

WA State Superior Courts: 2018 Reference Guide on Legal Financial Obligations (LFOs)

**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. State law authorizes both mandatory and discretionary LFOs, and each statute may differ in setting standards for imposition and waiver:

- **Mandatory LFOs** shall be imposed in every case or for every conviction for a certain type of offense regardless of the defendant's ability to pay (although some mandatory LFOs can be partially waived);
- **Discretionary LFOs** may be imposed or waived at the court's discretion.

Mandatory LFOs Include:

- **Victim Penalty Assessment (VPA):** \$500 for each case that includes one or more felony or gross misdemeanor convictions; \$250 for each case that includes misdemeanor convictions. *RCW 7.68.035*.
- **DNA Collection Fee:** The first sentence imposed in a defendant's lifetime for a crime specified in *RCW 43.43.754* must include a fee of \$100. *RCW 43.43.7541*; but see *RCW 9.94A.777* (not mandatory for defendants with mental health conditions).
- **Restitution:** Shall be ordered whenever a felony offense results in injury to any person or damage to or loss of property, unless extraordinary circumstances make restitution inappropriate. *RCW 9.94A.753(5)*; but see *RCW 9.92.060(2)(b)* and *City of Seattle v. Fuller*, 177 Wn.2d 263 (2013) (restitution discretionary for misdemeanors).
- **Crime-Specific LFOs:** Some LFOs are mandatory based on the type of offense. See, e.g., *RCW 9.68A.105* (requiring court to impose fee assessments for convictions for commercial sex abuse of a minor related offenses, although 2/3 of assessment may be waived if court finds, on the record, that the defendant lacks the ability to pay); but see *RCW 9.94A.777* (court must determine person with mental health condition has means to pay even mandatory LFOs, except for VPA and restitution).

Discretionary Costs are expenses specially incurred by the state in prosecuting the defendant or in administering pretrial supervision. *RCW 10.01.160*. These include, but are not limited to jury fees and costs of incarceration.

Caps for Certain Costs: Pretrial supervision (other than alcohol and drug monitoring) (\$150); warrants for failure to appear (\$100); costs of incarceration (actual cost – no more than \$100 per day). *RCW 10.01.160(2)*.

Imposing Costs: The court shall not impose costs, including the cost of incarceration, if the defendant is indigent at the time of sentencing. *RCW 10.01.160(3)*; *9.94A.760(3)*. "Courts should also look to the comment

in . . . GR 34 for guidance" to determine a defendant's ability to pay costs. *State v. Blazina*, 182 Wn.2d 827, 839 (2015). A court should "seriously question the ability to pay LFOs" if a defendant 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 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 838.

Time Payments of LFOs are required if the defendant is indigent. *RCW 10.01.170(1)*.

Imposing LFOs on Defendants with Mental Health Conditions: Before imposing any LFOs other than restitution or the VPA, the court must find that a defendant with a "mental health condition" has the means to pay the additional sums. *RCW 9.94A.777*.

Imposing Fines: Fines are generally discretionary. Some fines are mandatory but can be waived in full or in part on a finding of indigence. See, e.g., *RCW 69.50.430(1)* (fines for VUCSA offenses mandatory unless court finds indigence); *RCW 69.50.401(2)(b)* (court may impose fines for convictions for manufacture, possession, or delivery of amphetamines, \$3000 of which may not be suspended). Trial judges are strongly urged to consider a defendant's ability to pay before imposing fines. *State v. Clark*, 191 Wn. App. 369, 376 (2015).

Collection of LFOs

Monthly Payment Schedules: A monthly payment towards LFOs is a condition of sentence. *RCW 9.94A.760(11)*. The schedule can be set by (1) the court at sentencing, (2) DOC (if the person is on active supervision with DOC), or (3) the county clerk's office. *RCW 9.94A.760(1)*.

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, 609 (2016); 42 U.S.C. § 407(a).

Sanctions for Non-Payment

Requirement to Pay: The court may issue a summons or a warrant to guarantee the appearance of a defendant who has failed to pay. *RCW 9.94A.6333(3)(a)*; *9.94B.040(4)(b)*. The better practice may be to issue a summons for non-payment and a warrant upon any failure to appear. If using contempt procedures, the court must find that a person is in *willful* default prior to the issuance of 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)*. “The court may issue a warrant of arrest for his or her appearance.” *Id.*

Right to Counsel: Whenever a modification of sentence may result in jail, an indigent defendant has a right to appointed counsel at public expense. *State v. Stone*, 165 Wn. App. 796, 814-15 (2012).

Factors Court Must Consider Before Jailing a Defendant for Failure to Pay: A defendant may not be sanctioned for non-payment unless the court finds that the failure to pay is willful. *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983). This applies to all LFO debt, whether mandatory or discretionary. Failure to pay is willful if the individual has the current ability to pay but refuses to do so. *RCW 9.94A.6333(3)(c)*. An individual who is indigent as defined by *RCW 10.101.010(3)(a)-(c)* is presumed to lack the current ability to pay. *Id.*; *9.94B.040(4)(c)*. If the court finds the defendant is homeless or mentally ill, it cannot sanction the defendant for willful noncompliance. *RCW 9.94A.6333(3)(d)*; *9.94B.040(4)(d)*.

Burden of Proof: The state must show noncompliance by a preponderance of the evidence. *RCW 9.94A.6333(3)(b)*; *9.94B.040(4)(c)*. The court must determine, after a hearing and on the record, whether the failure to pay is willful, considering the defendant’s income and assets, basic living costs, other liabilities including child support and other LFOs, and bona fide efforts to acquire additional resources. *RCW 9.94A.6333(3)(c)*; *9.94B.040(4)(c)*.

Incarceration for Failure to Pay: Persons incarcerated for contempt for willful non-payment of LFOs receive credit towards the LFOs for each day served at the rate specified by the court in the commitment order. *RCW 10.01.180(4)*. Persons incarcerated for willful non-payment of felony LFOs have violated a condition of sentence and do not receive credit toward LFOs. *State v. Nason*, 168 Wn.2d 936, 946-47 (2010). These individuals may be sanctioned by the court with up to 60 days’ confinement for each violation or by DOC with up to 30 days’ confinement as provided in *RCW 9.94A.737*. *RCW 9.94A.633(1)*. Alternatives to incarceration may also be ordered. *Id.*

Post-Sentencing Relief

Interest Relief: As of June 7, 2018, interest shall not accrue on non-restitution LFOs. *RCW 10.82.090(1)*. Upon release from total confinement, a defendant may petition for waiver of non-restitution interest that accrued before the effective date, and the court shall grant the motion. *RCW 10.82.090(2)(a)*. The statute only applies to adult offenders. *RCW 10.82.090(3)*.

Remission of Discretionary and Appellate Costs: After release from total confinement, a defendant who is not in contumacious default may petition for remission of costs. If the court is satisfied that payment would impose manifest hardship on the defendant or the defendant’s immediate

family, the court may remit all or part of the costs, modify the method of payment under *RCW 10.01.170*, or convert unpaid costs to community restitution hours (if the jurisdiction operates a community restitution program) at no less than the state minimum wage for each hour of community restitution. Manifest hardship exists where the defendant is indigent as defined in *RCW 10.10.010(3)(a)-(c)*. *RCW 10.01.160(4)*; *10.73.160(4)*. Courts can and should use GR 34 as a guide for determining whether someone can pay costs. *Wakefield*, 186 Wn.2d at 606. If a person has no present or future ability to pay amounts that will satisfy his or her LFOs, remission in accordance with *RCW 10.01.160(4)* is a more appropriate and just option. *Id.* at 607.

Other Options for Conversion, Modification, Waiver:

- If the court finds that a violation for failure to pay was not willful, it may (1) modify the terms of payment, (2) reduce or waive non-restitution LFOs, or (3) convert the non-restitution LFOs to community restitution at a rate of no less than the state minimum wage. *RCW 9.94A.6333(3)(f)*; *9.94B.040(4)(f)*. If the court finds that the violation was not willful and the defendant is indigent as defined in *RCW 10.101.010(3)(a)-(c)*, it shall address the LFOs through one of the above listed options. *Id.*
- The VPA shall not be waived, modified, or converted to community restitution hours. *Id.*

Determining Indigence

RCW 10.101.010(3)(a)-(c) is used to define indigence.

Under that statute, a person 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 veterans’ benefits, refugee resettlement, Medicaid or food stamps; or
- **Is involuntarily committed** to a public mental health facility; or
- **Has 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 updates to the FPL, visit:

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



Provided by the Washington State Supreme Court
Minority and Justice Commission
June 2018