
SUBSTITUTE SENATE BILL 5055

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Children & Family Services & Corrections
(originally sponsored by Senators Fairley, Esser and Kohl-Welles)

READ FIRST TIME 02/12/03.

1 AN ACT Relating to costs of incarceration; and amending RCW
2 9.94A.760 and 10.01.160.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9.94A.760 and 2001 c 10 s 3 are each amended to read
5 as follows:

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

1 proportionally among all other fines, costs, and assessments imposed,
2 unless otherwise ordered by the court.

3 (2) If the court determines that the offender, at the time of
4 sentencing, has the means to pay for the cost of incarceration, the
5 court may require the offender to pay for the cost of incarceration at
6 a rate of fifty dollars per day of incarceration, if incarcerated in a
7 prison, or the court may require the offender to pay the actual cost of
8 incarceration per day of incarceration, if incarcerated in a county
9 jail. In no case may the court require the offender to pay more than
10 one hundred dollars per day for the cost of incarceration. Payment of
11 other court-ordered financial obligations, including all legal
12 financial obligations and costs of supervision shall take precedence
13 over the payment of the cost of incarceration ordered by the court.
14 All funds recovered from offenders for the cost of incarceration in the
15 county jail shall be remitted to the county and the costs of
16 incarceration in a prison shall be remitted to the department.

17 (3) The court may add to the judgment and sentence or subsequent
18 order to pay a statement that a notice of payroll deduction is to be
19 issued immediately. If the court chooses not to order the immediate
20 issuance of a notice of payroll deduction at sentencing, the court
21 shall add to the judgment and sentence or subsequent order to pay a
22 statement that a notice of payroll deduction may be issued or other
23 income-withholding action may be taken, without further notice to the
24 offender if a monthly court-ordered legal financial obligation payment
25 is not paid when due, and an amount equal to or greater than the amount
26 payable for one month is owed.

27 If a judgment and sentence or subsequent order to pay does not
28 include the statement that a notice of payroll deduction may be issued
29 or other income-withholding action may be taken if a monthly legal
30 financial obligation payment is past due, the department may serve a
31 notice on the offender stating such requirements and authorizations.
32 Service shall be by personal service or any form of mail requiring a
33 return receipt.

34 (4) Independent of the department, the party or entity to whom the
35 legal financial obligation is owed shall have the authority to use any
36 other remedies available to the party or entity to collect the legal
37 financial obligation. These remedies include enforcement in the same
38 manner as a judgment in a civil action by the party or entity to whom

1 the legal financial obligation is owed. Restitution collected through
2 civil enforcement must be paid through the registry of the court and
3 must be distributed proportionately according to each victim's loss
4 when there is more than one victim. The judgment and sentence shall
5 identify the party or entity to whom restitution is owed so that the
6 state, party, or entity may enforce the judgment. If restitution is
7 ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of
8 rape of a child or a victim's child born from the rape, the Washington
9 state child support registry shall be identified as the party to whom
10 payments must be made. Restitution obligations arising from the rape
11 of a child in the first, second, or third degree that result in the
12 pregnancy of the victim may be enforced for the time periods provided
13 under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial
14 obligations for an offense committed prior to July 1, 2000, may be
15 enforced at any time during the ten-year period following the
16 offender's release from total confinement or within ten years of entry
17 of the judgment and sentence, whichever period ends later. Prior to
18 the expiration of the initial ten-year period, the superior court may
19 extend the criminal judgment an additional ten years for payment of
20 legal financial obligations including crime victims' assessments. All
21 other legal financial obligations for an offense committed on or after
22 July 1, 2000, may be enforced at any time the offender remains under
23 the court's jurisdiction. For an offense committed on or after July 1,
24 2000, the court shall retain jurisdiction over the offender, for
25 purposes of the offender's compliance with payment of the legal
26 financial obligations, until the obligation is completely satisfied,
27 regardless of the statutory maximum for the crime. The department of
28 corrections shall supervise the offender's compliance with payment of
29 the legal financial obligations for ten years following the entry of
30 the judgment and sentence, or ten years following the offender's
31 release from total confinement, whichever period ends later. The
32 department is not responsible for supervision of the offender during
33 any subsequent period of time the offender remains under the court's
34 jurisdiction.

35 (5) In order to assist the court in setting a monthly sum that the
36 offender must pay during the period of supervision, the offender is
37 required to report to the department for purposes of preparing a
38 recommendation to the court. When reporting, the offender is required,

1 under oath, to respond truthfully and honestly to all questions
2 concerning present, past, and future earning capabilities and the
3 location and nature of all property or financial assets. The offender
4 is further required to bring all documents requested by the department.

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

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

23 (8) After the judgment and sentence or payment order is entered,
24 the department is authorized, for any period of supervision, to collect
25 the legal financial obligation from the offender. Any amount collected
26 by the department shall be remitted daily to the county clerk for the
27 purpose of disbursements. The department is authorized to accept
28 credit cards as payment for a legal financial obligation, and any costs
29 incurred related to accepting credit card payments shall be the
30 responsibility of the offender.

31 (9) The department or any obligee of the legal financial obligation
32 may seek a mandatory wage assignment for the purposes of obtaining
33 satisfaction for the legal financial obligation pursuant to RCW
34 9.94A.7701.

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

1 (11) The county clerk shall provide the department with
2 individualized monthly billings for each offender with an unsatisfied
3 legal financial obligation and shall provide the department with notice
4 of payments by such offenders no less frequently than weekly.

5 (12) The department may arrange for the collection of unpaid legal
6 financial obligations through the county clerk, or through another
7 entity if the clerk does not assume responsibility for collection. The
8 costs for collection services shall be paid by the offender.

9 (13) Nothing in this chapter makes the department, the state, or
10 any of its employees, agents, or other persons acting on their behalf
11 liable under any circumstances for the payment of these legal financial
12 obligations.

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

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

20 (2) Costs shall be limited to expenses specially incurred by the
21 state in prosecuting the defendant or in administering the deferred
22 prosecution program under chapter 10.05 RCW. They cannot include
23 expenses inherent in providing a constitutionally guaranteed jury trial
24 or expenditures in connection with the maintenance and operation of
25 government agencies that must be made by the public irrespective of
26 specific violations of law. Expenses incurred for serving of warrants
27 for failure to appear and jury fees under RCW 10.46.190 may be included
28 in costs the court may require a defendant to pay. Costs for
29 administering a deferred prosecution may not exceed one hundred fifty
30 dollars. Costs for preparing and serving a warrant for failure to
31 appear may not exceed one hundred dollars. Costs of incarceration
32 imposed on a defendant convicted of a misdemeanor or a gross
33 misdemeanor may not exceed ~~((fifty dollars per day))~~ the actual cost of
34 incarceration. In no case may the court require the offender to pay
35 more than one hundred dollars per day for the cost of incarceration.
36 Payment of other court-ordered financial obligations, including all
37 legal financial obligations and costs of supervision take precedence

1 over the payment of the cost of incarceration ordered by the court.
2 All funds received from defendants for the cost of incarceration in the
3 county or city jail must be remitted for criminal justice purposes to
4 the county or city that is responsible for the defendant's jail costs.
5 Costs imposed constitute a judgment against a defendant and survive a
6 dismissal of the underlying action against the defendant. However, if
7 the defendant is acquitted on the underlying action, the costs for
8 preparing and serving a warrant for failure to appear do not survive
9 the acquittal, and the judgment that such costs would otherwise
10 constitute shall be vacated.

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

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

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