

LEGAL FINANCIAL OBLIGATIONS (LFOs)

Mandatory

Restitution

Victim Penalty Assessment – VPA

DNA database fee

Criminal filing fee

Discretionary (may be waived)

Fees - Court fees, Attorney Fees, etc.

Fines – Classification of crime

REVOCAION HEARING

- FAILURE TO PAY WAS WILLFULL**
 - Probation may be revoked
- IF NOT WILLFULL FAILURE TO PAY**
 - Court must consider alternative measures other than imprisonment.
Bearden v. Georgia, 461 U.S. 660 (1983)

REMISSION HEARING - MODIFY PAYMENTS – RCW 10.01.160(4)

- Payment may be modified if payment creates hardship for D or his/her family.**
“...If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.”

MOTION TO WAIVE OR REDUCE INTEREST – RCW 10.82.090

- Requires finding that defendant made “good faith” effort to pay, AND
- Interest accrual is causing significant hardship

RESTITUTION INTEREST – Must pay full principal of restitution before waiving its interest

WAIVE INTEREST OF LFOs ACCRUED DURING INCARCERATION. RCW 10.82.090(2)(a)

- Calculate interest accrued during the term of total confinement of the conviction giving rise to the LFOs
- Interest stemming from restitution cannot be waived
- Interest from all other LFOs may be waived
- Interest creates a hardship for offender or his or her immediate family

DURING SENTENCING – CHECKLIST –

TRIAL COURTS MUST MAKE AN INDIVIDUALIZED ASSESSMENT OF DEFENDANT’S CURRENT OR FUTURE ABILITY TO PAY

- Standards set out on *State v. Blazina*, (2015)**
 - Record must reflect that trial court made an individualized inquiry.** RCW 10.01.160(3).
 - Must assess current or future ability to pay**
 - A judgment and sentence with boilerplate language saying that court engaged in the required inquiry is not enough to fulfill this standard
 - Court is required to consider other factors**
 - Incarceration and a D’s other debts, including restitution
 - Courts should look at the comment in GR 34 for guidance** (waiver of fees and charges in civil matters on the basis of indigency)
 - Proof of indigent status
 - D receives assistance under a needs-based, means-tested program like: TANF, SSI, etc., OR
 - Household income is at or below 125% of federal poverty line; OR
 - D is above 125% and has recurring basic living expenses that render him w/o financial ability to pay the filing fee or other surcharges; OR
 - Other circumstances exist that demonstrates D’s inability to pay
 - If D meets the GR 34 standard for indigency, courts should question D’s ability to pay

MENTAL ILLNESS - WAIVING ALL LFOs (EXCEPT RESTITUTION AND VFA) FOR DEFENDANTS WITH MENTAL ILLNESS. RCW 9.94A.777

- Court must Inquire whether the Defendant has the means to pay those additional sums
- Mental Condition means:
 1. D has been diagnosed w/ mental disorder that prevents him/her from participating in gainful employment
AND
 2. Evidenced by D’s enrollment in a public assistance program, a record of involuntary hospitalization, or by competent expert evaluation

GOOD FAITH means that the offender has either (i) paid the principal amount in full; or (ii) made at least fifteen monthly payments within an eighteen-month period, excluding any payments mandatorily deducted by the Department of Corrections

2015 FEDERAL POVERTY GUIDELINES (FOR GR 34 – LOOK AT 125%)

| 100% | | | |
|-------------|----------|---------|--------|
| Family Size | Annual | Monthly | Weekly |
| 1 | \$11,770 | \$981 | \$226 |
| 2 | \$15,930 | \$1,328 | \$306 |
| 3 | \$20,090 | \$1,674 | \$386 |
| 4 | \$24,250 | \$2,021 | \$466 |
| 5 | \$28,410 | \$2,368 | \$546 |
| 6 | \$32,570 | \$2,714 | \$626 |
| 7 | \$36,730 | \$3,061 | \$706 |
| 8 | \$40,890 | \$3,408 | \$786 |
| Each Add'l | \$4,160 | \$347 | \$80 |

| 115% | | | |
|-------------|----------|---------|--------|
| Family Size | Annual | Monthly | Weekly |
| 1 | \$13,536 | \$1,128 | \$260 |
| 2 | \$18,320 | \$1,527 | \$352 |
| 3 | \$23,104 | \$1,925 | \$444 |
| 4 | \$27,888 | \$2,324 | \$536 |
| 5 | \$32,672 | \$2,723 | \$628 |
| 6 | \$37,456 | \$3,121 | \$720 |
| 7 | \$42,240 | \$3,520 | \$812 |
| 8 | \$47,024 | \$3,919 | \$904 |
| Each Add'l | \$4,784 | \$399 | \$92 |

| 125% | | | |
|-------------|----------|---------|--------|
| Family Size | Annual | Monthly | Weekly |
| 1 | \$14,713 | \$1,226 | \$283 |
| 2 | \$19,913 | \$1,659 | \$383 |
| 3 | \$25,113 | \$2,093 | \$483 |
| 4 | \$30,313 | \$2,526 | \$583 |
| 5 | \$35,513 | \$2,959 | \$683 |
| 6 | \$40,713 | \$3,393 | \$783 |
| 7 | \$45,913 | \$3,826 | \$883 |
| 8 | \$51,113 | \$4,259 | \$983 |
| Each Add'l | \$5,200 | \$433 | \$100 |

| 187.5% | | | |
|-------------|----------|---------|---------|
| Family Size | Annual | Monthly | Weekly |
| 1 | \$22,069 | \$1,839 | \$424 |
| 2 | \$29,869 | \$2,489 | \$574 |
| 3 | \$37,669 | \$3,139 | \$724 |
| 4 | \$45,469 | \$3,789 | \$874 |
| 5 | \$53,269 | \$4,439 | \$1,024 |
| 6 | \$61,069 | \$5,089 | \$1,174 |
| 7 | \$68,869 | \$5,739 | \$1,324 |
| 8 | \$76,669 | \$6,389 | \$1,474 |
| Each Add'l | \$7,800 | \$650 | \$150 |

| 150% | | | |
|-------------|----------|------------|--------|
| Family Size | Annual | Monthly | Weekly |
| 1 | \$17,655 | \$1,471.25 | |
| 2 | \$23,895 | \$1,991.25 | |
| 3 | \$30,135 | \$2,511.25 | |
| 4 | \$36,375 | \$3,031.25 | |
| 5 | \$42,615 | \$3,551.25 | |
| 6 | \$48,855 | \$4,071.25 | |
| 7 | \$55,095 | \$4,591.25 | |
| 8 | \$61,335 | \$5,111.25 | |
| Each Add'l | \$4,160 | \$520 | |

| 300% | | | |
|-------------|-----------|----------|---------|
| Family Size | Annual | Monthly | Weekly |
| 1 | \$35,310 | \$2,943 | \$679 |
| 2 | \$47,790 | \$3,983 | \$919 |
| 3 | \$60,270 | \$5,023 | \$1,159 |
| 4 | \$72,750 | \$6,063 | \$1,399 |
| 5 | \$85,230 | \$7,103 | \$1,639 |
| 6 | \$97,710 | \$8,143 | \$1,879 |
| 7 | \$110,190 | \$9,183 | \$2,119 |
| 8 | \$122,670 | \$10,223 | \$2,359 |
| Each Add'l | \$12,480 | \$1,040 | \$240 |

| 200% | | | |
|-------------|----------|---------|---------|
| Family Size | Annual | Monthly | Weekly |
| 1 | \$23,540 | \$1,962 | \$453 |
| 2 | \$31,860 | \$2,655 | \$613 |
| 3 | \$40,180 | \$3,348 | \$773 |
| 4 | \$48,500 | \$4,042 | \$933 |
| 5 | \$56,820 | \$4,735 | \$1,093 |
| 6 | \$65,140 | \$5,428 | \$1,253 |
| 7 | \$73,460 | \$6,122 | \$1,413 |
| 8 | \$81,780 | \$6,815 | \$1,573 |
| Each Add'l | \$8,320 | \$693 | \$160 |



What we have done for ourselves alone dies with us; what we have done for others and the world remains and is immortal.

Albert Pike, Atty (1801-1891)