

The Municipal Court of Washington for the City of Gig Harbor	Case No. _____
CITY OF GIG HARBOR , Plaintiff, vs. _____, Defendant.	Case No. _____ Order on Motion to Waive or Reduce Legal Financial Obligations Clerks action required: Para 4.2

I. INTRODUCTION

The Court, having considered the Defendant’s Motion to Waive or Reduce Legal Financial Obligations, declaration, and testimony, if any, and having reviewed the court records, makes the following:

II. FINDINGS OF FACT

2.1 The Court adopts the factual statements made by the Defendant in the Defendant’s Motion to Waive or Reduce Legal Financial Obligations Declaration filed herein.

III. CONCLUSIONS OF LAW

3.1 The imposition and collection of legal financial obligations (LFOs) have constitutional implications and are subject to constitutional limitations.⁰

3.2 A constitutionally permissible system that requires criminal defendants to pay court ordered LFOs must meet seven requirements:

1. Repayment must not be mandatory;
2. Repayment may be imposed only on convicted defendants;
3. Repayment may only be ordered if the defendant is or will be able to pay;
4. The financial resources of the defendant must be taken into account;
5. A repayment obligation may not be imposed if it appears there is not likelihood the defendant’s indigency will end;

⁰ *State v. Duncan*, 185 Wn.2d 430, ¶7 (2016), citing *State v. Barklind*, 87 Wn.2d 814, 817 (1976) (citing *Fuller v. Oregon*, 417 U.S. 40, 44-47, 94 S. Ct. 2116, 40 L.Ed.2d 642 (1974)). See also *State v. Blazina*, 182 Wn.2d 827 (2015).

6. The convicted person must be permitted to petition the court for remission of the payment of costs or any unpaid portion;
7. The convicted person cannot be held in contempt for failure to repay if the default was not attributable to an intentional refusal to obey the court order or a failure to make a good faith effort to make repayment.¹

3.3 Although the legislature has designated some LFOs as “mandatory,” and other LFOs have been treated as “mandatory” by the Court of Appeals, our Supreme Court has not had occasion to consider the constitutionality of “mandatory” LFOs.²

3.4 A sentencing judge in a criminal case is required to make an individualized inquiry into a defendant’s current and future ability to pay before the court imposes LFOs. This inquiry requires the court to consider important factors, such as incarceration, GR 34, and the defendant’s other debts, including restitution, when determining a defendant’s ability to pay.³

3.5 Courts should seriously question a person’s ability to pay LFOs if the person meets the GR 34 standard for indigency. “This is true for both the imposition and enforcement of LFOs.”⁴

3.6 Given the reality that on average, a person who pays \$25 per month toward the LFOs will owe more 10 years after conviction than when the LFOs were originally assessed, “trial courts should be cautious of imposing such low payment amounts in the long term for impoverished people.” Such low payments “should be generally ordered only for short-term situations.”⁵

3.7 If a person has no present or future ability to pay amounts that will actually pay off their LFOs, “remission in accordance with RCW 10.01.160(4) is a more appropriate and just option.”⁶

3.8 Federal law prohibits courts from ordering defendants to pay LFOs “if the person’s only source of income is social security disability.”⁷

3.9 Prior to enforced collection or any sanction imposed for a defendant’s nonpayment of LFOs, due process requires the sentencing court to conduct an inquiry into the defendant’s ability to pay.⁸

3.10 If a defendant is capable of paying but willfully refuses to pay, or if a defendant does not make sufficient bona fide efforts to seek employment or borrow money to pay, the court may imprison the defendant for failing to pay his or her LFOs. The burden is on the defendant to show that his or her nonpayment is not willful.⁹

¹ *State v. Duncan*, 185 Wn.2d at ¶7, citing *State v. Curry*, 118 Wn.2d 911, 915-16 (1992) (quoting *State v. Eisenman*, 62 Wn.App. 640, 644 n.10 (1991) (citing *State v. Barklind*, 87 Wn.2d at 814)).

² *State v. Duncan*, 185 Wn.2d at ¶7 n.3.

³ *State v. Blazina*, 182 Wn.2d 827, ¶¶20, 22 (2015).

⁴ *Richland V. Wakefield*, 186 Wn.2d 596, ¶24 (2016) (Post-sentencing, courts should regard a defendant’s eligibility for needs-based, means-tested assistance programs listed in GR 34 as “strong evidence of indigency.”).

⁵ *Id.*, at ¶25.

⁶ *Id.*

⁷ *Id.*, at ¶29

⁸ *State v. Blank*, 131 Wn.2d 230, 242 (1997); *State v. Nason*, 168 Wn.2d 936, ¶¶15, 22 (2010).

⁹ *State v. Nason*, 168 Wn.2d 936, at ¶15 (2010).

3.11 A defendant who claims indigency must do more than simply plead poverty in general terms. The defendant should be prepared to show the court his or her actual income, reasonable living expenses, the efforts, if any, to find steady employment, and the efforts, if any, to acquire resources from which to pay the LFOs.¹⁰

3.12 If in the future repayment will impose a manifest hardship on a defendant, or if the defendant is unable to repay, the court may order remission of all or part of the LFOs still owing.¹¹

IV. ORDER

4.1 Motion Denied: Defendant Not Met Burden Showing Inability To Pay; All LFOs Remain Owing. The Defendant did not meet his or her burden by a preponderance of the evidence of showing a present or future inability to pay the LFOs previously ordered herein.

Accordingly, the Defendant's Motion to Waive or Reduce Legal Financial Obligations is denied, and the Court orders that all previously ordered LFOs herein remain in effect. All LFOs herein which have been assigned to collection, if any, shall remain in collection.

4.2 Motion Granted: Defendant Indigent And Has No Present Or Future Ability To Pay; LFOs Amended. The Defendant has proven by a preponderance of the evidence that (1) future repayment of previously ordered LFOs will impose a manifest hardship on the defendant; and/or (2) the Defendant does not have the present or future ability to pay the previously imposed LFOs.

All LFOs herein which are in collection, if any, shall remain in collection. All interest accrued while this matter has been in collection status¹² shall be waived. The principal LFO amounts shall be reduced to the amount(s) listed below, totaling \$_____

The Defendant is in compliance with the LFO portion of the sentence. The clerk of the court shall promptly give notice of such fact to the Department of Licensing for any traffic related convictions in this matter.¹³

The Court amends the LFO portion of the Judgment and Sentence previously entered herein, and orders the Defendant to pay only the following LFOs, which may not be converted to community service hours¹⁴ (credit will be given for any amounts previously paid).

¹⁰ *State v. Woodward*, 116 Wn.App. 697, 704 (2003).

¹¹ *State v. Blank*, 131 Wn.2d 230, 242 (1997). See RCW 10.01.180(4) (fines, costs); and RCW 10.73.160(4) (appellate costs).

¹² See RCW 3.62.020(5), .040(5).

¹³ See RCW 46.64.025; 46.20.289; and 46.20.291

¹⁴ See Kitsap County District Court. *Legal Financial Obligations – A Judge Pro Tempore Primer* (2015), at 22-24 *Order on Motion to Waive/Reduce Legal Financial Obligation - Page 3 of 5* (2/2020)

LEGAL FINANCIAL OBLIGATIONS – MANDATORY (NO COMM SERVICE ALLOWED)

	Legal Financial Obligations	Statutorily Mandated ¹		Clerk's Use ²	Amount ³
<input type="checkbox"/>	Criminal Conviction Fee (may not be imposed if appointed counsel or verified petition shows no ability to pay)	\$43 per case		CFD,CFN, CFT	\$
<input type="checkbox"/>	Monitoring Assessment	\$100 per month max		MON	\$
<input type="checkbox"/>	DV Court Order Violation Additional Fine (Effective 7/23/17)	\$30.75 per count		DPR	\$
<input type="checkbox"/>	Domestic Violence Assessment	\$115 per count		DVA \$100 DPO \$15	\$
<input type="checkbox"/>	Toxicology Lab Fee (may not be imposed if appointed counsel or verified petition shows no ability to pay) ³	\$250		DUC	\$
<input type="checkbox"/>	DUI Passenger Under Age 16 in Vehicle Minimum Fine ⁴	Priors	Indigent	YIV	\$
		0	\$0		
		1	\$1,700		
		2 or 3	\$3,400		
<input type="checkbox"/>	DUI Emergency Response Costs. Defendant shall pay the amount as required by separate order (\$2,500 maximum).				\$
<input type="checkbox"/>	Restitution. Defendant shall pay restitution in an amount determined within 180 days from today, or as required by separate order.				
<input type="checkbox"/>	DNA Fee ⁵ (Effective 7/1/2002)	\$100		DN1, DN2	\$
<input type="checkbox"/>	Indecent Exposure	\$16.50		PRP	\$
<input type="checkbox"/>	Prostitution Assessment	\$16.50		PRP	\$
<input type="checkbox"/>	Patronizing or Permitting Prostitution	Priors ⁶	No Ability to Pay	PRP	\$
		0	\$500		
		1	\$834		
		2+	\$1,650		
<input type="checkbox"/>	Animals-Cruelty (reasonable costs)	As proven		RTN	\$
<input type="checkbox"/>	Animals-Cruelty (civil penalty)	\$1,000		CTA	\$
<input type="checkbox"/>	Unlawful Issuance of Check Minimum Fine ⁷	The greater of -- 255% of check amount, or \$768.75 for a 1 st offense in 12 months, or \$2,306.25 for a 2 nd offense in 12 months		RCW Number	\$

¹ The court is required by statute to order the amount shown regardless of the defendant's ability to pay. The mandatory Public Safety and Education Assessment, RCW 3.62.090, is included when appropriate.

² The clerk enters these codes into the Judicial Information System.

³ The defendant shall pay this amount. The mandatory Public Safety and Education Assessment, RCW 3.62.090, is included when appropriate.

⁴ The mandatory additional fine (including PSEA) based upon the number of "prior offenses" within 7 years. RCW 46.61.5055(6).

⁵ A DNA Fee is required if the conviction offense is 4° Assault domestic violence (effective July 23, 2017), 4° Assault with sexual motivation, Communication with a Minor for Immoral Purposes, 2° Custodial Sexual Misconduct, Failure to Register,

Harassment, Patronizing a Prostitute, 2° Sexual Misconduct with a Minor, Stalking, or Violation of a Sexual Assault Protection Order, Indecent Exposure (effective July 28, 2019).

- ⁶ The number of prior convictions, deferred prosecutions and/or diversion agreements for this offense.
⁷ RCW 9A.56.060 (effective for crimes committed on or after July 26, 2009). The statute requires a fine calculation of 150% of the check amount. The mandatory PSEA must be added to this amount. [PSEA1 is 70% of the fine amount, plus PSEA2 which is 50% of PSEA1, which equals 105% of the fine amount which is then added to the fine. 150% + 105% = 255% of the check amount]. PSEA is also included in the mandatory \$375 or \$1,125 alternative fine calculation.

LEGAL FINANCIAL OBLIGATIONS – DISCRETIONARY (NO COMMUNITY SERVICE ALLOWED)

	Legal Financial Obligation	Statutorily Authorized ¹		Clerks Use Only	Amount to Pay ²
<input type="checkbox"/>	Fine	\$1,000 max for misdeme'r \$5,000 max for g.misd. ³		RCW Number	\$
<input type="checkbox"/>	Criminal Traffic Penalty ⁴	Not Indig	Indigent	TPC	\$
		\$102.50	\$0		
<input type="checkbox"/>	Warrant Costs	\$100 maximum		SWF	\$
<input type="checkbox"/>	Booking Fee (Pierce Jail only)	\$101		BKF	\$
<input type="checkbox"/>	Incarceration Costs (actual)	\$100 per day maximum		PBR	\$

¹ The court may order the amount shown only if the defendant has an ability to pay. The mandatory Public Safety and Education Assessment, RCW 3.62.090, is included when appropriate.

² The defendant shall pay this amount. The mandatory Public Safety and Education Assessment, RCW 3.62.090, is included when appropriate.

³ The maximum mandatory PSEA for a misdemeanor is \$1,050 resulting in a maximum fine and PSEA of \$2,050. The maximum mandatory PSEA for a gross misdemeanor is \$5,250 resulting in a maximum fine and PSEA of \$10,250.

⁴ All or part of the Title 46 Criminal Justice Penalty may be offset by participation in a community service program.

DATED: _____

Done in open court in the presence of the defendant.

 Judge