
HOUSE BILL 3235

State of Washington

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By Representatives Goodman, Ross, O'Brien, Warnick, Kelley, Pearson, Hurst, Sells, Kirby, Linville, Rolfes, Roach, Roberts, Morrell, Green, Armstrong, and VanDeWege

Read first time 01/25/08. Referred to Committee on Judiciary.

1 AN ACT Relating to victim restitution; and amending RCW 9.94A.010
2 and 9.94A.760.

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

4 **Sec. 1.** RCW 9.94A.010 and 1999 c 196 s 1 are each amended to read
5 as follows:

6 The purpose of this chapter is to make the criminal justice system
7 accountable to the public by developing a system for the sentencing of
8 felony offenders which structures, but does not eliminate,
9 discretionary decisions affecting sentences, and to:

10 (1) Ensure that the punishment for a criminal offense is
11 proportionate to the seriousness of the offense and the offender's
12 criminal history;

13 (2) Promote respect for the law by providing punishment which is
14 just;

15 (3) Be commensurate with the punishment imposed on others
16 committing similar offenses;

17 (4) Protect the public;

18 (5) Offer the offender an opportunity to improve him or herself;

- 1 (6) Make frugal use of the state's and local governments'
2 resources; (~~and~~)
3 (7) Reduce the risk of reoffending by offenders in the community;
4 and
5 (8) Consider a victim's needs and provide restitution and support
6 as needed to ensure that such person will not be further victimized.

7 **Sec. 2.** RCW 9.94A.760 and 2005 c 263 s 1 are each amended to read
8 as follows:

9 (1) Whenever a person is convicted in superior court, the court may
10 order the payment of a legal financial obligation as part of the
11 sentence. The restitution portion of a person's legal financial
12 obligation shall be established as soon as possible at the time of
13 sentencing and the order shall include the location of the offender's
14 assets and any assets stolen from the victim for seizure and return to
15 the victim. The court must on either the judgment and sentence or on
16 a subsequent order to pay, designate the total amount of a legal
17 financial obligation and segregate this amount among the separate
18 assessments made for restitution, costs, fines, and other assessments
19 required by law. On the same order, the court is also to set a sum
20 that the offender is required to pay on a monthly basis towards
21 satisfying the legal financial obligation. If the court fails to set
22 the offender monthly payment amount, the department shall set the
23 amount if the department has active supervision of the offender,
24 otherwise the county clerk shall set the amount. Upon receipt of an
25 offender's monthly payment, restitution shall be paid prior to any
26 payments of other monetary obligations. After restitution is
27 satisfied, the county clerk shall distribute the payment proportionally
28 among all other fines, costs, and assessments imposed, unless otherwise
29 ordered by the court.

30 (2) If the court determines that the offender, at the time of
31 sentencing, has the means to pay for the cost of incarceration, the
32 court may require the offender to pay for the cost of incarceration at
33 a rate of fifty dollars per day of incarceration, if incarcerated in a
34 prison, or the court may require the offender to pay the actual cost of
35 incarceration per day of incarceration, if incarcerated in a county
36 jail. In no case may the court require the offender to pay more than
37 one hundred dollars per day for the cost of incarceration. Payment of

1 other court-ordered financial obligations, including all legal
2 financial obligations and costs of supervision shall take precedence
3 over the payment of the cost of incarceration ordered by the court.
4 All funds recovered from offenders for the cost of incarceration in the
5 county jail shall be remitted to the county and the costs of
6 incarceration in a prison shall be remitted to the department.

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

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

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

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

31 (5) In order to assist the court in setting a monthly sum that the
32 offender must pay before, during, and after the period of supervision,
33 the offender is required to report to the department and the county
34 clerk for purposes of preparing a recommendation to the court. When
35 reporting, the offender is required, under oath, to respond truthfully
36 and honestly to all questions concerning present, past, and future
37 earning capabilities and the location and nature of all property or

1 financial assets. The offender is further required to bring all
2 documents requested by the department.

3 (6) After completing the investigation, the department and the
4 county clerk shall make a report to the court on the amount of the
5 monthly payment that the offender should be required to make towards a
6 satisfied legal financial obligation that includes the offender's
7 assets and assets stolen from the victim for seizure and return to the
8 victim.

9 (7)(a) 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 (b) Subsequent to any period of supervision, or if the department
24 is not authorized to supervise the offender in the community, the
25 county clerk may make a recommendation to the court that the offender's
26 monthly payment schedule be modified so as to reflect a change in
27 financial circumstances. If the county clerk sets the monthly payment
28 amount, or if the department set the monthly payment amount and the
29 department has subsequently turned the collection of the legal
30 financial obligation over to the county clerk, the clerk may modify the
31 monthly payment amount without the matter being returned to the court.
32 During the period of repayment, the county clerk may require the
33 offender to report to the clerk for the purpose of reviewing the
34 appropriateness of the collection schedule for the legal financial
35 obligation. During this reporting, the offender is required under oath
36 to respond truthfully and honestly to all questions concerning earning
37 capabilities and the location and nature of all property or financial

1 assets. The offender shall bring all documents requested by the county
2 clerk in order to prepare the collection schedule.

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

15 (9) The department or any obligee of the legal financial obligation
16 may seek a mandatory wage assignment for the purposes of obtaining
17 satisfaction for the legal financial obligation pursuant to RCW
18 9.94A.7701. Any party obtaining a wage assignment shall notify the
19 county clerk. The county clerks shall notify the department, or the
20 administrative office of the courts, whichever is providing the monthly
21 billing for the offender.

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

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

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

33 (c) The billing shall direct payments, other than outstanding cost
34 of supervision assessments under RCW 9.94A.780, parole assessments
35 under RCW 72.04A.120, and cost of probation assessments under RCW
36 9.95.214, to the county clerk, and cost of supervision, parole, or
37 probation assessments to the department.

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

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

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

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

18 (14) Nothing in this chapter makes the department, the state, the
19 counties, or any state or county employees, agents, or other persons
20 acting on their behalf liable under any circumstances for the payment
21 of these legal financial obligations or for the acts of any offender
22 who is no longer, or was not, subject to supervision by the department
23 for a term of community custody, community placement, or community
24 supervision, and who remains under the jurisdiction of the court for
25 payment of legal financial obligations.

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