Any order directing incarceration for failure to pay fine and/or costs shall provide for immediate release upon full payment of the amount ordered or in lieu thereof set a daily rate to be credited to the satisfaction of the amount of fine and/or costs due which will allow the custodian of the prisoner to compute the amount of time to be served to satisfy the total amount due.

Rule 8.8—Direct appeal from an order of detention and scope of appeal

A. Final Order of Detention for Non-Payment. The appeal to this Court from a final order of a municipal court of record or a district court directing a defendant to be imprisoned under the provisions of Section 983 of Title 22 or under the foregoing provisions of Section VIII of these Rules shall constitute an appeal from the issues raised in the record below and the judicial findings of fact and conclusions of law made in the trial court, and the trial court's ultimate decision to imprison the defendant. The appeal shall be limited to whether the trial court abused its discretion in entering its final order of detention. The propriety of any fine, cost, or other assessment made within the original judgment and sentence is not a proper subject of an appeal from an order of detention. Such claims must instead be raised in a direct appeal from the judgment and sentence.

B. Stay of Execution of Detention Order Pending Appeal. The trial court may stay the execution of its final order of detention upon the filing by the defendant of a verified motion to stay execution of the order pending appeal. The verified motion must be filed within ten (10) days from the date of the trial court's pronouncement of its order of detention. If the motion is granted, the defendant shall, within five (5) days after the filing of the petition in error in this Court, file a certified copy of the petition in error in the trial court and serve a copy thereof upon the trial judge which entered the order of detention. This shall ensure the trial court is notified that an appeal has in fact been commenced in the Court of Criminal Appeals.

C. Notice of Appeal from Order of Detention and Request for Appeal

Record. A defendant desiring to appeal from a final order of detention under these Rules must file a Notice of Appeal from Order of Detention with the Clerk of the District Court within ten (10) days from the date the detention order is pronounced. The Notice of Appeal from Order of Detention shall be in substantial compliance with the following language:

Defendant gives notice of intent to appeal from the trial court's order imprisoning him/her for non-payment of sums due in Case No(s). _____ in the _____ [name of the district court or municipal court of record in which the detention order was entered], State of Oklahoma. The final order of detention was pronounced by said court on the _____ day of _____, _____. Defendant requests the clerk of the trial court to prepare an appeal record as required by Section VIII of the *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App.

Form 13.4, Section XIII of these *Rules* shall not be utilized in direct appeals from a final order of detention, and the trial court clerk shall not be required to accept for filing or act upon any pleading which does not comply with this rule.

D. Petition in Error, Briefs, and Service.

(1) A petition in error WITH A CERTIFIED COPY OF THE DETENTION ORDER ATTACHED and a supporting brief, must be filed with the Clerk of this Court within thirty (30) days from the date the final detention order is pronounced. The filing of a petition in error is jurisdictional and failure to timely file constitutes waiver of the right to appeal.

(2) The brief shall not exceed thirty (30) typewritten, 8-1/2 by 11-inch pages in length. Briefs and pleadings shall comply with the requirements of Rule 3.5.

(3) The party filing the petition in error shall be known as the appellant. The party against whom the appeal is taken shall be known as the appellee.

(4) This Court may direct the appellee to file an answer brief, if necessary; however, the appellee is not required to file an answer brief unless directed by the

Court.

(5) All pleadings and briefs filed in a direct appeal from an order of detention shall be signed by the party responsible for their filing or by the party's attorney of record. Additionally, all such pleadings or briefs shall contain a certificate of service upon the adverse party. The party or their attorney of record shall be responsible for service upon the adverse party, except that service upon the Attorney General will be made by the Clerk of this Court when a party so requests. No pleadings, briefs, or motions will be considered by this Court without proof of service to the adverse party.

E. Record on Appeal from an Order of Detention.

(1) The record on appeal from a final order of detention for non-payment shall be transmitted by the clerk of the trial court in accordance with the procedure set forth in Rule 2.3(B), but within the thirty (30) day time period set forth in Rule 8.8(D)(1).

(2) The record on appeal to be compiled by the trial court clerk and transmitted to the Clerk of this Court is limited to the written order containing findings of fact and conclusions of law and the transcript of the proceedings (both as set out in Rule 8.7) and the judgment and sentence being enforced by means of the detention order.

Appendix B: Rule 8 Form Used in Tulsa County District Court

ORDER OF THE COURT - RULE 8 HEARING

[prepare separate Rule 8 for each case]

DEFENDANT'S NAME: _____ CASE NO.: _____

☐ The Court has sentenced you to the custody of the Department of Corrections or the Tulsa County Jail and you are therefore ordered to report to the Cost Administrator on the 2nd floor of this building within two weeks of your release from the Department of Corrections, or immediately after your release from the Tulsa County Jail, to make payment arrangements on the costs and fines assessed to you today.

☐ The Court finds you are able to pay and you agree to pay by installment payment the fines and costs assessed in this case. You are ordered to report immediately to the Cost Administrator on the 2nd floor of this building to make arrangements for installment payments of the costs and fines assessed in this case as shown below.

☐ The Court orders you to perform _____ hours of community service in lieu of the fines and costs or in lieu of _____ assessed in this case as shown below. You are first ordered to report immediately to the Misdemeanor Work Program located in the basement of this building, Room B3 in the Court Services Office and secondly you are ordered to report to the Office of the Cost Administrator on the 2nd floor of this building. A review of your community service is set before this Court on: _____.

☐ The Court has found you to be indigent and unable to pay the costs and fines assessed in this case and said monies are hereby ordered suspended. You are ordered to take this form immediately to the Cost Administrator on the 2nd floor of this building.

☐ The Court finds you are able and agree to pay the fines and costs assessed in this case immediately and you are ordered to report immediately to the Criminal/Traffic Division on the 2nd floor of this building and to pay all costs and fines assessed in this case as shown below.

COUNT 1: (circle one) D.U.I. Felony Misdemeanor Traffic Charge amended to: _____

Deferred (date) _____ D.U.I. Program (date) _____ Suspended (____ yrs) Dismissed cost to: State/Deft. (circle 1)

Fine \$ _____ Victim's Compensation \$ _____ Court Fund \$ _____ Deferred Fee \$ _____

Drug Fund Fee \$ _____ Lab Fee \$ _____ D.A. Drug Fund \$ _____ P.S.I. Fee \$ _____

DNA Fee \$ _____ Incarceration Fee \$ _____ Restitution \$ _____ Other _____ \$ _____

COUNT 2: (circle one) D.U.I. Felony Misdemeanor Traffic Charge amended to: _____

Deferred (date) _____ D.U.I. Program (date) _____ Suspended (____ yrs) Dismissed cost to: State/Deft. (circle 1)

Fine \$ _____ Victim's Compensation \$ _____ Court Fund \$ _____ Deferred Fee \$ _____

Drug Fund Fee \$ _____ Lab Fee \$ _____ D.A. Drug Fund \$ _____ P.S.I. Fee \$ _____

DNA Fee \$ _____ Incarceration Fee \$ _____ Restitution \$ _____ Other _____ \$ _____

COUNT 3: (circle one) **D.U.I. Felony Misdemeanor Traffic Charge amended to:** _____

Deferred (date) _____ D.U.I. Program (date) _____ Suspended (_____ yrs) Dismissed cost to: State/Deft. (circle 1)

Fine \$ _____ Victim's Compensation \$ _____ Court Fund \$ _____ Deferred Fee \$ _____

Drug Fund Fee \$ _____ Lab Fee \$ _____ D.A. Drug Fund \$ _____ P.S.I. Fee \$ _____

DNA Fee \$ _____ Incarceration Fee \$ _____ Restitution \$ _____ Other _____ \$ _____

COUNT 4: (circle one) **D.U.I. Felony Misdemeanor Traffic Charge amended to:** _____

Deferred (date) _____ D.U.I. Program (date) _____ Suspended (_____ yrs) Dismissed cost to: State/Deft. (circle 1)

Fine \$ _____ Victim's Compensation \$ _____ Court Fund \$ _____ Deferred Fee \$ _____

Drug Fund Fee \$ _____ Lab Fee \$ _____ D.A. Drug Fund \$ _____ P.S.I. Fee \$ _____

DNA Fee \$ _____ Incarceration Fee \$ _____ Restitution \$ _____ Other _____ \$ _____

**IF YOU FAIL TO PAY, APPEAR, OR REPORT AS ORDERED, A WARRANT WILL BE ISSUED FOR YOUR ARREST
AND YOU MAY BE CONFINED IN THE TULSA COUNTY JAIL UNTIL THE BALANCE IS PAID IN FULL**

Dated this _____ day of _____, _____

Judge of the District Court of Tulsa County

I HAVE READ AND UNDERSTAND THIS ORDER:

Appendix C: Payment Plan Form Provided to Defendants By Cost Administration Office

TULSA COUNTY COURT COST ADMINISTRATION PAYMENT PLAN AGREEMENT

NAME:	
D.O.B:	
ADDRESS:	
EMPLOYER:	
PHONE:	
COURT CLERK: JM	

CASE NO.:	BALANCE:
TOTAL:	\$ -

IS TO BE PAID ON OR BEFORE

IS TO BE PAID ON OR BEFORE <u>05/02/14</u> AND A PAYMENT DUE ON THE <u>2ND</u> DAY OF EACH MONTH CONTINUING UNTIL THE CASE(S) IS PAID IN FULL.

YOUR COST ADMINISTRATION REVIEW IS ON : <u>10/03/14</u>
--

- * If your are making payments according to the above agreement you are NOT required to appear to cost administration for review, and the review date will be extended to the following year.
- * All payments are made in the Criminal and Traffic Division located on the second floor of the County Courthouse in the Court Clerk's Office. Office hours are 8:30 a.m. to 5:00 p.m. **If paying in person** bring this payment plan with you.
- * If paying by mail, enclose a stamped self addressed envelope if you want your receipt mailed back to you. **Put your case number on your check or money order. Write court cost on your payment.**
- * Make payable to, and mail to: Sally Howe Smith, Court Clerk, Criminal/Traffic Division, Tulsa County Courthouse, 500 South Denver, Tulsa, Oklahoma 74103-3844. Allow 7 days for delivery.
- * Payments can be made by cash, check, money order, credit card, or cashier's check.
 - * Do not send cash through mail.
 - * Bad checks will be prosecuted to the fullest extent of the law.
- * All payments must be received in the office of the Court Clerk on or before the due date to avoid penalties. If you cannot make your payment on time you must appear *in person* before the Cost Administrator on your due date.

I have read and have agreed to the foregoing payment schedule. I understand I am under an order of the court to comply and that if I fail to do so, I will face additional penalties and possible imprisonment.

SIGNATURE: _____	DATE: _____
-------------------------	--------------------

*****Warning* If you do not make your scheduled payments on time, the total amount that you owe will become due and a warrant shall be issued for your arrest for the full amount of cost charged in your case(s), plus penalty fees.*****

LOBECK TAYLOR
COMMUNITY ADVOCACY CLINIC