

A Guide to Court- Ordered Financial Obligations in Oregon Criminal Courts

UNDERSTANDING WHAT
YOU OWE AND OPTIONS
TO REDUCE OR CANCEL
YOUR FINES AND FEES

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Contents

Introduction	1
Court-Ordered Financial Obligations (COFOs) in Oregon	1
How COFOs Burden Defendants and their Families	2
How to Use this Guide	3
Key Terms to Know	4
Understanding Court-Ordered Financial Obligations (COFOs)	7
Criminal Fines	8
Court-Appointed Attorney Fees	12
Restitution	15
Compensatory Fines	22
Supervision Fees	24
Miscellaneous Fees	24
How COFOs May Continue to Grow Even After the Case is Over	29
COFOs While in Prison or Jail	30
Payment Schedule Assessment Fee	31
Collections Referral Fee	33
Interest on Criminal Judgments	34
Getting COFOs Reduced or Cancelled	37
Preparing to Ask a Court to Reduce or Waive COFOs Debt	38
Other Forms of Relief from COFOs	47
Conclusion	51
Appendix	53

Legal Disclaimer

This guide is for general information purposes only. It is not a substitute for specific legal advice about your individual situation, facts, or case. For direct legal advice regarding your specific legal issue, please speak to an attorney or legal assistant.

The material covered in this guide is limited to court-ordered financial obligations (COFOs) in trial-level criminal cases. When discussing “criminal cases,” we are referring to cases where a defendant may be charged with a felony, misdemeanor, or violation offense in Oregon circuit courts, municipal courts, or justice courts, even though violation offenses are not technically considered a “crime” under Oregon law. This guide does not include COFOs in civil cases or other types of legal proceedings. Depending on the type of legal matter, there may be several other COFOs that are not discussed in this guide.

The information in this guide is based on the most current law available at the time the guide was written. However, laws and rules regarding COFOs change frequently, and there have been numerous changes in recent years. In particular, courts and community corrections offices instituted several temporary policies and procedures during the COVID-19 pandemic to reduce financial hardship among low-income Oregonians. Please be aware that the majority of COVID-related policy changes are no longer in place and may no longer apply to your situation.

Where possible, it is important that you review all current statutes, rules, and cases to confirm that the law has not changed significantly since this guide was written.

Introduction

Court-Ordered Financial Obligations (COFOs) in Oregon

In Oregon, when someone gets in trouble with the law, they might have to pay money called “court-ordered financial obligations” (COFOs). COFOs mostly fall into four categories:

- Fines
- Fees
- Compensatory Fines
- Restitution

Even after their case is over, someone might still owe additional money, like payment schedule assessment fees, collection referral fees, supervision fees, or probation violation fees. This can make the amount owed grow a lot, especially if someone can’t pay right away.¹ When the debt is large, it may seem impossible to deal with.

COFOs affect people involved in the legal system at different times, such as when they get arrested, go to court, or even

after they’ve been sentenced. As soon as someone is arrested and charged, they are at risk of having to pay fees even if they haven’t been found guilty yet and may be entirely innocent. When the case is done, the defendant may still have to pay fines and other costs, even if it’s hard for them to afford. Sometimes it is possible to try to reduce these costs, but often it is not the first thing on the defendant’s mind when facing prison or jail time. It is common for people to not realize just how much money they owe until much later.

This guide is meant to help people deal with these financial penalties. It gives tips on how to lower the amount a defendant owes during different parts of their case. It is also designed to help people who already owe money to the court and want to figure out how to pay it.

¹ See Street Roots, *Unpaid Fine? The Poorer You Are, the More You Owe* (Nov 9, 2018) (documenting the story of Cindy Mendoza, who received her first ever traffic tickets in 2010 for \$400 that quickly grew to \$811, and a later ticket for \$870 that grew to over \$2000).

How COFOs Burden Defendants and their Families

COFOs are very damaging to defendants and their families. A person charged with a criminal offense is immediately at risk of having to pay many different financial penalties, regardless of whether they are guilty or innocent of the crime. The court may order someone to pay various fines and fees at many different times during the case—from right after the arrest until long after sentencing. These costs are often overlooked by attorneys and judges, so many defendants end up owing the court money they can't afford to pay. Judges often don't consider whether a defendant has the ability to pay unless someone reminds them. Defendants are usually more worried about jail or prison, rather than checking on how much money they will owe to the court at the end of a criminal case. This means that fines and fees in criminal court are often unfair when compared to what the defendant can actually afford.

Many low-income Oregonians who become involved in the criminal legal system might still owe money to the court for many years after their case is over. If they can't pay right away, things can get worse. Their debt may grow as the court adds new fees and charges interest. Not paying court debt often leads to more problems that make it harder to become financially stable; problems such as

not being able to get a driver's license, having to stay on community supervision for longer, or not being eligible to expunge convictions. People may have to choose between paying what they owe to the court or taking care of themselves and their families, which means they might have to skip groceries, rent, or medical care.

There is not much evidence that these court fees make our communities safer or help people change their ways. Instead, they make it harder for people to start over and get back on their feet. This can make it more likely for them to end up in trouble again, with new criminal cases and new fines and fees, which isn't good for community safety. Studies show that certain groups are more affected by fines and fees, such as people of color, women, and people on low incomes.²

That's why we made this guide—to help Oregonians figure out how to deal with these court fines and fees and hopefully make things a bit easier.

2 U.S. Commission on Civil Rights, *Targeted Fines and Fees Against Communities of Color: Civil Rights and Constitutional Implications* (Sept. 2007), at 3 (“The Commission’s review of the existing data and research also shows that the impacts of these practices have been borne by communities of color, along with the poor. Municipalities that rely heavily on revenue from fines and fees have a higher-than-average percentage of African American and Latino populations relative to the demographics of the median municipality. Another study revealed that residents living in the poorest zip codes of a city account for the vast majority of traffic infractions. The residents living in those zip codes were disproportionately African American and Latino.”). See also Wasco County District Attorney’s Office, *Wasco County District Attorney Monetary Sanction Policy*, at 2 (“Fees and fines . . . disproportionately burden people of color. Black and Native men, and Native women, in particular, are overrepresented in Wasco County’s criminal system, and thus are more often exposed to fees and fines.”).

How to Use this Guide

This guide has three main goals:

1. To help people understand COFOs in Oregon criminal courts,
2. To give advice on avoiding COFOs (if possible) *before* they have been ordered; and
3. To assist those who already have COFOs in asking for them to be lowered or waived.

To make it easier to use, we have divided the guide into sections:

- 1. Key Terms to Know (page 4):**
This section explains important terms related to COFOs. It will help you understand what people are talking about when they discuss COFOs in court. You may want to look back at this section when reading the rest of the guide.
- 2. Understanding Court-Ordered Financial Obligations (COFOs) (page 7):** Here, we talk about the most common COFOs ordered in Oregon courts. We'll also give you tips on how to try to avoid them if your case is still ongoing and before a judge has ordered you to pay them.
- 3. How COFOs May Continue to Grow Even After the Case is Over (page 29):** This part covers how your COFOs might increase even after your case is over due to extra fees and interest. We'll also share tips on how to stop them from growing too much.
- 4. Getting COFOs Reduced or Canceled (page 37):** Finally, we'll explain how you can ask the court to lower or forgive your COFOs if you're struggling to pay them. We'll give you step-by-step instructions on how to do this.

Throughout this guide you will see **Tips for Defendants** or **Tips** that provide useful advice about COFOs and how to best navigate them while you are currently a defendant in a criminal case, or after your case is over and you are no longer a defendant. We have also included several **Case Examples**, taken from real examples of people who have been especially burdened by COFOs. The names in these case examples have been changed for anonymity, but the information in each case example is a true and accurate account of their circumstances.

Take a look at **the Appendix on page 53** for copies of documents that you can use to ask the court to lower or forgive your COFOs, and other helpful information.

Key Terms to Know

Below are some common terms that are important for understanding COFOs in Oregon criminal courts. We give a short definition for each term, but you will find much more detail on many of these terms later in this guide. You may want to look back at these definitions when you are reading the rest of the guide.

Court-Ordered Financial Obligations (COFOs) are any amount of money that a court tells a defendant to pay during or after a court case in Oregon. In criminal cases, COFOs usually fit into four categories: court fines, court fees, restitution, and compensatory fines.³ They might also be called “court debt,” “court fines and fees,” “monetary obligations,” or “financial obligations.”

Fines are money that a court orders a defendant to pay as punishment for a crime. A court may order a fine as a part of the punishment along with jail or

prison time or probation. But a court can’t order a defendant to pay a fine unless they have been found guilty or have pleaded guilty first.

Fees are money that a court may tell a defendant to pay to cover some of the costs of handling their case. Fees help the court pay for things such as funding the court itself, and they’re not part of the punishment for the crime. There are several different kinds of court fees, such as court-appointed attorney fees, payment schedule assessment fees, collection referral fees, and supervision fees.

3 ORS 423.105(1)(c)(A).

Court-Appointed Attorney Fees happen when a defendant can't afford a lawyer, and the court provides one for them. Sometimes, the court will order the defendant to pay some of the lawyer's fees. The court is supposed to consider if the defendant can afford to pay these fees, but oftentimes they order these fees without looking closely at it.

The **Payment Schedule Assessment Fee** is a fee that is automatically added if the defendant doesn't pay the total amount of COFOs at the end of the case. It is meant to cover the cost of managing the defendant's payments, and it can be added without the defendant knowing. The amount of the fee and when it is added can change at any time based on rules issued by the Chief Justice of the Oregon Supreme Court. Currently a defendant must pay a \$25 payment schedule assessment fee if they have an outstanding balance or are on a payment plan that will end more than a year after the COFOs were ordered by the court. A payment schedule assessment fee is sometimes called a payment plan fee or a collection fee.

The **Collections Referral Fee** is a fee automatically added if a defendant's debt is sent from the court to a private collections agency to try to collect the debt. There is no set maximum amount for this fee, and it can be added without letting the defendant know. The amount of the collections referral fee can vary between different courts.

Restitution is money a court orders a defendant to pay in order to cover a victim's financial losses directly resulting from the crime. Restitution is commonly ordered for the victim's medical expenses, counseling, property loss or damage,

or other damages stemming from the crime. When determining the amount of restitution, the court does not consider if the defendant is unable to afford to pay restitution.⁴ Instead, the court might decide on a payment plan based on the defendant's finances.⁵ There's no limit to how much restitution a court can order.

Compensatory Fines are when a court orders a defendant to pay a criminal fine and decides that part of the fine should go directly to the victim. Compensatory fines are different from restitution because they are still considered punishment for the crime, rather than money intended to make up for a victim's financial losses. A court can only order a compensatory fine if it first orders the defendant to pay a fine. After ordering the fine, the court will then tell the defendant that some (or all) of the fine will go to the victim. The compensatory fine is given to the victim as a penalty for the crime that caused harm to them when that victim could sue the defendant in civil court for damages.⁶

Supervision Fees are monthly fees that someone under community supervision (such as probation, post-prison supervision, or parole) has to pay for the cost of the community corrections program. Usually, it will cost around \$25 to \$35 a month. When someone is sentenced to probation, the court orders them to pay this fee. If someone is on post-prison supervision or parole, the Board of Parole and Post-Prison Supervision orders it. The money goes directly to the local office supervising the person, and it helps cover the cost of their supervision. A recent law passed in 2021 says that people sentenced after January 1, 2022, don't have to pay these fees anymore, but there's still

4 ORS 137.106(2)(a).

5 ORS 137.106(5)(a).

6 ORS 137.101(1).

some uncertainty about whether people sentenced before that date might still have to pay.

Remission is when a court reduces or cancels (waives) a person's COFOs after they've already been ordered to pay them. The court can do this, and rarely the Governor of Oregon might also do it as an act of clemency.

Waive is when a judge or someone else with authority over COFOs reduces the balance down to zero. This might happen for the entire balance or just for one specific part of the COFOs.

ORS (Oregon Revised Statutes) are the laws of Oregon passed by the Oregon Legislature. All laws about the criminal courts and COFOs are found in the ORS's.

Circuit Court/Municipal Court/Justice Court:

There are three main types of courts in Oregon where people might be ordered to pay COFOs.

- **Circuit courts** are state courts that are broken up by county and deal with felony and misdemeanor cases. Cases in circuit courts are referred to as "State of Oregon v. Name of Defendant."
- **Municipal courts** handle violation cases and some misdemeanors, but they're based within a single city or town, instead of the county.
- **Justice courts** also handle lower-level cases such as traffic, boating, wildlife, and other violations but they have jurisdiction within a county, not in a specific city. Municipal courts and justice courts do not handle felony cases.

A **felony** is a criminal charge where the defendant could be sentenced to more than one year in prison.

A **misdemeanor** is a less serious criminal charge where the defendant could be sentenced to a year or less in jail.

A **violation** is an offense punished by a fine, not by prison or jail time.

Chief Justice Order (CJO): Sometimes, the Chief Justice of the Oregon Supreme Court issues special orders telling the Oregon circuit courts about new rules they must follow. From time to time, these CJOs create rules about how certain COFOs may be ordered or collected by the circuit courts. The Chief Justice decides when or if to change a CJO and can make CJOs temporary.

Relief refers to any time that a court or other agency assists a person with COFOs, either by reducing or waiving the amount owed, or by allowing a payment plan that is more affordable.

Understanding Court-Ordered Financial Obligations (COFOs)

Disclaimer

This section covers the various kinds of COFOs that judges in Oregon's circuit courts, municipal courts, and justice courts might order. Different courts and judges can have very different approaches to COFOs, including what types they order, how much they order someone to pay, and what information they consider when making a decision.

Municipal courts and justice courts tend to have different approaches to COFOs compared to circuit courts. They also have differences between each other, so what might be a rule in one municipal court might not be the rule in another, depending on the judge's preference. This means it is important to reach out directly to the court when possible if you have any questions about how COFOs are handled there.

Criminal Fines

Criminal fines are the most common type of COFOs. They are a financial punishment ordered by the court after a defendant has been convicted of a felony, misdemeanor, or violation. The Oregon Legislature has set the smallest and largest amounts of fines a court can order for a criminal conviction,⁷ which are listed below. When asked by the defendant, the court has to consider the defendant’s financial situation before deciding how large the fine should be.⁸ The court might reduce or waive the fine altogether if the defendant can’t afford it, or if the defendant is facing a long prison sentence and will have little ability to pay. However, as we will discuss later, courts rarely do this, and they regularly order fines that defendants can’t afford.

TIP FOR DEFENDANTS: If you want the judge to consider your financial circumstances before the judge imposes fines in your case, be sure to speak to your attorney. Ask your attorney to raise your concern about affording your fines during the sentencing arguments. The judge is only required to consider your financial circumstances *if* they are told about them, they do not have to ask about them otherwise. Be proactive, because if you or your attorney do not mention your financial circumstances, the judge is unlikely to ask.⁹

Fines for Different Types of Cases

Felony Fines

The maximum fines for felony convictions are determined by ORS 161.625. The minimum fines for felony convictions are determined by ORS 137.286(2), unless a specific statute says otherwise. ORS 137.286(3) allows a court to waive felony fines at sentencing. The chart below shows the minimum and maximum fines for felony convictions.

Offense Degree	Min. Fine	Max. Fine	Mandatory
Murder/Aggravated Murder	\$200	\$500,000	No
Class A Felony	\$200	\$375,000	No
Class B Felony	\$200	\$250,000	No
Class C Felony	\$200	\$125,000	No
Unclassified Felony	\$200	Specific Amount	No

Misdemeanor Fines

The maximum fines for misdemeanor convictions are determined by ORS 161.635. The minimum fines for

7 In 2011, the Oregon Legislature completely changed the structure of circuit court fines and fees. Before 2011, criminal fines were called “unitary assessments” and there were different laws that applied. See *former* ORS 137.290 (2009), *repealed by* Or. Laws, ch. 597, § 118. Many defendants may still owe unitary assessments that were ordered by a court prior to 2011 under the old system of fines.

8 ORS 161.645.

9 The Court of Appeals has ruled that although a judge is required to *consider* the defendant’s financial circumstances, the judge does not need to *make an affirmative finding* that the defendant has the ability to pay. See *State v. Qualey*, 138 Or App 74 (1995). The Court of Appeals has also held that in a case where a defendant failed to advise the judge about his ability to pay, it was not an error for a court to fail to consider the defendant’s financial circumstances. *State v. Wheeler*, 268 Or App 729, 732-33 (2015). However, as long as the defendant asks the judge to consider financial circumstances, it is an error for the court to fail to do so. *State v. Beltran*, 127 Or App 238, 241 (1994).

misdemeanor convictions are determined by ORS 137.286(1), unless a specific statute says otherwise. ORS 137.286(3) allows a court to waive misdemeanor fines at sentencing. The chart below shows the minimum and maximum fines for misdemeanor convictions.

Offense Degree	Min. Fine	Max. Fine	Mandatory
Class A Misdemeanor	\$100	\$6,250	No
Class B Misdemeanor	\$100	\$2,500	No
Class C Misdemeanor	\$100	\$1,250	No
Unclassified Misdemeanor	\$100	Specific Amount	No

Violation Fines

For violation convictions, there are maximum fines set by ORS 153.018(2) and minimum fines set by ORS 153.021. Additionally, there are several other laws that determine fines for specific types of violations.¹⁰

There is a key difference in violation fines compared to fines for more serious crimes. Oregon law sets “presumptive fines” for each violation, meaning there is a standard fine expected for each violation.¹¹ Usually, these fines are what someone pays to resolve the violation without going to court, unless the law or the court specifically requires them to appear.¹² If they do go to

court, the judge can decide on a different fine amount, but it must still be between the statutory minimum and maximum. Normally, the original ticket will say what the presumptive fine is for that violation under state law.

Before January 1, 2023, the law did not allow courts to reduce the violation fine below a certain amount, so defendants always had to pay at least some money for a violation.¹³ In 2022, HB 4120 was passed, allowing courts to partially or fully waive violation fines in light of a person’s financial circumstances if the court finds that requiring the minimum fine would be “inconsistent with justice in the case.” This law took effect on January 1, 2023, and uses the same legal criteria as when courts decide whether to cancel fines for misdemeanors and felonies.

TIP: Many people have outstanding fines for violations that were imposed by a court before the law changed. These fines might now be eligible to be reduced below the statutory minimum, or completely waived. People who go back to the court to seek remission of violation fines should inform the court about the 2022 change in the law (HB 4120), as some judges might not be aware of these recent changes. Later on, this guide explains how to request a waiver of fines after a judgment has been made.

¹⁰ Violation fines are much more complicated than misdemeanor and felony fines. The amount of the violation fine depends on the specific details about the violation offense. ORS 153.800 requires the Chief Justice of the Oregon Supreme Court to publish a uniform fine schedule that lists the different fines for specific violations that are handled by the Oregon circuit courts. The most recent schedule of fines (SOF-23) can be found at: https://www.courts.oregon.gov/schedules/Schedule_Fines_Violations_SOF23_FINAL.pdf. We have included this schedule of fines in the Appendix of this guide.

¹¹ ORS 153.019; ORS 153.020.

¹² ORS 153.061.

¹³ Former ORS 153.021 stated that “a court may not defer, waive, suspend or otherwise reduce the fine for a violation” any less than 20% of the presumptive fine for that violation. This meant that courts were required to impose at least 20% of the presumptive fine for violations, even if the person could show that they would have no ability to pay that amount.

2023 Schedule of Fines on Violations (SOF-23)	Presumptive Fine	Minimum Fine (153.021)	Maximum Fine (Individuals) (153.018(2))	Maximum Fine (Corporations) (153.018(3))
Standard (153.019)				
(1) Class A violation	\$440	\$225	\$2,000	\$4,000
(2) Class B violation	\$265	\$135	\$1,000	\$2,000
(3) Class C violation	\$155	\$85	\$500	\$1,000
(4) Class D violation	\$115	\$65	\$250	\$500
(5) Class E violation (PCS offenses only)	\$100	\$45	\$100	N/A
<i>Local Surcharge Counties (example: Multnomah, Jefferson) add \$5 to fine amounts in each column. (traffice offenses and parking only)</i>				
Traffic Violation in Special Zone (153.020)				
(6) Class A violation	\$875	\$225	\$2,000	\$4,000
(7) Class B violation	\$525	\$135	\$1,000	\$2,000
(8) Class C violation, speed only	\$325	\$85	\$500	\$1,000
(9) Class D violation, speed only	\$225	\$65	\$250	\$500
<i>Local Surcharge Counties (example: Multnomah, Jefferson) add \$5 to fine amounts in each column. (traffice offenses and parking only)</i>				

Criminal fines are determined per charge, not per case. A person could face multiple charges within one criminal case, each carrying its own fine if the defendant is convicted. If a defendant is convicted of several charges and the court imposes the minimum fine for each one, the total financial penalty can quickly become overwhelming. Often, this combined penalty may far exceed the severity of the actual criminal behavior, especially considering that a defendant may be convicted of multiple charges stemming from a single criminal act.

CASE EXAMPLE: Jane Defendant entered someone’s home without permission and stole the owner’s purse. She then used the credit cards from the purse to make three unauthorized purchases. Although this was one criminal act, Jane faced nine charges in circuit court: Burglary, two counts of Theft, three counts of Computer Crime, and three counts of Identity Theft. She pleaded guilty to five of these charges. During sentencing, neither Jane nor her attorney raised her financial struggles or addiction issues, despite her difficult circumstances before the crime. The judge imposed a \$200 minimum felony fine for each of the five charges Jane admitted to, totaling \$1000, and sentenced her to prison. There was no consideration given to Jane’s inability to pay or the impact of this debt on her future financial stability.

In some cases, criminal fines are negotiated during plea bargains between the prosecutor and defense attorney.

Because fines are a part of the punishment for a crime, the prosecutor might offer less time in jail or prison if the defendant agrees to pay a specific fine. These types of plea bargain discussions also happen often with restitution or compensatory fines, where the prosecutor may offer less incarceration time if the defendant agrees to pay a specific amount to the victim. When a defendant accepts these terms (or “stipulates”), the court will typically order the agreed upon fine without more carefully considering whether the amount is actually fair.

CASE EXAMPLE: Jane Defendant entered a plea agreement where the prosecutor agreed to not recommend fines or restitution. In exchange, Jane agreed that she was not eligible to receive earned time credit or other forms of early release programs from prison until she had begun serving the last of her consecutive sentences. Because Jane Defendant “stipulated” to the agreement, the court did not consider whether it would be fair for her to spend more time in prison in exchange for having no financial penalties.

Deciding the Amount of a Criminal Fine

Courts have the authority to determine the amount of a criminal fine within the legal limits. They can also choose to waive these fines.

When deciding whether to order fines and the amount of the fine, courts must take into account these factors:

1. The defendant’s financial resources (such as income, public assistance benefits, savings, and any property they own)
2. The defendant’s other financial obligations (such as monthly expenses, debts, or if they are financially responsible for other family members).
3. Whether paying the fine would be too burdensome.
4. Whether the defendant can pay in installments.¹⁴

Judges are not required to ask the defendant about their financial circumstances unless the defendant or their attorney brings them to the court’s attention.

TIP FOR DEFENDANTS: Before sentencing, gather as much detailed information about your finances as possible to present to the court. Share your income, monthly expenses, debts, and any other relevant financial details. Discuss this with your attorney. If you’re worried about not being able to afford the fines, speak to your attorney beforehand and ask them to argue that the court should reduce or waive the fine amount.

Courts can fully waive fines (including violation fines) after considering the factors listed above if the court determines that it would be unjust to impose them.¹⁵

¹⁴ ORS 161.645, which applies to fines in felony and misdemeanor cases, says that the court must consider: “(1) The financial resources of the defendant and the burden that payment of a fine will impose, with due regard to the other obligations of the defendant; and (2) The ability of the defendant to pay a fine on an installment basis or on other conditions to be fixed by the court.”

¹⁵ ORS 137.286(3), ORS 153.021(2) (“[A] court may waive payment of the minimum fine established by this section, in whole or in part, if the court finds that requiring payment of the minimum fine would be inconsistent with justice in the case.”).

Despite these requirements, the vast majority of defendants don't have their financial situations considered by the court before fines are imposed. Attorneys and judges often prioritize thinking about prison, jail, or probation terms over fines. Additionally, courts may have many cases

to get to and so may not take the time to ask questions or carefully consider the defendant's financial burdens. This results in defendants being ordered to pay fines that they cannot afford or are unfair to their given circumstances.

Court-Appointed Attorney Fees

Defendants facing felony or misdemeanor charges have the right to a court-appointed attorney (public defender) if they can't afford one.¹⁶ Almost all defendants in Oregon would suffer serious financial hardship if they had to pay the full cost of a private defense attorney. Courts will assess a defendant's financial eligibility before appointing an attorney.¹⁷

Many defendants mistakenly believe that court-appointed attorneys are entirely free. That isn't true. Although defendants with court-appointed attorneys won't have to pay the high cost of a private defense attorney, they are often ordered to pay some attorney fees. These fees may be determined at the beginning or end of the case and can vary greatly depending on the court, judge, and defendant's circumstances. Whether a defendant is in jail or not while the case is pending may also affect the fees charged. Unfortunately, even those facing extreme poverty or those who are houseless may still be ordered to pay attorney fees.

CASE EXAMPLE: In one extreme case, John Defendant was financially qualified to receive a court-appointed attorney to represent him. However, at the sentencing hearing John was ordered to pay \$103,827.26 in attorney fees. The judge ordered this amount despite the fact that John was unemployed and houseless when he was arrested, incarcerated throughout his case, and sentenced to a lengthy prison sentence. During the sentencing hearing, John was so focused on the prison sentence that he had no memory of such a large amount of attorney fees being ordered. It wasn't until after he got to prison that he actually realized how much money the court had ordered him to pay. As a result, John's attorney never made any arguments about John's inability to afford this large amount, and John had to write letters to the court asking to reduce the attorney fees.

¹⁶ Attorneys are typically not appointed to defendants who are facing only violation offenses, since they do not include the risk of any jail time.

¹⁷ ORS 151.485(1) states that a person is financially eligible for appointed counsel if "the person is determined to be financially unable to retain adequate counsel without substantial hardship in providing basic economic necessities to the person or the person's dependent family under the standards established by the Public Defense Services Commission under ORS 151.216."

TIP FOR DEFENDANTS: You may want to discuss with your attorney prior to the sentencing hearing whether it is possible that the judge will order attorney fees, and if your attorney can argue for a lesser amount or for the attorney fees to be fully waived. Although it is possible to ask the court to waive or reduce the attorney fees after a case is over, it is usually harder to have attorney fees addressed by the court after they have already been ordered.

Determining the Amount of Attorney Fees

Court-appointed attorney fees usually affect individuals either at the start or the end of a criminal case. At the beginning, typically after the defendant's first court appearance, the defendant completes a form called an Affidavit of Financial Eligibility. This form helps the court decide if the defendant qualifies for a court-appointed attorney based on their finances. There is a \$20 application fee for an appointed attorney, but the court might waive it. Defendants in county jail may not need to fill out this form, as the court often assumes they can't afford a private attorney while incarcerated.

Once the court receives the defendant's Affidavit of Financial Eligibility, a court staff member uses it to decide if the defendant can be appointed an attorney, and calculate any immediate payment that must be made (called the "contribution amount") toward attorney fees. This process takes place with a court clerk or administrative staff member, not with a judge. Sometimes a clerk may order a defendant to pay some amount towards attorney fees even

after their calculation recommends a \$0 contribution amount. If the clerk determines the defendant must pay a contribution amount, they enter this information as a limited judgment in the court record of the defendant's criminal case. In many cases, payment is required right away.

TIP FOR DEFENDANTS: When completing the Affidavit of Financial Eligibility, providing detailed information about financial hardship increases the likelihood of the court making a fair determination about the contribution amount. Courts consider various factors such as employment history, monthly income, previous unemployment, and public assistance benefits such as Social Security, disability, or food stamps. They also examine monthly expenses, property, assets, debts, and dependents. It's important for you to be as detailed as possible in filling out the affidavit.

While the Affidavit of Financial Eligibility and contribution amount are typically handled by a court staff member separate from the judge, defendants can still ask the judge to review these attorney fees. By law, the court can review any determination of the defendant's ability to pay the contribution amount at any time.¹⁸ The judgment entered by the court clerk usually includes a disclaimer stating that it is subject to review by the court. However, because defendants often don't know they can challenge this judgment, judges rarely review it in practice.

¹⁸ ORS 151.487(5).

TIP FOR DEFENDANTS: Once you've filled out the Affidavit of Financial Eligibility and received the limited judgment stating your contribution amount, consider discussing it with your defense attorney. If you disagree with the court clerk's decision, you have the right to ask the judge to review it at any time, even after the case is over. Talk to your attorney or the judge about why you think the amount is too high. Provide them with any additional financial information you may have missed on the Affidavit.

At the end of a criminal case, if a defendant is convicted, the judge may include in their sentence a requirement to pay certain costs related to the state's prosecution efforts.¹⁹ This could include a "reasonable attorney fee" for their appointed attorney. However, the defendant won't be ordered to pay attorney fees for criminal charges that were dismissed or if

they were found not guilty by a jury. The court may also order the defendant to repay some administrative costs related to determining their eligibility for appointed counsel and the costs of legal and other services related to their appointed counsel, regardless of the outcome of the case.²⁰ This type of fee can be ordered even if they are not convicted.

Unlike with criminal fines, courts *must* ask the defendant about their ability to pay attorney fees.²¹ The judge must first determine that the defendant can afford them before ordering them.²² It is a legal error for a judge to require a defendant to pay attorney fees without sufficient evidence that the defendant has the ability to pay.²³ The prosecutor has the burden of proof regarding a defendant's ability to pay attorney fees—this means that it's the prosecutor's responsibility to show that the defendant is able to pay, not the defendant's responsibility to show why they can't.²⁴ A defendant can also ask the court to reconsider their ability to pay at any

19 ORS 161.665(1).

20 ORS 151.505(1).

21 ORS 161.665(4) ("The court may not sentence a defendant to pay costs under this section unless the defendant is or may be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose."); ORS 151.505(3) ("The court may not require a person to pay costs under this section unless the person is or may be able to pay the costs. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the person and the nature of the burden that payment of costs will impose.").

22 "A court cannot impose fees based on pure speculation that a defendant has funds to pay the fees or may acquire them in the future." *State v. Pendergraph*, 251 Or App 630, 634, 284 P3d 573 (2012).

23 *State v. Coverstone*, 260 Or App 714, 716, 320 P3d 670 (2014) (reversing the trial court's order of \$8000 attorney fees without any evidence that the defendant could afford to pay that amount, and rejecting the state's argument that "the trial court is not required to engage in a colloquy or factfinding as to defendant's ability to pay on the record.")

24 *State v. Mendoza*, 286 Or App 548, 549, 401 P3d 288 (2017) ("It is the state's burden to prove that a defendant 'is or may be able to pay' attorney fees.") (quoting *State v. Kanuch*, 231 Or App 20, 24, 217 P3d 1082 (2009)).

time if their circumstances have changed.²⁵ However, in practice, judges often overlook defendants' financial situations before ordering attorney fees.

TIP FOR DEFENDANTS: Judges can reconsider waiving or reducing attorney fees at any time, even years later. If you're unable to pay previously ordered fees, you can file a Motion for Remission of Court-Ordered Financial Obligations (discussed later in this guide) and explain why you can no longer afford them.

Restitution

When someone is found guilty of a felony, misdemeanor, or violation that caused financial loss for a victim, the court can order the defendant to pay restitution. This is to compensate the victim for their reasonable and proven expenses related to the crime, aiming to “make the victim whole again.” The victim doesn't have to be the person directly harmed—they could be anyone who suffered financial loss due to the crime.²⁶ Restitution can also be ordered to be paid to an insurance company or to

the state's Criminal Injuries Compensation Account if they paid money to the victim.²⁷

Restitution is guaranteed by Oregon law and the state constitution.²⁸ If the victim asks for restitution, the prosecutor is supposed to notify the defendant and provide evidence of the victim's financial losses to the court at a restitution hearing. There is a specific procedure for holding a restitution hearing and many different laws about what evidence is required and the timing of when it must be presented

25 ORS 161.665(5) (“A defendant who has been sentenced to pay costs under this section and who is not in contumacious default in the payment of costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the immediate family of the defendant, the court may enter a supplemental judgment that remits all or part of the amount due in costs, or modifies the method of payment under ORS 161.675.”); ORS 151.505(4)(a) (“A person who has been required to pay costs under this section and who is not in contumacious default in the payment of the costs may at any time petition the court for remission of the payment of costs or any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the person ordered to repay or on the immediate family of the person, or will interfere with the ability of the person to complete an alcohol or drug treatment program, the court may enter a supplemental judgment that remits all or part of the amount due or modifies the method of payment.”).

26 ORS 137.103(4).

27 ORS 137.103(4)(c), (d). The Criminal Injuries Compensation Account is an account of money that is funded by defendant's COFOS payments and run by the Department of Justice. Crime victims can apply to the Crime Victims' Compensation Program to request financial assistance for losses they have suffered from a crime, and if they are approved they will be given some amount of money from the account.

28 ORS 137.106(2)(a) (“If the court finds from the evidence presented that a victim suffered economic damages, in addition to any other sanction it may impose, the court shall enter a judgment or supplemental judgment requiring that the defendant pay the victim restitution in a specific amount that equals the full amount of the victim's economic damages as determined by the court.”); Or Const, Art I, § 42(1)(d) (“To preserve and protect the right of crime victims to justice, . . . the following rights are hereby granted to victims[:] . . . The right to receive prompt restitution from the convicted criminal who caused the victim's loss or injury[.]”).

to the court. This procedure is discussed in more detail below. In theory, the laws regarding restitution are supposed to allow a defendant the opportunity to challenge whether restitution is granted or how much restitution is awarded, but in practice these restitution hearings rarely happen.

There is no maximum limit on restitution amounts, so they can be substantial, even hundreds of thousands or millions of dollars. Judges must order restitution if the prosecutor meets legal requirements, without considering the defendant's ability to pay.²⁹ This means that as long as the prosecutor can show that the victim lost a certain amount of money as a result of defendant's crime, the judge must order restitution equal to that amount. Judges are only allowed to consider the defendant's financial situation to decide on a reasonable payment plan.³⁰ The only way a judge can reduce restitution is if the victim agrees to accept less.³¹

CASE EXAMPLE: Judges are not allowed to reduce the restitution amount based on a defendant's inability to pay, which can lead to extremely high restitution amounts that defendants can never afford. For example, Jane Defendant was ordered to pay over \$1.2 million to an insurance company, despite having very limited financial resources. After considering the fact that Jane had no money, the best the court could do was put her on a payment plan of \$50 per month beginning after her release from prison.

Laws around restitution have changed several times, most recently in 2022.³² These changes almost always favor prosecutors, making it harder for defendants to get a fair restitution hearing and challenge unfair restitution amounts. Low-income defendants are particularly affected, as they're often pressured to agree to restitution amounts as part of plea deals instead of having a restitution hearing to contest them. Sometimes, restitution is ordered without the defendant's knowledge, even months after their sentence, catching them off guard. This happens because prosecutors are allowed to seek restitution well after the defendant has been sentenced, and defense attorneys may have lost contact with the defendant during that time or simply fail to notify them. Defendants will be surprised to learn that their COFOs have been amended to add thousands of dollars of additional restitution.

It's crucial for defendants to discuss restitution with their attorneys and understand the process fully in their case before sentencing.

TIP FOR DEFENDANTS: Restitution hearings can be confusing and overwhelming, but there are two important points for defendants to remember that you can discuss with your defense attorney:

1. You have the right to request a restitution hearing in all cases. You don't have to agree to restitution without contesting it. Your attorney can discuss the pros and cons of agreeing to restitution with you.

29 ORS 137.106(2)(a).

30 ORS 137.106(5)(a).

31 ORS 137.106(2)(b). In the case of "person felonies" (a felony crimes against a person, rather than property), the victim's decision to accept a lesser amount of restitution must be in writing. ORS 137.106(2)(b)(B).

32 HB 4075 (2022) (codified as Or Laws 2022, ch 57).

2. You have the right to have an attorney represent you at your restitution hearing, even if it occurs months after your sentencing. The same attorney who represented you in your criminal case must also represent you at the restitution hearing.

Current Restitution Procedure

The court may schedule a restitution hearing either on the defendant's sentencing date or sometime after. Often, these hearings occur weeks or even months later, even if the defendant is in jail or prison.

According to current law, prosecutors are not required to inform the court or the defendant about a restitution request during the criminal case or before sentencing. They have up to 90 days after the defendant is sentenced to file a motion requesting restitution,³³ with the possibility of an extension for "good cause."³⁴ Sometimes a prosecutor will tell the court and the defendant that they expect to file a motion for restitution in future, but they don't have all the information at the time of sentencing to know the amount of money being requested. In other cases, the prosecutor might give absolutely no heads up that restitution is going to be a part of the case, only to surprise the defendant

weeks or months later. Judges have wide discretion in granting extensions, so there's no firm deadline for the prosecutor to request restitution.³⁵

TIP FOR DEFENDANTS: Since prosecutors can request restitution up to 90 days after sentencing (and sometimes longer if the court allows), defendants may not be aware of it, especially if they're incarcerated or have changed addresses. The prosecutor has to send the restitution motion to your attorney but is not required to send it to you. Make sure your attorney has a way to contact you. To stay informed, keep the court updated on your current address and stay in touch with your defense attorney at least until the 90 days have passed.

When a prosecutor files a motion for restitution, they must provide evidence of the damages suffered by the victim,³⁶ typically in the form of bills or statements. If the motion is filed after sentencing, the prosecutor must state to the court that they provided the defendant with supporting documentation showing the basis for the restitution request.³⁷ The court then schedules a restitution hearing, which could be several weeks or months later. If the defendant wants to object to the restitution, they must file an objection with the court at

33 ORS 137.106(1)(b)(A).

34 ORS 137.106(1)(b)(A).

35 "Good cause" is not defined anywhere in the restitution statute, and has only been briefly discussed in case law. For example, the Court of Appeals has held that a prosecutor's carelessness in missing the 90-day time limit does not constitute good cause for requesting an extension. *State v. Biscotti*, 219 Or App 296, 300-01, 182 P3d 269 (2008). Court's will have a large amount of discretion in deciding what is a "good cause" reason to give a prosecutor more than 90 days to request restitution.

36 ORS 137.106(1)(a).

37 ORS 137.106(1)(b)(A).

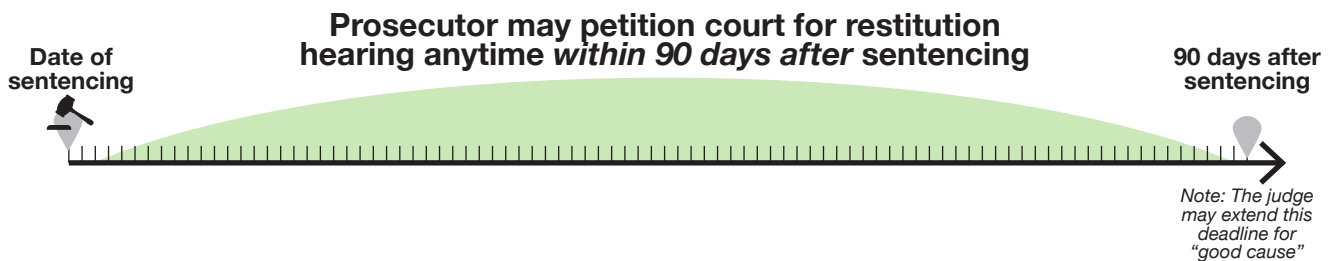
least 15 days before the hearing,³⁸ including the reason for the objection.³⁹

TIP FOR DEFENDANTS: Sometimes, defense attorneys fail to tell you that the prosecutor is requesting restitution. They may simply agree to the restitution without consulting you first. If you discover that your attorney has done this, you are allowed to contact the court directly and request a reconsideration of restitution.

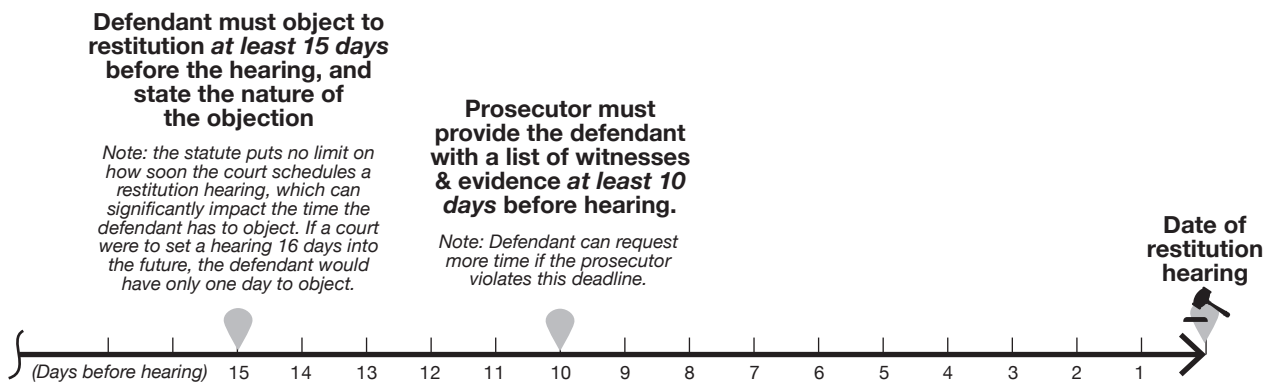
At least 10 days before the restitution hearing, the prosecutor must provide the defendant with a list of witnesses and copies of any documents they plan to show to the court.⁴⁰ If there are physical exhibits that the prosecutor will use in court, they must let the defendant inspect them prior to the hearing.⁴¹ If they fail to do so, the defendant can ask for more time to review the information.⁴²

Below is a simple diagram outlining the restitution hearing process:

Timelines for Restitution Hearing



Once the judge schedules the hearing:



38 ORS 137.106(1)(b)(B).

39 ORS 137.106(1)(b)(B).

40 ORS 137.106(7)(a)(A), (B).

41 ORS 137.106(7)(a)(B).

42 ORS 137.106(7)(b).

TIP FOR DEFENDANTS: The timing of the restitution procedure can put defendants at a disadvantage. While they're required to object to restitution at least 15 days before the restitution hearing, they may only receive the list of witnesses and exhibits 10 days before. This means that defendants may not have a chance to see the list of witnesses or copies of the relevant documents before they have to object. To navigate this, defendants may want to object to restitution at first, and then later tell the court that they no longer object if they review the evidence with their attorney and decide that the prosecutor's evidence supports. Since you are required to state a reason you are objecting to restitution, you should say that you haven't received any evidence from the prosecutor to show why the restitution is appropriate.

is no right to a jury. Typically, witnesses include the victim and others who can testify about the financial loss. There may also be representatives from businesses or insurance companies present if they're seeking restitution.

Restitution hearings are like trials in that both sides are given an opportunity to present witness testimony and arguments. However, sometimes there may be very little witness testimony if the restitution evidence can be shown through documents like bills or statements. The rules of evidence that apply in criminal trials do not apply in restitution hearings, so the hearings are often more informal.⁴³ However, the defendant may still be able to object to certain evidence if they can show the court why the evidence isn't reliable.⁴⁴ The defendant must be allowed to be present for the restitution hearing, unless they voluntarily waive this right.⁴⁵ If a defendant does not show up for the restitution hearing after being told the date and time of the hearing, the court can only proceed if they have other information demonstrating that the defendant's failure to appear is voluntary or intentional.⁴⁶

After reviewing documents, hearing witnesses, and considering arguments from both sides, the judge will order the defendant to pay restitution if the prosecutor has proven three factors:

1. the defendant committed a crime;
2. the victim suffered economic damages; and

The Legal Standard at a Restitution Hearing

If the defendant hasn't agreed to pay restitution and objects to the restitution request within the specified time, the court will schedule a hearing. This hearing usually involves the prosecutor, the victim, the defendant, the defense lawyer, and any witnesses from either side. These hearings occur before a judge and there

43 *State v. Lobue*, 304 Or App 13, 20-21, 466 P3d 83 (2020) (the rules of evidence do not apply at a restitution hearing, but a defendant may challenge hearsay evidence on the grounds that it lacks "minimal indicia of reliability" under the Due Process Clause of the Constitution).

44 *Id.*

45 *State v. Kesch*, 150 Or App 288, 291, 946 P2d 322 (1997).

46 *State v. Shutoff*, 263 Or App 615, 618, 330 P3d 1237 (2014) ("[W]here the only information available is that a defendant is absent and was told the date of trial, a trial court lacks sufficient information to conclude that the defendant's absence is voluntary.").

3. there's a direct link between the crime and the financial harm to the victim.⁴⁷

“Economic damages” include monetary losses like medical expenses, burial and memorial expenses, loss of income, property damage, and certain other expenses that can be objectively verified, are necessary, and are reasonable.⁴⁸ A victim cannot claim economic damages for loss of their ability to earn a living in future.⁴⁹

Here are some common examples of restitution requests and how they might be proven:

- **Theft of property** – bill or statement showing the value of the property that was stolen.
- **Damage to property** – bill or statement from a repair shop or insurance company showing how much it would cost to fix the property.
- **Injury to victim requiring medical treatment** – medical bill or health insurance statement showing the victim’s out-of-pocket expenses for the medical care.
- **Injury to victim requiring mental health counseling** – bill or statement showing the victim’s out-of-pocket costs to receive counseling.

Under the most recent change to the restitution law, if the victim’s financial losses are documented in a bill, estimate, or invoice from a business, healthcare provider, or public body, the court will presume them to be reasonable.⁵⁰ This can pose a problem for defendants because oftentimes these bills are inflated. For instance, if a victim seeks restitution for car damage, an estimate from a repair shop, even if it’s higher than usual, is typically accepted as reasonable. Similarly, when items are stolen, victims might claim the original purchase price rather than the current value, which could be lower due to depreciation. For example, if a victim seeks restitution for a three-year-old cell phone, they are entitled to the value of a three-year-old phone, not a brand-new phone. In cases like jewelry, where value is highly subjective, it’s crucial for the defendant to challenge the value during the hearing to avoid excessive restitution.

The court may decide not to grant restitution if it finds the victim’s financial losses weren’t a reasonably foreseeable outcome of the defendant’s actions.⁵¹ Additionally, if the defendant proves during the hearing that the victim could have lessened the losses, the court can reduce the restitution accordingly.⁵²

47 *State v. Jordan*, 249 Or App 93, 95, 274 P3d 289, *rev den*, 353 Or 103 (2012).

48 ORS 137.103(2)(a) (incorporating the definition found in ORS 31.705(2)(a) (“‘Economic damages’ means objectively verifiable monetary losses including but not limited to reasonable charges necessarily incurred for medical, hospital, nursing and rehabilitative services and other health care services, burial and memorial expenses, loss of income and past and future impairment of earning capacity, reasonable and necessary expenses incurred for substitute domestic services, recurring loss to an estate, damage to reputation that is economically verifiable, reasonable and necessarily incurred costs due to loss of use of property and reasonable costs incurred for repair or for replacement of damaged property, whichever is less.”). ORS 137.103 also includes a separate definition of economic damages for the rarely charged crime of Subjecting Another Person to Involuntary Servitude.

49 ORS 137.103(2)(a).

50 ORS 137.106(1)(c).

51 “Foreseeability requires the court ‘to determine whether damages are too attenuated to be recoverable’ based on ‘whether a reasonable person in the defendant’s position would have foreseen that someone in the victim’s position could reasonably incur damages of the same general kind that the victim incurred.” *State v. Howard*, 292 Or App 517, 522–23, 424 P3d 803 (2018) (quoting *State v. Ramos*, 358 Or 581, 597, 368 P3d 446 (2016)).

52 *State v. Rock*, 280 Or App 432, 437–38, 380 P3d 1084 (2016).

TIP FOR DEFENDANTS: Restitution hearings are the **only** chance for defendants to question if the amount the victim is asking for is fair. Defendants might hesitate to challenge the restitution request because of fear that the judge could see it as a lack of remorse and punish them more harshly. It's wise for defendants to talk to their attorney to plan their approach and gather evidence if they believe the victim is asking for too much.

TIP FOR DEFENDANTS: If you are being asked by the prosecutor to agree to restitution, talk to your attorney about what the consequences of that will be for your specific case. Every criminal case involves a variety of different factors for defendants to consider, and some defendants may be ok with agreeing to restitution in order to get a better plea offer. Ask your attorney about different counter offers in the plea negotiations if you don't think the restitution being requested is reasonable.

Prosecutors' Plea Negotiation Tactics Regarding Restitution

Despite the supposed protections in place for defendants to challenge restitution that could financially harm them for life, courts rarely hold these hearings. Instead, prosecutors often include restitution in plea deals to prevent defendants from exercising their right to a restitution hearing. A prosecutor can not only condition a plea agreement on a defendant's agreement to pay restitution but can also include that the defendant pay a specific amount of money, even if that amount may be unreasonable.

Unfortunately, many defendants lose the chance to challenge restitution because they feel pressured to agree to it as part of their plea deal. Prosecutors commonly include restitution in initial negotiations to save time and effort. Given prosecutors' considerable power over the type of conviction and the length of the sentence, defendants may feel they have no choice but to agree to restitution to avoid long prison terms. This often leads to defendants agreeing to unreasonable restitution amounts that wouldn't hold up in a hearing.

CASE EXAMPLE: Jane Defendant received a plea offer from the prosecutor in her criminal case where the prosecutor used the threat of restitution as a way to get her to agree to an unfavorable agreement. During the plea negotiations, the prosecutor told Jane that the State would not ask for restitution or criminal fines if Jane agreed that she would not be eligible for any prison programs that could allow her early release from prison. Jane agreed because she was worried about a large financial penalty, so she avoided paying restitution but may have served more time because of it.

TIP FOR DEFENDANTS: The court can only order restitution for crimes the defendant was convicted of,⁵³ unless the defendant agrees through a plea agreement to pay for dismissed charges. This often happens in theft cases, where prosecutors may agree to drop some charges if the defendant will pay restitution for all charges, even those that were dropped.

Forcing defendants to agree to restitution is becoming more and more common because prosecutors are trained to do so. In 2017, the Oregon Department of Justice Crime Victims' Services Division created a guide to restitution for prosecutors and

victims called "Honoring a Victim's Right to Restitution: Roles and Responsibilities."⁵⁴ They advise prosecutors to encourage defendants to agree to restitution amounts, even if they don't have all the available information about the amount of financial loss, to avoid a restitution hearing.⁵⁵ The guide also suggests specific language to include in plea deals, like waiving challenges to garnishing inmate trust accounts and waiving a defendant's right to contest a finding of the ability to pay at sentencing.⁵⁶ Prosecutors may use their leverage to push defendants into agreeing to restitution amounts that might otherwise be seen as unfair.

Compensatory Fines

Compensatory fines are less common than other penalties in criminal cases, so they are not as familiar to defendants and attorneys. These fines are often confused with restitution because they both involve defendants paying money to the crime victim(s). A compensatory fine is a share of a criminal fine that the court orders

the defendant to pay the victim instead of paying it to the court.⁵⁷ In order to tell a defendant to pay a compensatory fine, the court must first order the defendant to pay a fine for the crime they have been convicted of. Since criminal fines are limited by legal maximums, compensatory fines are also limited to these maximums.⁵⁸

53 *State v. Storm*, 318 Or App 809, 820, 509 P3d 132 (2022) (defendant's admission to punching wall and throwing vacuum cleaner did not permit restitution for damage to other property that defendant was not convicted of); *State v. Parsons*, 287 Or App 351, 358–59, 403 P3d 497, *adh'd to as modified on recons*, 288 Or App 449, 403 P3d 834 (2017), *rev den*, 362 Or 545 (2018) (trial court erred in imposing restitution for stolen pants when the defendant admitted only to damaging pants).

54 Oregon Department of Justice Crime Victims' Services Division, *Honoring a Victim's Right to Restitution: Roles and Responsibilities* (June 2017), available at https://www.doj.state.or.us/wp-content/uploads/2020/01/Victim_Impact_Statement_Best_Practice.pdf.

55 Oregon Department of Justice Crime Victims' Services Division, *Honoring a Victim's Right to Restitution: Roles and Responsibilities* (June 2017), at 4-5 ("Determine restitution losses as early as possible, but if restitution is TBD [to be determined] at time of sentencing, ask the defense to stipulate up to an agreed upon amount as an effort to eliminate the need for a restitution hearing later. Be creative, some losses may be novel in nature, but within the law.").

56 *Id.* at 9 ("Waive all statutory, constitutional, and administrative challenges to garnishment of inmate trust accounts."); ("Waive rights under ORS 161.675(1), which requires an express ability to pay finding at the time of sentencing.").

57 Defendants do not actually make restitution or compensatory fines payments directly to the crime victim. All of a defendant's COFOS are paid to the court, and the court will then direct the portion that is restitution or a compensatory fine to the victim.

58 *State v. Gray*, 113 Or App 552, 555, 833 P2d 341 (1992).

Compensatory fines are only ordered in misdemeanor and felony cases, not for violations.⁵⁹

Judges sometimes order the entire fine to be compensatory without directly saying so, further blurring the line between compensatory fines and restitution. For example, if a judge orders a defendant to pay a \$5000 compensatory fine, without saying anything else about fines, this implies that the defendant was ordered to pay a \$5000 fine and 100 percent of the fine will be a compensatory fine.

Compensatory fines can only be ordered when there is a victim who has suffered some type of financial loss as a result of the crime.⁶⁰ Unlike restitution, compensatory fines aren't limited to the exact amount of the victim's loss,⁶¹ but are based on any injury the victim could sue for in civil court.⁶² A court can order both restitution and a compensatory fine.⁶³

Compensatory fines are almost never the subject of a separate hearing before a judge; they are almost always negotiated as part of a plea agreement. That means that defendants are often forced to pay large compensatory fines without the court considering whether the defendant can actually afford to pay them.

Oregon law says that when a court decides to impose a fine and how large the fine will be, the court must consider the defendant's financial circumstances and how much of a burden the fine will place

on the defendant, as well as whether the defendant can pay the fine in installments.⁶⁴ This law applies to both regular criminal fines and to compensatory fines. Defendants may want to talk to their attorney about bringing up their financial situation before the court orders a compensatory fine.

For a court to order a compensatory fine without it being a part of the plea agreement, the court must find that the defendant committed a crime, (this is usually presumed if the defendant is being sentenced after being found guilty or after pleading guilty), caused economic damage to the victim, and that there's a direct link between the crime and the damage⁶⁵— similar to the requirements for restitution. The fact that there are similar requirements for restitution and compensatory fines further leads to confusion between these two different COFOs.

If the crime victim later files a civil lawsuit against the defendant to try and recover money damages, there are some protections in place to prevent the defendant from paying the victim twice. Any amount that a defendant pays towards compensatory fines will be credited against any civil judgement for punitive damages coming out of the same incident.⁶⁶ Restitution payments, on the other hand, are credited "against any judgement in favor of the victim" in the civil action, not just for punitive damages.⁶⁷

59 ORS 137.101(1); ORS 161.515 (defining the term "crime").

60 ORS 137.101(1); *State ex rel. Juvenile Department of Douglas County v. S.J.P.*, 247 Or App 698, 702, 271 P3d 124 (2012).

61 *State v. Garlitz*, 287 Or App 372, 377–78, 404 P3d 1090 (2017).

62 ORS 137.101(1).

63 ORS 137.101(2).

64 ORS 161.645.

65 *State v. Barkley*, 315 Or 420, 432–38, 846 P2d 390, *cert den*, 510 US 837 (1993) (discussing and applying ORS 137.101(1)).

66 ORS 137.101(3).

67 ORS 137.109(1).

Supervision Fees

In Oregon, if someone is found guilty of a misdemeanor or felony, they might get probation. In some cases, a defendant may be sentenced to first serve jail time, and then probation after they are released from jail. At sentencing, the court gives the defendant certain conditions that they must follow while they are on probation. While on probation, the defendant is monitored by a probation officer to make sure they follow the court's conditions. Before January 1, 2022, defendants on probation had to pay a monthly supervision fee of at least \$25/month,⁶⁸ but a new law ended this fee for anyone sentenced after January 1, 2022.⁶⁹

Sometimes, instead of regular probation, the court might give what's called "bench probation," where the defendant doesn't meet with a probation officer regularly but still has to follow the court's conditions.⁷⁰ There used to be a bench probation fee (typically a \$100 flat fee,⁷¹ but it could also be monthly⁷²), but the new law ended this fee for anyone sentenced after January 1, 2022.⁷³

The new law that was passed in 2021 ending supervision fees in Oregon was SB 620. SB 620 ended monthly probation fees and stopped courts from ordering them for people who got probation after January 1, 2022. It also stopped the parole board from ordering supervision fees for people getting out of prison. The law also ended the practice of allowing courts to impose or collect fees where a defendant has violated probation.

TIP FOR DEFENDANTS: The law ending monthly supervision fees says that it only applies to defendants sentenced after January 1, 2022. However, we have not seen any examples of defendants who may have been sentenced before that date and are still being required to pay monthly supervision fees. If you're on some type of supervision and still being charged fees, talk to your supervision officer or the lawyer who handled your case. They can help you figure out if your fees should have been ended by the new law.

Miscellaneous Fees

Defendants might have to pay various less common fees depending on the type of criminal conviction. Sometimes, these extra charges are added without

the defendant knowing, or they're quickly mentioned during sentencing without discussing if the court could waive them. Defendants often face these fees when

68 Former ORS 423.570(1), (3) (1995), repealed by Or Laws 2021, ch 653, § 1.

69 Or Laws 2021, ch 653, § 1.

70 ORS 137.540(8).

71 Former ORS 137.540(8) (2021), amended by Or Laws 2021, ch 653, § 3.

72 Former ORS 423.570(2) (1995), repealed by Or Laws 2021, ch 653, § 1.

73 Or Laws 2021, ch 653, § 1.

they're given alternatives to jail time, like diversion or probation. In such cases, they might accept the fees without fully understanding them, to avoid a conviction or harsher punishment.

TIP FOR DEFENDANTS: If you're unsure about any of the fees mentioned during sentencing, don't hesitate to speak up. Ask your defense attorney or the judge to clarify what the fee is for, if it's mandatory, or if it can be waived. You can also request the court to consider your financial situation when deciding on the fee.

Here are some examples of miscellaneous fees defendants might have to pay:

Diversion Agreement Fee

In some cases, a defendant facing certain misdemeanor or felony charges might get a chance to enter into a diversion agreement with the prosecutor. This means the defendant agrees to meet certain conditions, and in return, the charges will be dismissed. While the diversion is ongoing, court proceedings are halted. However, if the defendant breaks the agreement, the state will restart the prosecution. The court might ask the defendant to pay a \$100 program fee, but it can choose to waive some or all of it for someone who can't afford it.⁷⁴

Misdemeanor Probationary Diversion (Conditional Discharge) Fee

This is another type of diversion, often called a conditional discharge. It is used when a defendant is found guilty or pleads guilty to certain misdemeanors (or certain class C felonies if they're entering a specialty court like drug court, veterans' court, or mental health court). The court delays the judgment until after the defendant finishes a probation period. If the defendant completes the probation successfully, the charges are dropped. Those who choose this diversion have to pay a \$100 fee, which must be paid within 90 days unless the court allows more time.⁷⁵

Bench Probation Fee

Bench probation (discussed in the section on "Supervision Fees") is a type of probation monitored directly by the court instead of a community corrections office. Before January 1, 2022, defendants on bench probation had to pay a \$100 fee mandated by the court. This fee had to be paid by the end of the probation period.⁷⁶

License Suspension Fee

Whenever a court has to inform the Oregon Department of Transportation about a suspension or restriction on driving privileges due to failure to comply with a court order, failure to pay fines, or failure to appear, it can add a \$15 fee without notifying the individual.⁷⁷

Courthouse Construction Surcharge

In certain situations, the chief judge of a county circuit court can order an extra \$5 charge on fines imposed on defendants

74 ORS 135.891(2).

75 ORS 137.533(1)(e).

76 Former ORS 137.540(8).

77 ORS 809.267.

in that county. This money goes towards funding courthouse construction or debt.⁷⁸

Extradition Costs

If a defendant is arrested by law enforcement outside Oregon and needs to be brought back to face charges, the Oregon prosecuting agency may seek extradition. This involves coordinating with the law enforcement agency outside Oregon to transport the defendant back to an Oregon county jail. After the case concludes, the court can order the defendant to pay the extradition costs, specifically the expenses of transporting them back to Oregon.⁷⁹ Extradition costs are only imposed if the defendant is ultimately convicted.

TIP FOR DEFENDANTS: Very few criminal cases involve extradition fees because most defendants are already in Oregon when they are arrested. Since it doesn't come up often, attorneys and judges may not know that Oregon law limits courts from charging extradition costs unless the defendant can afford to pay them or may be able to pay them in future. That means the court must consider the defendant's finances and how much of a burden extradition costs will be.⁸⁰ In one case, a defendant was ordered to pay more than \$2,300 in extradition costs that she could not afford. These costs were removed after the defendant showed they should not have been ordered.

Costs of Prosecution

After a criminal case ends in a conviction, the court can decide if the individual should pay for certain expenses the state had to pay during the prosecution.⁸¹ These costs might cover attorney fees and other lesser-known expenses like witness fees or investigation fees.⁸²

Probation Violation Fee and Extradition Cost

If someone on probation is found to have violated probation and is brought back to court, the court used to require them to pay a \$25 fee, and they could also be asked to cover the costs of being brought back to Oregon for the hearing if they were arrested out of state.⁸³ These mandatory fees were canceled in 2021 by Oregon SB 620.

DUII Fines and Fees

For those convicted of driving under the influence of intoxicants (DUII), the court usually imposes several different fines and fees. Some are mandatory, while others the court can waive or reduce depending on the defendant's financial situation. The amount of DUII fines will vary based on specifics of the case—like previous offenses, blood alcohol level, or whether a child was in the vehicle. Below is a basic guide to DUII COFOs.

DUII Diversion Fee

A first-time DUII offender might be eligible for a diversion program to avoid a conviction on their record. If the program

78 ORS 1.188; Chief Justice Orders (CJOs) 16-026 and 16-030.

79 ORS 161.655(7).

80 ORS 161.655(4).

81 ORS 161.665(1), (4).

82 See, e.g., *State v. Heston*, 74 Or App 631, 704 P2d 541 (1985) (discussing witness fees and investigation fees as costs that can be passed on to the defendant under ORS 161.655).

83 Former ORS 137.540(12)(a).

is successfully completed, the defendant can avoid getting a conviction. To enter the program, the defendant typically has to pay fees including:

- a \$490 DUII diversion petition fee (which could be waived or put on a payment plan for low-income individuals);⁸⁴
- \$150 for an alcohol and drug assessment and treatment;⁸⁵ and
- in some counties, a fee of \$5 to \$50 for attending a victim impact panel, with the exact fee decided by the county. This fee cannot be waived.⁸⁶

DUII Conviction Fines and Fees

If a defendant isn't eligible for a DUII Diversion Program and is convicted of a DUII, they must pay certain fines and fees:

- **DUII Conviction Fee:** \$255 (This fee can be waived entirely or partly for low-income defendants)⁸⁷
- **DUII Fine:** The amount of the fine depends on the defendant's prior DUII convictions, if their blood alcohol content (BAC) was above 0.15%, and whether there was a child in the vehicle. The fines are mandatory and cannot be waived or reduced, regardless of the defendant's financial situation.⁸⁸

Here are the minimum and maximum fines for DUII offenses:

DUII Conviction	Minimum DUII Fine	Maximum DUII Fine (misdemeanor)	Minimum DUII Fine If Defendant Has BAC Over .15%	Maximum DUII Fine if the Defendant has BAC over .15%	If child in the vehicle
First conviction	\$1000	\$6250	\$2000	\$6250	\$10,000
Second conviction	\$1500	\$6250	\$2000	\$6250	\$10,000
Third or subsequent conviction	\$2000	\$6250	\$2000	\$6250	\$10,000

84 ORS 813.210(2); ORS 813.240.

85 Oregon Judicial Department, *Summary of DUII Diversion Fees* (Feb. 2022), https://www.courts.oregon.gov/forms/Documents/DUII_Diversion_Form_6_Summary_of_Fees.pdf.

86 ORS 813.235.

87 ORS 813.020(1); ORS 813.030.

88 ORS 813.010(6), (7).

How COFOs May Continue to Grow Even After the Case is Over

MANY PEOPLE ASSUME that once their criminal case is over, the COFOs ordered by the court will stay the same. That's usually not true. If a person doesn't make payments right away, their fines and fees can increase in various ways. Courts may add extra administrative fees without warning, or send COFOs debt to a collections agency that adds their own fees. It is often a shock when the person finds out that they owe much more money than they expected. If the court didn't consider their financial situation before sentencing, these growing fees will only make the person's already heavy financial burden worse.

TIP: After your case ends, expect additional fees if you can't pay immediately. While some fees are inevitable, courts might delay adding them if you're on a payment plan and keep your contact information up to date with the court. Call the court and explain that you want to keep the balance from growing too much. Many courts will offer a low monthly payment plan or delay collecting the balance for a while. While this might not work for everyone, it could help avoid some of the hefty extra fees.

After the court sentences a defendant, any fines and fees that the defendant was ordered to pay are combined into

one total amount owed.⁸⁹ The defendant is then supposed to pay this right away, unless they arrange a payment plan or get sentenced to jail or prison. Sometimes, the judge might order a payment plan during the sentencing hearing.⁹⁰ Other times, the person may work out a payment plan with court staff or a supervision officer (like a probation or parole officer) after sentencing.⁹¹ If the defendant was sentenced to probation, they can ask the court to review the payment plan anytime as long as the COFOs debt remains outstanding.⁹²

TIP FOR DEFENDANTS: If you know you can't pay everything within 30 days, ask the judge for a payment plan. They might need more details about your finances before deciding on the plan. Court clerks or staff can also help set up a plan after your case ends, but they usually don't ask for as much financial information. Plus, the judge might agree to waive some of your fines and fees, which court clerks can't do.

COFOs While in Prison or Jail

When a defendant is sentenced to jail or prison and ordered to pay COFOs, they usually do not have to pay right away unless the court makes a special finding that the defendant has the ability to pay even while incarcerated.⁹³ Oregon law requires this finding to be said by the court on the record before the court orders the defendant to make payments while incarcerated.⁹⁴ If the court does not say anything about whether the defendant can pay, the money owed can't be collected until the person is released.⁹⁵

Even though incarcerated people aren't required to pay COFOs immediately, a recent law lets the Oregon Department of Corrections (ODOC) deduct money from a person's prison accounts to pay back what they owe. This means that money deposited in a person's prison accounts by friends and family, or money earned from working while in prison, can be deducted to pay COFOs.⁹⁶ These automatic deductions started happening in October 2020. ODOC takes 10% of any money put into an adult in custody's (AIC's) account for

89 ORS 137.143.

90 ORS 161.675(1) authorizes the court to "order payment to be made immediately or within a specified period of time or in specified installments."

91 ORS 161.675(3).

92 ORS 161.675(3).

93 ORS 161.675(1) ("If a defendant is sentenced to a term of imprisonment, any part of the sentence that requires the payment of a sum of money for any purpose is enforceable during the period of imprisonment if the court expressly finds that the defendant has assets to pay all or part of the amounts ordered.")

94 *Id.*

95 *State v. Foos*, 295 Or App 116, 119, 433 P3d 493 (2018).

96 ORS 423.105.

COFOs and 5% for a savings account for when they're released.⁹⁷ Once the savings account reaches \$500, ODOC takes the full 15% for COFOs.⁹⁸ Some types of money, like veterans' benefits or tribal money, are protected from this deduction.⁹⁹ ODOC sends the money it takes out each month to the Oregon Judicial Department (OJD) to go towards the person's outstanding COFOs.

When the money gets to the court, there are laws that control how the money is applied.¹⁰⁰ Usually, the court credits the money towards the oldest COFOs first. But if a case involves restitution or a compensatory fine, the money goes towards that case first, even if there are older COFOs.¹⁰¹

TIP: Some people in prison have successfully asked the court to forgive or reduce their COFOs by writing letters or filing a Motion to Modify Financial Obligations (also called a "Motion for Remission of Court-Ordered Financial Obligations"). One reason that these requests can be successful is that many courts don't fully understand how little money AICs have. The impact of a 15% deduction on an AIC can have serious consequences—like not being able to call a child or loved one, or being unable to buy basic necessities like toothpaste. If you're in prison and want your COFOs forgiven or reduced, you might want to explain to the court in human terms how the deduction negatively affects you each month.

Payment Schedule Assessment Fee

Defendants in Oregon circuit court cases most commonly face a post-judgment fee called a payment schedule assessment fee. This fee is unique to circuit courts and doesn't apply in municipal court or justice court cases. When the circuit court orders COFOs during sentencing, the defendant is required to pay it immediately unless they arrange a payment plan.¹⁰² The payment

schedule assessment fee is an extra charge added to the total COFOs balance to cover the administrative costs of creating and managing the defendant's account. Over the last twenty years, the amount of this fee has changed more than five times. This is because Oregon statutes set a maximum amount for this fee (currently \$200 per case), but allows the Chief Justice of the

97 ORS 423.105(3)(b).

98 ORS 423.105(3)(b)(B). It should be noted that that all AICs, even those who don't have COFOs, already receive an automatic 5% deduction of their prison savings account to be given to a general victims fund. ORS 423.105(2)(b).

99 ORS 423.105(1)(f).

100 ORS 423.105(4).

101 ORS 423.105(4)(a).

102 ORS 161.675(1).

Oregon Supreme Court to set a lower fee if they wish to.¹⁰³ Each court case incurs one payment schedule assessment fee. Individuals with multiple cases in the same circuit court or across different circuit courts will face multiple payment schedule assessment fees.

Before the COVID-19 pandemic, the payment schedule assessment fee was at its highest and was ordered very quickly after a judgment. Back then, it was added to a person’s COFOs without warning just 30 days after judgment. If the person couldn’t pay their COFOs in full within those 30 days, the fee was:

- \$50 if the COFOs amount owed was under \$150;
- \$125 if the COFOs amount was between \$150 and \$399;
- \$200 if the COFOs amount was over \$400.¹⁰⁴

Recently, efforts to ease the financial burden on defendants, largely due to COVID-19, have led to changes in this fee to make it less burdensome. First, in March 2020, the Chief Justice issued an emergency order urging courts to waive the fee.¹⁰⁵ Then, the Oregon Legislature changed the law to allow courts to fully waive it.¹⁰⁶ The current rules for the payment schedule assessment fee are:

- No fee if the defendant pays their COFOs within 12 months or have a payment plan that will end within 12 months;

- If the payment plan lasts more than 12 months, a \$25 fee is charged;
- The court can waive or suspend the \$25 fee if it deems it appropriate based on the defendant’s financial situation;
- Any previously imposed payment schedule assessment fees issued in line with previous orders from the Chief Justice must be waived by April 1, 2022.

Despite these recent changes to try and reduce the burden of the payment schedule assessment fee, the fee remains unnecessary, confusing, and unexpected for defendants.

TIP: Sometimes court staff refer to the payment schedule assessment fee as “collections fees.” However, this is not the same as a “collections referral fee,” which is a fee charged if the court has to send the COFOs balance to a collections agency. This collections referral fee is discussed in the following section.

Municipal courts and justice courts have a fee similar to the payment schedule assessment, but it’s not as consistently applied. Oregon law allows these courts to charge a fee of up to 25% of the total amount owed, capped at \$250, if the defendant doesn’t pay their COFO balance within the time frame set by the judge. However, the law says that if the defendant pays as directed by the court, this fee must be waived or put on hold.¹⁰⁷

103 ORS 1.202. The maximum payment schedule assessment fee has grown, as prior versions of the statute set the maximum at \$50 (between 2001 and 2007) and \$100 (between 2007 and 2009). Also, previous versions of this statute set a minimum payment schedule assessment of \$50, but there is currently no minimum in the law.

104 Chief Justice Order (CJO) No. 11-027 (effective between July 1, 2011 and October 4, 2021).

105 Chief Justice Order (CJO) No. 20-010 (effective until 60 days after the end of the Governor’s declared state of emergency).

106 2021 HB 2176.

107 ORS 137.118(3).

Collections Referral Fee

If someone has unpaid COFOs and hasn't contacted the court or set up a payment plan, the court may hand over their debt to a collections agency. Circuit, municipal, and justice courts can all use these collections agencies to try to recover money.¹⁰⁸ The timing for this varies, but it's usually between 30 days and a year after the judgment was entered and the court has not received payment. When the court sends the debt to collections, they add a collections referral fee, which can significantly raise the total owed. This fee isn't fixed but is a percentage of the existing debt, so there's no maximum limit. We've even seen a fee as high as \$350,000 in one case.

TIP: The Oregon Judicial Department has stated they do not send debts to collections agencies while the person is incarcerated in jail or prison, but mistakes can happen. If you inform the court of your incarceration (or have someone contact them on your behalf), they will usually remove the case from collections and retract any fees imposed during your incarceration.

Some court websites mention that the collections referral fee is 28% of the COFOs balance at the time the court makes the referral to the collection agency, but this isn't always accurate. We have seen countless collections referral fees that differ from this 28% amount. There is no statute that restricts how much the circuit court can charge for this fee.

TIP: If you know you owe COFOs to a court but can't afford to make payments right away, it is always better to contact the court instead of letting them send the balance to collections. It is important that the court has your current contact information so you receive any notices they send you about your COFOs. Most courts will be willing to arrange a low monthly payment plan instead of sending your case to collections or they may be willing to defer your payments until you are in a better place to pay.

Depending on the court, a person's debt may be sent to either a private collections agency or to the Oregon Department of Revenue, which acts as the State of Oregon's collections agency. Usually, the court will send the debt to a collections agency and charge a collections referral fee without informing the person. Once the debt is with a collections agency, they may try to collect it, often by sending letters to the defendant about the outstanding balance. If there are no payments made within a year, the debt is returned to the court and sent to another collections agency. It's possible for a person to accumulate multiple collections referral fees as their debt is passed between agencies.

¹⁰⁸ ORS 137.118(1).

CASE EXAMPLE: Jane Defendant was sentenced in October 2004 to a state prison sentence. After her release, she struggled with houselessness and did not have the money to pay her outstanding COFOs. She remained houseless and lived paycheck to paycheck for years after her release. During this time, the court sent her case to two different collections agencies—first in May 2008 and then again in September 2010. Each time, the court added a collections referral fee, adding \$1221 and \$1394.40 to her balance.

there's no consistency based on location. This means someone with unpaid fines for traffic offenses across neighboring areas might have to deal with multiple collections agencies, each with its own payment rules and often higher costs than the person can handle. While the Oregon Judicial Department doesn't charge interest on judgments, these private collections agencies might.

TIP: Collections agencies may have their own fees not governed by court rules or state law. Once the court sends the debt to a collections agency, the court doesn't keep track of any additional fees or interest the agency may add. So, when someone contacts the court about their debt, the staff can only tell them what the COFOs balance was *before* it was sent to collections, but not what the balance may have grown to.

Unlike Oregon circuit courts, where each county uses the same collections agencies chosen by the Oregon Judicial Department, municipal courts and justice courts may each have their own individual collections services. Some courts might use the same collections agencies, but

Interest on Criminal Judgments

The balance of COFOs on a criminal judgment can increase each year due to interest charges. Under Oregon law, criminal judgments can accrue interest at a rate of 9% per year for up to 20 years.¹⁰⁹ However, interest doesn't accumulate while the defendant is incarcerated. Interest only

starts being charged on the first day of the second month after release.¹¹⁰

Currently, the Oregon Judicial Department (OJD) is not charging interest on fines and fees from circuit courts.¹¹¹ OJD says this has been the case since 2007, due to difficulties in calculating interest

¹⁰⁹ ORS 137.183(1)(a); ORS 82.010.

¹¹⁰ ORS 137.183(1)(b).

¹¹¹ Under Oregon law, the State Court Administrator, or a municipal judge in a local court, may waive the interest on any criminal judgment or on a category of criminal judgments. ORS 137.183(2), (3). In a recent presentation on Oregon Judicial Department Fines and Fees, representatives from the Oregon Judicial Department confirmed that interest on criminal judgments is currently being waived. *Oregon Judicial Department Fines and Fees*, Oregon Judicial Department (July 2022), available at <https://multco-web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/07.11.2022%20Mult%20LPSCC%20OJD%20Presentation%20on%20Fines%20and%20Fees%20%281%29.pdf>.

accurately for over 1.4 million cases.¹¹² But this policy might change in future, and not all municipal or justice courts are waiving interest. To know if interest will be charged on their outstanding balance, people should contact the court directly and ask about their policy.

TIP: Always expect your balance to increase if you can't pay it right away. Even though Oregon circuit courts aren't charging interest now, they might begin charging interest in the future. Keeping your contact information updated with the court and agreeing to a low monthly payment plan might help avoid extra charges.

112 Emily Green, *Unpaid Fine? The Poorer You Are, the More You Owe*, Street Roots (Nov 9, 2018), <https://www.street-roots.org/news/2018/11/09/unpaid-fine-poorer-you-are-more-you-owe>.

Getting COFOs Reduced or Cancelled

MANY PEOPLE READING this guide might already have overdue COFOs, which can lead to various problems such as difficulty getting or renewing a driver's license. If you're struggling with these consequences, there may be something you can do.

TIP: While you might not have a lawyer to help you seek relief from your COFOs, consider reaching out to your previous defense attorney. They might answer questions, assist in the process, or even represent you to reduce or eliminate your existing COFOs. It's worth a shot.

There's some good news for those seeking relief from outstanding COFOs debt. Judges seem open to waiving

or reducing them, especially after the financial strain of the COVID-19 pandemic. Though there's no guarantee because every court and every judge are different, courts seem willing to hear from those with limited financial resources and consider reducing or waiving COFOs.

In general, Oregon circuit courts have been more willing to reconsider COFOs compared to municipal and justice courts. Two recent changes have made this possible in circuit courts but not in municipal or justice courts. First, a new rule created by the Oregon Judicial Department allows circuit court judges to waive or reduce certain COFOs,¹¹³ except for restitution, compensatory fines, and fines that are mandatory under state law.¹¹⁴ Second, a new template motion was created in 2023, based on this rule, to

113 UTCR 4.120

114 UTCR 4.120(1)

help defendants in circuit courts seek modifications to their financial obligations. This template can be used but is not compulsory. The form is available online

and can be customized with additional information as needed. You will also find a copy in the Appendix of this guide.

Preparing to Ask a Court to Reduce or Waive COFOs Debt

Before you write a letter or file a motion with the court to ask for a waiver or a reduction of your COFOs, do your research. Understand your COFOs as best you can. You will want to know the answers to the following questions before you begin:

- In which courts do you owe COFOs?
- What are the case numbers?
- What is the current balance in each case?

Then, for each case, put together the reasons you will give the court when you ask for a waiver or reduction of your COFOs. Here are some steps to get you started.

Step 1: Find out the courts to which you owe COFOs, the case numbers, and specific details of your COFOs.

For the most accurate information about your COFOs, it's best to contact the court directly or visit them in person. You can typically find the court's phone number by an internet search or on the court's website. The Oregon Judicial Department has a website with links to every individual circuit court here: <https://www.courts.oregon.gov/courts/Pages/default.aspx>. A

registry for individual municipal courts and justice courts can be found here: <https://www.courts.oregon.gov/courts/Pages/other-courts.aspx>. Most circuit courts have an accounting office where court clerks can help you with information about your outstanding debt and ways to pay or seek relief. Some courthouses also have computers where you can look up detailed information about your case. Any fines ordered by the judge will be listed in your criminal judgment, which you can request from court staff. If you've received a letter from the court or a collections agency, it might also have a phone number you can call. Be ready with a pen and paper before you dial and try to find a quiet spot so you won't get distracted or be unable to hear the information the clerk tells you. When you speak to a court clerk, let them know you're trying to get relief from fines you can't afford and ask the questions below. Write down the information they give you.

1. What are the court case numbers where I owe an outstanding COFOs balance?
2. What is the name of the judge for each case where I owe COFOs?
3. How much total money do I owe on each case?
4. What is the breakdown of COFOs on each case?

- a. How much are the court fines?
 - b. How much are the court fees?
 - c. How much is restitution?
 - d. How much are the compensatory fines?
5. How do I ask the court for relief from this debt if I can't afford to pay? (In circuit courts, the clerk will probably tell you about the template Motion to Modify Financial Obligations. In municipal court or justice court, the court clerk may tell you that the judge accepts written letters or that the judge allows defendants to appear in person in court to make their request on a particular date).
 6. If the court tells you your balance has been sent to collections, ask whether the court will agree to pull the balance back from collections so you can ask the court about relief. In some cases, the court may tell you that you must ask the collections agency directly about a payment plan, but sometimes the court will take the case out of collections. Ask the court for the name and contact information of the collections agency.

Your former defense attorney may also be a helpful source of information about your COFOS. Consider contacting them. If they don't seem responsive to your questions, think about just asking them for a copy of your judgment. Although your judgment might not have the latest information about the status of your COFOS (if additional fees have been added), it will tell you what COFOS you originally owed.

If your reason to try to resolve your COFOS is that they are getting in the way of you obtaining or reinstating your driver's license, call the Oregon DMV at 503-945-5000. The DMV can tell you the courts and case numbers for which you owe COFOS that are holding up your driver's license. It may be that some of your COFOS are

not impacting your driver's license, so this will help you focus on the most important COFOS first.

Step 2: Find out how to ask the courts for COFOS relief.

Municipal and Justice Courts

When you talk to court staff about your fines and fees, ask them how you can request relief from the court. In municipal and justice courts, they might suggest writing a letter or email to the judge, appearing in person, or following a specific court policy for COFOS such as a payment plan. If they recommend writing to the judge, make sure to get the correct spelling of the judge's name and mailing address. If they suggest appearing in person, ask for details on how and when to do so.

If your fines and fees have been sent to a collections agency, ask if the judge can bring them back so you can address them in court. If they will not, ask for the collections agency's contact information. You may need to figure out your debt with the collections agency rather than the court. Some agencies offer payment plans. However, there are risks in contacting them; providing your address or phone number could make it easier for them to pursue collections in the future if they didn't previously have your contact information. Even just calling the agency from your phone can give away your number. Consider this risk before reaching out.

Circuit Courts

If you are dealing with COFOS in circuit court, you can prepare and submit a Motion for Remission of Court-Ordered Financial Obligations (also called a Motion to Modify

Financial Obligations). There are more details on this below in Step 4.

Step 3: Put together your reasons for why the court should reduce or cancel your COFOs.

It's important to think carefully about your reasons for why the court should waive or reduce your COFOs so you can make a good presentation to the court, whether in writing or in person. Here are some things to think about to start you off:

Your financial situation

This is the most important thing the judge will consider. Use these questions to explore and prepare an explanation of your finances:

- Did the judge consider your financial situation when the COFOs were first ordered? If so, what about your financial situation has changed since then?
- Are you currently employed? If not, when did you last have a job? What is your monthly income now compared to when the COFOs were first ordered?
- Do you receive any public assistance or benefits, like food stamps/SNAP, TANF, social security disability, supplemental security income, housing assistance, etc.?
- What are your monthly expenses, including rent, utilities, groceries, transportation, medical costs, and other expenses?
- Do you have any children or dependents you support?
- Do you own any assets, like a home, car, bank account, property, or investments?
- Do you have any outstanding debts in addition to these COFOs, like medical bills, student loans, credit card debt, or other debts including COFOs owed to other courts?
- Are there any other barriers preventing you from paying your COFOs that you want the court to know about?
- What problems are you facing because of your outstanding COFOs debt? Are they stopping you from getting a driver's license or housing?

Positive information about you

While most judges will make their decisions about COFOs based on your ability to pay, it is often helpful to let the judge know positive information about you that will encourage them to give you relief.

- What positive changes have you made in your life since your criminal case? Be specific or give an example rather than just generally saying you have changed.
- What have you accomplished since your criminal case? This could be completing a class, starting treatment, starting a prosocial program, getting your GED or a degree, getting a steady job or a promotion, etc.
- How do you support family, friends, and your community in positive ways apart from or in addition to any financial support?
- How will the waiver or reduction of your COFOs improve your life?
- How will it improve your family's lives or your community?
- What will make the judge feel confident that you are not likely to have criminal cases in the future for which you will owe COFOs?

Support from others

Think about whether there is anyone in your community who can support your request to the court or vouch for the positive aspects of your life, who you are, and how a waiver or reduction of COFOS will help. Ask these people to write a letter to the court. You can include their letters with your letter to the judge or motion or offer to show them to the judge during your in-person presentation. Make copies of the letters and submit these copies to the court. Keep the originals for your records and in case you need them again.

Other things to think about

If you were ordered to pay restitution or compensatory fines as well as other COFOS, your payments to the court are often split between these different obligations. For example, if you owe fines and restitution, if you pay \$50 to the court the court may apply \$25 to your fines and \$25 to your restitution. You might be able to motivate the court to waive the other COFOS (fines and fees) so that 100% of your future payments go to the crime victims when you pay your restitution and/or compensatory fines.

Legal authority for your request to waive or reduce COFOS

Some judges may not be familiar with all of the various legal provisions that allow them to cancel or reduce COFOS. You may want to be ready to cite the specific statute, rule, case name, or Chief Justice Order when making your request to the court. If there is a legal authority from the previous sections that is relevant to your situation, prepare to discuss it with the court. Below are some of the most common legal authorities for people seeking relief from COFOS in circuit courts:

- **Uniform Trial Court Rule (UTCRC) 4.120:** allows a person to file a motion in circuit court for “reduction-eligible court-ordered financial obligations,” which are “any fines, fees, costs, or court-appointed attorney fees imposed by the court in a final criminal judgment of conviction or a judgment fining a person in contempt of court that a defendant has failed to pay in full as ordered by the court.” UTCRC 4.120 cites to several statutes that are listed below.
- **ORS 161.685(5)** (regarding fines): “If it appears to the satisfaction of the court that the default in the payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or installments due on the payment, or revoking the fine or order of restitution in whole or in part.”
- **ORS 161.665(5)** (regarding court costs and attorney fees): “A defendant who has been sentenced to pay costs under this section and who is not in contumacious default in the payment of costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the immediate family of the defendant, the court may enter a supplemental judgment that remits all or part of the amount due in costs, or modifies the method of payment under ORS 161.675 (Time and method of payment of fines, restitution and costs).”
- **ORS 151.487(5)** (regarding the appointed counsel contribution amount): “The determination that a person is able to pay or partially able to pay, or that a person no longer has the ability to pay the amount ordered in subsection (1) of this section, is subject to review at any time by the court.”

- **ORS 151.505(4)(a)** (regarding attorney fees): “A person who has been required to pay costs under this section and who is not in contumacious default in the payment of the costs may at any time petition the court for remission of the payment of costs or any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the person ordered to repay or on the immediate family of the person, or will interfere with the ability of the person to complete an alcohol or drug treatment program, the court may enter a supplemental judgment that remits all or part of the amount due or modifies the method of payment.”
- **ORS 153.021(2)** (regarding waiver of violation fines in municipal and justice court): As previously discussed in the section on fines, before January 1, 2023, courts were not allowed to reduce violation fines below the statutory minimum. This recently changed with the passage of HB 4120 (2022), and courts are now permitted to fully waive violation fines or reduce them below the statutory minimum. However, since the law only became effective on January 1, 2023, some judges in municipal and justice courts may not be familiar with the change. The new version of this statute states:

“Notwithstanding subsection (1) of this section, a court may waive payment of the minimum fine described in this section, in whole or in part, if the court determines that requiring payment of the minimum fine would be inconsistent with justice in the case. In making its determination under this subsection, the court shall consider:

(a) The financial resources of the defendant and the burden that payment of the minimum fine would impose, with due regard to the other obligations of the defendant; and

(b) The extent to which that burden could be alleviated by allowing the defendant to pay the fine in installments or subject to other conditions set by the court.”

Step 4: Make your request to the court.

By now, you should have researched or learned from the court clerk how to go about requesting a waiver or reduction of your COFOs and have prepared your reasons for why the court should do this. You are now ready to prepare a letter or a motion to the judge, or to appear in person. Here are some tips for writing to the judge or appearing in person.

Writing a letter or email to the judge of a municipal or justice court

Municipal or justice courts may allow you to request a waiver or reduction of COFOs by writing a letter or email to the judge. Here is a suggested outline for your letter or email:

[Date]

[Court Mailing Address]

Re: Case Number _____

Dear Judge _____ (Be sure to spell the judge's name correctly!)

My name is _____ and I owe \$_____ to this court in case number(s) _____. I am respectfully requesting the court [pull my debt back from collections and (if applicable)] reduce or waive my court-ordered financial obligations. [Include statements about the relevant statutes that apply to your situation].

[Description of your current financial situation and why you are unable to pay the COFOs. Include information about how the COFOs debt is negatively impacting you, such as if your driver's license has been suspended.]

[Positive information about yourself.]

[Description of your support from others in the community. If you have letters of support, mention them here.]

[Other considerations for the court. Tell the court if you are providing any supporting documentation along with your letter.]

Sincerely,

[Sign your name.]

[Print your name.]

[Print your mailing address and phone number.]

Follow the instructions the court staff have given you about how to submit this letter and the copies of support letters or documents by mail or email.

Consider following up with the court staff to check that your letter was received. Ask when you are likely to hear back from the judge. If you have not heard from the court after that estimated time has passed, consider respectfully contacting the court to find out what is happening with your request.

Appearing before the court to request a waiver or reduction of your COFOs

You may have the option to appear before the judge in municipal or justice courts to ask for a waiver or reduction of your COFOs, even if you have already submitted something in writing. Here are some tips:

- Double-check with the court staff about how and when you can appear before the judge. In some cases, you may have to give the court staff advance notice of when you plan to appear and your case number(s). For other courts, there may be a designated day and time that the court allows walk-ins for people seeking relief from COFOs, and you can show up at that time.
- Follow the court staff's instructions about how to appear before the judge.
- Before you plan to appear before the judge, make sure you have:
 - Your case number(s) and COFOs information of your cases;
 - Notes/outline of your reasons for the court to waive or reduce your COFOs; and
 - Copies of your supporting letters and documents to give to the court. Have an extra copy of these documents for

yourself so you can refer to them after you give copies to the judge.

- Plan to arrive at the court ahead of time in case there are any unexpected circumstances that delay you getting to the courtroom on time. Remember to leave yourself extra time to get through courthouse security, prepare yourself mentally, and make sure you have your documents in order.
- When appearing before the judge:
 - Greet the judge respectfully and address them as "Your Honor."
 - Try to speak clearly and loudly enough for the judge to hear.
 - Never interrupt the judge when they are speaking. Stop speaking if the judge starts speaking.
 - Ask the judge to clarify if there is something the judge says that you do not understand.
 - It is normal to be nervous when speaking to a judge. Take a deep breath or ask the judge for a moment to collect your thoughts if necessary.
- Before you leave the court, ask the judge or court staff about the next steps. You may want to write down notes immediately after leaving the court room in case you forget instructions you were given or something that the judge told you.

Filling out and submitting a template Motion to Modify Financial Obligations

As we've explained, if you are addressing COFOs in circuit court, there is a template you can use for a Motion to Modify Financial Obligation (which is also called a Motion for Remission of Court-Ordered Financial Obligations). The form is available on the Oregon Judicial Department's website

(<https://www.courts.oregon.gov/forms/Documents/MotionModFinancialObligations.pdf>) and is included in the Appendix of this guide. Below are some instructions and tips for filling out the form and filing it with the court. We recommend you read all the steps before you begin.

1. Fill out the top of the first page, known as the “case caption.” You will need to write in the county of the circuit court, your name, and the case number. If you are requesting relief from COFOs in multiple cases in the same county, you can write multiple case numbers in the case caption. If you have cases in different counties (for example, if you owe COFOs in both Multnomah County Circuit Court and Washington County Circuit Court), you must prepare and file a separate Motion in each county circuit court.
2. Complete the questions in the “Declaration in Support.”
 - Check the boxes for the statements that apply to you.
 - Then, write in your answers as necessary. The form provides very little space for you to answer questions. If you need more room for your answer, write, “See attached page for additional information.” Then, on a separate piece of paper, re-write the statement, e.g., *I have not paid as ordered or I missed a payment on a payment plan because . . .* and then write your full answer. For the statement, *I ask the court to reduce or waive the outstanding amounts that I owe because (explain the impact payment will have on you, including any barriers to complying with any court orders)*, this is where you can write all your reasons why the court
- should waive or reduce your COFOs, which you previously thought about and prepared. Include the additional page(s) with your motion.
 - If you have letters of support, write in your answer, “See attached letters of support,” and include *copies* of the letters. We recommend that you include copies of the letters of support, but save the originals for your records in case you need to make more copies for motions in other courts or to present them to judges.
 - If you have copies of documents that further demonstrate your financial situation or positive information about yourself, write in your answer, “See attached documents,” and include *copies* of those documents with your motion.
3. Read and understand the statement in bold: ***I hereby declare that the above statements are true to the best of my knowledge and belief. I understand they are made for use as evidence in court and I am subject to penalty for perjury.***
4. If you agree to the statement in bold, write in the date, sign your name, write in your name, and fill in your address and phone number. Make sure that your address and phone number are accurate so that the court can contact you.
5. Make two copies of your Motion and all additional pages/documents. You will need to serve one copy on the prosecuting attorney and have one copy for your records. You will submit the original to the court.
6. You must serve a copy of your Motion to the prosecuting attorney before you file your Motion with the court. To do this, mail a copy of your Motion with the additional pages/documents to the

prosecuting attorney’s office by U.S. Postal Services mail. If you do not know the address for the district attorney’s office, it is usually available on the district attorney’s website or you can ask a court clerk. Remember what date you mailed the copy.

7. Then complete the “Certificate of Mailing” section of the original Motion by writing in the date that you mailed a copy of the Motion to the prosecutor’s office and the mailing address of the prosecutor’s office. Then fill in the date, sign your name, and print your name. Tip: Fill in the “Certificate of Mailing” section on your copy of the motion so that you have that information for your records.
8. There is no fee to file the Motion to Modify Financial Obligation with the court.
9. To file the *original* completed Motion and additional pages/documents with the court, you can take it to the courthouse and file it in person or mail it to the court. It may be easier to bring your Motion to the courthouse because you can confirm with a court clerk that you have completed all the steps correctly.
10. You will be contacted by the court if the court decides to set a hearing where you appear before the judge. In some cases, the court may decide on your Motion without any appearance being necessary. If you want to appear before the judge, you should make sure to write on the first page of the Motion, “I am requesting oral argument.”

before you leave the courtroom. The judge may not always agree to do exactly what you asked for—for example, they may waive some, but not all, of the COFOs that you wanted to be waived. They also may reduce some of your COFOs but make you pay the remainder on a payment plan. Or maybe the judge will fully deny your request. Even if you disagree with the court’s decision, you should make sure to be respectful to the judge because you may have to go back in front of them some time in the future.

Courts have a lot of discretion when deciding whether to reduce or waive COFOs, and every judge is different. The information you provide about your financial situation may be viewed differently by different judges. If the court denied your request to reduce your COFOs, there are not many other legal options available. You may be able to appeal the decision, but filing an appeal is difficult to do without the assistance of an attorney. You can also consider some of the other forms of relief discussed in the following section.

There is no limit on the number of times you can write to the court or file a Motion to Modify Financial Obligations. If the court denies your request, listen carefully to the reasons why the court did not accept your argument. Once a reasonable period of time has passed, you can go back to the court and try again. The court may be more willing to waive or reduce COFOs if you can show that you have been consistently paying down your balance on a payment plan. Make sure that you spend this time addressing whatever issues or reasons the court had for denying your request.

After the court decides on your request to waive or reduce your COFOs

After you submit your request in writing or appear in court, the judge will decide whether to grant or deny your request. Make sure you get a copy of the court’s decision

Other Forms of Relief from COFOs

Most people seeking relief from COFOs will go to the courts that originally ordered their COFOs. However, in some limited circumstances, there may be other options to have COFOs waived or reduced. Below are some examples.

Expiration of Judgment

In all Oregon courts, a judgment that includes COFOs that are not for restitution is enforceable for 20 years after the entry of the judgment.¹¹⁵ However, if the judgment includes restitution, the judgment is enforceable for 50 years after the entry of the judgment.¹¹⁶ This means that if 20 years have passed since the date that the judgment was entered (or 50 years in the case of restitution), the defendant is no longer under a legal obligation to repay the ordered COFOs. Typically, court clerks will review the date of the judgment and the remaining balance of COFOs is automatically adjusted to a zero balance. However, if you believe that the judgment in your case has expired and you have still been ordered to pay COFOs, you should notify the court.

115 ORS 18.180(4); ORS 18.194(3).

116 ORS 18.180(4); ORS 18.194(3).

117 ORS 144.089.

118 ORS 144.089(2)(a).

119 ORS 144.089(2)(b).

120 ORS 144.089(1)(c).

Community Service Exchange Program

In some cases, a person can perform community service in exchange for waiver of certain COFOs.¹¹⁷ In 2017, the Oregon Legislature passed a law directing each county to set up a community service exchange program.¹¹⁸ However, each local supervisory authority (the local parole and post-prison supervision office) can choose whether or not to participate in the program.¹¹⁹ Under this program, people who have served a prison sentence and are serving an active period of parole or post-prison supervision may participate in community service with a community-based organization in exchange for waiver of:

- Costs of conviction;
- Attorney fees;
- Costs related to a defendant's conviction that built up while they were incarcerated;
- Payment schedule assessment fees; or
- Collection referral fees.¹²⁰

People are typically not allowed to use the community service program to waive any of these types of COFOs:

- Restitution;
- Compensatory fines;
- Felony or misdemeanor fines;
- Violation fines; or

- Miscellaneous fees such as the Bench Probation Fee, DUII Conviction Fee, etc.¹²¹

There are some limitations with the Community Service Exchange Program so it may not be an option for everyone. Firstly, not every local supervisory authority has decided to participate in the Community Service Exchange Program. Secondly, the program is only for people who have been released from a prison sentence and are on post-prison supervision or parole: if you are on probation, you are not eligible. Thirdly, the program only allows you to waive fees in most cases, not court fines. Lastly, many counties will require you to pay a fee in order to join the program.¹²²

Governor's Clemency Action – Remission of Fines

Oregon law gives the governor broad clemency powers. Clemency is a way for the governor to grant an individual defendant or a group of defendants some type of relief from their punishment for a criminal offense. The four types of clemency are:

- Pardon – where the governor overturns a criminal conviction so it is as if the conviction never happened and the defendant serves no criminal punishment (including COFOs)

- Commutation – where the governor substitutes a less harsh punishment than the sentence originally ordered by the court (usually by releasing someone from jail or prison)
- Reprieve – where the governor grants temporary relief from a criminal punishment
- Remission – where the governor independently reduces or waives the COFOs ordered in a criminal case

ORS 144.649 permits the governor to “remit, after judgement therefor, all penalties and forfeitures.” The governor’s remission power extends to any type of COFOs, in all courts in the state of Oregon (including circuit courts, municipal courts, and justice courts). However, remission of fines and other types of clemency are very rare. The governor can ignore an application for clemency or refuse to grant it, even if someone is very deserving. The governor has broad clemency powers but there is no legal authority or any binding precedents that control how the governor makes clemency decisions. That means clemency should be seen as a last resort and understood to have a very small chance of being successful.

121 ORS 144.089(3).

122 For example, both Polk County Community Corrections and Washington County Community Corrections require participants to pay a one-time fee of \$40 in order to join their community service exchange programs.

CASE EXAMPLE: In December 2022, Governor Kate Brown granted a remission for \$1.8 million in old traffic fines and fees for Oregonians, helping those with suspended licenses due to unpaid fines and fees.¹²³ In December 2023, Governor Tina Kotek expanded on Governor Brown’s order by granting a new remission order for old traffic fines and fees for individuals who were mistakenly left out of the first order.¹²⁴ Since taking office, Governor Kotek has granted far fewer clemency requests than Governor Brown, and it is unknown whether she has granted any additional requests for remission of COFOs other than this December 2023 order. Clemency decisions are often highly political rather than based on merit, so it’s not a dependable option for those seeking immediate relief from fines and fees.

For more information on Governor Brown and Governor Kotek’s remission orders, and to see a list of all the names and case numbers that received remission, visit the Oregon DMV’s website: “Fine Remittance – Do I Qualify?” at https://www.oregon.gov/odot/dmv/pages/fine_remittance.aspx. The website also includes frequently asked questions, instructions on how to check if you were included in the remission orders, and information on steps you can take if you believe you were mistakenly omitted from the remission orders.

Local Community Programs

There may be local community programs that offer opportunities for relief from your COFOs. These programs are all different and have their own rules for whether somebody qualifies for assistance. Some programs offer ways to have your COFOs forgiven or paid, while others may offer to help you advocate with the court to waive or reduce your COFOs. It is not always easy to find out what programs are available. To find out about programs, consider searching online, talking to people or organizations in your community, or asking your PO or the courts.

Examples:

Multnomah County Project Reset is a program that offers COFOs relief to low-income Oregonians. Only Multnomah County COFOs are eligible to be waived or reduced by Project Reset, not COFOs from other counties. For more information on their requirements or the application process you can visit their website at <https://mpdlaw.com/multnomah-project-reset/> or call their hotline at 503-273-8224.

The Multnomah County Alternative Community Service (ACS) – Restitution Crew is a program that allows participants to reduce the restitution that they owe on a criminal case, in exchange for participating in community service. This program appears to be available only in Multnomah County, as we are not aware of other counties offering a similar opportunity to reduce restitution through community service. For more

¹²³ If you want to check if you were among the list of defendants who were granted remission of fines by Governor Brown, you can check the remission order here: <https://www.courts.oregon.gov/Documents/RemissionOrdersCircuit-Court.pdf>.

¹²⁴ *Governor Kotek Forgives Fines and Fees Allowing More Oregonians to Reinstate Driver’s Licenses*, State of Oregon Newsroom (Dec. 5, 2023), <https://apps.oregon.gov/oregon-newsroom/OR/GOV/Posts/Post/governor-kotek-forgives-fines-and-fees-allowing-more-oregonians-to-reinstate-driver-s-licenses-95968>.

information about the Restitution Crew, contact Multnomah County Alternative Community Service at 503-988-3007.

The Sara Snyder Defendant Support Fund is an organization that offers financial support to those with small financial requirements stemming from their involvement in the criminal legal system. Currently, they require applications to be submitted by an attorney. More information can be found on their website at <https://www.sarasnyderfund.org>.

Conclusion

COFOS PRODUCE A HEAVY BURDEN on people involved in the criminal legal system and their families. Many details about COFOs and the laws that apply to them continue to be largely misunderstood by attorneys, judges, and stakeholders in the criminal legal system. As is clear by the large amount of information in this guide, it can be extremely difficult for defendants to understand the possible financial penalties during their criminal case and after it ends. Many Oregonians continue to be hindered by their COFOs balance

years, and sometimes decades, after their case is over. It is our hope that this guide provides individuals with the information and tools needed to lessen some of these harms from COFOs. We further ask that stakeholders view this guide as a starting point for considering much-needed reforms to the COFOs stemming from our criminal legal system.

Appendix

Motion to Modify Financial Obligations (Oregon Judicial Department)

Uniform Trial Court Rule 4.120

**Outline of Letter Requesting Waiver or Reduction of
COFOs to Municipal Court or Justice Court**

2023 Schedule of Fines on Violations (Oregon Judicial Department)

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

State of Oregon

Case No: _____

v.

**MOTION TO MODIFY FINANCIAL
OBLIGATION
and DECLARATION IN SUPPORT**

Defendant

MOTION

I am the Defendant in this case. I ask the court to reduce, modify, or waive court-ordered financial obligations.

I have reduction-eligible unpaid balances for fines, fees, court costs, and/or court-appointed attorney fees as ordered in this case

STATEMENT OF POINTS AND AUTHORITIES

UTCR 4.120 permits the court to reduce, modify, or waive reduction-eligible unpaid fines, fees, and costs, including court-appointed attorney fees, as provided in ORS 161.685(5), ORS 161.665(5), ORS 151.487(5), ORS 151.505(4)(a), or other applicable legal authority for obligations imposed as a result of a criminal conviction or contempt judgment.

DECLARATION IN SUPPORT

- This case is not on appeal and the time for appeal under ORS 138.071 has passed
- I am on a payment plan and have made all my payments to the court on time
- or*
- I have not paid as ordered or I missed a payment on a payment plan because (*explain*): _____

- I ask the court to reduce or waive the outstanding amounts that I owe because (*explain the impact payment will have on you, including any barriers to complying with any court orders*): _____

- I am currently receiving the following public assistance benefits (*check all that apply*):
- Food Stamps (SNAP-Supplemental Nutrition Assistance Program)

- Supplemental Security Income (SSI)
- Temporary Assistance to Needy Families (TANF)
- Oregon Health Plan (OHP)

I am currently represented by a court-appointed attorney

I am currently an adult in custody

I hereby declare that the above statements are true to the best of my knowledge and belief. I understand they are made for use as evidence in court and I am subject to penalty for perjury.

Date

Signature

Name (typed or printed)

Address

City/State/Zip

Phone Number

Certificate of Mailing

I certify that on *(date)*: _____ I placed a true and complete copy of this *Motion to Modify Financial Obligation and Declaration in Support* in the United States mail to the prosecuting attorney at *(address)*: _____

Date

Signature

Name (typed or printed)

4.120 MOTIONS TO REDUCE OR MODIFY OUTSTANDING COURT-ORDERED FINANCIAL OBLIGATIONS

- (1) As used in this rule, “Reduction-Eligible Court-Ordered Financial Obligations” means any fines, fees, costs, or court-appointed attorney fees imposed by the court in a final criminal judgment of conviction or a judgment finding a person in contempt of court that a defendant has failed to pay in full as ordered by the court. “Reduction-eligible court-ordered financial obligations” does not include compensatory fines imposed pursuant to ORS 137.101 or restitution awards as defined in ORS 137.103.
- (2) After the time for filing a notice of appeal under ORS 138.071, if the case is not pending on appeal, a person with outstanding reduction-eligible court-ordered financial obligations may file a motion in the criminal case requesting that the court reduce, modify, or waive unpaid fines, fees, and costs, including court-appointed attorney fees, as provided in ORS 161.685(5), ORS 161.665(5), ORS 151.487(5), ORS 151.505(4)(a), or other applicable legal authority. Notice must be provided to the prosecuting attorney by service or first-class mail. The motion must include the following:
 - (a) The statutory or other legal authority for the motion;
 - (b) Information showing that the person’s circumstances satisfy the legal criteria for the relief requested.
- (3) Any response to the motion must be served and filed not more than 28 days after notice under subsection (2) of this rule, or the date of filing the motion, whichever occurs latest. Upon good cause shown, the court may allow a late filing. Notwithstanding UTCR 4.050, the court may hold a hearing on the motion or may decide the motion without a hearing after the time for filing a response to the motion has expired.
- (4) If the court orders the reduction, modification, or waiver of some or all of the person’s unpaid fines, fees, or costs, the court shall enter an appropriate supplemental judgment.

Disclaimer

The Uniform Trial Court Rules (UTCR) are statewide rules that apply in each of Oregon’s 36 circuit courts. Rules are effective August 1 of each year unless specifically adopted “out-of-cycle.” The language of UTCR 4.120 is effective as of August 1, 2024, but may be subject to change in future. To review the current UTCRs, visit <https://www.courts.oregon.gov/programs/utcr/Pages/currentrules.aspx>.

[Date]

[Court Mailing Address]

Re: Case Number _____

Dear Judge _____ (Be sure to spell the judge's name correctly!)

My name is _____ *and I owe \$* _____ *to this court in case number(s)* _____. *I am respectfully requesting the court [pull my debt back from collections and (if applicable)] reduce or waive my court-ordered financial obligations. [Include statements about the relevant statutes that apply to your situation].*

[Description of your current financial situation and why you are unable to pay the COFOs. Include information about how the COFOs debt is negatively impacting you, such as if your driver's license has been suspended.]

[Positive information about yourself.]

[Description of your support from others in the community. If you have letters of support, mention them here.]

[Other considerations for the court. Tell the court if you are providing any supporting documentation along with your letter.]

Sincerely,

[Sign your name.]

[Print your name.]

[Print your mailing address and phone number.]

**2023 “SCHEDULE OF FINES” ON VIOLATIONS
(SOF-23)**

**PRESUMPTIVE, MINIMUM, AND MAXIMUM AMOUNTS
FOR VIOLATION OFFENSES IN OREGON**

EFFECTIVE JANUARY 1, 2023

ABOUT THE SCHEDULE

Effective Date: This “schedule of fines” (SOF-23) supersedes SOF-21A and all previous fine schedules and summaries and is effective on January 1, 2023.

Changes to Previous Schedule (SOF-21A): SOF-23 reflects the following substantive change from SOF- 21A:

- Updates some minimum fine amounts in response to Oregon Laws 2022, chapter 68 (House Bill 4120). House Bill 4120 removed the provision in ORS 153.021 that previously provided that the minimum fine amount for a specific fine violation is 20 percent of the presumptive fine for the violation. Unless otherwise provided by law, Oregon law no longer specifies a minimum fine amount for specific fine violations. This change took effect on January 1, 2023. Accordingly, this schedule does not specify a minimum fine amount for specific fine violations and lists “N/A” where those amounts would be included in the schedule.

Purposes: OSCA is publishing SOF-23 as a helpful guide for courts, law enforcement, and public safety partners. The schedule is not a substitute for reading the actual law.

SOF-23 provides summarized information on:

- the amount a citing enforcement officer must enter on the citation in the place designated for "presumptive fine" when charging a person with a violation offense under **state** law, regardless of the court the officer cites the person to appear in; and
- the minimum and maximum amounts courts can impose on conviction.

The presumptive fine is the amount the defendant can pay to resolve the violation offense without having to do anything else, unless the law or the court requires the defendant to appear. (See ORS 153.061.) The court can impose a higher fine, up to the maximum statutory sanction, if the law or the court requires the defendant to appear.

Minimum Fine Amounts: The minimum fine amounts included in this schedule are the amounts provided in ORS 153.021(1). However, House Bill 4120 (2022) amended ORS 153.021 to allow courts to waive payment of the minimum fine, in whole or in part, if the court determines that requiring payment of the minimum fine would be inconsistent with justice in the case.

Offenses Included: SOF-23 includes amounts for Class A, B, C, D, and E violations and common “specific fine violations.”

Local Surcharges (Jefferson County and Multnomah County): Pursuant to Chief Justice Orders 16-026 and 16-030, in accordance with the process set forth in ORS 1.188, there is a \$5 surcharge on each fine assessed by a circuit court for traffic offenses as defined in ORS 801.555(2) and parking ordinances in Jefferson and Multnomah Counties.

What Presumptive Fines Are Not/Do Not Do: The presumptive fines listed in SOF-23:

- are **not** bail, security-release amounts, or security-release deposit amounts; they do not affect security-release procedures under ORS 135.265;
- do **not** include any moneys for restitution or costs; and
- do **not** apply to misdemeanors or felonies.

Where to Find Schedules: SOF-23 and earlier schedules are posted in PDF on the Oregon Judicial Department’s website—www.courts.oregon.gov.

- Click on **Forms/Rules/Fees**.
- Click on the **Court Feestab**.

(a)	(b)	(c)	(d)	(e)
2023 Schedule of Fines on Violations (SOF-23)	Presumptive Fine	Minimum Fine* [153.021]	Maximum Fine (Individuals) [153.018(2)]	Maximum Fine (Corporations) [153.018(3)]
Standard [153.019]				
(1) Class A violation	\$440	\$225	\$2,000	\$4,000
(2) Class B violation	\$265	\$135	\$1,000	\$2,000
(3) Class C violation	\$165	\$85	\$500	\$1,000
(4) Class D violation	\$115	\$65	\$250	\$500
(5) Class E violation (PCS offenses only)	\$100	\$45	\$100	N/A
<i>Local Surcharge Counties (example: Multnomah, Jefferson) add \$5 to fine amounts in each column (traffic offenses and parking only).</i>				
Traffic Violation in Special Zone [153.020]				
(6) Class A violation	\$875	\$225	\$2,000	\$4,000
(7) Class B violation	\$525	\$135	\$1,000	\$2,000
(8) Class C violation, speed only	\$325	\$85	\$500	\$1,000
(9) Class D violation, speed only	\$225	\$65	\$250	\$500
<i>Local Surcharge Counties (example: Multnomah, Jefferson) add \$5 to fine amounts in each column (traffic offenses and parking only).</i>				
Tobacco and Alcohol				
(10) <u>A Viol.</u> OLCC licensee furnishing alcohol to a minor, 471.410(6), <u>first offense</u>	\$440	\$225	\$2,000	\$4,000
(11) <u>SF Viol.</u> OLCC licensee furnishing alcohol to a minor, 471.410(6), <u>second offense</u> (third or subsequent is a Class A misd.)	\$860	N/A	\$2,000	\$2,000
(12) <u>A Viol.</u> Allow minor to consume alcohol on property, 471.410(10), <u>first offense</u>	\$440	\$225	\$2,000	\$4,000
(13) <u>SF Viol.</u> Allow minor to consume alcohol on property, 471.410(10), <u>second or subsequent offense</u>	\$1,000	N/A	\$2,000	\$2,000
(14) <u>SF Traffic Viol.</u> Refusal to take test for intoxicants, 813.095	\$650	N/A	\$2,000	\$2,000
(15) <u>SF Viol.</u> Sell tobacco or inhalant delivery system to a person under 21, 167.755(2)(a)	\$10	N/A	\$50	\$2,000
(16) <u>SF Viol.</u> Sell tobacco or inhalant delivery system to a person under 21, 167.755(2)(b)(A), <u>manager/supervisor, first or second offense</u>	\$50	N/A	\$250	\$2,000
(17) <u>SF Viol.</u> Sell tobacco or inhalant delivery system to a person under 21, 167.755(2)(b)(B), <u>manager/supervisor, third or subsequent offense</u>	\$100	N/A	\$500	\$2,000
(18) <u>SF Viol.</u> Sell tobacco or inhalant delivery system to a person under 21, 167.755(2)(c)(A), <u>owner, first or second offense</u>	\$100	N/A	\$500	\$2,000
(19) <u>SF Viol.</u> Sell tobacco or inhalant delivery system to a person under 21, 167.755(2)(c)(B), <u>owner, third or subsequent offense</u>	\$200	N/A	\$1,000	\$2,000
<i>Local Surcharge Counties (example: Multnomah, Jefferson) add \$5 to fine amounts in each column (traffic offenses and parking only).</i>				

(a)	(b)	(c)	(d)	(e)
2023 Schedule of Fines on Violations (SOF-23)	Presumptive Fine	Minimum Fine* [153.021]	Maximum Fine (Individuals) [153.018(2)]	Maximum Fine (Corporations) [153.018(3)]
Special Traffic Violations				
(20) SF Traffic Viol. Speeding 100 mph or greater, 811.109(5)	\$1,150	N/A	\$2,000	\$2,000
(21) A Traffic Viol. Careless driving, serious injury or death of vulnerable user, 811.135(3)	N/A must appear	N/A	\$12,500	\$12,500
(22) SF Traffic Viol. Unlawful parking in a winter recreation parking area, 811.590	\$30	N/A	\$2,000	\$2,000
(23) SF Traffic Viol. Bicycle helmet, 814.485 and 814.486	\$25	N/A	\$2,000	\$2,000
(24) SF Traffic Viol. Motor-assisted scooter helmet, 814.534 and 814.536	\$25	N/A	\$2,000	\$2,000
(25) SF Traffic Viol. Skateboarder, scooter rider, in-line skater helmet, 814.600	\$25	N/A	\$25	\$25
<i>Local Surcharge Counties (example: Multnomah, Jefferson) add \$5 to fine amounts in each column (traffic offenses and parking only).</i>				
Overweight--Schedule I [818.430(1)]				
(26) 1,000 or less	\$100	N/A	\$2,000	\$2,000
(27) 1,001 - 2,000	\$150	N/A	\$2,000	\$2,000
(28) 2,001 - 3,000	\$200	N/A	\$2,000	\$2,000
(29) 3,001 - 5,000	\$300	N/A	\$2,000	\$2,000
(30) 5,001 - 7,500	(a) * 0.15	N/A	\$2,000	\$2,000
(31) 7,501 - 10,000	(a) * 0.16	N/A	\$2,000	\$2,000
(32) 10,001 - 12,500	(a) * 0.20	N/A	amt in (b)	amt in (b)
(33) 12,501 and over	(a) * 0.24	N/A	amt in (b)	amt in (b)
<i>Local Surcharge Counties (example: Multnomah, Jefferson) add \$5 to fine amounts in each column (traffic offenses and parking only).</i>				
Overweight--Schedule II [818.430(2)]				
(34) 100 - 5,000	\$200 + (a) * 0.10	N/A	\$2,000	\$2,000
(35) 5,001 - 10,000	\$350 + (a) * 0.15	N/A	\$2,000	\$2,000
(36) 10,001 - and over	\$600 + (a) * 0.30	N/A	amt in (b)	amt in (b)
<i>Local Surcharge Counties (example: Multnomah, Jefferson) add \$5 to fine amounts in each column (traffic offenses and parking only).</i>				
Overweight--Schedule III [818.430(4)]				
(37) 100 - 5,000	\$200 + (a) * 0.15	N/A	\$2,000	\$2,000
(38) 5,001 - 8,250	\$350 + (a) * 0.20	N/A	\$2,000	\$2,000
(39) 8,251 - 10,000	\$350 + (a) * 0.20	N/A	amt in (b)	amt in (b)
(40) 10,001 - and over	\$500 + (a) * 0.30	N/A	amt in (b)	amt in (b)
<i>Local Surcharge Counties (example: Multnomah, Jefferson) add \$5 to fine amounts in each column (traffic offenses and parking only).</i>				

(a)	(b)	(c)	(d)	(e)
2023 Schedule of Fines on Violations (SOF-23)	Presumptive Fine	Minimum Fine* [153.021]	Maximum Fine (Individuals) [153.018(2)]	Maximum Fine (Corporations) [153.018(3)]
Miscellaneous Other Violations				
(41) SF Viol. Scrap metal business violation, 165.117, first through third offense.	\$1,000	N/A	\$2,000	\$2,000
(42) SF Viol. Scrap metal business violation, 165.117, fourth or subsequent offense.	\$5,000	N/A	\$5,000	\$5,000
(43) SF Viol. Unlawful air pollution in the second degree, 468.936	\$5,000	N/A	\$25,000	\$25,000
(44) D Viol. Livestock running atlarge, 607.045 and 607.992(3), first offense (second or subsequent is a Class B viol.)	\$60	\$60	\$250	\$500
(45) D Viol. Operating a sailboat that is at least 12 feet in length w/o aquatic invasive species permit, 830.565 and 830.990(1)	\$115	\$65	\$250	\$500
(46) D Viol. Operating motor boat w/o aquatic invasive species permit, 830.565 and 830.990(1)	\$50	\$50	\$250	\$500
(47) D Viol. Failure to drain water from motor boat before transport, Or Laws 2019, ch 154, sec 2 (HB 2076) and 830.990(1)	\$50	\$50	\$250	\$500
(48) D Viol. Unlawfully providing single-use plastic bags to customers. Or Laws 2019, ch 434, sec 4 (HB 2509)	\$115	\$65	\$250	\$250
<i>Local Surcharge Counties (example: Multnomah, Jefferson) add \$5 to fine amounts in each column (traffic offenses and parking only).</i>				

*** Note about Minimum Fine Amounts:** The minimum fine amounts included in this schedule are the amounts provided in ORS 153.021(1). However, House Bill 4120 (2022) amended ORS 153.021 to allow courts to waive payment of the minimum fine, in whole or in part, if the court makes an individualized determination that requiring payment of the minimum fine would be inconsistent with justice in the case. As such, there may be cases where the court imposes a fine that is less than the minimum fine or no fine.

About OJRC

OJRC is a Portland, Oregon, 501(c)(3) nonprofit founded in 2011. We work to promote civil rights and improve legal representation for communities that have often been underserved in the past: people living in poverty and people of color among them. Our clients are currently and formerly incarcerated Oregonians. We work in partnership with other, like-minded organizations to maximize our reach to serve underrepresented populations, train public interest lawyers, and educate our community on civil rights and civil liberties concerns. We are a public interest law firm that uses integrative advocacy to achieve our goals. This strategy includes focused direct legal services, public awareness campaigns, strategic partnerships, and coordinating our legal and advocacy areas to positively impact outcomes in favor of criminal justice reforms.



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