

WA State Courts of Limited Jurisdiction (CLJs): 2018 Reference Guide on Legal Financial Obligations (LFOs) in Criminal Cases

**Disclaimer: Check statutory and case law cites to confirm law is current*

Imposing LFOs at Sentencing

LFOs include restitution, fees, fines, assessments, and costs imposed as part of a criminal judgment upon conviction. In some cases, costs may be imposed for pretrial supervision. *RCW 10.01.160*. State law authorizes both mandatory and discretionary LFOs, and statutes may differ in setting standards for imposition and waiver.

Mandatory LFOs in CLJs

- **DNA Collection Fee:** \$100, limited to specified crimes and imposed only once in a lifetime. *RCW 43.43.7541*.
- **Public Safety & Educational Assessments:** Two separate assessments, which together equal 105% of any fines, forfeitures, or penalties imposed. *RCW 3.62.090*. Note that, per statute, the PSEA is applied slightly differently for DUI/Physical control cases.
- **Offense-Specific Fines:** Some offenses carry additional mandatory penalties. *See, e.g., RCW 26.50.110* (\$15 mandatory fine for Violation of a DV Protection Order).

Discretionary LFOs in CLJs:

- **Fines** are generally discretionary. *See RCW 3.62.010; 35.20.255*. Courts have the discretion to waive or suspend some “offense-specific” fines on a finding of indigence. *See, e.g., RCW 46.64.055(1)*.
- **Restitution** is permitted but not mandatory for non-felony offenses. *See RCW 9.92.060(2)(b); Seattle v. Fuller*, 177 Wn.2d 263 (2013).
- **Criminal Conviction Fee** of \$43 may not be imposed on indigent defendants. *RCW 3.62.085*.
- **DUI Fines, Fees and Costs** are all discretionary. *RCW 46.61.5055* specifies minimum fines that a court must impose as part of a DUI sentence “unless the court finds the offender to be indigent.” *See, e.g., RCW 46.51.5055(1)(a)(ii)*. The PSEA 1 of 70% is applicable to that fine; but the PSEA 2 of 35% is not. *RCW 3.62.090(1), (2)*. A court must impose a \$250 fee on a person originally arrested for DUI or physical control, but “[u]pon a verified petition by the person assessed the fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay.” *RCW 46.61.5054(1)*.
- **Criminal Justice Funding Penalty** of \$50 must be imposed on Title 46 crimes, but the court can waive or reduce that amount if the defendant is indigent. *RCW 46.64.055(1)*. The PSEA is applicable to the criminal justice funding penalty. *RCW 3.62.090(1), (2)*.

Discretionary Costs in CLJs: Costs may not be imposed if a defendant is indigent. *RCW 10.01.160(3)*. Even in the absence of a statutory finding of indigency, courts are required to inquire into a defendant’s ability to pay costs. Courts should “look to the comment in...GR 34 for

guidance” to determine a defendant’s ability to pay costs, even in the criminal setting. *State v. Blazina*, 182 Wn.2d 827, 839 (2015). A court should “seriously question a person’s ability to pay LFOs” if that person meets the GR 34 standard for indigence. *Id.* In determining the amount and method of payment for costs for defendants who are not indigent, the court shall consider the financial resources of the defendant and the nature of the burden that the payment of costs will impose. *RCW 10.01.160(3)*. This includes consideration of factors such as incarceration and a defendant’s other debts. *Blazina*, 182 Wn.2d at 839.

Allowing Time to Pay: The court must allow an indigent defendant to pay LFOs within a certain time or in installments. *RCW 10.01.170(1)*.

Determining Indigence: *RCW 10.101.010(3)(a)-(c)* defines indigence. A defendant is indigent if he or she:

- Currently receives benefits from TANF, aged, blind or disabled assistance, medical care services, pregnant woman assistance, SSI, federal poverty-related veteran’s benefits, refugee resettlement, Medicaid or food stamps; or
- Is involuntarily committed to a public mental health facility; or
- Has a net (or take-home) income at or below 125% of the federal poverty level (FPL), which for 2018 is:
 - \$15,175 for individuals
 - \$20,575 for a family of 2
 - \$25,975 for a family of 3
 - \$31,375 for a family of 4
 - \$36,775 for a family of 5
 - \$42,175 for a family of 6

For latest updates to the FPL, visit:

opd.wa.gov/documents/00531-2018_PovertyRate.pdf

Collection of LFOs

Referral to Collection Agencies: CLJs may use collection agencies under Chapter 19.16 RCW to collect LFOs. *RCW 3.02.045(1)*. No debt may be assigned to a collection agency unless 30 days have passed since the debtor was notified that the debt may be assigned to a collection agency. *RCW 19.16.500(2)*. Once assigned, the court may add a reasonable fee, payable by the debtor, to the outstanding debt for the collection agency fee incurred. A contingent fee of up to 50% of the first \$100,000 of the unpaid debt per account is presumptively reasonable. *Id.* Costs, fees, fines, forfeitures, and penalties imposed in CLJs for criminal offenses do not accrue interest. *RCW 3.62.020; 3.62.040; 35.20.220; 3.50.100*.

Persons Receiving Social Security Disability: Federal law prohibits courts from ordering defendants to pay LFOs if the person’s sole source of income is social security

disability benefits. *City of Richland v. Wakefield*, 186 Wn.2d 596 (2016); 42 U.S.C. § 407(a).

Sanctions for Non-payment

Issuing or Warrant for Non-payment: A court must find that a defendant is willfully defaulting on required payments prior to issuing a warrant. “A defendant sentenced to pay any fine, penalty, assessment, fee, or costs who *willfully* defaults in the payment thereof or of any installment is in contempt of court as provided in chapter 7.21 RCW.” *RCW 10.01.180(1)* (emphasis added). The court may then issue a warrant of arrest for his or her appearance. *Id.*

Willful Failure to Pay: Before issuing sanctions, the court must find that a defendant “willfully refused to pay” LFOs. *Bearden v. Georgia*, 461 U.S. 660, 672 (1983). A failure to pay is willful if the defendant has the current ability to pay but refuses to do so. *RCW 10.01.180(3)(a)*. Mentally ill and homeless defendants cannot be held in willful contempt. *RCW 10.01.180(3)(c)*.

Assistance of Counsel: A defendant is entitled to assistance of counsel when facing a contempt proceeding that could result in incarceration, and counsel must be appointed if the defendant is indigent. *Smith v. Whatcom Cnty. Dist. Ct.*, 147 Wn.2d 98, 113 (2002).

Factors the Court Must Consider before Sanctioning a Defendant for Non-payment: A defendant may not be jailed for non-payment of a fine unless there is a finding, following a hearing on the record, that the failure to pay is willful. *RCW 10.01.180(3)(a)*. Any defendant who is indigent as defined by *RCW 10.101.010(3)(a)-(c)*, is presumed to be unable to pay. *RCW 10.01.180(3)(b)*. The court must inquire into a defendant’s ability to pay, and consider income, assets, basic living costs and other liabilities, including child support and other LFOs, as well as the defendant’s bona fide efforts to acquire additional resources (see sample questions). *Id.* The defendant may bear the burden of proving inability to pay, but the court still has a duty to inquire. *Smith*, 147 Wn.2d at 112.

Alternatives to Incarceration for Non-payment: Only if “no reasonable or effective alternatives are available,” should the court use its contempt power to incarcerate for non-payment. *Smith*, 147 Wn.2d at 113. *See also Bearden*, 461 U.S. at 672. As an alternative to incarceration, the court can reduce the amount of LFOs, modify its previous orders regarding payment of LFOs, or convert LFOs to community restitution at a rate of no less than the state minimum wage. *RCW 10.01.180(5)*.

Post-Sentencing LFO Relief

Interest Relief: As of June 7, 2018, interest does not accrue on non-restitution LFOs. *RCW 10.82.090*. To address interest that accrued on non-restitution LFOs prior to that date, the defendant, upon release from total confinement, may petition the court for waiver of the non-restitution interest. The court shall grant this motion. *RCW 10.82.090(2)(a)* (“[t]he court shall waive all interest on the

portions of the legal financial obligations that are not restitution that accrued prior to the effective date of this section”) (emphasis added). The court may reduce interest on the restitution portion only if the principal has been paid in full. *RCW 10.82.090(2)(b)*.

Remission of Discretionary Costs: A defendant, after release from total confinement, may petition the court for remission of costs. *RCW 10.01.160(4)*. The defendant must show that he/she is not in “contumacious default” in payment of the costs and that the costs will impose “manifest hardship” on the defendant or his/her immediate family. *Id.* If so, the court may 1) remit all or part of the amount due in costs; 2) modify the method of payment under *RCW 10.01.170*, or 3) convert the costs to community restitution hours (if the jurisdiction operates such a program) at a rate of no less than the state minimum wage. **Manifest hardship** exists where the defendant is indigent as defined in *RCW 10.101.010(a) – (c)*. *Id.*

Other Options for Conversion, Modification or Waiver: If the court finds that a defendant is not in willful contempt for failing to pay LFOs, it may enter an order 1) allowing the defendant more time for payment; 2) reducing the amount of each installment; 3) revoking the LFOs in whole or in part; or 4) converting the LFOs to community restitution hours at a rate of no less than the state minimum wage. *RCW 10.01.180(5)*. If the defendant is indigent as defined in *RCW 10.101.010(3)(a) – (c)*, the court shall enter an order addressing the LFOs through one of the above-listed options. *Id.*

Sample Questions: Determining Ability to Pay

- **Income:** What is your monthly take-home income before taxes? Do you receive any government benefits (SSI, disability benefits, TANF, food stamps, or veteran’s benefits)?
- **Employment History:** Are you working? When did you last work? What have you done to find work? Do you have any medical or other conditions that limit your ability to work? Have previous periods of incarceration limited your ability to work?
- **Monthly Expenses:** How much does your household spend on basic living costs, including housing and utilities, food, health care or medical costs, transportation, clothing, payment of LFOs/fines to other courts, child support, and other necessities?
- **Assets and Other Financial Resources:** Do you own property that you could use to pay LFOs? Do you have any credit or ability to borrow money?
- **Other Debts:** Do you have other debts, including other LFOs, healthcare/medical care/hospital costs, education loans?

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