

The background of the slide is a dense, repeating pattern of gold-colored currency symbols, including the dollar sign (\$), euro symbol (€), pound sterling symbol (£), and yen symbol (¥). The symbols are rendered in a 3D, embossed style, creating a textured, metallic appearance. The central text is set against a plain white background.

Court Financial Obligations

Counseling Your Clients Regarding
Their Court-Related Financial
Obligations and Advocating for Relief

How are Court Financial Obligations Assessed and Collected?

Title 22, Oklahoma Statutes, Sections 983 and 983b,

Court of Criminal Appeals Rule 8.1 through 8.8.

Legal Financial Obligations are administered under Rules 8.1 through 8.8 of the Court of Criminal Appeals. The process is commonly referred to as Rule 8. The Rule 8 process sets the procedure for assessing legal financial obligations at sentencing or at a time following sentencing. Individuals who immediately begin a probated sentence at the time of sentencing will usually have a Rule 8 hearing at that time to assess their ability to pay and establish a payments schedule.

Individual who still have time to serve at the time of sentencing will have a Rule 8 hearing 60 to 180 days following their release from incarceration. Additional Rule 8 hearings are scheduled throughout the time it takes the individual to pay off his or her legal financial obligations.



House Bill 2259

Part I

Court Cost Compliance Program

- Effective November 1, 2023
- Establishes a court cost compliance program. Title 19 O.S. § 514.4
- Purpose: To assist county sheriffs and the courts with the collection of fines, costs, fees, and assessments associated with any case in which a warrant has been issued and the case has been referred to the court cost compliance program. Title 19, O.S. § 514.4 A
- Once a warrant has been issued, court clerk notifies sheriff.
- Sheriff may contract with “Cost Compliance Liaisons” to assist with collections.



House Bill 2259

Part I

Court Cost Compliance Program

- Cost Compliance Liaisons: Private Debt Collectors, Contract with the Sheriffs' Association.
- May Assess an Addition 30% of Court Financial Obligations. This Fee May not be Waived or Reduced Unless the Amount Owed is Waived or Reduced by the Court for Good Cause.
- May Accept Payments.
- Court Cost Liaison Must Submit Payments Received to the Court Clerk Within 15 Days.
- Clients May Still Pay Directly to the Court Clerk. Court Clerk Must Notify the Court Cost Liaison of Payment Within 4 days of receipt of payment.



House Bill 2259

Part I

Court Cost Compliance Program

- Insufficient Funds Trap. All Insufficient Funds Charges Added to the Defendant's Balance. Also, Credit Card Reversal Transaction Fees Will be Applied to the Defendant's Balance.
- Cost Compliance Liaison Shall Inform Individuals of Their Right to a Cost Hearing as Provided in Title 22, O.S. § 983.
- Warrants Will Be Recalled
 - Upon Payment of Outstanding Balance
 - With Mutually Agreed Monthly Payment Plan And A Down Payment of \$100.



House Bill 2259

Part I

Court Cost Compliance Program

- Issue: Title 19 O.S. § 514.4 D
 - “A single down payment shall be sufficient to recall all cost-related warrants against a defendant in a single jurisdiction.”
 - Jurisdiction in the State of Oklahoma District Courts Means “The State of Oklahoma.”
 - Venues are Counties.
 - Will a Single Down Payment in One County Get a Defendant’s Cost Warrants Lifted in Other Counties within Oklahoma?
 - I Get the Feeling the Legislature Meant “Venue” Rather than Jurisdiction.
 - But It’s Worth a Try!

House Bill 2259

Part II

Title 22, O.S. § 983

Effective November 1, 2023

Terms

Cost Arrest Warrant.

Authorizes Arrest Under the Following Circumstances:

- Failure to Comply with Terms of CFO Payment Plan
- Failure to Appear at a Cost or Willfulness Hearing
- Failure to Appear at Court Clerk's Office Within 10 Days of Being Cited Law Enforcement.

House Bill 2259

Part II

Title 22, O.S. § 983

Terms (cont.)

Cost Cite and Release Warrant.

Authorizes Citation and Release Under the Following Circumstances:

- Failure to Comply With Terms of CFO Payment Plan
- Failure to Appear at Cost Hearing or Willfulness Hearing

Cost Hearing.

- Court Determines Defendant's Ability to Pay CFOs.
- Once the Date is Set All CFOs are Suspended Until the Cost Hearing is Held.

House Bill 2259

Part II

Title 22, O.S. § 983

Terms (cont.)

Court Financial Obligation.

Includes:

- Fines
- Fees
- Costs
- Assessments, Imposed by the Court or Required to be Paid,
- Excluding Restitution or Payments Made to Other than the Court Clerk.

House Bill 2259

Part II

Title 22, O.S. § 983

Terms (cont.)

Payment-In-Full

Defendant Required to Pay All CFOs within 90 Days of Plea or Sentence in District Court or 30 within Sentence in Municipal Court.

Payment-In-Installments

Defendant is Required to Make Monthly Payments in any Amount Until Amount Owed is Full Paid.

Willfulness Hearing

The Court Determines Whether Defendant Who has Previously Been Found Able to Pay CFOs has Willfully Failed to Pay.

House Bill 2259

Part II

Title 22, O.S. § 983

When to Determine if the Defendant Can Pay?

Sentenced to Prison:

Hearing Within 180 days of Release.

Title 22 O.S. § 983b

Released to Street:

Hearing on Ability to Pay at Time of Sentencing or At Any Point Thereafter.

Court May Set Cost Hearing or Consider Written Motion or Affidavit from Defendant.

Title 22 O.S. § 983 A

House Bill 2259

Part II

Title 22, O.S. § 983

- The Ability to of a Defendant to Pay Court Financial Obligations May Not Impact the Sentence Imposed.

Title 22 O.S. § 983 B 1

My Opinion: Sentencing Determinations, Whether Negotiated or Not, Should Not Be Impacted by a Defendant's Ability to Pay.

House Bill 2259

Part II

Title 22, O.S. § 983

The Defendant is Found Unable to Pay

Defendants with CFOs Found by the Court to be In Whole or In Part Unable to Pay Receive a Hardship Waiver of Obligations, Either In Whole or In Part.

Title 22, O.S. § 983 B 2

If the Court Waives any Part of the CFOs, the Court Shall Apply the Same Percentage Reduction Equally to All Fines, Costs, Fees, and Assessments, Excluding Restitution.

Title 22, O.S. § 983 F

House Bill 2259

Part II

Title 22, O.S. § 983

How Do We Get our Clients This Relief?

You Have to Know Your Clients and Offer Proof of the Following Factors.

The Oklahoma Indigent Defense System Has a Questionnaire that Will Be Useful. The Questionnaire Is Adopted from Legal Services of Oklahoma Form. Ed Wunch and the Excellent Attorneys at Legal Aid Services of Oklahoma Are Excellent at Evaluating Clients' Financial Challenges.

House Bill 2259

Part II

Title 22, O.S. § 983

In Degerming the Defendant's Ability to Pay,
The Court Shall Consider the Following Factors:

- Individual and Household Income
- Household Living Expenses
- Number of Dependents
- Assets
- Child Support Obligations
- Physical/Mental Conditions that Diminish Income
- Additional Case-Related Expenses to be Paid by Defendant
- Any Other Factors Relevant to the Ability of Defendant to Pay

House Bill 2259

Part II

Title 22, O.S. § 983

In Determining the Defendants Ability to Pay,
the Following SHALL NOT be Considered as Income or Assets:

- Child Support Income
- Money from Federal, State, or Tribal Govt. Need-Based Disability Assistance Program
- Assets Exempt from Bankruptcy

House Bill 2259

Part II

Title 22, O.S. § 983

Defendants Presumed Unable to Pay and Eligible for Relief

- Designated Totally Disabled by any Federal, State, or Tribal Disability Program:
 - Social Security
 - Disability Insurance
 - Supplemental Security Income
 - Tribal Disability Benefits

House Bill 2259

Part II

Title 22, O.S. § 983

Defendants Presumed Unable to Pay and Eligible for Relief
Receives Support from:

- Temporary Assistance for Needy Families
- Supplemental Nutrition Assistance Program
- Special Supplemental Nutrition Program for Women, Infants, and Children Nutrition Education and Supplemental Food Program
- Or Any Other Federal Need-Based Financial Support

House Bill 2259

Part II

Title 22, O.S. § 983

Defendants Presumed Unable to Pay and Eligible for Relief
Receives Subsidized Housing Support Through:

- The Housing Choice Voucher Program
- The United States Department of Housing and Urban Development
- Or Other State, Local, or Federal Government Housing Subsidy Program

House Bill 2259

Part II

Title 22, O.S. § 983

Defendants Presumed Unable to Pay and Eligible for Relief

The Defendant's Total Income is Below 150% of the Federal Poverty Level.

People In House	Monthly Income	Annual Income
1	\$1,699	\$20,358
2	\$2,289	\$27,465
3	\$2,879	\$34,545
4	\$3,469	\$41,625
5	\$4,059	\$48,705
6	\$4,649	\$55,785
7	\$5,829	\$69,945

House Bill 2259

Part II

Title 22, O.S. § 983

Notice of Court Financial Obligations

At the Time of a Plea or Sentencing, the Court Shall Inform the Defendant of:

- Total Court Financial Obligations Owed,
- The Consequences of Failing to Pay,
- Defendant May Request a Cost Hearing if Unable to Pay at Which Point the Court Waive All or Part of the Debt Owed.
- If the Total Owed is Not Known, Court Shall Inform Defendant of When/Where They Can Get Total.

House Bill 2259

Part II

Title 22, O.S. § 983

The Defendant to Appear Immediately After Sentencing

- At the Court Clerk's Office
- Provide Current Contact Information
- Select Payment Terms or Request a Cost Hearing
- Failure to Report = All CFOs Due 30 Days From the Date of Plea or Sentencing.

House Bill 2259

Part II

Title 22, O.S. § 983

Ways to Pay

- Payment in Full
- Payment in Installments

Key: Upon Any Change in Circumstances Affecting the Ability of Defendant to Pay, Defendant May Request a Cost Hearing Before the Court by Contacting the Court Clerk.

House Bill 2259

Part II

Title 22, O.S. § 983

There Will Be Hearings

District and Municipal Courts Shall Provide Cost Hearings Upon Request.

- Dedicated Dockets, or
- On As-Requested Basis.

Defendant Receives Summons Personally or by Mail to Appear.

Failure to Appear = Cite and Release Warrant or Cost Arrest Warrant.

No Fees Shall Be Assessed Based on Hearing Request or Warrant.

House Bill 2259

Part II

Title 22, O.S. § 983

Oh, Yes. There Will Be Hearings

In Determining Ability to Pay the Court May Rely on:

- Testimony
- Relevant Documents
- Any Information Provided by the Defendant Using a Cost Hearing Affidavit Adopted by the Court of Criminal Appeals
- Or Any Other Evidence or Testimony Concerning Ability to Pay
- Supporting Documents in Cost or Willfulness Hearing Shall Not be Viewable by the Public on a Court-Controlled Website.

House Bill 2259

Part II

Title 22, O.S. § 983

If the Court Initially or Later Determines the Defendant Can Pay Some or All CFOs, the Court May Order:

- Payment in Full
- Payment in Installments
- Financial Incentives Under a Set of Conditions Determined by the Court, or
- Community Service In lieu of Payment. Defendant get at least 2 times minimum wage credit. \$14.50 per hour.

House Bill 2259

Part II

Title 22, O.S. § 983

Delinquency: Failure to Comply With Payment Plan

- Court Issues a “Cost Cite and Release Warrant”
- Court Issues a “Cost Arrest Warrant”
- Court Clerks Will Review Cases at Least Once Every 6 Months
- Summonses and Cost Hearing Will Follow for Delinquent Defendants.
- There are Specific Timelines for the Above Warrants and Failure to Appear Citations.

House Bill 2259

Part II

Title 22, O.S. § 983

Willfulness Hearings

Following Defendant's Arrest for Failure to Appear the Court Shall Conduct a Cost Hearing or Willfulness Hearing within 72 Hours, unless:

- The Defendant Pays \$100, Defendant is Released, and New Cost Hearing Date is Set, or
- The Court Releases Defendant on Defendant's Own Recognizance and a New Cost Date is Provided.
- New Procedures Will Not Apply to Warrants Issued Prior to Nov. 1, 2023

House Bill 2259

Part II

Title 22, O.S. § 983

Willfulness Hearings (cont.)

Following Delinquency Finding, Willfulness Hearings May be Held at any Time. The Court Will Evaluate:

- Was the Defendant Found Able to Pay at a Previous Cost Hearing?
- Is there New Evidence or Change in Circumstances Since the Last Hearing?
- Has the Defendant Made Any Efforts to Satisfy CFOs?
- Are there Any Other Relevant Facts or Circumstances to Consider?

House Bill 2259

Part II

Title 22, O.S. § 983

Court Finds Failure to Pay Willful

Court May Impose Jail Time per Title 28, O.S. §101 Only Under the Following Circumstances:

- The Hearing Was Conducted on the Record per COCA Rules, and
- The Defendant Was Represented by Counsel or Expressly Waived his/her Right to Counsel.

Jail Sanction:

- Defendant May Get Credit for Time Served

House Bill 2259

Part II

Title 22, O.S. § 983

Court Finds Failure to Pay Willful

Jail Sanction:

- Defendant May Get Credit for Time Served
- Jail Sanction May be Satisfied by Payment in Full of CFO Balance.

If Defendant Is Able But Refuses to Pay, the Defendant May Get \$100 Knocked off CFOs for Each Day Served. \$200 off if Defendant Performs Useful Labor.

Conclusion

As of November 1, 2023, we have an unprecedented opportunity to help our clients succeed. At my agency, this means we will have to be well prepared with substantial information in support of our clients' motions for CFO relief. The Courts now have direction and discretion to do the right thing for indigent folks. We will provide the Courts the information they need to do the right thing.

(Following this slide are addendum slides with additional information.)

Types of CFOs: Court Costs

Costs and Assessments:

Court costs and assessments were originally intended to be “user fees.” Court costs and assessments are levied in criminal and civil cases. Over the last three decades the legislature has assigned an increasing number of costs and assessments to criminal defendants.

Court Costs are intended to go to the court system to restore the court system’s operational resources based upon the litigants’ use of those resources.

Assessments are intended to go to executive agencies to restore those agencies’ operational resources based upon the litigants’ use of those resources.

“In all cases of security to keep the peace under this chapter, the court in addition to the orders mentioned in said chapter shall tax the costs against the complainant or defendant, or both, as justice may require, and enter judgment therefor, which may be enforced as judgments for costs in criminal cases, and execution may issue therefor.” 22 O.S. Section 57

Types of CFOs: Court Costs

The Uniform Fee Schedule

Oklahoma Supreme Court Order No. SCAD-2019-89 is in the materials.

The schedule attached to the Order includes the court costs associated with all Oklahoma District Court cases.

The list of costs associated with criminal cases is the longest. It includes the statutory authority for each cost and assessment. Many of these cost are Executive Agency fees.

Many additional fees are found in Title 20, Sections 1301 through 1316.

Types of CFOs: Court Costs

Court Costs in criminal cases are fees assessed by the Court against a criminal defendant upon his or her conviction to pay for the services of the court clerk, judges, and other courthouse service providers.

Court Costs may include fees for the filing of documents, the costs of securing witnesses, the costs of transcripts, or other costs related to the administration of the court system.

Title 28, Oklahoma Statutes, Section 153

Title 28, Oklahoma Statutes, Section 182

Types of CFOs: Fines

A fine is “[a] sum imposed as punishment for an offense.”

There are many fines scattered throughout Oklahoma’s statutes.

The general law on fines is found at Title 21 O.S. Sections 9 and 10. These sections state the general fine for a misdemeanor is up to \$500 and the general fine for a felony is up to \$1,000.

Many crimes carry potential fines far in excess of these amounts.

Most potential fines increase exponentially if the client has prior convictions. A few crimes have severe fines for the first-time offenders. Some non-violent offenses carry potential fine of up to \$500,000.

Types of CFOs: Incarceration Costs

Jail Fees:

Title 22, Oklahoma Statutes, Section 979a authorizes the court to assess jail fees against criminal defendant for time spent in jails before and after their conviction. Each municipality or county may set its own fee for each day of incarceration. These fees average about \$50 per day. Jail fees often add up to hundreds or thousands of dollars.

A few counties do not charge jail fees. Other counties have voluntarily capped jail fees. Under the statute, mentally ill individuals are exempt from jail fees; however, we have seen some courts find justification for not complying with this exemption.

Types of CFOs: Executive Agency Fees

Executive Agency Fees:

These fees are assessed by the Court against a criminal defendant to pay for the services of an executive agency when that agency is involved in the criminal justice system.

Executive agency fees may include fees for the cost of indigent defense services representation, Oklahoma State Bureau of Investigation fees, prosecution fees to the District Attorney, fees to the Council on Law Enforcement and Education Training, community service programs, the Department of Public Safety, etc.

Executive agency fees also include fees for the cost of supervised probation.

Types of LFOs: Restitution

Restitution: Title 22 Oklahoma Statutes, Section 991f

Restitution is an amount of money assessed against a criminal defendant upon sentencing that intended to restore a victim's financial loss.

Restitution is not punishment. It is intended to make the victim financially whole following an unlawful loss.

The amount of restitution may be negotiated with the prosecutor prior to sentencing or determined by a judge based on proof of loss.

The amount of restitution may be reduced following sentencing under limited circumstances. This rarely happens.

Types of CFOs: Restitution

The Restitution and Diversion Program

Title 22 Oklahoma Statutes, Section 991f -1.1

Applies to property crimes which are appropriate for deferred prosecution.

\$25 fee per complaint.

Important:

Paragraph J: The victim shall promptly provide to the Restitution and Diversion Program all documentation and evidence of compensation or reimbursement from insurance companies or agencies of this state, any other state, or the federal government received as a direct result of the crime for injury, loss of earnings or out-of-pocket loss.



Types of CFOs: Probation-Related Costs

Costs Associated With Probation

Most individuals who received a probated sentence, either a suspended sentence following a conviction or a deferred sentence in which sentencing is set off for a months or years, will have conditions of their probation that will require them to pay additional fees. Some examples are fees for drug and alcohol assessment, urinalysis tests, monitoring, drug/alcohol treatment, behavioral classes, etc.

Types of CFOs: Probation-Related Costs

Costs Associated With Probation (Continued)

Supervision Fees:

Title 22 Oklahoma Statutes, 994d

\$40 per month for Department of Corrections Supervision.

\$40 per month for District Attorney Supervision.

Important: Both provision allow for “hardship” waivers of the supervision fee. “In hardship cases, the Department shall expressly waive all or part of the fee.” Same for District Attorney supervision.

\$40 Community Sentencing Supervision Fee. Plus \$20 per month administration fees. (Title 22, O.S. Sec 988.9) Obligation to pay continues beyond period of participation.

Jail Fee Relief for Your Client.

No Incarceration Fees If Mentally Ill: Title 22, Oklahoma Statutes, Section 979a.

The court shall order the defendant to reimburse all actual costs of incarceration, upon conviction or upon entry of a deferred judgment and sentence unless the defendant is a mentally ill person as defined by Section 1-103 of Title 43A of the Oklahoma Statutes.

Title 43A, Oklahoma Statutes, Section 1-103:

““Mental illness” means a substantial disorder of thought, mood, perception, psychological orientation or memory that significantly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life;”

Unpublished Opinion: Bickham v. State, No. C-2010-337 (2010).

Other CFO Relief for Your Client: Drug Court

Participation in Drug Court

Title 22, Oklahoma Statutes, Section 471.9

E. When the offender has successfully completed the drug court program, the drug court **judge shall have the discretion to expressly waive all or part of the court costs and fees, driver license reinstatement fees, if applicable, and fines associated with the criminal case** if, in the opinion of the drug court judge, continued payment of the court costs, fees and fines by the offender would create a **financial hardship** for the offender, including specifically the discretion to waive any requirement that fines and costs be satisfied by a person prior to that person being eligible for a provisional driver license pursuant to Section 6-212 of Title 47 of the Oklahoma Statutes.

The Foundational Law

The standard: *Bearden vs. Georgia*, 461 U.S. 660 (1983)

The State may not use as the sole justification for imprisonment the poverty or inability of the probationer to pay the fine and to make restitution if he has demonstrated sufficient bona fide efforts to do so. Pp. 461 U.S. 669-672.

In other words, a defendant cannot be incarcerated for a failure to pay unless the State can prove that the defendant willfully did not comply with his or her payment obligations.

Client Counseling and Advocacy

Balancing Your Client's Priorities when Advocating for Legal Financial Obligation Relief.

Rules of Professional Conduct.

Rule 1.2 Rule 1.2. Scope Of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

Client Counseling and Advocacy

Oklahoma Rules of Professional Conduct:

Rule 1.4 (b)

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.