
SENATE BILL 5950

State of Washington 63rd Legislature 2013 2nd Special Session

By Senators Roach, Benton, and Sheldon

Read first time 06/28/13. Referred to Committee on Law & Justice.

1 AN ACT Relating to requiring payment for costs of incarceration;
2 and amending RCW 9.94A.760 and 10.01.160.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

1 satisfied, the county clerk shall distribute the payment proportionally
2 among all other fines, costs, and assessments imposed, unless otherwise
3 ordered by the court.

4 (2) If the court determines that the offender, at the time of
5 sentencing, has the means to pay for the cost of incarceration, the
6 court (~~may~~) must require the offender to pay for the cost of
7 incarceration at a rate of fifty dollars per day of incarceration, if
8 incarcerated in a prison, or the court (~~may~~) must require the
9 offender to pay the actual cost of incarceration per day of
10 incarceration, if incarcerated in a county jail. In no case may the
11 court require the offender to pay more than one hundred dollars per day
12 for the cost of incarceration. Payment of other court-ordered
13 financial obligations, including all legal financial obligations and
14 costs of supervision shall take precedence over the payment of the cost
15 of incarceration ordered by the court. All funds recovered from
16 offenders for the cost of incarceration in the county jail shall be
17 remitted to the county and the costs of incarceration in a prison shall
18 be remitted to the department.

19 (3) The court may add to the judgment and sentence or subsequent
20 order to pay a statement that a notice of payroll deduction is to be
21 issued immediately. If the court chooses not to order the immediate
22 issuance of a notice of payroll deduction at sentencing, the court
23 shall add to the judgment and sentence or subsequent order to pay a
24 statement that a notice of payroll deduction may be issued or other
25 income-withholding action may be taken, without further notice to the
26 offender if a monthly court-ordered legal financial obligation payment
27 is not paid when due, and an amount equal to or greater than the amount
28 payable for one month is owed.

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

36 (4) Independent of the department or the county clerk, the party or
37 entity to whom the legal financial obligation is owed shall have the
38 authority to use any other remedies available to the party or entity to

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

1 under the court's jurisdiction. The county clerk is authorized to
2 collect unpaid legal financial obligations at any time the offender
3 remains under the jurisdiction of the court for purposes of his or her
4 legal financial obligations.

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

13 (6) After completing the investigation, the department shall make
14 a report to the court on the amount of the monthly payment that the
15 offender should be required to make towards a satisfied legal financial
16 obligation.

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

31 (b) Subsequent to any period of supervision, or if the department
32 is not authorized to supervise the offender in the community, the
33 county clerk may make a recommendation to the court that the offender's
34 monthly payment schedule be modified so as to reflect a change in
35 financial circumstances. If the county clerk sets the monthly payment
36 amount, or if the department set the monthly payment amount and the
37 department has subsequently turned the collection of the legal
38 financial obligation over to the county clerk, the clerk may modify the

1 monthly payment amount without the matter being returned to the court.
2 During the period of repayment, the county clerk may require the
3 offender to report to the clerk for the purpose of reviewing the
4 appropriateness of the collection schedule for the legal financial
5 obligation. During this reporting, the offender is required under oath
6 to respond truthfully and honestly to all questions concerning earning
7 capabilities and the location and nature of all property or financial
8 assets. The offender shall bring all documents requested by the county
9 clerk in order to prepare the collection schedule.

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

22 (9) The department or any obligee of the legal financial obligation
23 may seek a mandatory wage assignment for the purposes of obtaining
24 satisfaction for the legal financial obligation pursuant to RCW
25 9.94A.7701. Any party obtaining a wage assignment shall notify the
26 county clerk. The county clerks shall notify the department, or the
27 administrative office of the courts, whichever is providing the monthly
28 billing for the offender.

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

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

36 (b) The billing shall direct payments, other than outstanding cost
37 of supervision assessments under RCW 9.94A.780, parole assessments

1 under RCW 72.04A.120, and cost of probation assessments under RCW
2 9.95.214, to the county clerk, and cost of supervision, parole, or
3 probation assessments to the department.

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

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

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

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

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

28 **Sec. 2.** RCW 10.01.160 and 2010 c 54 s 1 are each amended to read
29 as follows:

30 (1) The court (~~may~~) must require a defendant to pay costs. Costs
31 may be imposed only upon a convicted defendant, except for costs
32 imposed upon a defendant's entry into a deferred prosecution program,
33 costs imposed upon a defendant for pretrial supervision, or costs
34 imposed upon a defendant for preparing and serving a warrant for
35 failure to appear.

36 (2) Costs shall be limited to expenses specially incurred by the
37 state in prosecuting the defendant or in administering the deferred

1 prosecution program under chapter 10.05 RCW or pretrial supervision.
2 They cannot include expenses inherent in providing a constitutionally
3 guaranteed jury trial or expenditures in connection with the
4 maintenance and operation of government agencies that must be made by
5 the public irrespective of specific violations of law. Expenses
6 incurred for serving of warrants for failure to appear and jury fees
7 under RCW 10.46.190 may be included in costs the court may require a
8 defendant to pay. Costs for administering a deferred prosecution may
9 not exceed two hundred fifty dollars. Costs for administering a
10 pretrial supervision may not exceed one hundred fifty dollars. Costs
11 for preparing and serving a warrant for failure to appear may not
12 exceed one hundred dollars. Costs of incarceration imposed on a
13 defendant convicted of a misdemeanor or a gross misdemeanor may not
14 exceed the actual cost of incarceration. In no case may the court
15 require the offender to pay more than one hundred dollars per day for
16 the cost of incarceration. Payment of other court-ordered financial
17 obligations, including all legal financial obligations and costs of
18 supervision take precedence over the payment of the cost of
19 incarceration ordered by the court. All funds received from defendants
20 for the cost of incarceration in the county or city jail must be
21 remitted for criminal justice purposes to the county or city that is
22 responsible for the defendant's jail costs. Costs imposed constitute
23 a judgment against a defendant and survive a dismissal of the
24 underlying action against the defendant. However, if the defendant is
25 acquitted on the underlying action, the costs for preparing and serving
26 a warrant for failure to appear do not survive the acquittal, and the
27 judgment that such costs would otherwise constitute shall be vacated.

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

33 (4) A defendant who has been ordered to pay costs and who is not in
34 contumacious default in the payment thereof may at any time petition
35 the sentencing court for remission of the payment of costs or of any
36 unpaid portion thereof. If it appears to the satisfaction of the court
37 that payment of the amount due will impose manifest hardship on the

1 defendant or the defendant's immediate family, the court may remit all
2 or part of the amount due in costs, or modify the method of payment
3 under RCW 10.01.170.

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

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