

SENATE BILL REPORT

SB 5423

As of February 17, 2011

Title: An act relating to legal financial obligations.

Brief Description: Encouraging the reduction of recidivism by modifying legal financial obligation provisions.

Sponsors: Senators Regala, Hargrove, Chase and Kline.

Brief History:

Committee Activity: Human Services & Corrections: 2/15/11.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Shani Bauer (786-7468)

Background: Legal Financial Obligations. When a defendant is convicted of a crime, the court may impose financial obligations as part of the judgment and sentence. Financial obligations include victim restitution; crime victims' compensation fees; court costs; court-appointed attorneys' fees and costs of defense; fines; and other costs associated with the offense or sentence. An offender's payments toward a legal financial obligation are applied first to restitution, and then proportionally to other monetary obligations after restitution has been satisfied. Costs of incarceration, if ordered, are paid last.

Interest on Legal Financial Obligations. Judgments for financial obligations in criminal proceedings bear interest from the date of judgment at the same rate that is applicable 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 applicable interest rate on criminal financial obligation judgments for almost two decades.

Interest that accrues on the restitution portion of the financial obligation is paid to the victim of the offense. All other interest accruing on the judgment is split between the state and the county as follows:

- 25 percent to the state for the Public Safety and Education Account;
- 25 percent to the state for the Judicial Information System Account; and
- 50 percent to the county's current expense fund, 25 percent of which must be used to fund local courts.

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.

Waiver of Interest on Financial Obligations. An offender may petition a court to reduce or waive the interest on legal financial obligations as an incentive for the offender to pay the principal. The court may grant the petition only if the offender shows:

- a good faith effort to pay;
- interest accrual is causing a significant hardship;
- an inability to pay both the principal and interest; and
- that reduction or waiver of interest will enable full payment.

Good faith effort means that the offender has either paid the principal amount in full or has made 24 consecutive monthly payments under a payment plan agreement with the court. Interest on the restitution portion of a legal financial obligation judgment may not be waived, but may be reduced if the offender has paid the restitution principal in full.

Summary of Bill: Upon motion by an offender, the court must waive the interest on non-restitution legal financial obligations that accrued during the term of total confinement, if the offender shows that the interest creates a hardship for the offender or his or her immediate family.

When showing a good faith effort to pay in order to allow the court to reduce or waive interest on non-restitution legal financial obligations that accrued other than when an offender was incarcerated, a good faith effort means the offender has made at least 15 monthly payments within an 18 month period.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill supports successful reentry. The onus is on the individual to bring a motion forward, and the person must have made 80 percent of their payments to qualify for reduction. Large financial obligations significantly limit reentry efforts and may lead to recidivism. Allowing more flexibility on interest may actually add to collections. This bill does not touch restitution interest and does not create new responsibilities for clerks. It should have a very minimal fiscal impact to the state, but will mean a great deal to the persons who have financial obligations to pay. Keeping restitution in place is vitally important as is giving an offender the necessary tools for reentry.

OTHER: We were concerned with the restitution provisions of this bill, but understand it is not the intent to change those. The bill could be clarified in this regard. We would support a reduction in the interest rate.

The reduction in the number of payments to show good faith is a good change. We have two issues with the bill. One, the definition of total confinement should be clarified. The clerks would like it to relate to the initial period of confinement served by the offender and for

which the legal financial obligation is being imposed. Second, the clerks have to do all the credit calculations manually. The fiscal note does not reflect this workload. The county clerks already assist offenders in getting credits and waivers when the person is working on paying their obligations.

Persons Testifying: PRO: Travis Stearns, WA Defenders Association, WA Association of Criminal Defense Lawyers; Paul Benz, Lutheran Public Policy Office; Nick Allen, Columbia Legal Services.

OTHER: Karla Salp, WA Coalition of Crime Victim Advocates; Debbie Wilke, WA Association of County Officials.