

Putting the Brakes on Washington's Garnishment Treadmill:
*Sensible solutions from other states that could protect consumers,
improve the administration of justice, and save Washington money.*

By: Adam Mayle¹ and Stanley Corbit²

As a consumer protection issue, wage garnishment – an employer's withholding of wages to satisfy an employee's debt in accordance with a court order – does not usually attract a great deal of attention in Washington. Unlike the foreclosure crisis, there are no vacant homes to remind us of the economic ruin suffered by families. As opposed to payday lending, there are not the usurious interest rates – often in excess of 360 percent – that arouse public outrage.³ For the average, middle-class consumer, garnishment is a non-issue. But for thousands of low-income Washington residents, garnishment is a pressing hardship that burdens already limited financial resources. Worse still, garnishment is a notoriously difficult process to escape and can result in workers paying multiple times the amount of the debt they originally owed. There is good reason that the garnishment process is referred to as a “treadmill.”

The Northwest Justice Project routinely represents clients with garnishment issues. One of these clients is a man we will call Jeff. Jeff is disabled and has a chronic medical condition. He has no health insurance and must pay several hundred dollars every month for life-extending medications. In order to supplement his income, he works part-time, making around \$400 a week.

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³ Fred Corbit. *Payday-lending law works in Washington state*. SEATTLE TIMES. (Jan. 9, 2013).

Unfortunately for Jeff, a dire financial situation is complicated by garnishment. Despite his low income and physical disability, Jeff can legally have as much as a quarter of his paycheck garnished. Although Jeff's earnings have been garnished for three years, he owes more than his initial debt because of recurring costs and attorney's fees associated with the writ of garnishment, which his creditor must renew every sixty days.

Unfortunately, while Jeff's story is tragic, it is not uncommon. Notwithstanding the strides that Washington has made to protect consumers in other areas, its garnishment laws fail low-income workers like Jeff.

Washington's Garnishment Law: The Making of the Treadmill

Washington's garnishment laws are among the most oppressive in the nation. In fact, Washington's garnishment laws are only slightly stronger than the minimum protections provided for under federal law.⁴ Creditors are allowed to garnish a larger percentage of wages in Washington than in many other states. Furthermore, Washington's garnishment laws lack protections specifically designed for its lower-income residents.

In Washington, wages exempted from garnishment are generally the greater of 75% of disposable earnings or 35 times the federal minimum wage.⁵ Assume that a consumer has disposable earnings of just \$321.65 per week, which is 35 times Washington's minimum wage of \$9.19 per hour, and that a creditor has a money judgment against this consumer. Under Washington law, \$67.90 of these earnings is garnishable.⁶ If this hypothetical wage

⁴ The federal law is set forth in the Consumer Credit Protection Act at 15 USC § 1671 et seq. 15 U.S.C. § 1673(a) defines the maximum allowable garnishment under federal law.

⁵ See RCW 6.27.150. It should be noted that a higher percentage of disposable earnings are available for garnishment for unpaid spousal maintenance and child support.

⁶ This garnishment amount is calculated by subtracting \$253.75, which is 35 times the federal minimum wage of \$7.25, from the \$321.65 of disposable earnings.

earner had a family to support, or was an uninsured person with a chronic medical condition like Jeff, the hardship that this garnishment would pose is obvious.

Washington's garnishment laws operate according to this harsh calculus. There is no defined exemption for low-income consumers facing financial hardship. Nor is there any limit to how much a consumer can be garnished over time. This is particularly troubling given the garnishment treadmill that many low-income debtors face. Because writs of garnishments must be reissued every 60 days, attorney's fees, interest, and costs can offset the garnishments, leading to a perpetual cycle that ends in bankruptcy or destitution.⁷ As a result of this approach, a recent survey by the National Consumer Law Center ("NCLC") of wage garnishment laws nationwide rated Washington's laws as a "C," which was the second lowest grade they gave any state.⁸

Not all states have punitive laws like Washington's. Many states have crafted more humane garnishment regimes that balance the need for an effective compensation mechanism for judgment creditors with protections for low-income debtors. Although the garnishment laws vary significantly from state to state, many have common features that Washington's laws lack. These include greater exemptions for wages, judicial discretion to limit garnishment for hardship, and annual limits on the amount that a consumer can be garnished.

Exempt More Wages

Compared to many other states, Washington's wage exemptions for garnishment are low. Indeed, Washington law only provides for slightly greater protections than states like

⁷ Pursuant to RCW 6.27.090, attorney's fees can be as much as \$300 for a garnishment proceeding and judgment creditors can receive up to a 12 percent interest rate on a judgment.

⁸ The study is cited in Chart 3 of *Testimony in Support of SB 373 Nevada Wage Protection Act Before the Nevada Legislature*, Robert J. Hobbs of the National Consumer Law Center (March 26, 2013).

Alabama, Georgia, and Louisiana, which have the lowest exemptions permissible under federal law.⁹

Other states have wage exemption schemes that protect more of a consumer's income. For example, some states prohibit altogether the garnishment of low income people's wages. In Pennsylvania and South Carolina, wage garnishment is prohibited for consumer debt.¹⁰ Texas exempts from garnishment any property of a family worth less than \$60,000 and any property of an individual worth less than \$30,000.¹¹ These exemptions protect virtually all of the wages of low-income debtors.

Even where states generally permit wage garnishment, many have wage exemptions much higher than Washington's. New York only allows judgment creditors to garnish up to 10% of wages, leaving debtors with at least 90% of their income.¹² Other states use a higher multiple of the federal minimum wage when calculating their exemptions. Minnesota, New Mexico, North Dakota, and Vermont all exempt wages equal to 40 times the federal minimum wage.¹³ New Hampshire exempts 50 times the federal minimum wage.¹⁴ Still other states substitute their own state minimum wage for the federal minimum wage as a basis for their exemption. For instance, Connecticut protects 40 times the state minimum wage of \$8.25, which is a dollar more than the current federal minimum wage.¹⁵ Because the federal minimum wage is the lowest wage permissible under federal law, using Washington's minimum wage – which is \$9.19 – to calculate earnings exemptions would make a big difference to low-income workers.

⁹ See Ala. Code § 5-19-15; Ga. Code Ann. § 18-4-20.; La. Civ. Code Ann. art. 13 § 3881.

¹⁰ See 42 Pa. Stat. Ann. § 8127; S.C. Code Ann. § 15-39-410.

¹¹ See Tex. Prop. Code Ann. § 42.001.

¹² See N.Y. CVP. Law § 5205.

¹³ See Minn. Stat. §§ 571.922, 550.136; N.M. Stat. Ann. § 35-12-7; N.D. Cent. Code § 32-09.1-03; Vt. Stat. Ann. Tit. 12, § 3170.

¹⁴ See N.H. Rev. Stat. § 512:21(II).

¹⁵ See Conn. Gen. Stat. §§ 31-58, 52-361a.

Give Courts Discretion to Limit Garnishment for Hardship

Some states give courts the express discretion to limit garnishment, especially in cases of hardship. Kansas “forbids wage garnishment for two months after recovery of the debtor or a family member from an illness.”¹⁶ Rhode Island exempts wages from garnishment for one year from when the debtor last collected state assistance.¹⁷ California’s garnishment law expressly allows a debtor the opportunity to prove to the court that he or she has a need for an exemption greater than otherwise specified by statute.¹⁸ Like California, Washington garnishment law contains language that could empower courts to exercise their equitable discretion.¹⁹ However, the standard for such judicial discretion is not defined by statute or clarified by case law.

Place Annual Caps on Garnishment

At least one other state limits the total amount of wages that can be garnished in a year. Iowa law prescribes that “the maximum amount of an employee’s earnings which may be garnished during any one calendar year is \$250 for each judgment creditor.”²⁰ Beyond preserving the earnings of low-income workers, this annual cap also limits the number of times that a creditor will seek court renewal of a garnishment against a debtor. Consequently, debtors in Iowa are burdened by fewer costs and attorney’s fees.

Why Garnishment Reform Matters to Washington

This cursory review of other state laws suggests how much more Washington could do to reform its garnishment laws to protect low-income workers. But why should

¹⁶ Kan. Stat. Ann. § 60-2310.

¹⁷ See R.I. Gen. Laws § 9-26-4.

¹⁸ See Cal. Civ. Proc. § 706.051.

¹⁹ See RCW 6.27.150(4) provides: “*Unless directed otherwise by the court*, the garnishee shall determine and deduct exempt amounts under this section directed in the writ of garnishment and answer, and shall pay these amounts to the defendant.” (Emphasis added).

²⁰ Iowa Code § 642.21.

Washington act? Some would argue that protecting more debtors' wages only makes it harder for creditors to collect money they are rightfully owed. Doesn't society have an interest in creditors getting paid? After all, if a worker is being garnished, aren't they liable for their debts? Moreover, if Washington limits garnishments, won't borrowers tighten credit for fear of not getting paid back?

The answers to these questions are not so clear.

Of course, any reforms that offer more consumer protections will necessarily make it more difficult for creditors to be compensated through the garnishment process. However, garnishment does not only affect a debtor and a creditor. It has a broader societal impact. Garnishing the wages of low-income workers can have enduring negative impacts on the children and dependents that rely on the debtors for financial support.

Furthermore, garnishment also affects Washington taxpayers. When debtors and their families can no longer support themselves because of garnishment, they frequently turn to government and other taxpayer-funded benefits. Similarly, wage garnishment protections are directly correlated with bankruptcy filing rates. Thus, the NCLC has found that states with strong wage garnishment protections on average have lower rates for bankruptcy.²¹ According to the NCLC's previously-cited study, in 2012 Washington had the 13th highest quantity of Chapter 7 bankruptcy filings in the nation.²²

Regarding the argument that reforming garnishment laws would lead to tighter credit for low-income borrowers, would tightening the availability of unsecured credit really be such a bad thing? Excessive borrowing, particularly using credit cards, is a major reason

²¹ See *Testimony of Robert J. Hobbs*, *supra* note 6.

²² See *id.*

why many consumers first run into debt problems.²³ Such borrowing on a national scale has been cited as a contributing factor to the recent financial crisis.²⁴

Beyond the fiscal basis for reform, there is a powerful equity argument. Even if a consumer's paycheck is being garnished, it is not a foregone conclusion that the consumer is actually liable for any debt. A significant share of debt collection cases are won on default because many defendants lack the resources or the sophistication to defend a lawsuit. For a recent case, the Northwest Justice Project reviewed the lawsuits filed by a collection agency. Of the 135 cases that the collection agency filed in one month, the collection agency obtained 102 defaults judgments. In 70 of these default cases, a writ of garnishment was issued.²⁵ These numbers are not unusual. A sizeable minority, if not the majority, of debt collection cases are won by default. Simply put, many consumers burdened by garnishment have never had their day in court to defend against the underlying debt.

What is Good for Debtors is Good for Washington

In general, Washington offers some of the best consumer protections in the country. But in terms of wage garnishment, Washington law is sorely lacking. Compared to many other states, Washington does too little to protect its most vulnerable residents. Our garnishment laws do not exempt sufficient earnings of low income workers, place annual caps on garnishments, or provide clear discretion for judges to limit garnishment for hardship or other equitable reasons.

²³ See Odysseas Papadimitriou. *Credit card debt: Are consumers returning to bad habits?* CHRISTIAN SCIENCE MONITOR (Dec. 31, 2011).

²⁴ See Press Release, Financial Crisis Inquiry Commission, Financial Crisis Inquiry Commission Releases Report on the Causes of the Financial Crisis (Jan. 27, 2011).

²⁵ Second Supplemental Declaration of Marie Nguyen at ¶¶ 3-5, *Portfolio Recovery Associates, LLC v. Alexander*, No. 12-2-10731-1 (January 31, 2012).

No one argues that creditors do not deserve a judicial mechanism to seek compensation for debts that they are owed. But Washington takes the wrong approach to garnishment. Washington's current law affects not only debtors. It also harms debtor's families, burdens taxpayers, pushes struggling households into bankruptcy, and encourages an inequitable system of justice by default.