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SENATE BILL 5880

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Stevens, Regala, and Harper

Read first time 03/23/11. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to collections on legal financial obligations; and  
2 amending RCW 9.94A.010 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 the person will not be further victimized.

7 **Sec. 2.** RCW 9.94A.760 and 2008 c 231 s 35 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 court must on either the judgment and sentence or on a  
12 subsequent order to pay, designate the total amount of a legal  
13 financial obligation and segregate this amount among the separate  
14 assessments made for restitution, costs, fines, and other assessments  
15 required by law. On the same order, the court is also to set a sum  
16 that the offender is required to pay on a monthly basis towards  
17 satisfying the legal financial obligation. If the court fails to set  
18 the offender monthly payment amount, the department shall set the  
19 amount if the department has active supervision of the offender,  
20 otherwise the county clerk shall set the amount. Upon receipt of an  
21 offender's monthly payment, restitution shall be paid prior to any  
22 payments of other monetary obligations. After restitution is  
23 satisfied, the county clerk shall distribute the payment proportionally  
24 among all other fines, costs, and assessments imposed, unless otherwise  
25 ordered by the court.

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

1 All funds recovered from offenders for the cost of incarceration in the  
2 county jail shall be remitted to the county and the costs of  
3 incarceration in a prison shall be remitted to the department.

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

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

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

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

28 (5) In order to assist the court in setting a monthly sum that the  
29 offender must pay during the period of supervision, the offender is  
30 required to report to the department for purposes of preparing a  
31 recommendation to the court. When reporting, the offender is required,  
32 under oath, to respond truthfully and honestly to all questions  
33 concerning present, past, and future earning capabilities and the  
34 location and nature of all property or financial assets. The offender  
35 is further required to bring all documents requested by the department.

36 (6) After completing the investigation, the department shall make  
37 a report to the court on the amount of the monthly payment that the

1 offender should be required to make towards a satisfied legal financial  
2 obligation.

3 (7)(a) During the period of supervision, the department may make a  
4 recommendation to the court that the offender's monthly payment  
5 schedule be modified so as to reflect a change in financial  
6 circumstances. If the department sets the monthly payment amount, the  
7 department may modify the monthly payment amount without the matter  
8 being returned to the court. During the period of supervision, the  
9 department may require the offender to report to the department for the  
10 purposes of reviewing the appropriateness of the collection schedule  
11 for the legal financial obligation. During this reporting, the  
12 offender is required under oath to respond truthfully and honestly to  
13 all questions concerning earning capabilities and the location and  
14 nature of all property or financial assets. The offender shall bring  
15 all documents requested by the department in order to prepare the  
16 collection schedule.

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

35 (8) After the judgment and sentence or payment order is entered,  
36 the department is authorized, for any period of supervision, to collect  
37 the legal financial obligation from the offender. Subsequent to any  
38 period of supervision or, if the department is not authorized to

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

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

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

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

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

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

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

37 (e) The county clerks, the administrative office of the courts, and  
38 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.

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