
Judiciary Committee

HB 1276

Title: An act relating to court-ordered legal financial obligations collected by the county clerks.

Brief Description: Addressing court-ordered legal financial obligations collected by the county clerks.

Sponsors: Representatives Warnick, Dickerson, Nealey and Kelley.

Brief Summary of Bill

- Authorizes county clerks to issue and serve orders to withhold and deliver and notices of debt for the purpose of collecting past-due legal financial obligations.
- Prohibits the Administrative Office of the Courts from making budget reductions to the legal financial obligations funds without approval by the Legislature.

Hearing Date: 2/16/11

Staff: Kelly Pfundheller (786-7289).

Background:

When a person is convicted of a crime, the court may order the payment of legal financial obligations (LFO) as part of the sentence. Legal financial obligations are requirements to pay any of the following:

- restitution to the victim;
- statutorily imposed crime victim's compensation fees;
- court cost;
- county or inter-local drug fund assessments;
- court-appointed attorneys' fees and costs of defense;
- fines;
- reimbursement for emergency response expenses in cases of vehicular assault or vehicular homicide involving a driving while under the influence conviction; and
- any other financial obligation assessed to the offender as a result of a felony conviction.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In 2003 legislation was passed requiring the Department of Corrections (DOC) to supervise an offender's compliance with the payment of LFOs only during the period within which the offender is incarcerated or while the DOC is authorized to supervise the offender in the community. The DOC is not responsible for supervising the offender during any subsequent period of time that the offender is under the court's supervision. During that period, county clerks supervise an offender's compliance with LFO payments.

When an offender completes his or her term of supervision, the DOC must notify the Administrative Office of the Courts (AOC) and provide information to enable the county clerk to monitor the payment of the remaining LFOs. The AOC provides billing services and maintains a statewide database of offender payments. The AOC also distributes the funds appropriated to the counties for the purpose of the county clerk collection budgets, and the AOC has the discretion to expend those funds appropriated by the Legislature for LFO billing.

When the Legislature transferred the responsibility for collecting criminal LFO payments from the DOC to the county clerks, it enabled the county clerks to take many, but not all, administrative collection actions previously reserved to the DOC. The DOC's authority to issue notices of debt and orders to withhold and deliver was not extended to county clerks.

Order to Withhold and Deliver.

The DOC may issue an "order to withhold and deliver" when an offender's court-ordered LFO payment is past-due, provided that the offender's judgment and sentence or subsequent order to pay includes a statement that other income withholding action may be taken without further notice to the offender.

An order to withhold and deliver may be issued to any person or entity the DOC has reason to believe is in possession of property that is due, owing, or belonging to the offender. The order directs such persons or entities to withhold the property and deliver it to the appropriate clerk of the court, upon expiration of a 20-day answer period. The property is then applied toward satisfaction of the offender's past-due LFOs.

Notice of Debt.

A notice of debt is necessary only when an offender's judgment and sentence or subsequent order to pay does not include a statement that income-withholding action may be taken without further notice to the offender. A notice of debt notifies an offender that income withholding action will be taken to enforce and collect past-due payments on his or her court ordered LFOs.

A notice of debt is effective only if the offender's monthly LFO payment is past-due. The notice alerts the offender that collection will be effected through either a notice of payroll deduction, or an order to withhold and deliver. The notice of debt must include statements: (1) of the total LFO and monthly payment amount; (2) that earnings are subject to a notice of payroll deduction; (3) that earnings or property or both are subject to the order to withhold and deliver; and (4) that net proceeds will be applied to satisfaction of the offender's outstanding LFOs. The notice of debt is effective 20 days after it is served on or refused by the offender.

Joint Bank Accounts.

Collection action by the DOC against a joint bank account or any other funds subject to community property laws require 20 days notice to all affected parties stating that (1) the funds are subject to potential withholding, and (2) the non-obligated party may contest the withholding of his or her interest in the funds. The non-obligated person has 10 days to contest the withholding of his or her interest in the funds by filing a petition with the DOC. If such a petition is not received, the DOC is authorized to proceed with the collection action.

Summary of Bill:

The county clerks are granted authority to issue and serve orders to withhold and deliver and notices of debt for the purpose of collecting past-due LFO. Also, limitations are placed on the AOC in regards to budget reductions.

Authority currently held by the DOC to issue an order to withhold and deliver for the purpose of satisfying an offender's past-due LFOs is extended to county clerks. Authority currently held by the DOC to issue a notice of debt to an offender, for the purpose of notifying the offender that income-withholding action is being taken against him or her in order to satisfy past-due LFO payments, is also extended to county clerks. County clerks are also granted authority and obligations with respect to joint bank accounts when supervising compliance with LFOs. A non-obligated person may file a petition with the superior court contesting the withholding of his or her interest in a joint bank account or other funds subject to a collection action. The county clerk serving notice of potential withholding is charged with notifying a non-obligated person of his or her right to file a petition.

The AOC may not make budget reductions to the legal financial obligations funds unless specifically permitted to make those reductions by the Legislature.

Appropriation: None.

Fiscal Note: Requested on February 11, 2011.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.