

SSB 5055 - S AMD 616

By Senators Fairley, Stevens

ADOPTED 02/10/2004

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9.94A.760 and 2003 c 379 s 14 are each amended to
4 read as follows:

5 (1) Whenever a person is convicted of a felony, the court may order
6 the payment of a legal financial obligation as part of the sentence.
7 The court must on either the judgment and sentence or on a subsequent
8 order to pay, designate the total amount of a legal financial
9 obligation and segregate this amount among the separate assessments
10 made for restitution, costs, fines, and other assessments required by
11 law. On the same order, the court is also to set a sum that the
12 offender is required to pay on a monthly basis towards satisfying the
13 legal financial obligation. If the court fails to set the offender
14 monthly payment amount, the department shall set the amount. Upon
15 receipt of an offender's monthly payment, restitution shall be paid
16 prior to any payments of other monetary obligations. After restitution
17 is satisfied, the county clerk shall distribute the payment
18 proportionally among all other fines, costs, and assessments imposed,
19 unless otherwise ordered by the court.

20 (2) If the court determines that the offender, at the time of
21 sentencing, has the means to pay for the cost of incarceration, the
22 court may require the offender to pay for the cost of incarceration at
23 a rate of fifty dollars per day of incarceration, if incarcerated in a
24 prison, or the court may require the offender to pay the actual cost of
25 incarceration per day of incarceration, if incarcerated in a county
26 jail. In no case may the court require the offender to pay more than
27 one hundred dollars per day for the cost of incarceration. Payment of
28 other court-ordered financial obligations, including all legal
29 financial obligations and costs of supervision shall take precedence
30 over the payment of the cost of incarceration ordered by the court.

1 All funds recovered from offenders for the cost of incarceration in the
2 county jail shall be remitted to the county and the costs of
3 incarceration in a prison shall be remitted to the department.

4 (3) The court may add to the judgment and sentence or subsequent
5 order to pay a statement that a notice of payroll deduction is to be
6 issued immediately. If the court chooses not to order the immediate
7 issuance of a notice of payroll deduction at sentencing, the court
8 shall add to the judgment and sentence or subsequent order to pay a
9 statement that a notice of payroll deduction may be issued or other
10 income-withholding action may be taken, without further notice to the
11 offender if a monthly court-ordered legal financial obligation payment
12 is not paid when due, and an amount equal to or greater than the amount
13 payable for one month is owed.

14 If a judgment and sentence or subsequent order to pay does not
15 include the statement that a notice of payroll deduction may be issued
16 or other income-withholding action may be taken if a monthly legal
17 financial obligation payment is past due, the department or the county
18 clerk may serve a notice on the offender stating such requirements and
19 authorizations. Service shall be by personal service or any form of
20 mail requiring a return receipt.

21 (4) Independent of the department or the county clerk, the party or
22 entity to whom the legal financial obligation is owed shall have the
23 authority to use any other remedies available to the party or entity to
24 collect the legal financial obligation. These remedies include
25 enforcement in the same manner as a judgment in a civil action by the
26 party or entity to whom the legal financial obligation is owed.
27 Restitution collected through civil enforcement must be paid through
28 the registry of the court and must be distributed proportionately
29 according to each victim's loss when there is more than one victim.
30 The judgment and sentence shall identify the party or entity to whom
31 restitution is owed so that the state, party, or entity may enforce the
32 judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or
33 9.94A.753(6) to a victim of rape of a child or a victim's child born
34 from the rape, the Washington state child support registry shall be
35 identified as the party to whom payments must be made. Restitution
36 obligations arising from the rape of a child in the first, second, or
37 third degree that result in the pregnancy of the victim may be enforced

1 for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6).
2 All other legal financial obligations for an offense committed prior to
3 July 1, 2000, may be enforced at any time during the ten-year period
4 following the offender's release from total confinement or within ten
5 years of entry of the judgment and sentence, whichever period ends
6 later. Prior to the expiration of the initial ten-year period, the
7 superior court may extend the criminal judgment an additional ten years
8 for payment of legal financial obligations including crime victims'
9 assessments. All other legal financial obligations for an offense
10 committed on or after July 1, 2000, may be enforced at any time the
11 offender remains under the court's jurisdiction. For an offense
12 committed on or after July 1, 2000, the court shall retain jurisdiction
13 over the offender, for purposes of the offender's compliance with
14 payment of the legal financial obligations, until the obligation is
15 completely satisfied, regardless of the statutory maximum for the
16 crime. The department may only supervise the offender's compliance
17 with payment of the legal financial obligations during any period in
18 which the department is authorized to supervise the offender in the
19 community under RCW 9.94A.728, 9.94A.501, or in which the offender is
20 confined in a state correctional institution or a correctional facility
21 pursuant to a transfer agreement with the department, and the
22 department shall supervise the offender's compliance during any such
23 period. The department is not responsible for supervision of the
24 offender during any subsequent period of time the offender remains
25 under the court's jurisdiction. The county clerk is authorized to
26 collect unpaid legal financial obligations at any time the offender
27 remains under the jurisdiction of the court for purposes of his or her
28 legal financial obligations.

29 (5) In order to assist the court in setting a monthly sum that the
30 offender must pay during the period of supervision, the offender is
31 required to report to the department for purposes of preparing a
32 recommendation to the court. When reporting, the offender is required,
33 under oath, to respond truthfully and honestly to all questions
34 concerning present, past, and future earning capabilities and the
35 location and nature of all property or financial assets. The offender
36 is further required to bring all documents requested by the department.

1 (6) After completing the investigation, the department shall make
2 a report to the court on the amount of the monthly payment that the
3 offender should be required to make towards a satisfied legal financial
4 obligation.

5 (7)(a) During the period of supervision, the department may make a
6 recommendation to the court that the offender's monthly payment
7 schedule be modified so as to reflect a change in financial
8 circumstances. If the department sets the monthly payment amount, the
9 department may modify the monthly payment amount without the matter
10 being returned to the court. During the period of supervision, the
11 department may require the offender to report to the department for the
12 purposes of reviewing the appropriateness of the collection schedule
13 for the legal financial obligation. During this reporting, the
14 offender is required under oath to respond truthfully and honestly to
15 all questions concerning earning capabilities and the location and
16 nature of all property or financial assets. The offender shall bring
17 all documents requested by the department in order to prepare the
18 collection schedule.

19 (b) Subsequent to any period of supervision, or if the department
20 is not authorized to supervise the offender in the community, the
21 county clerk may make a recommendation to the court that the offender's
22 monthly payment schedule be modified so as to reflect a change in
23 financial circumstances. If the county clerk sets the monthly payment
24 amount, the clerk may modify the monthly payment amount without the
25 matter being returned to the court. During the period of repayment,
26 the county clerk may require the offender to report to the clerk for
27 the purpose of reviewing the appropriateness of the collection schedule
28 for the legal financial obligation. During this reporting, the
29 offender is required under oath to respond truthfully and honestly to
30 all questions concerning earning capabilities and the location and
31 nature of all property or financial assets. The offender shall bring
32 all documents requested by the county clerk in order to prepare the
33 collection schedule.

34 (8) After the judgment and sentence or payment order is entered,
35 the department is authorized, for any period of supervision, to collect
36 the legal financial obligation from the offender. Subsequent to any
37 period of supervision or, if the department is not authorized to

1 supervise the offender in the community, the county clerk is authorized
2 to collect unpaid legal financial obligations from the offender. Any
3 amount collected by the department shall be remitted daily to the
4 county clerk for the purpose of disbursements. The department and the
5 county clerks are authorized, but not required, to accept credit cards
6 as payment for a legal financial obligation, and any costs incurred
7 related to accepting credit card payments shall be the responsibility
8 of the offender.

9 (9) The department or any obligee of the legal financial obligation
10 may seek a mandatory wage assignment for the purposes of obtaining
11 satisfaction for the legal financial obligation pursuant to RCW
12 9.94A.7701. Any party obtaining a wage assignment shall notify the
13 county clerk. The county clerks shall notify the department, or the
14 administrative office of the courts, whichever is providing the monthly
15 billing for the offender.

16 (10) The requirement that the offender pay a monthly sum towards a
17 legal financial obligation constitutes a condition or requirement of a
18 sentence and the offender is subject to the penalties for noncompliance
19 as provided in RCW 9.94A.634, 9.94A.737, or 9.94A.740.

20 (11)(a) Until January 1, 2004, the department shall mail
21 individualized monthly billings to the address known by the department
22 for each offender with an unsatisfied legal financial obligation.

23 (b) Beginning January 1, 2004, the administrative office of the
24 courts shall mail individualized monthly billings to the address known
25 by the office for each offender with an unsatisfied legal financial
26 obligation.

27 (c) The billing shall direct payments, other than outstanding cost
28 of supervision assessments under RCW 9.94A.780, parole assessments
29 under RCW 72.04A.120, and cost of probation assessments under RCW
30 9.95.214, to the county clerk, and cost of supervision, parole, or
31 probation assessments to the department.

32 (d) The county clerk shall provide the administrative office of the
33 courts with notice of payments by such offenders no less frequently
34 than weekly.

35 (e) The county clerks, the administrative office of the courts, and
36 the department shall maintain agreements to implement this subsection.

1 (12) The department shall arrange for the collection of unpaid
2 legal financial obligations during any period of supervision in the
3 community through the county clerk. The department shall either
4 collect unpaid legal financial obligations or arrange for collections
5 through another entity if the clerk does not assume responsibility for
6 collection pursuant to subsection (4) of this section. The costs for
7 collection services shall be paid by the offender.

8 (13) Nothing in this chapter makes the department, the state, the
9 counties, or any state or county employees, agents, or other persons
10 acting on their behalf liable under any circumstances for the payment
11 of these legal financial obligations or for the acts of any offender
12 who is no longer, or was not, subject to supervision by the department
13 for a term of community custody, community placement, or community
14 supervision, and who remains under the jurisdiction of the court for
15 payment of legal financial obligations.

16 **Sec. 2.** RCW 10.01.160 and 1995 c 221 s 1 are each amended to read
17 as follows:

18 (1) The court may require a defendant to pay costs. Costs may be
19 imposed only upon a convicted defendant, except for costs imposed upon
20 a defendant's entry into a deferred prosecution program or costs
21 imposed upon a defendant for preparing and serving a warrant for
22 failure to appear.

23 (2) Costs shall be limited to expenses specially incurred by the
24 state in prosecuting the defendant or in administering the deferred
25 prosecution program under chapter 10.05 RCW. They cannot include
26 expenses inherent in providing a constitutionally guaranteed jury trial
27 or expenditures in connection with the maintenance and operation of
28 government agencies that must be made by the public irrespective of
29 specific violations of law. Expenses incurred for serving of warrants
30 for failure to appear and jury fees under RCW 10.46.190 may be included
31 in costs the court may require a defendant to pay. Costs for
32 administering a deferred prosecution may not exceed one hundred fifty
33 dollars. Costs for preparing and serving a warrant for failure to
34 appear may not exceed one hundred dollars. Costs of incarceration
35 imposed on a defendant convicted of a misdemeanor or a gross
36 misdemeanor may not exceed (~~(fifty dollars per day)~~) the actual cost of

1 incarceration. In no case may the court require the offender to pay
2 more than one hundred dollars per day for the cost of incarceration.
3 Payment of other court-ordered financial obligations, including all
4 legal financial obligations and costs of supervision take precedence
5 over the payment of the cost of incarceration ordered by the court.
6 All funds received from defendants for the cost of incarceration in the
7 county or city jail must be remitted for criminal justice purposes to
8 the county or city that is responsible for the defendant's jail costs.
9 Costs imposed constitute a judgment against a defendant and survive a
10 dismissal of the underlying action against the defendant. However, if
11 the defendant is acquitted on the underlying action, the costs for
12 preparing and serving a warrant for failure to appear do not survive
13 the acquittal, and the judgment that such costs would otherwise
14 constitute shall be vacated.

15 (3) The court shall not sentence a defendant to pay costs unless
16 the defendant is or will be able to pay them. In determining the
17 amount and method of payment of costs, the court shall take account of
18 the financial resources of the defendant and the nature of the burden
19 that payment of costs will impose.

20 (4) A defendant who has been sentenced to pay costs and who is not
21 in contumacious default in the payment thereof may at any time petition
22 the sentencing court for remission of the payment of costs or of any
23 unpaid portion thereof. If it appears to the satisfaction of the court
24 that payment of the amount due will impose manifest hardship on the
25 defendant or the defendant's immediate family, the court may remit all
26 or part of the amount due in costs, or modify the method of payment
27 under RCW 10.01.170."

SSB 5055 - S AMD 616

By Senators Fairley, Stevens

ADOPTED 02/10/2004

28 On page 1, line 1 of the title, after "incarceration;" strike the
29 remainder of the title and insert "and amending RCW 9.94A.760 and
30 10.01.160."

EFFECT: Technical amendment to incorporate 2003 amendments to underlying code language.

--- END ---