
SENATE BILL 5951

State of Washington 63rd Legislature 2013 2nd Special Session

By Senator Roach

Read first time 06/29/13. Referred to Committee on Law & Justice.

1 AN ACT Relating to costs of incarceration for impaired driving
2 offenders; 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:

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

10 (b) May require the offender to pay for the cost of incarceration
11 at a rate of fifty dollars per day of incarceration, if incarcerated in
12 a prison, or the court may require the offender to pay the actual cost
13 of incarceration per day of incarceration, if incarcerated in a county
14 jail.

15 (3) In no case may the court require the offender to pay more than
16 one hundred dollars per day for the cost of incarceration. Payment of
17 other court-ordered financial obligations, including all legal
18 financial obligations and costs of supervision shall take precedence
19 over the payment of the cost of incarceration ordered by the court.
20 All funds recovered from offenders for the cost of incarceration in the
21 county jail shall be remitted to the county and the costs of
22 incarceration in a prison shall be remitted to the department.

23 ~~((+3))~~ (4) The court may add to the judgment and sentence or
24 subsequent order to pay a statement that a notice of payroll deduction
25 is to be issued immediately. If the court chooses not to order the
26 immediate issuance of a notice of payroll deduction at sentencing, the
27 court shall add to the judgment and sentence or subsequent order to pay
28 a statement that a notice of payroll deduction may be issued or other
29 income-withholding action may be taken, without further notice to the
30 offender if a monthly court-ordered legal financial obligation payment
31 is not paid when due, and an amount equal to or greater than the amount
32 payable for one month is owed.

33 If a judgment and sentence or subsequent order to pay does not
34 include the statement that a notice of payroll deduction may be issued
35 or other income-withholding action may be taken if a monthly legal
36 financial obligation payment is past due, the department or the county
37 clerk may serve a notice on the offender stating such requirements and

1 authorizations. Service shall be by personal service or any form of
2 mail requiring a return receipt.

3 ~~((+4))~~ (5) Independent of the department or the county clerk, the
4 party or entity to whom the legal financial obligation is owed shall
5 have the authority to use any other remedies available to the party or
6 entity to collect the legal financial obligation. These remedies
7 include enforcement in the same manner as a judgment in a civil action
8 by the party or entity to whom the legal financial obligation is owed.
9 Restitution collected through civil enforcement must be paid through
10 the registry of the court and must be distributed proportionately
11 according to each victim's loss when there is more than one victim.
12 The judgment and sentence shall identify the party or entity to whom
13 restitution is owed so that the state, party, or entity may enforce the
14 judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or
15 9.94A.753(6) to a victim of rape of a child or a victim's child born
16 from the rape, the Washington state child support registry shall be
17 identified as the party to whom payments must be made. Restitution
18 obligations arising from the rape of a child in the first, second, or
19 third degree that result in the pregnancy of the victim may be enforced
20 for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6).
21 All other legal financial obligations for an offense committed prior to
22 July 1, 2000, may be enforced at any time during the ten-year period
23 following the offender's release from total confinement or within ten
24 years of entry of the judgment and sentence, whichever period ends
25 later. Prior to the expiration of the initial ten-year period, the
26 superior court may extend the criminal judgment an additional ten years
27 for payment of legal financial obligations including crime victims'
28 assessments. All other legal financial obligations for an offense
29 committed on or after July 1, 2000, may be enforced at any time the
30 offender remains under the court's jurisdiction. For an offense
31 committed on or after July 1, 2000, the court shall retain jurisdiction
32 over the offender, for purposes of the offender's compliance with
33 payment of the legal financial obligations, until the obligation is
34 completely satisfied, regardless of the statutory maximum for the
35 crime. The department may only supervise the offender's compliance
36 with payment of the legal financial obligations during any period in
37 which the department is authorized to supervise the offender in the
38 community under RCW 9.94A.728, 9.94A.501, or in which the offender is

1 confined in a state correctional institution or a correctional facility
2 pursuant to a transfer agreement with the department, and the
3 department shall supervise the offender's compliance during any such
4 period. The department is not responsible for supervision of the
5 offender during any subsequent period of time the offender remains
6 under the court's jurisdiction. The county clerk is authorized to
7 collect unpaid legal financial obligations at any time the offender
8 remains under the jurisdiction of the court for purposes of his or her
9 legal financial obligations.

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

19 ~~((+6))~~ (7) After completing the investigation, the department
20 shall make a report to the court on the amount of the monthly payment
21 that the offender should be required to make towards a satisfied legal
22 financial obligation.

23 ~~((+7))~~ (8)(a) During the period of supervision, the department may
24 make a recommendation to the court that the offender's monthly payment
25 schedule be modified so as to reflect a change in financial
26 circumstances. If the department sets the monthly payment amount, the
27 department may modify the monthly payment amount without the matter
28 being returned to the court. During the period of supervision, the
29 department may require the offender to report to the department for the
30 purposes of reviewing the appropriateness of the collection schedule
31 for the legal financial obligation. During this reporting, the
32 offender is required under oath to respond truthfully and honestly to
33 all questions concerning earning capabilities and the location and
34 nature of all property or financial assets. The offender shall bring
35 all documents requested by the department in order to prepare the
36 collection schedule.

37 (b) Subsequent to any period of supervision, or if the department
38 is not authorized to supervise the offender in the community, the

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

16 ~~((+8+))~~ (9) After the judgment and sentence or payment order is
17 entered, the department is authorized, for any period of supervision,
18 to collect the legal financial obligation from the offender.
19 Subsequent to any period of supervision or, if the department is not
20 authorized to supervise the offender in the community, the county clerk
21 is authorized to collect unpaid legal financial obligations from the
22 offender. Any amount collected by the department shall be remitted
23 daily to the county clerk for the purpose of disbursements. The
24 department and the county clerks are authorized, but not required, to
25 accept credit cards as payment for a legal financial obligation, and
26 any costs incurred related to accepting credit card payments shall be
27 the responsibility of the offender.

28 ~~((+9+))~~ (10) The department or any obligee of the legal financial
29 obligation may seek a mandatory wage assignment for the purposes of
30 obtaining satisfaction for the legal financial obligation pursuant to
31 RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the
32 county clerk. The county clerks shall notify the department, or the
33 administrative office of the courts, whichever is providing the monthly
34 billing for the offender.

35 ~~((+10+))~~ (11) The requirement that the offender pay a monthly sum
36 towards a legal financial obligation constitutes a condition or
37 requirement of a sentence and the offender is subject to the penalties

1 for noncompliance as provided in RCW 9.94B.040, 9.94A.737, or
2 9.94A.740.

3 ~~((+11))~~ (12)(a) The administrative office of the courts shall mail
4 individualized periodic billings to the address known by the office for
5 each offender with an unsatisfied legal financial obligation.

6 (b) The billing shall direct payments, other than outstanding cost
7 of supervision assessments under RCW 9.94A.780, parole assessments
8 under RCW 72.04A.120, and cost of probation assessments under RCW
9 9.95.214, to the county clerk, and cost of supervision, parole, or
10 probation assessments to the department.

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

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

16 ~~((+12))~~ (13) The department shall arrange for the collection of
17 unpaid legal financial obligations during any period of supervision in
18 the community through the county clerk. The department shall either
19 collect unpaid legal financial obligations or arrange for collections
20 through another entity if the clerk does not assume responsibility or
21 is unable to continue to assume responsibility for collection pursuant
22 to subsection ~~((+4))~~ (5) of this section. The costs for collection
23 services shall be paid by the offender.

24 ~~((+13))~~ (14) The county clerk may access the records of the
25 employment security department for the purposes of verifying employment
26 or income, seeking any assignment of wages, or performing other duties
27 necessary to the collection of an offender's legal financial
28 obligations.

29 ~~((+14))~~ (15) Nothing in this chapter makes the department, the
30 state, the counties, or any state or county employees, agents, or other
31 persons acting on their behalf liable under any circumstances for the
32 payment of these legal financial obligations or for the acts of any
33 offender who is no longer, or was not, subject to supervision by the
34 department for a term of community custody, and who remains under the
35 jurisdiction of the court for payment of legal financial obligations.

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

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

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

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

6 (4) A defendant who has been ordered to pay costs and who is not in
7 contumacious default in the payment thereof may at any time petition
8 the sentencing court for remission of the payment of costs or of any
9 unpaid portion thereof. If it appears to the satisfaction of the court
10 that payment of the amount due will impose manifest hardship on the
11 defendant or the defendant's immediate family, the court may remit all
12 or part of the amount due in costs, or modify the method of payment
13 under RCW 10.01.170.

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

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