

Guarantor-Backed Prosecutorial Discretion in Child-Support Enforcement: A Conditional Design Framework for the Peruvian

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Abstract

Objective. This article evaluates whether, and under what conditions, the transposition of the civil-law figure of the *aval* (third-party guarantor) into the Peruvian *principio de oportunidad* for the offence of omission of family assistance (art. 149 of the Criminal Code) can secure maintenance payments and strengthen the protection of children entitled to support.

Method. A convergent mixed-methods design combined three strands: doctrinal analysis of Peruvian criminal, procedural and private law; a structured review of the international evidence on criminal-justice mechanisms for child-support enforcement, in which 210 records were retrieved, 207 screened and 36 studies retained for structured extraction across seven predefined dimensions; and semi-structured interviews with four legal practitioners of the Lima Norte judicial district. A supplementary verification stage cross-checked every substantive citation and added 24 corroborated sources.

Results. Criminal prosecution is the dominant enforcement mechanism in both legal traditions, but its effects are strongly conditioned by the debtor's capacity to pay. Where capacity is present, enforcement is associated with improved compliance; where it is absent, criminalisation increases recidivism, deepens arrears and further reduces payment capacity. No retrieved study evaluated a third-party guarantor mechanism in child-support enforcement: the proposal rests, at present, on an evidentiary void rather than on demonstrated effectiveness. Scholarship on wealth-conditioned pretrial release supplies a directly transferable warning, since mechanisms that condition a favourable procedural outcome on access to money or to a solvent third party reproduce and amplify socio-economic inequality. Comparative verification further establishes that the Colombian precedent frequently invoked in support of the proposal does not exist in the terms in which it is usually cited.

Conclusions. The *aval penal* is defensible only as a conditional, capacity-triaged instrument: subordinated to a mandatory means assessment, accompanied by a public guarantee fund for debtors with no access to a private guarantor, and expressly barred from operating as a precondition for avoiding custody. So configured, it may raise compliance among debtors with latent capacity and relieve prosecutorial caseload without converting indigence into imprisonment. Empirical validation remains outstanding, and the article specifies the evaluation design required to supply it.

Keywords: criminal guarantor; principle of opportunity; omission of family assistance; child-support enforcement; capacity to pay; children's rights; Peru; comparative criminal procedure

1. Introduction

The non-payment of judicially fixed maintenance is one of the most persistent enforcement failures in family law. It is also one of the few areas in which contemporary legal systems have responded by mobilising the criminal law against a private economic default. Peru exemplifies this configuration with unusual sharpness: failure to comply with a maintenance allowance fixed by judicial or administrative decision constitutes the offence of omission of family assistance under article 149 of the Criminal Code, punishable by up to three years' deprivation of liberty, rising to between two and four years in cases of recidivism.

The resulting caseload is substantial. According to the statistical yearbook of the Public Prosecution Service, prosecutorial files for this offence numbered 62,975 in 2018 and 68,385 in 2019, fell to 22,211 in 2020 under pandemic conditions, and stood at 49,122 in 2021, when they represented 88.23 per cent of all recorded offences against the family (Baldino & Romero, 2022). A criminal category conceived as an instrument of last resort has therefore become, in practice, the principal procedural route through which maintenance obligations are pursued. Peruvian scholarship has observed that the specialised courts created under the immediate-trial procedure of Legislative Decree 1194 now operate in substance as maintenance-collection tribunals, initiating proceedings without adequate prior verification of the constitutive elements of the offence (Calderón, 2023).

Against this background, the *principio de oportunidad* regulated in article 2 of the Code of Criminal Procedure of 2004 has emerged as the dominant negotiated response. It authorises the prosecutor to abstain from bringing the criminal action where the statutory conditions are met and the parties agree on reparation. Its recurring weakness, however, is that the agreement is frequently concluded and then not honoured: the debtor obtains the procedural benefit, the file is closed, and the child receives nothing. Gálvez (2022) documents precisely this pattern of non-compliance with agreements reached under the mechanism, and it constitutes the practical problem that the present study addresses.

The proposal examined here is the incorporation of the *aval* — the third-party guarantor of private law — as a condition of the negotiated disposition. On this model, a solvent third party would assume joint and several liability for the agreed instalments, so that the child's entitlement no longer depends exclusively on the willingness or solvency of the debtor. The intuition is that a guarantee converts a promise into an enforceable economic obligation, and that this in turn secures both the child's interest and a reduction in judicial workload.

That intuition is plausible. It is not, however, self-evidently correct, and the literature that is customarily invoked in its support has not previously been assembled or tested. Three questions therefore remain open. First, what does the international evidence actually establish about the effectiveness of criminal-justice mechanisms in securing maintenance payments? Second, does any of that evidence bear directly on guarantor or surety arrangements? Third, if a guarantor mechanism is to be introduced, what design constraints must it satisfy in order to avoid reproducing the distributive pathologies that comparable money-conditioned mechanisms have generated elsewhere?

This article addresses those questions and, in doing so, revises the proposal rather than merely restating it. Its central claim is that the *aval penal* cannot be defended as a general solution, because the evidence shows that the determinant of compliance is not the presence or absence of a guarantee but the debtor's capacity to pay. It can, however, be defended as a targeted instrument, provided it is embedded in a triage architecture that distinguishes debtors who will not pay from debtors who cannot, and provided the state supplies a substitute guarantee for those with no access to a private one. The article's contributions are fourfold: it maps the international evidence base systematically; it identifies and documents a complete evidentiary void on guarantor mechanisms in this field; it corrects a comparative-law premise that has circulated without verification in the regional literature; and it specifies a conditional design, with safeguards and an evaluation protocol.

The article proceeds as follows. Section 2 sets out the normative and conceptual framework. Section 3 describes the methods. Section 4 reports the results of the structured evidence review, the comparative analysis and the practitioner interviews. Section 5 develops the proposed design and its safeguards, and specifies the research agenda. Section 6 concludes.

2. Normative and conceptual framework

2.1 The offence of omission of family assistance

Article 149 of the Peruvian Criminal Code penalises the person who fails to comply with a maintenance obligation established by judicial or administrative decision. The provision is structurally dependent: the criminal wrong does not consist in the failure to support a child as such, but in the disobedience of a prior enforceable order. Three consequences follow. The offence presupposes a completed civil or family-law

proceeding; its commission is established largely by documentary proof of arrears; and the criminal court is placed in the position of enforcing a determination it did not make.

Peruvian doctrine remains divided on the protected legal interest. One position treats the offence as autonomous, protecting the family and the subsistence of dependants rather than patrimony; a second treats it as subsidiary to more general provisions on the breach of family duties or judicial orders. Baldino and Romero (2022) show that the disagreement extends further, encompassing whether the interest protected is the family, the personal integrity of the maintenance creditor, or the administration of justice. The question is not merely taxonomic. If the protected interest is the administration of justice, disobedience is the gravamen and inability to pay is a matter of culpability alone; if it is the subsistence of the child, then the child's actual receipt of funds — not the debtor's punishment — is the measure of the norm's success. The present analysis adopts the second reading, which is also the reading most consistent with article 27 of the Convention on the Rights of the Child.

2.2 The principio de oportunidad in Peruvian criminal procedure

Article 2 of the Code of Criminal Procedure permits the Public Prosecution Service to abstain from exercising the criminal action in defined circumstances, including where the offence carries a custodial penalty not exceeding four years and the harm has been repaired. The mechanism is one of *numerus clausus*: it does not apply to recidivists or habitual offenders, nor where the accused has already benefited from it on two occasions in respect of the same protected interest, and a third application is barred within five years of the second abstention. The Supreme Court has confirmed that its application is a power reserved to the prosecution (Casación 833-2019, Lambayeque), and the limits attaching to recidivism have been developed in Casación 30-2018, Huaura.

Doctrinally, the mechanism is justified on three grounds that are worth separating because they generate different design implications. The first is humanitarian: avoiding an unnecessary criminal process. The second is administrative: conserving public resources and shortening the period of uncertainty for the accused. The third is reparative: promoting conciliation and repair of the harm caused. Where these three rationales diverge — as they do when a debtor is willing to repair but unable to pay — the mechanism's design must specify which prevails. Peruvian law does not presently do so, and this indeterminacy is one source of the enforcement gap the present proposal seeks to close.

2.3 The aval in Peruvian private law and the transposition problem

The *aval* is a figure of commercial rather than general civil law. Under the Peruvian Securities Law (Ley 27287), it is a personal guarantee attaching to a negotiable instrument, by which the guarantor assumes an obligation of the same rank as that of the principal obligor. Peruvian case law has established two features of direct relevance here. First, the guarantor's liability is joint and several, and the guarantor may not raise against the holder defences available to the principal debtor (Casación 1665-98, Lambayeque). Second, the guarantee is accessory to the instrument and follows its fate, so that if the instrument is ineffective the guarantee is void; it cannot be re-characterised as an ordinary surety, because to do so would defeat the parties' intention to guarantee an autonomous and abstract obligation (Casación 286-99, Lima).

This second holding matters considerably, and it has been overlooked in the literature proposing the transposition. A maintenance debt is not an abstract cambiary obligation: it is a determinate, periodic, judicially fixed obligation subject to modification as the parties' circumstances change. The *aval* in its technical sense is therefore not directly transposable to it. What the proposal in fact requires is a personal surety (*fianza solidaria*) with express waiver of the benefit of prior enforcement, or a specifically designed statutory guarantee. Precision on this point is not pedantry: an instrument mislabelled in the enabling legislation would be vulnerable to exactly the accessoriness objection that Casación 286-99 articulates. Throughout this article the expression *aval penal* is retained because it is the term used in the Peruvian debate, but it is used to denote a purpose-built statutory guarantee rather than the cambiary figure in its strict sense.

A further distinction must be drawn between the guarantee proposed here and the *caución económica* familiar to Peruvian criminal procedure. The latter secures the accused's appearance and procedural compliance; it is oriented to the process. The guarantee proposed here secures the substantive maintenance debt; it is oriented to the child. The two serve different functions, are calculated on different bases and, as Section 5 argues, must be subject to different rules — in particular, breach of the former may properly bear on liberty, whereas breach of the latter must not.

3. Method

3.1 Design

The study adopts a convergent mixed-methods design in which three strands of evidence were generated in parallel and integrated at the interpretation stage. The first strand is doctrinal, comprising analysis of Peruvian statutory provisions, Supreme Court decisions and scholarly commentary, together with the corresponding sources in the comparator jurisdictions. The second is a structured review of the international empirical and analytical literature on criminal-justice mechanisms for child-support enforcement. The third is a set of semi-structured expert interviews with practitioners in the Lima Norte judicial district. The design is descriptive and analytical rather than causal: it establishes what is currently known, identifies what is not known, and derives design constraints from both.

3.2 Structured evidence review

The review was conducted against a protocol specified in advance of the searches. The research question was framed as follows: how do criminal-justice mechanisms — including prosecutorial discretion, bail, surety or guarantor requirements, and diversion programmes — address non-compliance with child-support obligations, and what is their effectiveness in securing payment and protecting children's rights? Three semantic searches were executed against the Elicit corpus of approximately 138 million records, each targeting a distinct facet of the question, as set out in Table 2. Records were screened at abstract stage against three criteria: the study had to address a criminal-law dimension of maintenance enforcement; it had to offer some assessment of effectiveness, outcomes or impact rather than mere normative description; and it had to concern financial support obligations rather than other family offences. Studies passing screening were subjected to structured extraction across seven predefined dimensions: legal mechanism, jurisdiction, legal tradition, compliance outcome, judicial-efficiency impact, children's-rights protection approach, and study methodology. Fixed response options were specified for six of the seven in order to permit cross-tabulation.

The review is exploratory rather than a full systematic review in the technical sense. Screening and extraction were performed at a single pass without independent duplicate assessment, and no inter-rater agreement statistic was computed. Formal risk-of-bias appraisal was not undertaken, in part because the predominance of doctrinal legal scholarship in the retrieved corpus makes standard appraisal instruments inapplicable. These limitations are stated here rather than deferred to the discussion because they bear on how the findings in Section 4 should be read: the review establishes the shape and the boundaries of the available evidence with confidence, and the direction of the principal effects with reasonable confidence, but it does not support quantitative pooling.

3.3 Citation verification

Because a substantial part of the regional literature on this topic circulates in sources that are not indexed and are seldom checked, every substantive citation carried forward into this article was independently verified. Verification proceeded in three steps: confirmation that the cited work exists and that its bibliographic details are correct; confirmation that its content in fact supports the proposition attributed to it; and, where either test failed, either replacement of the citation with a verified source or removal of the underlying claim.

The procedure produced three categories of correction, each of which is reported in the results because each bears on the substance of the argument. Several works cited in the antecedent literature for propositions concerning guarantees were found, on inspection, to address entirely unrelated subjects, and have been removed. One frequently repeated comparative claim concerning Colombian law was found to be inaccurate, and is corrected in Section 4.7. One author attribution was found to be incomplete

and has been corrected. A claim concerning the adoption of a solidary guarantor in Mexican practice could not be verified against any primary or indexed secondary source and is accordingly reported as unverified rather than relied upon.

3.4 Expert interviews

Four legal practitioners — comprising judges, prosecutors and defence lawyers — of the Lima Norte judicial district were interviewed using a seven-item semi-structured guide addressing the operation of the principle of opportunity in maintenance cases, the causes of non-compliance with agreements, and the anticipated effects of a guarantee requirement. Participants were selected by non-probability expert sampling on the basis of professional role and direct experience of the caseload. Responses were analysed thematically following open, axial and selective coding (Hernández-Sampieri & Mendoza, 2018; Strauss & Corbin, 2002).

The evidentiary weight of this strand should be assessed accordingly. Four participants drawn from a single judicial district by purposive sampling cannot support generalisation, and the interviews are reported here as a source of practitioner-generated hypotheses about implementation constraints — which is the function for which they are well suited — rather than as evidence of the mechanism's effects.

3.5 Comparative case selection

Comparators were selected on the basis of functional similarity rather than geographical proximity, following the criterion that a jurisdiction is informative if it has confronted the same enforcement problem and adopted an identifiable institutional response. Four were retained: Colombia, on account of its shared civil-law tradition, its criminalisation of maintenance default and its recent statutory reform of the principle of opportunity; South Korea, as the most institutionally developed instance of a layered enforcement regime combining guarantees, sanctions and state advance payment; Malaysia, as a jurisdiction with a dedicated administrative support division; and the United States, which although a common-law system supplies by a wide margin the largest body of empirical evidence on the effects of criminalising maintenance default.

3.6 Ethical considerations

Participants were informed of the purpose of the study and of the use to be made of their responses, and participated voluntarily. No identifying information is reported, and responses are attributed only by professional role. No case files or personal data relating to litigants were accessed.

4. Results

4.1 The Peruvian baseline

Table 1 summarises the prosecutorial caseload for the offence over the most recent period for which official figures have been published. Two features are relevant to the argument. The first is scale: even in the depressed pandemic year, the offence generated more than twenty thousand prosecutorial files, and in 2021 it accounted for close to nine in ten recorded offences against the family. The second is volatility: the collapse between 2019 and 2020 and the partial recovery in 2021 track the interruption and resumption of court operations rather than any change in underlying compliance, which indicates that the recorded figures measure institutional throughput at least as much as they measure the conduct of debtors.

Table 1. Prosecutorial files for omission of family assistance in Peru, 2018–2021

Year	Prosecutorial files recorded	Share of all recorded offences against the family
2018	62,975	Not reported
2019	68,385	Not reported
2020	22,211	Not reported
2021	49,122	88.23%

Note. Figures from the Statistical Yearbook of the Public Prosecution Service for 2021, as reported and analysed by Baldino and Romero (2022). The 2020 reduction is attributable to the interruption of judicial activity during the COVID-19 pandemic rather than to a change in compliance behaviour.

The interpretive difficulty is that these figures record files opened, not obligations discharged. Peru does not publish disaggregated data allowing the proportion of maintenance debts actually recovered through the criminal route to be calculated, nor the survival rate of agreements concluded under the principle of opportunity. This absence is itself a finding, and it recurs in Section 5.6: no evaluation of the proposed reform will be possible unless the corresponding indicators are collected.

4.2 Characteristics of the retrieved evidence

Of 210 records retrieved by the three searches, 207 proceeded to screening and 36 were retained. Figure 1 details the flow and the reasons for exclusion. The dominant exclusion ground was subject-matter irrelevance: 101 records concerned family offences other than the financial obligation of support, and a further 63 addressed maintenance enforcement without any criminal-law dimension.

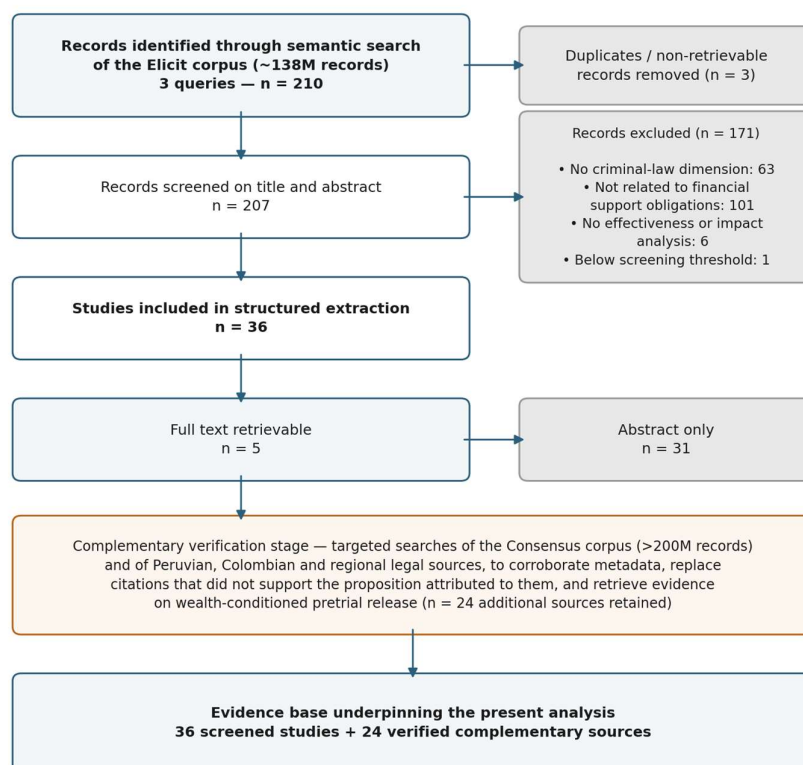


Figure 1. Flow of records through identification, screening, extraction and complementary verification. Table 2 reports the yield of each search. The distribution is itself informative: the search directed specifically at guarantor and surety arrangements returned the smallest number of retained studies, and none of those retained in fact evaluated such an arrangement in the maintenance context. This is the first indication of the evidentiary void documented in Section 4.5.

Table 2. Search strategy and yield

Search	Query	Facet addressed	Records retrieved
S1	criminal enforcement child support non-payment prosecution diversion	Criminal enforcement and diversion	70
S2	bail surety guarantor family maintenance alimony compliance	Guarantee and surety mechanisms	70
S3	prosecutorial discretion alternative dispute	Prosecutorial discretion and regional coverage	70

Search	Query	Facet addressed	Records retrieved
	resolution child support obligations Latin America		
	Total retrieved (before de- duplication)		210

Note. All searches were semantic and were executed against the Elicit corpus (approximately 138 million records, incorporating Semantic Scholar and OpenAlex).

Table 3 sets out the distribution of the retained studies across the extraction dimensions, and Figure 4 displays the jurisdictional and legal-tradition coverage. The corpus is heavily weighted towards the United States, which supplies sixteen of the thirty-six studies, and towards doctrinal legal analysis, which is the sole or principal method in a clear majority. Only ten studies employ quantitative empirical methods and only two employ an explicitly comparative design. Eight studies do not specify a jurisdiction at all. Full text was retrievable for five studies; the remaining thirty-one were assessed on the basis of abstracts.

Table 3. Distribution of the 36 retained studies across extraction dimensions

Dimension	Category	n
Legal mechanism examined	Criminal prosecution / sentencing	24
	Legislative reform proposal	16
	Mediation or alternative dispute resolution	3
	Prosecutorial discretion / diversion	3
	Bail, surety or guarantor	0
Legal tradition	Common law	17
	Civil law	9
	Mixed or hybrid	5
	Not specified	5
Study method	Doctrinal or legal analysis	26
	Empirical quantitative	10
	Empirical qualitative	8
	Mixed methods	3
	Comparative law	2
Compliance outcome reported	Not measured	17
	No effect or negative	12
	Partially improves	4
	Improves compliance	3
Judicial-efficiency impact	Not addressed	24
	Increases workload	5
	Reduces workload	4
Full text retrievable	Yes	5
	No (abstract only)	31

Note. Categories within the mechanism and method dimensions are not mutually exclusive; a single study may be coded to more than one category, so column totals exceed 36 for those dimensions.

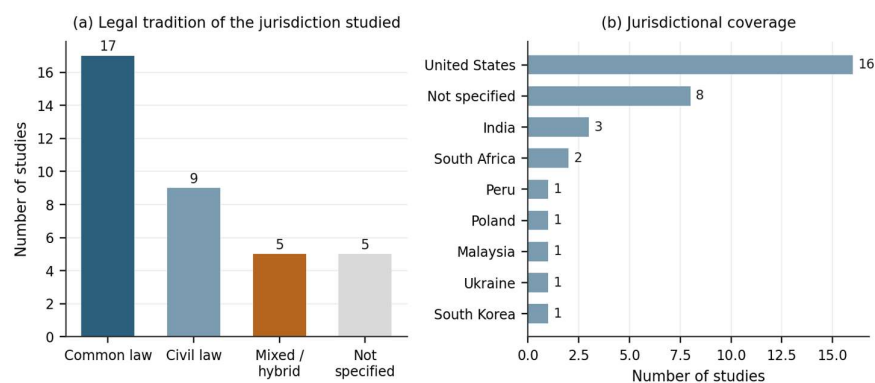


Figure 4. Coverage of the retained corpus by (a) legal tradition of the jurisdiction studied and (b) jurisdiction.

Two implications follow for the weight that can be placed on this body of work. First, the evidence is geographically and methodologically unbalanced, and inferences drawn from it to a Peruvian setting must be made cautiously. Second, more than half the corpus reports no compliance outcome at all: the field is rich in normative argument and comparatively poor in measurement. Any claim that a given enforcement mechanism does or does not work must therefore rest on a small number of studies, which are identified individually in Table 4.

4.3 Criminal prosecution and the capacity-to-pay moderator

Criminal prosecution is the dominant mechanism in the corpus, coded in twenty-four of the thirty-six studies and present across both legal traditions. Its reported effects, however, diverge sharply, and the divergence is not random. It tracks a single variable: whether the debtor population under study possessed the capacity to pay.

Among studies of populations with established means, enforcement is associated with improved payment. The Michigan study reported higher payments both from fathers who were jailed and from those who were not, indicating a deterrent effect operating beyond the individuals actually sanctioned (Chambers, 1979). Analyses of Malaysian and South African enforcement report comparable results, attributing them to the credible threat of imprisonment operating alongside institutional support for claimants (Carnelley & Hctor, 2025; Ismail & Sulong, 2020). The most careful early empirical treatment of the question found that stricter enforcement rules do raise compliance, while simultaneously establishing that ability to pay is an independent and powerful determinant of it (Bartfeld & Meyer, 1994). Among studies of indigent populations, the direction reverses. Criminalisation is associated with increased recidivism, deepening arrears and reduced future capacity to pay (Lollar, 2018; Spjeldnes et al., 2013). Incarceration is a predictor of arrears accumulation rather than of their reduction, because obligations continue to accrue while the debtor is unable to earn (McLeod & Gottlieb, 2018). Ethnographic work describes a circular entanglement in which the debt of imprisonment and the imprisonment of debt reinforce one another, obstructing precisely the familial relationships on which reintegration depends (Haney, 2018). Between sixteen and thirty-three per cent of young non-custodial fathers face lack of income as a substantive barrier to payment, a group for whom no intensification of legal threat can generate resources that do not exist (Mincy & Sorensen, 1998). Enforcement of this kind alienates debtors from the formal economy and drives them into unrecorded work, compounding the original problem (Cammatt, 2011; Turetsky & Waller, 2020).

A particularly instructive finding concerns what happens when the threat does operate on the indigent. Where enforcement relies heavily on incarceration rather than on financially extractive measures such as wage garnishment, the most vulnerable debtors respond by working more hours at lower wages (Zatz & Stoll, 2020). The mechanism thus does elicit a behavioural response; but the response is the intensification of precarious labour rather than the emergence of a capacity to pay, and its welfare consequences are the opposite of those intended.

The long-run picture is sobering even where short-run effects are positive. In the jurisdiction identified as the most successful in the United States at inducing payment, seventy-one per cent of fathers were making no payments at all by the seventh year after divorce, and only seventeen per cent were paying in full (Mnookin, 1981). Deterrence, where it operates, appears to operate transiently.

Table 4. Studies contributing direct evidence on compliance or behavioural outcomes

Study	Jurisdiction	Debtor profile	Reported outcome
Bartfeld & Meyer (1994)	United States (Wisconsin)	Mixed	Stricter enforcement raises compliance; ability to pay is an independent determinant
Chambers (1979)	United States (Michigan)	Predominantly with means	Jailing associated with higher payments from jailed and non-jailed alike
Ismail & Sulong (2020)	Malaysia	With means	Arrears recovered through debtor summons backed by threat of imprisonment
Carnelley & Hoxcor (2025)	South Africa	With means	Periodical imprisonment and correctional supervision operate as deterrents
Meyer et al. (2019)	United States (Wisconsin)	Mixed	Most enforcement actions associated with commencing payment; licence suspension sometimes associated with lower likelihood
Luckey & Potts (2011)	United States	Low income	Diversion with employment support outperforms incarceration; no control group
Zatz & Stoll (2020)	United States (20 cities)	Low income	Incarceration-heavy enforcement associated with more hours worked at lower wages
Spjeldnes et al. (2013)	United States	Low income	Higher post-release recidivism among fathers jailed for arrears; interaction by race
McLeod & Gottlieb (2018)	United States	Low income	Incarceration predicts accumulation of arrears
Cozzolino (2018)	United States	Low income	14% of debtors had been jailed for the debt by the child's ninth year
Mnookin (1981)	United States (Michigan)	Mixed	By year seven after divorce, 71% paying nothing and 17% paying in full
Mincy & Sorensen (1998)	United States	Young, low income	16–33% lack income sufficient to pay at all

Note. “Debtor profile” records the capacity-to-pay characteristics of the study population as described by the authors, not a formal classification applied by the present review.

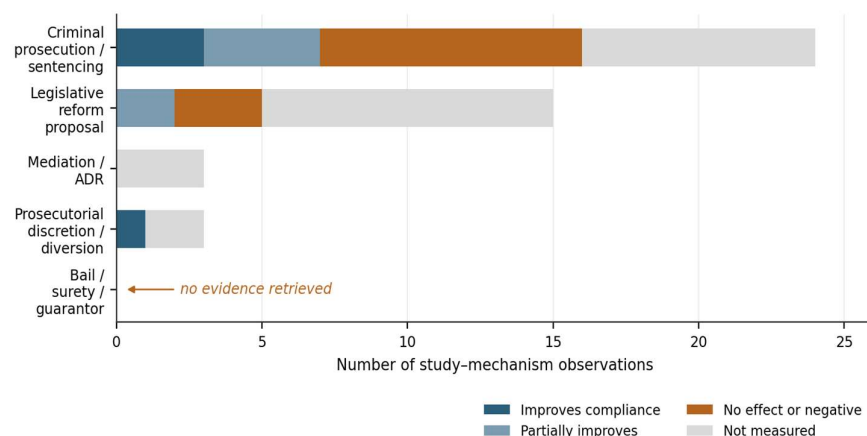


Figure 2. Reported compliance outcomes by legal mechanism across the retained corpus. Observations are coded at study-mechanism level; a study examining two mechanisms contributes two observations.

4.4 Diversion and procedural-justice alternatives

Only three studies in the corpus examined prosecutorial discretion or diversion. The most substantial evaluates an alternative-to-incarceration programme in a south-eastern United States jurisdiction which offered low-income non-custodial fathers employment assistance, life-skills training and support in re-establishing relationships with their children. Over three years of implementation, participants were substantially more likely to meet their obligations than comparable fathers who were incarcerated, and the programme generated material savings to the state (Luckey & Potts, 2011). The finding is encouraging but qualified: the evaluation lacks a control group, and the comparison is with incarceration rather than with an untreated baseline.

A second strand concerns the integration of procedural-justice principles into enforcement, evaluated across six United States child-support agencies as an alternative to contempt proceedings. The theoretical premise is that perceived fairness of process increases compliance with outcomes independently of whether those outcomes are favourable. The evaluations report on process fidelity rather than on payment, however, and none of the three reports compliance data, so the premise remains untested in this setting.

The third, in Poland, records the coexistence of criminal prosecution and prosecutorial discretion within the same enforcement framework but supplies no data on the relative effectiveness of either. Taken together, the diversion evidence is thin, directionally favourable and methodologically weak.

4.5 The evidentiary void on guarantor mechanisms

The central negative finding of the review is that no retrieved study evaluated a third-party guarantor or surety mechanism as an instrument of maintenance enforcement. This is not a finding of ineffectiveness. It is a finding that the question has not been asked.

Two near-misses warrant notice, because each has been mistaken for a precedent. The South Korean regime provides for security-deposit orders in maintenance proceedings, but these are deposits furnished by the debtor rather than guarantees furnished by a solvent third party, and they therefore do not address the case in which the debtor has no assets to deposit (Jun, 2025). Colombian law provides for a security as a guarantee of reparation in the operation of the principle of opportunity, but as Section 4.7 establishes, its scope and its statutory basis differ materially from what the Peruvian proposal assumes. The consequence for the present proposal is significant and should be stated plainly. The claim that the introduction of a guarantee has raised compliance in comparable jurisdictions cannot be supported by the evidence retrieved. Any argument for the mechanism must therefore proceed by analogy and by design reasoning, and must carry the burden of demonstrating that the analogies drawn are apt. The remainder of this section examines the closest available analogy, and finds that it counsels caution.

4.6 Wealth-conditioned release: the transferable warning

The mechanism that most closely resembles the proposal is not found in the maintenance literature at all. It is monetary bail: an arrangement in which a favourable procedural outcome is made conditional on the provision of money or on the willingness of a third party to stand behind the accused. That literature is large, methodologically strong and consistent in its conclusions, and it is directly relevant because the structural feature it identifies as problematic is precisely the feature the present proposal would introduce.

The core finding is that conditioning procedural outcomes on financial capacity sorts defendants by wealth rather than by conduct. Systematic review of the field concludes that bail generates extensive opportunities for revenue extraction and control, and that its operation consistently produces harms falling disproportionately on low-income people of colour, amplifying existing social inequalities (Page & Scott-Hayward, 2022). Quasi-experimental analysis establishes that a substantial share of racial disparity in pretrial release is attributable to the disparate impact of release decisions themselves rather than to differences in underlying risk (Arnold et al., 2020). Bail and pretrial detention account for between thirty and forty-seven per cent of the explained disparity in adjudication and sentencing outcomes in one state-level analysis (Donnelly & MacDonald, 2018). Reviewing the empirical literature as a whole, the pretrial system imposes substantial economic harm on detained defendants while delivering public benefits too small to justify it (Dobbie & Yang, 2021).

Of particular relevance to a guarantor model is the finding that the burden of a third-party guarantee does not remain with the accused. Ethnographic research on commercial bail shows that the obligation is displaced onto family members — disproportionately low-income women — who become co-signatories and bear the financial and emotional consequences of default (Page & Soss, 2019). A guarantee requirement in maintenance cases would operate on the same social terrain, and there is every reason to expect the same displacement: the guarantor most readily available to an indigent debtor is a mother, a sister or a partner, frequently a woman already absorbing the costs of the family disruption that generated the proceedings.

It is worth recording that the seed proposal itself anticipated this concern, citing the literature on the inequitable distribution of bail burdens. The present review confirms that the concern is well founded and establishes that it cannot be treated as a residual caveat. It is the principal design constraint, and Section 5 builds the proposed architecture around it.

4.7 Comparative analysis and a correction to the received account

Verification of the comparative premises on which the proposal has rested produced one substantial correction. It is frequently asserted in the regional literature, including in the antecedent version of this study, that article 175 of the Colombian Code of Childhood and Adolescence (Ley 1098 of 2006) provides that no precautionary measure shall be imposed in cases of maintenance default where the accused offers economic or personal guarantees equivalent to the value of the maintenance owed. This is not what that provision does.

Articles 174 and 175 of Ley 1098 are situated within the system of criminal responsibility for adolescents, and govern the application of the principle of opportunity and restorative-justice mechanisms to adolescent offenders. They are not addressed to adult maintenance debtors. Article 193(6) of the same statute in fact points in the opposite direction, requiring judges to refrain from applying the principle of opportunity and conditional suspension of sentence where the victims are children, unless they have been indemnified. Colombian jurisprudence has since qualified that prohibition as inapplicable to maintenance default, on the finalist reasoning that imprisoning the debtor defeats the very purpose of the sanction, but the qualification is judicial and recent rather than statutory. The correction does not leave the comparative argument without support. It relocates it. Colombia's Ley 2477 of 2025, reforming the regime of integral reparation and the principle of opportunity, provides that where the victim has not been fully indemnified the competent official shall fix an appropriate security as a guarantee of reparation, after hearing the Public Ministry. This is a genuine and current instance of a guarantee operating within a principle-of-opportunity framework in a civil-law jurisdiction that also

criminalises maintenance default under article 233 of its Criminal Code. It is a materially stronger comparator than the one previously invoked, and it has the additional merit of being recent enough that Peru could learn from its implementation rather than merely from its text. Table 5 sets out the comparative position.

A second claim required for completeness could not be verified. The assertion that Mexico has implemented a solidary guarantor in cases of maintenance default, and that this has relieved the workload of magistrates' courts, is repeated in the regional literature but could not be traced to any primary provision or indexed secondary source in the course of this study. It is accordingly reported as unverified and is not relied upon.

Table 5. Treatment of economic guarantees in maintenance enforcement across comparator jurisdictions

Jurisdiction	Maintenance default criminalised	Guarantee mechanism available	Nature of the guarantee	Evidence of effect on compliance
Peru	Yes — art. 149 Criminal Code, up to 3 years	No	Caución económica secures procedural appearance only	Not measured
Colombia	Yes — art. 233 Criminal Code, 1–3 years	Yes — Ley 2477 (2025)	Security fixed by the competent official as guarantee of integral reparation	Too recent for evaluation
South Korea	Yes, alongside licence suspension, travel bans and name disclosure	Yes	Security deposit furnished by the debtor; state advance payment with subsequent recovery	Reported institutionally; not independently evaluated
Malaysia	Imprisonment available on debtor summons	No	Administrative support division assists claimants	Arrears recovery reported
United States	Predominantly civil contempt with custodial consequence	No	Wage garnishment and licence suspension as principal tools	Extensive; effects conditional on capacity to pay

Note. The entry for Colombia reflects the position following Ley 2477 of 2025 and supersedes the account, widely repeated in the regional literature, which attributes a guarantee mechanism for adult maintenance debtors to art. 175 of Ley 1098 of 2006. That provision governs the principle of opportunity within the system of criminal responsibility for adolescents.

4.8 Practitioner perspectives

The interviews converged on four propositions. First, participants regarded the present operation of the principle of opportunity in maintenance cases as failing to achieve its purpose, on the ground that agreements are concluded and then abandoned, leaving the child no better off and the file closed. Second, participants anticipated that a guarantee requirement would improve the survival of agreements by supplying an enforceable economic backing that the debtor's undertaking alone does not provide. Third, participants identified the relief of caseload as a substantial institutional benefit, permitting judicial attention to be redirected to offences of greater criminal gravity. Fourth — and this qualification was volunteered rather than prompted — participants emphasised that clear statutory limits would be indispensable, both to prevent the mechanism from displacing the guarantees of criminal procedure and to prevent abuse in the constitution of the guarantee itself.

Two specific implementation risks were raised. The first is the risk of fraudulent or collusive guarantees, furnished by parties without genuine assets in order to obtain the procedural benefit; participants regarded this as manageable through verification requirements but not as negligible. The second is the

additional workload that receipt and control of guarantees would impose on courts and prosecutors, which participants considered capable of offsetting the efficiency gains unless the verification process is administratively simple.

These observations should be read as hypotheses about implementation rather than as evidence of effect. What they establish is that practitioners closest to the caseload independently identify the same two failure modes – verification integrity and administrative burden – that the comparative literature would predict, and the design proposed in Section 5 addresses both.

5. Discussion

5.1 From an unconditional to a conditional proposal

The results require a reformulation of the proposal rather than its abandonment. The original claim – that the introduction of the *aval* into the principle of opportunity will secure maintenance payments and reduce judicial workload – is not supported by direct evidence, because no such evidence exists, and it is placed under pressure by the closest available analogy, which shows that money-conditioned procedural outcomes sort litigants by wealth. But the results equally do not establish that the mechanism would fail. They establish something more precise and more useful: that its effects would depend almost entirely on which population it reaches.

This follows from the single most robust regularity in the retrieved evidence. Across jurisdictions, legal traditions and methods, the determinant of whether an enforcement mechanism improves compliance is not the severity of the mechanism but the capacity of the debtor. Enforcement directed at debtors who can pay but do not produces payment. Enforcement directed at debtors who cannot pay produces arrears, recidivism and diminished future capacity. This regularity was established as early as Bartfeld and Meyer (1994) and has been confirmed repeatedly since, and it holds across mechanisms as different as incarceration, licence suspension and wage garnishment.

The implication for a guarantee mechanism is direct. A guarantee is a device for converting latent capacity into realised payment: it works by reaching assets that exist but are not being applied to the obligation, whether the debtor's own or a third party's. Where such assets exist, the mechanism has a coherent object. Where they do not, a guarantee requirement does not create capacity; it creates a threshold. And a threshold placed at the entrance to a procedural benefit, in a population defined by its inability to meet financial thresholds, distributes that benefit by wealth.

The proposal must therefore be conditional. It must reach the population for which it is coherent, and it must be structurally incapable of penalising the population for which it is not. The remainder of this section specifies how.

5.2 The proposed design

Figure 3 sets out the proposed decision architecture. Its organising principle is that the capacity assessment precedes, and determines, the availability of the guarantee – rather than the guarantee operating as a general precondition of the procedural benefit.

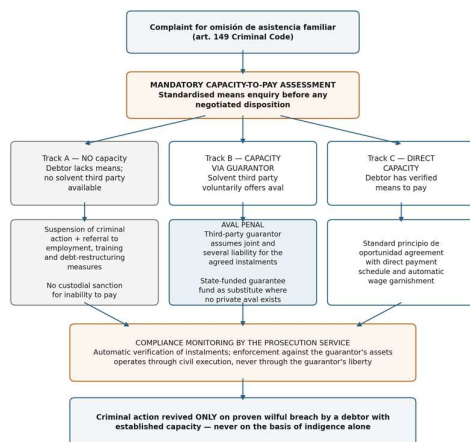


Figure 3. Proposed decision architecture for a capacity-triaged guarantee within the principle of opportunity.

The architecture has five components.

A mandatory capacity assessment. No negotiated disposition may be concluded until a standardised means enquiry has been completed. This is the load-bearing element of the design, and it is also the element most conspicuously absent from current practice. Its function is to distinguish the debtor who will not pay from the debtor who cannot, which the evidence identifies as the variable on which everything else turns. The Indian experience with mandatory affidavit disclosure of assets and liabilities in maintenance proceedings offers a workable procedural template, and the associated sanction for false disclosure supplies the necessary integrity mechanism (Kushwah & Kushwah, 2025).

Three differentiated tracks. Debtors with verified direct capacity proceed to a standard agreement with automatic wage garnishment, which the evidence identifies as more effective and less harmful than punitive alternatives (Zatz & Stoll, 2020). Debtors without direct capacity but with access to a solvent third party willing to guarantee proceed to the guarantee track. Debtors with neither are directed to suspension of the criminal action coupled with referral to employment, training and debt-restructuring measures, following the model with the best available evidence in this field (Luckey & Potts, 2011).

A public guarantee fund. The distributive objection to the mechanism is that access to a solvent guarantor is itself distributed by wealth. The objection is answered only by supplying a substitute where no private guarantee is available. A state fund advancing the maintenance instalment and recovering from the debtor as a public credit performs this function, and is the mechanism South Korea has adopted after finding that layered sanctions alone were insufficient (Jun, 2025). Without this component the design remains, in substance, a wealth-conditioned benefit, and the objections rehearsed in Section 4.6 apply to it in full.

Civil execution against the guarantor, never deprivation of liberty. The guarantor's obligation is patrimonial and must be enforced patrimonially. This is not merely a matter of proportionality: it is what distinguishes the proposed instrument from the bail arrangements whose distributive consequences the literature documents. The guarantor stands behind a debt, not behind a person's appearance, and no aspect of the guarantor's liberty may be engaged by the debtor's default.

Revival of the criminal action only on proven wilful breach. The criminal action may be revived only where the debtor had established capacity and wilfully failed to pay. Indigence, and the inability to procure a guarantor, must be structurally incapable of triggering criminal consequences. The United States Supreme Court's decision in *Turner v. Rogers* (2011) is instructive here as a cautionary rather than a model case: it addressed the procedural safeguards required before an indigent debtor may be imprisoned for civil contempt, and the extensive literature on its aftermath documents how readily inability to pay is misread as refusal in the absence of a structured enquiry.

5.3 Safeguards

Table 6 specifies the safeguards required for each identified risk, together with the source of the risk in the evidence reviewed. The table is intended to be operational: each entry corresponds to a provision that enabling legislation would need to contain.

Table 6. Design safeguards for a criminal guarantee regime in maintenance proceedings

Risk	Source in the evidence	Required safeguard
Access to the benefit distributed by wealth	Bail literature on wealth-conditioned release (Page & Scott-Hayward, 2022; Arnold et al., 2020)	Public guarantee fund as substitute where no private guarantor is available; guarantee never a precondition of non-custodial treatment
Burden displaced onto female relatives	Ethnography of commercial bail co-signature (Page & Soss, 2019)	Guarantor's consent to be given separately and independently advised; statutory cap on guaranteed amount; express

Risk	Source in the evidence	Required safeguard
		prohibition on guarantees by the maintenance creditor or her household
Indigence treated as refusal	Evidence on indigent debtors (Lollar, 2018; Mincy & Sorensen, 1998; Brito, 2013)	Mandatory standardised capacity assessment before any disposition; revival of criminal action conditional on proven wilful breach
Arrears accumulate during enforcement	Incarceration predicts arrears growth (McLeod & Gottlieb, 2018; Turetsky & Waller, 2020)	Suspension of accrual during participation in employment and training measures; power to restructure accumulated arrears
Fraudulent or collusive guarantees	Practitioner interviews; anticipated in the antecedent literature	Documentary verification of guarantor solvency against public registries; criminal liability for false attestation
Verification burden offsets efficiency gains	Practitioner interviews; South African administrative disarray (Carnelley & Hctor, 2025)	Administrative rather than judicial verification; standardised forms; verification delegated to prosecutorial support staff
Mechanism mislabelled and vulnerable to challenge	Accessoriness of the aval (Casación 286-99, Lima)	Enabling legislation to create a purpose-built statutory guarantee rather than incorporating the cambiary aval by reference
Displacement of procedural guarantees	Practitioner interviews; art. 193(6) Ley 1098 (Colombia)	Express preservation of the presumption of innocence and of the <i>numerus clausus</i> limits in art. 2 of the Code of Criminal Procedure

5.4 Anticipated effects on judicial efficiency

The efficiency claim advanced for the proposal is that diverting maintenance files from the criminal courts would relieve caseload and permit judicial resources to be redirected. The evidence supports this claim in part and qualifies it in part.

Diversion does reduce workload where it succeeds: the alternative-to-incarceration programme kept substantial numbers of debtors outside the custodial system with associated savings (Luckey & Potts, 2011), and digitalisation of enforcement has been reported to simplify procedures in comparable settings. The qualification is that mechanisms requiring case-by-case verification generate their own administrative load, and the South African experience illustrates how an enforcement system can consume more resources through repeated attempts to secure payment than it saves. The Peruvian evidence points the same way: courts operating under the immediate-trial procedure have become, in substance, maintenance-collection tribunals precisely because a fast procedural route attracted volume it was not designed to absorb (Calderón, 2023).

The efficiency case for the proposed design therefore rests less on diversion as such than on triage. A capacity assessment conducted once, early and to a standard format allows each file to be routed to the disposition capable of resolving it, and avoids the repeated cycling of unpayable cases through a procedure that cannot resolve them. Twenty-four of the thirty-six retained studies did not address judicial-efficiency effects at all, so this expectation is a design hypothesis rather than a finding, and it is included among the evaluation targets specified below.

5.5 Constitutional and ethical constraints

Three constraints bound the proposal. The first is the prohibition on imprisonment for debt, which is engaged whenever a custodial consequence follows from an inability rather than a refusal to pay. A design in which the availability of a guarantee determines exposure to custody engages this prohibition directly, which is why the capacity assessment must precede the guarantee rather than substitute for it. The second is equality before the law. A procedural benefit whose availability depends on access to a solvent third party is, in its practical operation, a benefit distributed by social capital. The public guarantee fund is not an optional refinement of the design; it is the element that renders the design compatible with this constraint.

The third is the best interests of the child, which cuts in both directions and is frequently invoked on one side only. It supports the mechanism, because the child's interest lies in receiving maintenance rather than in the debtor's punishment. But it also constrains it, because a design that incarcerates an indigent parent removes what earning capacity that parent retains and, on the evidence reviewed, reduces the child's prospects of receiving anything. Colombian jurisprudence has reasoned in precisely these terms in disapplying the statutory bar on the principle of opportunity in maintenance cases, and the reasoning transfers.

5.6 A research agenda

The principal contribution of the review is the identification of what is not known. Table 7 sets out the priority questions and the design capable of answering each. The first is by some distance the most important: no jurisdiction has evaluated a third-party guarantee in maintenance enforcement, and Peru is in a position to be the first.

Table 7. Priority research questions and corresponding evaluation designs

Question	Design	Primary outcome
Does a third-party guarantee raise the survival rate of agreements concluded under the principle of opportunity?	Staggered adoption across prosecutorial districts with difference-in-differences estimation	Proportion of agreed instalments paid at 12 and 24 months
Does the availability of a guarantor vary systematically by debtor income, gender and locality?	Administrative data linkage across prosecutorial and civil registries	Guarantee take-up rate stratified by debtor characteristics
On whom does the guarantee obligation ultimately fall?	Survey and semi-structured interviews with guarantors	Relationship, gender and income of guarantors; incidence of enforcement against them
Does capacity triage reduce the recycling of unpayable files?	Interrupted time series on file-level administrative data	Re-entry rate of closed files within 24 months
Does a public guarantee fund recover its outlay?	Cost-recovery analysis on fund administrative data	Proportion of advanced amounts recovered from debtors at 36 months
Does the mechanism alter custodial outcomes for indigent debtors?	Comparison of custody rates before and after adoption, stratified by assessed capacity	Custodial dispositions among debtors assessed as lacking capacity

Answering these questions requires data that Peru does not currently publish. The minimum instrumentation is the recording, at file level, of assessed debtor capacity, of whether a guarantee was constituted and by whom, of amounts agreed and amounts actually received, and of file status at defined intervals. Absent this, the reform would be adopted and its effects would remain as unmeasured as those of the mechanisms it replaces.

5.7 Limitations

Four limitations qualify the findings. First, the evidence review was exploratory: screening and extraction were conducted at a single pass without independent duplicate assessment, no agreement statistic was

computed, and formal risk-of-bias appraisal was not undertaken. Second, full text was retrievable for only five of the thirty-six retained studies, so the remainder were assessed on abstracts, which constrains judgement of methodological quality and may have caused nuance to be lost. Third, the retained corpus is dominated by United States common-law scholarship and by doctrinal method, and Latin American coverage is confined to a single study; inferences to a Peruvian setting are correspondingly indirect. Fourth, the interview component comprises four participants from one judicial district, selected purposively, and supports hypothesis generation rather than generalisation.

A fifth limitation is specific to the design proposed. It has not been implemented anywhere, and its expected effects are derived from evidence about adjacent mechanisms rather than about itself. The argument advanced here is accordingly that the design is defensible and evaluable, not that it is demonstrated.

6. Conclusions

This study set out to assess whether the incorporation of a third-party guarantee into the Peruvian principle of opportunity can secure maintenance payments and strengthen the protection of children entitled to support. Four conclusions follow.

First, the proposal rests on an evidentiary void rather than on demonstrated effectiveness. Of 207 records screened and 36 retained, none evaluated a third-party guarantor mechanism in maintenance enforcement. The comparative precedents customarily invoked do not, on verification, establish what they are said to establish: the Colombian provision most frequently cited governs the principle of opportunity for adolescent offenders rather than adult maintenance debtors, and the Mexican precedent could not be verified at all. The stronger comparator, Colombia's Ley 2477 of 2025, is too recent to have been evaluated.

Second, capacity to pay, and not the presence of a guarantee, is the determinant of compliance. This is the most robust regularity in the retrieved evidence and it holds across jurisdictions, legal traditions and mechanisms. Enforcement directed at debtors with means improves payment; enforcement directed at debtors without means increases arrears, recidivism and precarious labour while reducing future capacity. A guarantee is an instrument for converting latent capacity into payment, and it is coherent only where such capacity exists.

Third, the mechanism is defensible only in conditional form. The nearest structural analogue to a guarantee-conditioned procedural benefit is monetary bail, and the evidence on bail is consistent: conditioning outcomes on financial capacity sorts litigants by wealth, amplifies existing inequalities and displaces the burden onto family members, disproportionately women. A guarantee regime that avoids these consequences must be subordinated to a mandatory capacity assessment, must be accompanied by a public guarantee fund for debtors without access to a private guarantor, must be enforced against the guarantor's assets and never against the guarantor's liberty, and must be structurally incapable of converting indigence into a custodial outcome.

Fourth, the proposal is evaluable, and should be evaluated. The design specified in Section 5 is implementable through staggered adoption across prosecutorial districts, which would permit credible estimation of its effects. Peru's caseload — tens of thousands of files annually, concentrated in an offence that accounts for close to nine in ten recorded offences against the family — is large enough to support such an evaluation and consequential enough to warrant it. Were it undertaken, it would supply the first evidence anywhere on a question the international literature has not asked.

The wider implication concerns the relationship between criminal law and family maintenance. The Peruvian experience illustrates what happens when a criminal provision conceived as an instrument of last resort becomes the principal route by which a civil obligation is pursued: volume overwhelms the procedure, agreements substitute for adjudication, and neither punishment nor payment reliably follows. A guarantee mechanism does not resolve that structural problem. Properly designed, it can mitigate one part of it — the unenforceability of negotiated agreements against debtors with undisclosed or third-party

resources — while leaving untouched the larger part, which concerns debtors who have nothing to guarantee. Recognising that division is the condition of designing the instrument well.

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