
SENATE BILL 6709

State of Washington

61st Legislature

2010 Regular Session

By Senator Brandland

Read first time 01/22/10. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to legal financial obligations; amending RCW
2 9.94A.760 and 9.94A.753; and adding a new section to chapter 9.94A RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A RCW
5 to read as follows:

6 When a person who suffers from a mental health condition is
7 convicted of an offense, the court may waive imposition of legal
8 financial obligations if the court finds that:

9 (1) The offender's mental health condition was a direct cause of
10 the offender's commission of the offense;

11 (2) The offender's mental health condition substantially impairs
12 the offender's ability to pay legal financial obligations; and

13 (3) The offender:

14 (a) Is currently receiving support under supplemental security
15 income or social security disability insurance programs due to a mental
16 health condition;

17 (b) Is currently receiving support from the state under the general
18 assistance unemployable, general assistance expedited medicaid, or

1 temporary assistance for needy families programs, and has been
2 diagnosed with a mental health condition; or

3 (c) Was released within the prior six months from a mental health
4 treatment facility or other state institution where the offender
5 received treatment for a mental health condition.

6 **Sec. 2.** RCW 9.94A.760 and 2008 c 231 s 35 are each amended to read
7 as follows:

8 (1) Whenever a person is convicted in superior court, the court may
9 order the payment of a legal financial obligation as part of the
10 sentence. If the court determines that the offender suffers from a
11 mental health condition, the symptoms of which were a direct cause of
12 the offender's commission of the crime, the court may waive imposition
13 of legal financial obligations in accordance with section 1 of this
14 act. The court must on either the judgment and sentence or on a
15 subsequent order to pay, designate the total amount of a legal
16 financial obligation and segregate this amount among the separate
17 assessments made for restitution, costs, fines, and other assessments
18 required by law. On the same order, the court is also to set a sum
19 that the offender is required to pay on a monthly basis towards
20 satisfying the legal financial obligation. If the court fails to set
21 the offender monthly payment amount, the department shall set the
22 amount if the department has active supervision of the offender,
23 otherwise the county clerk shall set the amount. Upon receipt of an
24 offender's monthly payment, restitution shall be paid prior to any
25 payments of other monetary obligations. After restitution is
26 satisfied, the county clerk shall distribute the payment proportionally
27 among all other fines, costs, and assessments imposed, unless otherwise
28 ordered by the court.

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

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

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

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

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

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

30 (5) In order to assist the court in setting a monthly sum that the
31 offender must pay during the period of supervision, the offender is
32 required to report to the department for purposes of preparing a
33 recommendation to the court. When reporting, the offender is required,
34 under oath, to respond truthfully and honestly to all questions
35 concerning present, past, and future earning capabilities and the
36 location and nature of all property or financial assets. The offender
37 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, or if the department set the monthly payment amount and the
25 department has subsequently turned the collection of the legal
26 financial obligation over to the county clerk, the clerk may modify the
27 monthly payment amount without the matter being returned to the court.
28 During the period of repayment, the county clerk may require the
29 offender to report to the clerk for the purpose of reviewing the
30 appropriateness of the collection schedule for the legal financial
31 obligation. During this reporting, the offender is required under oath
32 to respond truthfully and honestly to all questions concerning earning
33 capabilities and the location and nature of all property or financial
34 assets. The offender shall bring all documents requested by the county
35 clerk in order to prepare the collection schedule.

36 (8) After the judgment and sentence or payment order is entered,
37 the department is authorized, for any period of supervision, to collect
38 the legal financial obligation from the offender. Subsequent to any

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

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

17 (10) The requirement that the offender pay a monthly sum towards a
18 legal financial obligation constitutes a condition or requirement of a
19 sentence and the offender is subject to the penalties for noncompliance
20 as provided in RCW 9.94B.040, 9.94A.737, or 9.94A.740.

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

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

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

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

36 (e) The county clerks, the administrative office of the courts, and
37 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 or
6 is unable to continue to assume responsibility for collection pursuant
7 to subsection (4) of this section. The costs for collection services
8 shall be paid by the offender.

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

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

20 **Sec. 3.** RCW 9.94A.753 and 2003 c 379 s 16 are each amended to read
21 as follows:

22 This section applies to offenses committed after July 1, 1985.

23 (1) When restitution is ordered, the court shall determine the
24 amount of restitution due at the sentencing hearing or within one
25 hundred eighty days except as provided in subsection (7) of this
26 section. The court may continue the hearing beyond the one hundred
27 eighty days for good cause. The court shall then set a minimum monthly
28 payment that the offender is required to make towards the restitution
29 that is ordered. The court should take into consideration the total
30 amount of the restitution owed, the offender's present, past, and
31 future ability to pay, as well as any assets that the offender may
32 have.

33 (2) During the period of supervision, the community corrections
34 officer may examine the offender to determine if there has been a
35 change in circumstances that warrants an amendment of the monthly
36 payment schedule. The community corrections officer may recommend a
37 change to the schedule of payment and shall inform the court of the

1 recommended change and the reasons for the change. The sentencing
2 court may then reset the monthly minimum payments based on the report
3 from the community corrections officer of the change in circumstances.

4 (3) Except as provided in subsection (6) of this section,
5 restitution ordered by a court pursuant to a criminal conviction shall
6 be based on easily ascertainable damages for injury to or loss of
7 property, actual expenses incurred for treatment for injury to persons,
8 and lost wages resulting from injury. Restitution shall not include
9 reimbursement for damages for mental anguish, pain and suffering, or
10 other intangible losses, but may include the costs of counseling
11 reasonably related to the offense. The amount of restitution shall not
12 exceed double the amount of the offender's gain or the victim's loss
13 from the commission of the crime.

14 (4) For the purposes of this section, for an offense committed
15 prior to July 1, 2000, the offender shall remain under the court's
16 jurisdiction for a term of ten years following the offender's release
17 from total confinement or ten years subsequent to the entry of the
18 judgment and sentence, whichever period ends later. Prior to the
19 expiration of the initial ten-year period, the superior court may
20 extend jurisdiction under the criminal judgment an additional ten years
21 for payment of restitution. For an offense committed on or after July
22 1, 2000, the offender shall remain under the court's jurisdiction until
23 the obligation is completely satisfied, regardless of the statutory
24 maximum for the crime. The portion of the sentence concerning
25 restitution may be modified as to amount, terms, and conditions during
26 any period of time the offender remains under the court's jurisdiction,
27 regardless of the expiration of the offender's term of community
28 supervision and regardless of the statutory maximum sentence for the
29 crime. The court may not reduce the total amount of restitution
30 ordered because the offender may lack the ability to pay the total
31 amount. The offender's compliance with the restitution shall be
32 supervised by the department only during any period which the
33 department is authorized to supervise the offender in the community
34 under RCW 9.94A.728, 9.94A.501, or in which the offender is in
35 confinement in a state correctional institution or a correctional
36 facility pursuant to a transfer agreement with the department, and the
37 department shall supervise the offender's compliance during any such
38 period. The department is responsible for supervision of the offender

1 only during confinement and authorized supervision and not during any
2 subsequent period in which the offender remains under the court's
3 jurisdiction. The county clerk is authorized to collect unpaid
4 restitution at any time the offender remains under the jurisdiction of
5 the court for purposes of his or her legal financial obligations.

6 (5) Except as provided in section 1 of this act, restitution shall
7 be ordered whenever the offender is convicted of an offense which
8 results in injury to any person or damage to or loss of property or as
9 provided in subsection (6) of this section unless extraordinary
10 circumstances exist which make restitution inappropriate in the court's
11 judgment and the court sets forth such circumstances in the record. In
12 addition, restitution shall be ordered to pay for an injury, loss, or
13 damage if the offender pleads guilty to a lesser offense or fewer
14 offenses and agrees with the prosecutor's recommendation that the
15 offender be required to pay restitution to a victim of an offense or
16 offenses which are not prosecuted pursuant to a plea agreement.

17 (6) Restitution for the crime of rape of a child in the first,
18 second, or third degree, in which the victim becomes pregnant, shall
19 include: (a) All of the victim's medical expenses that are associated
20 with the rape and resulting pregnancy; and (b) child support for any
21 child born as a result of the rape if child support is ordered pursuant
22 to a civil superior court or administrative order for support for that
23 child. The clerk must forward any restitution payments made on behalf
24 of the victim's child to the Washington state child support registry
25 under chapter 26.23 RCW. Identifying information about the victim and
26 child shall not be included in the order. The offender shall receive
27 a credit against any obligation owing under the administrative or
28 superior court order for support of the victim's child. For the
29 purposes of this subsection, the offender shall remain under the
30 court's jurisdiction until the offender has satisfied support
31 obligations under the superior court or administrative order for the
32 period provided in RCW 4.16.020 or a maximum term of twenty-five years
33 following the offender's release from total confinement or twenty-five
34 years subsequent to the entry of the judgment and sentence, whichever
35 period is longer. The court may not reduce the total amount of
36 restitution ordered because the offender may lack the ability to pay
37 the total amount. The department shall supervise the offender's
38 compliance with the restitution ordered under this subsection.

1 (7) Regardless of the provisions of subsections (1) through (6) of
2 this section, and except as provided in section 1 of this act, the
3 court shall order restitution in all cases where the victim is entitled
4 to benefits under the crime victims' compensation act, chapter 7.68
5 RCW. If the court does not order restitution and the victim of the
6 crime has been determined to be entitled to benefits under the crime
7 victims' compensation act, the department of labor and industries, as
8 administrator of the crime victims' compensation program, may petition
9 the court within one year of entry of the judgment and sentence for
10 entry of a restitution order. Upon receipt of a petition from the
11 department of labor and industries, the court shall hold a restitution
12 hearing and shall enter a restitution order.

13 (8) In addition to any sentence that may be imposed, an offender
14 who has been found guilty of an offense involving fraud or other
15 deceptive practice or an organization which has been found guilty of
16 any such offense may be ordered by the sentencing court to give notice
17 of the conviction to the class of persons or to the sector of the
18 public affected by the conviction or financially interested in the
19 subject matter of the offense by mail, by advertising in designated
20 areas or through designated media, or by other appropriate means.

21 (9) This section does not limit civil remedies or defenses
22 available to the victim, survivors of the victim, or offender including
23 support enforcement remedies for support ordered under subsection (6)
24 of this section for a child born as a result of a rape of a child
25 victim. The court shall identify in the judgment and sentence the
26 victim or victims entitled to restitution and what amount is due each
27 victim. The state or victim may enforce the court-ordered restitution
28 in the same manner as a judgment in a civil action. Restitution
29 collected through civil enforcement must be paid through the registry
30 of the court and must be distributed proportionately according to each
31 victim's loss when there is more than one victim.

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