

2SSB 5912 - S AMD TO S AMD (S-3008.2/13) 370
By Senator Roach

WITHDRAWN 06/26/2013

1 On page 6, after line 37 of the amendment, insert the following:

2 "Sec. 8. RCW 9.94A.760 and 2011 c 106 s 3 are each amended to read
3 as follows:

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

21 (2) If the court determines that the offender, at the time of
22 sentencing, has the means to pay for the cost of incarceration, the
23 court:

24 (a) Shall require the offender to pay the actual cost of
25 incarceration per day if the offender was sentenced for a violation of
26 RCW 46.61.502 or 46.61.504, or an equivalent local ordinance;

27 (b) May require the offender to pay for the cost of incarceration
28 at a rate of fifty dollars per day of incarceration, if incarcerated in
29 a prison, or the court may require the offender to pay the actual cost

1 of incarceration per day of incarceration, if incarcerated in a county
2 jail.

3 (3) In no case may the court require the offender to pay more than
4 one hundred dollars per day for the cost of incarceration. Payment of
5 other court-ordered financial obligations, including all legal
6 financial obligations and costs of supervision shall take precedence
7 over the payment of the cost of incarceration ordered by the court.
8 All funds recovered from offenders for the cost of incarceration in the
9 county jail shall be remitted to the county and the costs of
10 incarceration in a prison shall be remitted to the department.

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

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

28 ~~((+4))~~ (5) Independent of the department or the county clerk, the
29 party or entity to whom the legal financial obligation is owed shall
30 have the authority to use any other remedies available to the party or
31 entity to collect the legal financial obligation. These remedies
32 include enforcement in the same manner as a judgment in a civil action
33 by the party or entity to whom the legal financial obligation is owed.
34 Restitution collected through civil enforcement must be paid through
35 the registry of the court and must be distributed proportionately
36 according to each victim's loss when there is more than one victim.
37 The judgment and sentence shall identify the party or entity to whom
38 restitution is owed so that the state, party, or entity may enforce the

1 judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or
2 9.94A.753(6) to a victim of rape of a child or a victim's child born
3 from the rape, the Washington state child support registry shall be
4 identified as the party to whom payments must be made. Restitution
5 obligations arising from the rape of a child in the first, second, or
6 third degree that result in the pregnancy of the victim may be enforced
7 for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6).
8 All other legal financial obligations for an offense committed prior to
9 July 1, 2000, may be enforced at any time during the ten-year period
10 following the offender's release from total confinement or within ten
11 years of entry of the judgment and sentence, whichever period ends
12 later. Prior to the expiration of the initial ten-year period, the
13 superior court may extend the criminal judgment an additional ten years
14 for payment of legal financial obligations including crime victims'
15 assessments. All other legal financial obligations for an offense
16 committed on or after July 1, 2000, may be enforced at any time the
17 offender remains under the court's jurisdiction. For an offense
18 committed on or after July 1, 2000, the court shall retain jurisdiction
19 over the offender, for purposes of the offender's compliance with
20 payment of the legal financial obligations, until the obligation is
21 completely satisfied, regardless of the statutory maximum for the
22 crime. The department may only supervise the offender's compliance
23 with payment of the legal financial obligations during any period in
24 which the department is authorized to supervise the offender in the
25 community under RCW 9.94A.728, 9.94A.501, or in which the offender is
26 confined in a state correctional institution or a correctional facility
27 pursuant to a transfer agreement with the department, and the
28 department shall supervise the offender's compliance during any such
29 period. The department is not responsible for supervision of the
30 offender during any subsequent period of time the offender remains
31 under the court's jurisdiction. The county clerk is authorized to
32 collect unpaid legal financial obligations at any time the offender
33 remains under the jurisdiction of the court for purposes of his or her
34 legal financial obligations.

35 ((+5)) (6) In order to assist the court in setting a monthly sum
36 that the offender must pay during the period of supervision, the
37 offender is required to report to the department for purposes of
38 preparing a recommendation to the court. When reporting, the offender

1 is required, under oath, to respond truthfully and honestly to all
2 questions concerning present, past, and future earning capabilities and
3 the location and nature of all property or financial assets. The
4 offender is further required to bring all documents requested by the
5 department.

6 ((+6+)) (7) After completing the investigation, the department
7 shall make a report to the court on the amount of the monthly payment
8 that the offender should be required to make towards a satisfied legal
9 financial obligation.

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

24 (b) Subsequent to any period of supervision, or if the department
25 is not authorized to supervise the offender in the community, the
26 county clerk may make a recommendation to the court that the offender's
27 monthly payment schedule be modified so as to reflect a change in
28 financial circumstances. If the county clerk sets the monthly payment
29 amount, or if the department set the monthly payment amount and the
30 department has subsequently turned the collection of the legal
31 financial obligation over to the county clerk, the clerk may modify the
32 monthly payment amount without the matter being returned to the court.
33 During the period of repayment, the county clerk may require the
34 offender to report to the clerk for the purpose of reviewing the
35 appropriateness of the collection schedule for the legal financial
36 obligation. During this reporting, the offender is required under oath
37 to respond truthfully and honestly to all questions concerning earning

1 capabilities and the location and nature of all property or financial
2 assets. The offender shall bring all documents requested by the county
3 clerk in order to prepare the collection schedule.

4 ~~((+8+))~~ (9) After the judgment and sentence or payment order is
5 entered, the department is authorized, for any period of supervision,
6 to collect the legal financial obligation from the offender.
7 Subsequent to any period of supervision or, if the department is not
8 authorized to supervise the offender in the community, the county clerk
9 is authorized to collect unpaid legal financial obligations from the
10 offender. Any amount collected by the department shall be remitted
11 daily to the county clerk for the purpose of disbursements. The
12 department and the county clerks are authorized, but not required, to
13 accept credit cards as payment for a legal financial obligation, and
14 any costs incurred related to accepting credit card payments shall be
15 the responsibility of the offender.

16 ~~((+9+))~~ (10) The department or any obligee of the legal financial
17 obligation may seek a mandatory wage assignment for the purposes of
18 obtaining satisfaction for the legal financial obligation pursuant to
19 RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the
20 county clerk. The county clerks shall notify the department, or the
21 administrative office of the courts, whichever is providing the monthly
22 billing for the offender.

23 ~~((+10+))~~ (11) The requirement that the offender pay a monthly sum
24 towards a legal financial obligation constitutes a condition or
25 requirement of a sentence and the offender is subject to the penalties
26 for noncompliance as provided in RCW 9.94B.040, 9.94A.737, or
27 9.94A.740.

28 ~~((+11+))~~ (12)(a) The administrative office of the courts shall mail
29 individualized periodic billings to the address known by the office for
30 each offender with an unsatisfied legal financial obligation.

31 (b) The billing shall direct payments, other than outstanding cost
32 of supervision assessments under RCW 9.94A.780, parole assessments
33 under RCW 72.04A.120, and cost of probation assessments under RCW
34 9.95.214, to the county clerk, and cost of supervision, parole, or
35 probation assessments to the department.

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

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

3 ~~((+12+))~~ (13) The department shall arrange for the collection of
4 unpaid legal financial obligations during any period of supervision in
5 the community through the county clerk. The department shall either
6 collect unpaid legal financial obligations or arrange for collections
7 through another entity if the clerk does not assume responsibility or
8 is unable to continue to assume responsibility for collection pursuant
9 to subsection ~~((+4+))~~ (5) of this section. The costs for collection
10 services shall be paid by the offender.

11 ~~((+13+))~~ (14) The county clerk may access the records of the
12 employment security department for the purposes of verifying employment
13 or income, seeking any assignment of wages, or performing other duties
14 necessary to the collection of an offender's legal financial
15 obligations.

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

23 **Sec. 9.** RCW 10.01.160 and 2010 c 54 s 1 are each amended to read
24 as follows:

25 (1) The court shall require a defendant sentenced for a violation
26 of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, to pay
27 costs subject to subsection (3) of this section. In all other cases,
28 the court may require a defendant to pay costs. Costs may be imposed
29 only upon a convicted defendant, except for costs imposed upon a
30 defendant's entry into a deferred prosecution program, costs imposed
31 upon a defendant for pretrial supervision, or costs imposed upon a
32 defendant for preparing and serving a warrant for failure to appear.

33 (2) Costs shall be limited to expenses specially incurred by the
34 state in prosecuting the defendant or in administering the deferred
35 prosecution program under chapter 10.05 RCW or pretrial supervision.
36 They cannot include expenses inherent in providing a constitutionally
37 guaranteed jury trial or expenditures in connection with the

1 maintenance and operation of government agencies that must be made by
2 the public irrespective of specific violations of law. Expenses
3 incurred for serving of warrants for failure to appear and jury fees
4 under RCW 10.46.190 may be included in costs the court may require a
5 defendant to pay. Costs for administering a deferred prosecution may
6 not exceed two hundred fifty dollars. Costs for administering a
7 pretrial supervision may not exceed one hundred fifty dollars. Costs
8 for preparing and serving a warrant for failure to appear may not
9 exceed one hundred dollars. Costs of incarceration imposed on a
10 defendant convicted of a misdemeanor or a gross misdemeanor may not
11 exceed the actual cost of incarceration. In no case may the court
12 require the offender to pay more than one hundred dollars per day for
13 the cost of incarceration. Payment of other court-ordered financial
14 obligations, including all legal financial obligations and costs of
15 supervision take precedence over the payment of the cost of
16 incarceration ordered by the court. All funds received from defendants
17 for the cost of incarceration in the county or city jail must be
18 remitted for criminal justice purposes to the county or city that is
19 responsible for the defendant's jail costs. Costs imposed constitute
20 a judgment against a defendant and survive a dismissal of the
21 underlying action against the defendant. However, if the defendant is
22 acquitted on the underlying action, the costs for preparing and serving
23 a warrant for failure to appear do not survive the acquittal, and the
24 judgment that such costs would otherwise constitute shall be vacated.

25 (3) The court shall not order a defendant to pay costs unless the
26 defendant is or will be able to pay them. In determining the amount
27 and method of payment of costs, the court shall take account of the
28 financial resources of the defendant and the nature of the burden that
29 payment of costs will impose.

30 (4) A defendant who has been ordered to pay costs and who is not in
31 contumacious default in the payment thereof may at any time petition
32 the sentencing court for remission of the payment of costs or of any
33 unpaid portion thereof. If it appears to the satisfaction of the court
34 that payment of the amount due will impose manifest hardship on the
35 defendant or the defendant's immediate family, the court may remit all
36 or part of the amount due in costs, or modify the method of payment
37 under RCW 10.01.170.

1 (5) Except for direct costs relating to evaluating and reporting to
2 the court, prosecutor, or defense counsel regarding a defendant's
3 competency to stand trial as provided in RCW 10.77.060, this section
4 shall not apply to costs related to medical or mental health treatment
5 or services a defendant receives while in custody of the secretary of
6 the department of social and health services or other governmental
7 units. This section shall not prevent the secretary of the department
8 of social and health services or other governmental units from imposing
9 liability and seeking reimbursement from a defendant committed to an
10 appropriate facility as provided in RCW 10.77.084 while criminal
11 proceedings are stayed. This section shall also not prevent
12 governmental units from imposing liability on defendants for costs
13 related to providing medical or mental health treatment while the
14 defendant is in the governmental unit's custody. Medical or mental
15 health treatment and services a defendant receives at a state hospital
16 or other facility are not a cost of prosecution and shall be
17 recoverable under RCW 10.77.250 and 70.48.130, chapter 43.20B RCW, and
18 any other applicable statute."

19 Renumber the remaining sections consecutively and correct any
20 internal references accordingly.

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21 On page 74, line 3 of the title amendment, after "35.20.255,"
22 insert "9.94A.760, 10.01.160,"

EFFECT: Offenders convicted for DUI or PC violations must be
ordered to pay costs of incarceration unless the court finds that they
are unable to pay.

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