HOUSE BILL REPORT
SSB 5423

As Passed House:
April 7, 2011

Title: An act relating to legal financial obligations.

Brief Description: Modifying legal financial obligation provisions.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Regala, Hargrove, Chase and Kline).

Brief History:

Committee Activity:

Judiciary: 3/14/11, 3/17/11 [DP];

General Government Appropriations & Oversight: 3/24/11, 3/28/11 [DP].

Floor Activity:

Passed House: 4/7/11, 53-39.

Brief Summary of Substitute Bill

- Revises the standards for the reduction or waiver of interest on legal financial obligations imposed as part of a criminal judgment and sentence.
- Allows county clerks to issue orders to withhold and deliver and notices of debt to offenders for enforcement of past-due legal financial obligations.
- Requires the Administrative Office of the Courts to issue periodic, rather than monthly, individualized billing statements for legal financial obligations.
- Specifies that a judgment resulting from a crime committed on or after July 1, 2000, remains a lien on non-exempt real property of the judgment debtor until the judgment is fully satisfied.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Eddy, Frockt, Kirby, Nealey, Orwall and Roberts.

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.

Minority Report: Do not pass. Signed by 2 members: Representatives Chandler and Klippert.

Staff: Edie Adams (786-7180).

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

Majority Report: Do pass. Signed by 13 members: Representatives Hudgins, Chair; Miloscia, Vice Chair; McCune, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Ahern, Armstrong, Blake, Fitzgibbon, Ladenburg, Moscoso, Pedersen, Van De Wege and Wilcox.

Staff: Alex MacBain (786-7288).

Background:

<u>Legal Financial Obligations</u>.

When a defendant is convicted of a crime, the court may impose legal financial obligations (LFOs) as part of the judgment and sentence. Legal financial obligations include: victim restitution; crime victims' compensation fees; court costs; defense costs; fines; and other costs. An offender's payments towards LFOs are applied first to restitution, and then proportionally to other monetary obligations after restitution has been satisfied.

<u>Interest on Legal Financial Obligations</u>.

Legal financial obligation judgments bear interest from the date of judgment at the same rate that applies to civil judgments. The rate of interest generally applicable to civil judgments is the greater of 12 percent or four points above the 26-week treasury bill rate. As a result of low treasury bill rates, 12 percent has been the interest rate on LFOs for over two decades.

Interest that accrues on the restitution portion of the LFO is paid to the victim of the offense. All other accrued interest is split between the state and the county as follows: 25 percent to the State General Fund; 25 percent to the state Judicial Information System Account; and 50 percent to the county, 25 percent of which must be used to fund local courts.

<u>Waiver of Interest on Legal Financial Obligations</u>.

An offender may petition a court to reduce or waive the interest on the LFO as an incentive for the offender to pay the principal. The court may grant the petition only if the offender has made a good faith effort to pay and shows that interest accrual is causing a significant hardship and that he or she will not be able to fully pay the LFO unless interest is waived or reduced. "Good faith effort" means that the offender has paid the principal in full or has made 24 consecutive monthly payments under a payment plan. Interest on restitution may not be waived, but may be reduced if the offender has paid the restitution principal in full.

<u>Enforcement of Legal Financial Obligations</u>.

An offender's LFO that is based on a judgment and sentence for a crime committed before July 1, 2000, may be enforced for 10 years from the date of the judgment and sentence or the offender's release from total confinement, whichever is later, and can be extended by the court for an additional 10-year period. For crimes committed on or after July 1, 2000, the LFO can be enforced until it is satisfied.

An offender's compliance with LFOs is supervised by the Department of Corrections (DOC) during any period the offender is incarcerated or under the DOC supervision after release, and then by the county clerk for the remaining period the offender is under the jurisdiction of the court. When an offender's term of supervision ends, 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 issues individualized monthly billing statements to offenders subject to LFOs and maintains a statewide database of offender payments.

The LFO statutes authorize the DOC to issue "orders to withhold and deliver" and "notices of debt" in order to collect past-due LFOs. County clerks do not have similar authority. An order to withhold and deliver directs any person or entity who may possess property of the offender to withhold the property and deliver it to the appropriate clerk of the court, upon expiration of a 20-day answer period. A notice of debt notifies an offender that income withholding action will be taken to enforce and collect past-due LFO payments. When the DOC takes collection action against a joint bank account or any other funds subject to community property laws, special notice requirements apply and the non-obligated party is given the opportunity to contest the withholding of his or her interest in the funds.

Judgment Liens.

A judgment is generally enforceable for a period of 10 years, but may be extended for an additional 10-year period. Upon entry, a judgment may become a lien on non-exempt real property owned or later acquired by the judgment debtor. The judgment lien runs for a period not to exceed 10 years from entry of judgment unless the 10-year period is extended. The judgment lien statute does not provide an exception from this 20-year maximum for LFO judgments resulting from crimes committed on or after July 1, 2000, which remain enforceable until the judgment is satisfied.

Summary of Bill:

Waiver of Interest Legal Financial Obligations.

The standards for the reduction or waiver of interest on LFOs are revised. The court must waive interest on the non-restitution portion of the LFO that accrued while the offender was in total confinement for the conviction that gave rise to the LFO if the offender shows the interest creates a hardship.

For all other interest that accrues on the non-restitution portion of the LFO, the court may waive or reduce the interest if the offender has made a good faith effort to pay and the interest accrual is causing a significant hardship. The definition of "good faith effort" is revised to require 15 payments within 18 months. The offender is no longer required to show that he or she will be able to pay the LFO in full only if interest is waived.

Enforcement of Legal Financial Obligations.

The county clerks are granted authority to issue and serve orders to withhold and deliver for the purpose of collecting past-due LFOs and notices of debt for the purpose of notifying the offender that income-withholding action may be taken to satisfy past-due LFO payments. County clerks are also granted authority and obligations with respect to collection actions affecting joint bank accounts.

The AOC is required to issue periodic, rather than monthly, billing statements to offenders.

Judgment Liens.

The statute governing judgment liens on real property is amended to provide that a judgment resulting from a criminal sentence for a crime committed on or after July 1, 2000, remains a lien on non-exempt real property of the judgment debtor until the judgment is fully satisfied.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Judiciary):

(In support) This legislation strikes a fair balance between offender accountability and successful reentry of offenders into the community. A study by the University of Washington found that LFOs are a serious barrier to offender reentry due in large part to excessive interest rates. These interest rates accrue while the offender is in prison and does not have an ability to make payments. This impacts the offender's credit status, which can make it very difficult for the person to find housing and other needed services. We want to help offenders who are trying to get back into society and figure out their lives to be successful. This is especially important for people who are unable to make payments because they suffer from a mental illness. The bill promotes successful reentry which will decrease recidivism. The onus is placed on the offender to petition for the waiver. The bill does not touch restitution payments and provides greater collection authority to the court clerks. Increased payments will reduce collection costs and sanction efforts. The result of the bill will be to put the priority on the payment of restitution.

(With concerns) The DOC has concerns about two components of the bill. First, the bill allows clerks to issue, withhold, and deliver orders. The DOC is in a better position to determine whether an offender on supervision is in a position to comply with this process. The other concern is with the change to the frequency of billing offenders. The DOC is afraid that there will be a loss of income if the billing changes to periodic, which is not defined in the bill.

(Opposed) None.

Staff Summary of Public Testimony (General Government Appropriations & Oversight):

(In support) This bill provides realistic opportunities for re-entry while continuing to hold offenders accountable for their legal financial obligations (LFOs). Ever-mounting debt makes it more difficult for someone to re-enter society. This is especially important for people who are unable to make payments because they suffer from mental illness. Studies have shown that LFOs and the excessive interest rate that accompanies them pose a significant barrier to re-entry. These interest rates accrue while the offender is in prison and does not have the ability to make payments. A University of Washington study indicated that if someone owed $2,500 and made regular monthly payments of $25, they would owe $4,000 at the end of 30 years. This bill will produce long-term savings because it creates a more manageable debt for offenders upon release which will encourage more payment. Increased payments will reduce collection and sanction costs and will put more priority on the payment of restitution rather than interest.

(Opposed) None.

Persons Testifying (Judiciary): (In support) Travis Stears, Washington Defenders Association and the Washington Association of Criminal Defense Lawyers; Nick Allen, Columbia Legal Services; and Seth Dawson, National Alliance on Mental Illness.

(With concerns) Anna Alyward, Department of Corrections.

Persons Testifying (General Government Appropriations & Oversight): Nick Allen, Columbia Legal Services; Bob Cooper, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Steven Aldrich, Friends Committee on Washington Public Policy; and Seth Dawson, National Alliance on Mental Illness.

Persons Signed In To Testify But Not Testifying (Judiciary): None.

Persons Signed In To Testify But Not Testifying (General Government Appropriations & Oversight): None.