

HB 2231 - S COMM AMD

By Committee on Human Services & Corrections

1 Strike everything after the enacting clause and insert the
2 following:

3 "**Sec. 1.** RCW 9.94A.760 and 2011 c 106 s 3 are each amended to read
4 as follows:

5 (1) Whenever a person is convicted in superior court, the court may
6 order the payment of a legal financial obligation as part of the
7 sentence. The court must on either the judgment and sentence or on a
8 subsequent order to pay, designate the total amount of a legal
9 financial obligation and segregate this amount among the separate
10 assessments made for restitution, costs, fines, and other assessments
11 required by law. On the same order, the court is also to set a sum
12 that the offender is required to pay on a monthly basis towards
13 satisfying the legal financial obligation. If the court fails to set
14 the offender monthly payment amount, the department shall set the
15 amount if the department has active supervision of the offender,
16 otherwise the county clerk shall set the amount. Upon receipt of an
17 offender's monthly payment, restitution shall be paid prior to any
18 payments of other monetary obligations. After restitution is
19 satisfied, the county clerk shall distribute the payment proportionally
20 among all other fines, costs, and assessments imposed, unless otherwise
21 ordered by the court.

22 (2) If the court determines that the offender, at the time of
23 sentencing, has the means to pay for the cost of incarceration, the
24 court may require the offender to pay for the cost of incarceration at
25 a rate of fifty dollars per day of incarceration, if incarcerated in a
26 prison, or the court may require the offender to pay the actual cost of
27 incarceration per day of incarceration, if incarcerated in a county
28 jail. In no case may the court require the offender to pay more than
29 one hundred dollars per day for the cost of incarceration. Payment of
30 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. However, if the
21 court determines that the offender is mentally ill, as defined in RCW
22 71.24.025, failure to pay is not willful noncompliance and shall not
23 subject the offender to penalties.

24 (11)(a) The administrative office of the courts shall mail
25 individualized periodic billings to the address known by the office for
26 each offender with an unsatisfied legal financial obligation.

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

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

35 (d) The county clerks, the administrative office of the courts, and
36 the department shall maintain agreements to implement this subsection.

37 (12) The department shall arrange for the collection of unpaid
38 legal financial obligations during any period of supervision in the

1 community through the county clerk. The department shall either
2 collect unpaid legal financial obligations or arrange for collections
3 through another entity if the clerk does not assume responsibility or
4 is unable to continue to assume responsibility for collection pursuant
5 to subsection (4) of this section. The costs for collection services
6 shall be paid by the offender.

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

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

18 **Sec. 2.** RCW 9.94B.040 and 2002 c 175 s 8 are each amended to read
19 as follows:

20 (1) If an offender violates any condition or requirement of a
21 sentence, the court may modify its order of judgment and sentence and
22 impose further punishment in accordance with this section.

23 (2) In cases where conditions from a second or later sentence of
24 community supervision begin prior to the term of the second or later
25 sentence, the court shall treat a violation of such conditions as a
26 violation of the sentence of community supervision currently being
27 served.

28 (3) If an offender fails to comply with any of the requirements or
29 conditions of a sentence the following provisions apply:

30 (a)(i) Following the violation, if the offender and the department
31 make a stipulated agreement, the department may impose sanctions such
32 as work release, home detention with electronic monitoring, work crew,
33 community restitution, inpatient treatment, daily reporting, curfew,
34 educational or counseling sessions, supervision enhanced through
35 electronic monitoring, jail time, or other sanctions available in the
36 community.

1 (ii) Within seventy-two hours of signing the stipulated agreement,
2 the department shall submit a report to the court and the prosecuting
3 attorney outlining the violation or violations, and sanctions imposed.
4 Within fifteen days of receipt of the report, if the court is not
5 satisfied with the sanctions, the court may schedule a hearing and may
6 modify the department's sanctions. If this occurs, the offender may
7 withdraw from the stipulated agreement.

8 (iii) If the offender fails to comply with the sanction
9 administratively imposed by the department, the court may take action
10 regarding the original noncompliance. Offender failure to comply with
11 the sanction administratively imposed by the department may be
12 considered an additional violation.

13 (b) In the absence of a stipulated agreement, or where the court is
14 not satisfied with the department's sanctions as provided in (a) of
15 this subsection, the court, upon the motion of the state, or upon its
16 own motion, shall require the offender to show cause why the offender
17 should not be punished for the noncompliance. The court may issue a
18 summons or a warrant of arrest for the offender's appearance;

19 (c) The state has the burden of showing noncompliance by a
20 preponderance of the evidence. If the court finds that the violation
21 has occurred, it may order the offender to be confined for a period not
22 to exceed sixty days for each violation, and may (i) convert a term of
23 partial confinement to total confinement, (ii) convert community
24 restitution obligation to total or partial confinement, (iii) convert
25 monetary obligations, except restitution and the crime victim penalty
26 assessment, to community restitution hours at the rate of the state
27 minimum wage as established in RCW 49.46.020 for each hour of community
28 restitution, or (iv) order one or more of the penalties authorized in
29 (a)(i) of this subsection. Any time served in confinement awaiting a
30 hearing on noncompliance shall be credited against any confinement
31 order by the court;

32 (d) If the court finds that the violation was not willful, the
33 court may modify its previous order regarding payment of legal
34 financial obligations and regarding community restitution obligations.
35 If the violation is nonpayment of legal financial obligations and the
36 court determines that the offender is mentally ill, as defined in RCW
37 71.24.025, the failure to pay is not a willful violation; and

1 (e) If the violation involves a failure to undergo or comply with
2 mental status evaluation and/or outpatient mental health treatment, the
3 community corrections officer shall consult with the treatment provider
4 or proposed treatment provider. Enforcement of orders concerning
5 outpatient mental health treatment must reflect the availability of
6 treatment and must pursue the least restrictive means of promoting
7 participation in treatment. If the offender's failure to receive care
8 essential for health and safety presents a risk of serious physical
9 harm or probable harmful consequences, the civil detention and
10 commitment procedures of chapter 71.05 RCW shall be considered in
11 preference to incarceration in a local or state correctional facility.

12 (4) The community corrections officer may obtain information from
13 the offender's mental health treatment provider on the offender's
14 status with respect to evaluation, application for services,
15 registration for services, and compliance with the supervision plan,
16 without the offender's consent, as described under RCW 71.05.630.

17 (5) An offender under community placement or community supervision
18 who is civilly detained under chapter 71.05 RCW, and subsequently
19 discharged or conditionally released to the community, shall be under
20 the supervision of the department of corrections for the duration of
21 his or her period of community placement or community supervision.
22 During any period of inpatient mental health treatment that falls
23 within the period of community placement or community supervision, the
24 inpatient treatment provider and the supervising community corrections
25 officer shall notify each other about the offender's discharge,
26 release, and legal status, and shall share other relevant information.

27 (6) Nothing in this section prohibits the filing of escape charges
28 if appropriate."

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29 On page 1, line 1 of the title, after "obligations;" strike the
30 remainder of the title and insert "and amending RCW 9.94A.760 and

1 9.94B.040."

EFFECT: Provisions are removed preventing the court from determining an offender is willfully noncompliant for the failure to pay legal financial obligations if the offender is homeless.

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