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SENATE BILL 6492

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State of Washington                      59th Legislature                      2006 Regular Session

By Senators Kline, Franklin, Kohl-Welles and Oke

Read first time 01/13/2006. Referred to Committee on Judiciary.

1            AN ACT Relating to conversion of legal financial obligations to  
2 community restitution; amending RCW 9.94A.760, 10.01.160, and  
3 10.82.090; and adding a new section to chapter 10.04 RCW.

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

5            **Sec. 1.** RCW 9.94A.760 and 2005 c 263 s 1 are each amended to read  
6 as follows:

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

1 payments of other monetary obligations. After restitution is  
2 satisfied, the county clerk shall distribute the payment proportionally  
3 among all other fines, costs, and assessments imposed, unless otherwise  
4 ordered by the court.

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

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

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

36 (4) Independent of the department or the county clerk, the party or  
37 entity to whom the legal financial obligation is owed shall have the  
38 authority to use any other remedies available to the party or entity to

1 collect the legal financial obligation. These remedies include  
2 enforcement in the same manner as a judgment in a civil action by the  
3 party or entity to whom the legal financial obligation is owed.  
4 Restitution collected through civil enforcement must be paid through  
5 the registry of the court and must be distributed proportionately  
6 according to each victim's loss when there is more than one victim.  
7 The judgment and sentence shall identify the party or entity to whom  
8 restitution is owed so that the state, party, or entity may enforce the  
9 judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or  
10 9.94A.753(6) to a victim of rape of a child or a victim's child born  
11 from the rape, the Washington state child support registry shall be  
12 identified as the party to whom payments must be made. Restitution  
13 obligations arising from the rape of a child in the first, second, or  
14 third degree that result in the pregnancy of the victim may be enforced  
15 for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6).  
16 All other legal financial obligations for an offense committed prior to  
17 July 1, 2000, may be enforced at any time during the ten-year period  
18 following the offender's release from total confinement or within ten  
19 years of entry of the judgment and sentence, whichever period ends  
20 later. Prior to the expiration of the initial ten-year period, the  
21 superior court may extend the criminal judgment an additional ten years  
22 for payment of legal financial obligations including crime victims'  
23 assessments. All other legal financial obligations for an offense  
24 committed on or after July 1, 2000, may be enforced at any time the  
25 offender remains under the court's jurisdiction. For an offense  
26 committed on or after July 1, 2000, the court shall retain jurisdiction  
27 over the offender, for purposes of the offender's compliance with  
28 payment of the legal financial obligations, until the obligation is  
29 completely satisfied, regardless of the statutory maximum for the  
30 crime. The department may only supervise the offender's compliance  
31 with payment of the legal financial obligations during any period in  
32 which the department is authorized to supervise the offender in the  
33 community under RCW 9.94A.728, 9.94A.501, or in which the offender is  
34 confined in a state correctional institution or a correctional facility  
35 pursuant to a transfer agreement with the department, and the  
36 department shall supervise the offender's compliance during any such  
37 period. The department is not responsible for supervision of the  
38 offender during any subsequent period of time the offender remains

1 under the court's jurisdiction. The county clerk is authorized to  
2 collect unpaid legal financial obligations at any time the offender  
3 remains under the jurisdiction of the court for purposes of his or her  
4 legal financial obligations.

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

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

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

31 (b) Subsequent to any period of supervision, or if the department  
32 is not authorized to supervise the offender in the community, the  
33 county clerk may make a recommendation to the court that the offender's  
34 monthly payment schedule be modified so as to reflect a change in  
35 financial circumstances. If the county clerk sets the monthly payment  
36 amount, or if the department set the monthly payment amount and the  
37 department has subsequently turned the collection of the legal  
38 financial obligation over to the county clerk, the clerk may modify the

1 monthly payment amount without the matter being returned to the court.  
2 During the period of repayment, the county clerk may require the  
3 offender to report to the clerk for the purpose of reviewing the  
4 appropriateness of the collection schedule for the legal financial  
5 obligation. During this reporting, the offender is required under oath  
6 to respond truthfully and honestly to all questions concerning earning  
7 capabilities and the location and nature of all property or financial  
8 assets. The offender shall bring all documents requested by the county  
9 clerk in order to prepare the collection schedule.

10 (8) After the judgment and sentence or payment order is entered,  
11 the department is authorized, for any period of supervision, to collect  
12 the legal financial obligation from the offender. Subsequent to any  
13 period of supervision or, if the department is not authorized to  
14 supervise the offender in the community, the county clerk is authorized  
15 to collect unpaid legal financial obligations from the offender. Any  
16 amount collected by the department shall be remitted daily to the  
17 county clerk for the purpose of disbursements. The department and the  
18 county clerks are authorized, but not required, to accept credit cards  
19 as payment for a legal financial obligation, and any costs incurred  
20 related to accepting credit card payments shall be the responsibility  
21 of the offender.

22 (9) The department or any obligee of the legal financial obligation  
23 may seek a mandatory wage assignment for the purposes of obtaining  
24 satisfaction for the legal financial obligation pursuant to RCW  
25 9.94A.7701. Any party obtaining a wage assignment shall notify the  
26 county clerk. The county clerks shall notify the department, or the  
27 administrative office of the courts, whichever is providing the monthly  
28 billing for the offender.

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

33 (11) If an offender has been ordered to pay a legal financial  
34 obligation as part of a sentence and due to a change in circumstances  
35 cannot reasonably comply with the order, the court, upon motion of the  
36 offender, may order that the unpaid legal financial obligation be  
37 converted to community restitution unless the monetary obligation is

1 for restitution, which cannot be converted. The number of hours of  
2 community restitution in lieu of the legal financial obligation shall  
3 be converted at the rate of the prevailing state minimum wage per hour.

4 (12)(a) Until January 1, 2004, the department shall mail  
5 individualized monthly billings to the address known by the department  
6 for each offender with an unsatisfied legal financial obligation.

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

11 (c) The billing shall direct payments, other than outstanding cost  
12 of supervision assessments under RCW 9.94A.780, parole assessments  
13 under RCW 72.04A.120, and cost of probation assessments under RCW  
14 9.95.214, to the county clerk, and cost of supervision, parole, or  
15 probation assessments to the department.

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

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

21 ~~((12))~~ (13) The department shall arrange for the collection of  
22 unpaid legal financial obligations during any period of supervision in  
23 the community through the county clerk. The department shall either  
24 collect unpaid legal financial obligations or arrange for collections  
25 through another entity if the clerk does not assume responsibility or  
26 is unable to continue to assume responsibility for collection pursuant  
27 to subsection (4) of this section. The costs for collection services  
28 shall be paid by the offender.

29 ~~((13))~~ (14) The county clerk may access the records of the  
30 employment security department for the purposes of verifying employment  
31 or income, seeking any assignment of wages, or performing other duties  
32 necessary to the collection of an offender's legal financial  
33 obligations.

34 ~~((14))~~ (15) Nothing in this chapter makes the department, the  
35 state, the counties, or any state or county employees, agents, or other  
36 persons acting on their behalf liable under any circumstances for the  
37 payment of these legal financial obligations or for the acts of any  
38 offender who is no longer, or was not, subject to supervision by the

1 department for a term of community custody, community placement, or  
2 community supervision, and who remains under the jurisdiction of the  
3 court for payment of legal financial obligations.

4 **Sec. 2.** RCW 10.01.160 and 2005 c 263 s 2 are each amended to read  
5 as follows:

6 (1) The court may require a defendant to pay costs. Costs may be  
7 imposed only upon a convicted defendant, except for costs imposed upon  
8 a defendant's entry into a deferred prosecution program or costs  
9 imposed upon a defendant for preparing and serving a warrant for  
10 failure to appear.

11 (2) Costs shall be limited to expenses specially incurred by the  
12 state in prosecuting the defendant or in administering the deferred  
13 prosecution program under chapter 10.05 RCW. They cannot include  
14 expenses inherent in providing a constitutionally guaranteed jury trial  
15 or expenditures in connection with the maintenance and operation of  
16 government agencies that must be made by the public irrespective of  
17 specific violations of law. Expenses incurred for serving of warrants  
18 for failure to appear and jury fees under RCW 10.46.190 may be included  
19 in costs the court may require a defendant to pay. Costs for  
20 administering a deferred prosecution may not exceed one hundred fifty  
21 dollars. Costs for preparing and serving a warrant for failure to  
22 appear may not exceed one hundred dollars. Costs of incarceration  
23 imposed on a defendant convicted of a misdemeanor or a gross  
24 misdemeanor may not exceed the actual cost of incarceration. In no  
25 case may the court require the offender to pay more than one hundred  
26 dollars per day for the cost of incarceration. Payment of other court-  
27 ordered financial obligations, including all legal financial  
28 obligations and costs of supervision take precedence over the payment  
29 of the cost of incarceration ordered by the court. All funds received  
30 from defendants for the cost of incarceration in the county or city  
31 jail must be remitted for criminal justice purposes to the county or  
32 city that is responsible for the defendant's jail costs. Costs imposed  
33 constitute a judgment against a defendant and survive a dismissal of  
34 the underlying action against the defendant. However, if the defendant  
35 is acquitted on the underlying action, the costs for preparing and  
36 serving a warrant for failure to appear do not survive the acquittal,

1 and the judgment that such costs would otherwise constitute shall be  
2 vacated.

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

8 (4) A defendant who has been sentenced to pay costs and who is not  
9 in contumacious default in the payment thereof may at any time petition  
10 the sentencing court for remission of the payment of costs or of any  
11 unpaid portion thereof. If it appears to the satisfaction of the court  
12 that payment of the amount due will impose manifest hardship on the  
13 defendant or the defendant's immediate family, the court may remit all  
14 or part of the amount due in costs, or modify the method of payment  
15 under RCW 10.01.170.

16 (5) If an offender has been ordered to pay costs and due to a  
17 change in circumstances cannot reasonably comply with the order, the  
18 court, upon motion of the offender, may order that the unpaid costs be  
19 converted to community restitution. The number of hours of community  
20 restitution in lieu of the payment of costs shall be converted at the  
21 rate of the prevailing state minimum wage per hour.

22 NEW SECTION. Sec. 3. A new section is added to chapter 10.04 RCW  
23 to read as follows:

24 If a defendant has been ordered to pay a fine and costs as part of  
25 a sentence and due to a change in circumstances cannot reasonably  
26 comply with the order, the court, upon motion of the offender, may  
27 order that the unpaid fine and costs be converted to community  
28 restitution. The number of hours of community restitution in lieu of  
29 the fine and costs shall be converted at the rate of the prevailing  
30 state minimum wage per hour.

31 **Sec. 4.** RCW 10.82.090 and 2004 c 121 s 1 are each amended to read  
32 as follows:

33 (1) Except as provided in subsection (2) of this section, financial  
34 obligations imposed in a judgment shall bear interest from the date of  
35 the judgment until payment, at the rate applicable to civil judgments.  
36 All nonrestitution interest retained by the court shall be split



1 twenty-five percent to the state treasurer for deposit in the public  
2 safety and education account as provided in RCW 43.08.250, twenty-five  
3 percent to the state treasurer for deposit in the judicial information  
4 system account as provided in RCW 2.68.020, twenty-five percent to the  
5 county current expense fund, and twenty-five percent to the county  
6 current expense fund to fund local courts.

7 (2) The court may, on motion by the offender, following the  
8 offender's release from total confinement, reduce or waive the interest  
9 on legal financial obligations levied as a result of a criminal  
10 conviction. The court may reduce or waive the interest only as an  
11 incentive for the offender to meet his or her legal financial  
12 obligations. The court may not waive the interest on the restitution  
13 portion of the legal financial obligation and may only reduce the  
14 interest on the restitution portion of the legal financial obligation  
15 if the principal of the restitution has been paid in full. The  
16 offender must show that he or she has personally made a good faith  
17 effort to pay, that the interest accrual is causing a significant  
18 hardship, and that he or she will be unable to pay the principal and  
19 interest in full and that reduction or waiver of the interest will  
20 likely enable the offender to pay the full principal and any remaining  
21 interest thereon. For purposes of this section, "good faith effort"  
22 means that the offender has either (a) paid the principal amount in  
23 full; or (b) made twenty-four consecutive monthly payments, excluding  
24 any payments mandatorily deducted by the department of corrections, on  
25 his or her legal financial obligations under his or her payment  
26 agreement with the court. The court may grant the motion, establish a  
27 payment schedule, and retain jurisdiction over the offender for  
28 purposes of reviewing and revising the reduction or waiver of interest.  
29 This section applies to persons convicted as adults or in juvenile  
30 court.

31 (3) If an offender has been ordered to pay a legal financial  
32 obligation as part of a sentence and due to a change in circumstances  
33 cannot reasonably comply with the order, the court, upon motion of the  
34 offender, may order that the unpaid interest be converted to community  
35 restitution. The court may not convert interest on the restitution  
36 portion of the legal financial obligation. The number of hours of

1 community restitution in lieu of the unpaid interest shall be converted  
2 at the rate of the prevailing state minimum wage per hour.

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