Office of the Ohio Public Defender

Elizabeth R. Miller, *State Public Defender*

Motion to Waive, Suspend, or Modify Court Costs
Pro se packet

By law, courts in Ohio are required to impose the costs of prosecution on criminal defendants as part of their sentences. Court costs can also include community control fees, program entry fees, surcharges, and other fees. However, the court may ***waive*** *those court costs if the defendant is indigent. The court is also allowed to* ***suspend*** *costs, by putting off payment of the costs until after the defendant is released from prison; or to* ***modify*** *them. The court is not required to waive, suspend, or modify your court costs, even when you are not able to pay them.*

If your judge did not waive, suspend, or modify your court costs at your sentencing hearing, then the prison system ("ODRC") will garnish money from your books to pay the court costs. Any time you have more than $25 and you owe court costs, the ODRC will take the money above $25 to pay your court costs. This will continue until you have paid off all your court costs and any financial sanctions to which you were sentenced. If your garnishment is the result of court costs, there may be a way to stop it. You will need to file a motion to waive, suspend, or modify your court costs, and attach an affidavit of indigency.

How do I know which motion to file – waiver, suspension, or modification?

- Waiving costs means getting rid of them completely. If your judge agrees to waive your costs, you never have to pay them. The waiver motion includes requested alternative relief of suspending or modifying costs.

- Suspending costs means putting off payment for a set period of time. If your judge agrees to suspend your costs until you finish serving your sentence, then the ODRC will not take any money from your account to pay costs. Once the period of suspension ends, you will still have to pay the costs.

- Modifying costs means changing the amount of costs that you owe.

It is possible that your judge may be more willing to delay payment of your costs than eliminate them altogether. That is particularly true if you are likely to work when you get out of prison. If you prefer, you can file both the motion to waive costs and the motion to suspend costs, and see if the judge chooses to grant either of them.

I don't know where to start. How do I file the motion?

First, you must find out how much you owe in court costs. You can contact the Clerk of Courts and ask them to send you a cost bill. Second, decide whether you would like the court to waive, suspend, or modify your costs. Now, you are ready to write the motion. In this packet, you will find fill-in-the-blank motions that you can use to prepare your motion.

Each of the motions is divided into two main sections (*the Motion to Modify Court Costs has a third section*):

- explaining to the judge that you are indigent; and
- explaining to the judge how paying court costs is causing you significant financial hardship.

In the first section, explain why you should be considered indigent. Tell the judge about any property you own (house, car, stock, cash, etc.) and the money you have in your prison account at the time you are filing the motion. You should also explain that you do not have any money or property to pay your court costs, if that is the case.

In the second section, explain how paying court costs is causing you significant financial hardship. Describe all the things you need to spend money on while incarcerated. This may include hygiene products, mail, medical costs, GettingOut, phone time, etc. You might explain that you are unable to get help with your expenses from family or friends while in prison because the ODRC takes money over $25 to pay your court costs. If you are asking your judge to waive your costs, explain what your financial situation will be like when you get out of prison. For example, if you plan to get a job and know how much you will make, include that information. If you will receive SSI and know what your monthly payments will be, list that in this section as well. Information in this section can help show that paying court costs on top of rent, utilities, transportation, and everything else will make it hard for you to successfully reintegrate into society.

For the Motion to Modify Court Costs, there is a third section to explain why the costs are not authorized by law. If you are billed for something that is not authorized by law, you must explain why that particular bill is not authorized. If your costs are legally authorized, you should write "N/A" in this section.

In addition to the motion, you should also complete and attach an affidavit of indigency, stating that you do not have any money or property to pay your court costs. You need to get the affidavit of indigency notarized, and your case manager can help you find a notary. Because the notary must watch you sign the affidavit, DO NOT sign the affidavit until you are with the notary. Once you complete your motion and your affidavit of indigency is notarized, ask your unit staff to make at least two copies of everything. You will need to mail one copy to the Clerk of Courts and one copy to the prosecutor's office. You should keep a copy for yourself, if you can.

If you need assistance filling out this packet, please kite "Law Library" and request a pass. The inmate clerks in the law library should be able to help you. Unfortunately, OPD does not have the resources to assist in filling out paperwork.

What about my fines and restitution? Are they the same as court costs?

Court costs are **different** from fines and restitution. Ohio law only allows your judge to waive, suspend, or modify ***costs***. There is no similar provision for the payment of fines or restitution. If you owe fines or restitution, the ODRC will continue to take money off your books to pay those fines and restitution, even if your judge waives or suspends your costs.

What about the costs of counsel? Are they the same as court costs?

Sometimes, a court will order you to pay back part or all of the costs of your legal representation. This is authorized by R.C. 2941.51, which also states that the costs of counsel are **different** from court costs. Court costs **must** be imposed, but may be waived, suspended, or modified. In contrast, no law requires that counsel costs be recouped. Additionally, counsel costs cannot be collected if doing so will cause a financial hardship. Under Ohio law, counsel costs may not be recouped from someone who has income below 125% of the federal poverty line. **Note: You cannot use the motions in this packet to waive, suspend, or modify counsel costs.**

Rev. 1/19/24

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff,	:	Case No. _____
vs.	:	
_____,	:	JUDGE _____
Defendant.	:	

MOTION TO WAIVE COURT COSTS

Defendant _____ respectfully requests that this court waive the payment of court costs in the above-captioned case. R.C. 2947.23. In the alternative, Defendant requests that this court suspend or modify the costs assessed in this case. The reasons for this motion are more fully stated in the attached memorandum in support.

Respectfully submitted,

_____
DEFENDANT, PRO SE

_____
Name and Inmate Number

_____
Name of Institution

_____
Address

_____
City, State and Zip Code

MEMORANDUM IN SUPPORT

Defendant _____ is currently incarcerated in the Ohio Department of Rehabilitation and Correction. This court sentenced Defendant to _____months/years in prison for _____, and also ordered the payment of court costs. This court did not waive the costs of prosecution at the time of Defendant's sentencing. Defendant remains indigent and cannot afford the $_____ in court costs that s/he currently owes.

Under R.C. 2947.23(C), this court retains jurisdiction after sentencing to waive, suspend, or modify the payment of the costs of prosecution. R.C. 2947.23(C). Defendant requests that this court exercise its continuing jurisdiction to waive those costs. In the alternative, Defendant requests that this court suspend or modify court costs.

I. Defendant is indigent.

II. Court costs in this case are creating a significant financial hardship.

CONCLUSION

Defendant is indigent and due to incarceration, has no substantial financial resources to assist in paying the court costs associated with this case, other than the negligible income received from the State, which is also allocated towards basic living necessities each month. Payment of these costs creates a significant financial hardship and substantially hinders Defendant's rehabilitation and reentry into society. Therefore, Defendant asks that this court waive the costs assessed in this case. In the alternative, Defendant requests that this court suspend or modify the costs assessed in this case.

Respectfully submitted,

_____
DEFENDANT, PRO SE

_____
Name and Inmate Number

_____
Name of Institution

_____
Address

_____
City, State and Zip Code

CERTIFICATE OF SERVICE

I certify a copy of the foregoing **MOTION TO WAIVE COURT COSTS** has been sent by regular U.S. mail to the office of the _____ County Prosecutor this _____ day of _____, 20____.

Mailed to:

Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

_____
DEFENDANT, PRO SE

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff,	:	Case No. _____
vs.	:	
_____,	:	JUDGE _____
Defendant.	:	

MOTION TO SUSPEND COURT COSTS

Defendant _____ respectfully requests that this court suspend the payment of court costs in the above-captioned case. R.C. 2947.23. The reasons for this motion are more fully stated in the attached memorandum in support.

Respectfully submitted,

_____
DEFENDANT, PRO SE

_____
Name and Inmate Number

_____
Name of Institution

_____
Address

_____
City, State and Zip Code

MEMORANDUM IN SUPPORT

Defendant _____ is currently incarcerated in the Ohio Department of Rehabilitation and Correction. This court sentenced Defendant to _____ months/years in prison for _____, and also ordered the payment of court costs. This court did not waive the costs of prosecution at the time of Defendant's sentencing. Defendant remains indigent and cannot afford the $_____ in court costs that s/he currently owes.

Under R.C. 2947.23(C), this court retains jurisdiction after sentencing to waive, suspend, or modify the payment of the costs of prosecution. R.C. 2947.23(C). Defendant requests that this court exercise its continuing jurisdiction to suspend those costs.

I. Defendant is indigent.

II. Court costs in this case are creating a significant financial hardship during incarceration.

CONCLUSION

Defendant is indigent and the payment of these costs during incarceration is a significant burden. S/he currently has no substantial financial resources to assist her/him in paying the court costs associated with this case, other than the negligible income s/he receives from the State, which is also allocated towards basic living necessities each month. Payment of these costs creates a significant financial hardship and substantially hinders defendant's rehabilitation and reentry into society. Therefore, Defendant asks that this court suspend payment of the costs until s/he is released from prison.

Respectfully submitted,

_____
DEFENDANT, PRO SE

_____
Name and Inmate Number

_____
Name of Institution

_____
Address

_____
City, State and Zip Code

CERTIFICATE OF SERVICE

I certify a copy of the foregoing **MOTION TO SUSPEND COURT COSTS** has been sent by regular U.S. mail to the office of the _____ County Prosecutor this _____ day of _____, 20____.

Mailed to:

Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

_____
DEFENDANT, PRO SE

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff,	:	Case No. _____
vs.	:	
_____,	:	JUDGE _____
Defendant.	:	

MOTION TO MODIFY COURT COSTS

Defendant _____ respectfully requests that this court modify the court costs in the above-captioned case. R.C. 2947.23. The reasons for this motion are more fully stated in the attached memorandum in support.

Respectfully submitted,

_____
DEFENDANT, PRO SE

_____
Name and Inmate Number

_____
Name of Institution

_____
Address

_____
City, State and Zip Code

MEMORANDUM IN SUPPORT

Defendant _____ is currently incarcerated in the Ohio Department of Rehabilitation and Correction. This court sentenced Defendant to prison for _____, and also ordered the payment of court costs. Defendant has been billed for the cost of _____. This particular bill is not statutorily authorized.

Under R.C. 2947.23(C), this court retains jurisdiction after sentencing to waive, suspend, or modify the payment of the costs of prosecution. R.C. 2947.23(C). Defendant requests that this court exercise its continuing jurisdiction to modify those costs.

I. Defendant is indigent.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

II. Court costs in this case are creating a significant financial hardship during incarceration.

III. The costs imposed are not authorized by law. (if applicable)

CONCLUSION

The above-mentioned court costs are not authorized by law. Also, Defendant is indigent and the payment of these costs during incarceration is a significant burden. Therefore, Defendant asks for this court to modify the court costs to reflect costs that are statutorily authorized.

Respectfully submitted,

_____
DEFENDANT, PRO SE

_____
Name and Inmate Number

_____
Name of Institution

_____
Address

_____
City, State and Zip Code

CERTIFICATE OF SERVICE

I certify a copy of the foregoing **MOTION TO MODIFY COURT COSTS** has been sent by regular U.S. mail to the office of the _____ County Prosecutor this _____ day of _____, 20____.

Mailed to:

Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

_____
DEFENDANT, PRO SE

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff,	:	Case No. _____
vs.	:	
_____,	:	JUDGE _____
Defendant.	:	

AFFIDAVIT OF INDIGENCY

I, _____, do hereby solemnly swear that I have presently this _____ day of _____, 20__, no means of financial support and no assets of any value and, therefore, cannot afford to pay the costs of prosecution previously imposed in the above-styled case.

_____
Defendant

Sworn to and subscribed in my presence this ____ day of _____, 20__.

_____
Notary Public