

SENATE BILL REPORT

E2SHB 1390

As of February 25, 2016

Title: An act relating to legal financial obligations.

Brief Description: Concerning legal financial obligations.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Goodman, Holy, Jinkins, Kagi, Moscoso, Ormsby and Pollet).

Brief History: Passed House: 3/09/15, 94-4; 2/03/16, 97-0.

Committee Activity: Law & Justice: 3/30/15, 3/31/15 [DPA-WM]; 2/24/16.

Ways & Means: 4/06/15, 4/07/15 [DPA, w/oRec].

Brief Summary of Bill

- Eliminates interest accrual on the non-restitution portions of legal financial obligations (LFOs).
- Provides that a court may not impose costs on a defendant who is indigent at the time of sentencing.
- Establishes provisions governing payment plans and priority of payment of LFOs.
- Addresses actions a court may take in sanction proceedings for failure to pay LFOs where the offender's failure to pay is not willful and establishes standards for what constitutes willful failure to pay.
- Provides that the DNA database fee is not mandatory if the state has already collected the offender's DNA as a result of a prior conviction.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Pearson, Roach and Kohl-Welles.

Staff: Aldo Melchiori (786-7439)

SENATE COMMITTEE ON WAYS & MEANS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Billig, Brown, Conway, Fraser, Hasegawa, Hewitt, O'Ban, Padden, Rolfes, Schoesler, Hatfield and Kohl-Welles.

Minority Report: That it be referred without recommendation.

Signed by Senators Parlette and Warnick.

Staff: Julie Murray (786-7711)

Background: Legal Financial Obligations (LFOs). When a defendant is convicted of a crime, the court may impose LFOs as part of the judgment and sentence. LFOs include victim restitution; crime victims' compensation fees; costs associated with the offender's prosecution and sentence; fines; penalties; and assessments.

Interest on LFOs. *Interest Rate.* LFO judgments bear interest from the date of judgment at the same rate that applies to civil judgments. The rate of interest generally applicable to civil judgments is the greater of 12 percent or four points above the 26-week treasury bill rate. As a result of low treasury bill rates, 12 percent has been the applicable interest rate on LFOs for over two decades. For cases in courts of limited jurisdiction, interest accrues on non-restitution financial obligations at the rate of 12 percent upon assignment to a collection agency.

Interest that accrues on the restitution portion of the LFO is paid to the victim of the offense. All other accrued interest is split between the state and the county as follows: 25 percent to the state general fund; 25 percent to the state Judicial Information System Account; and 50 percent to the county, 25 percent of which must be used to fund local courts.

Reduction or Waiver of Interest. An offender may petition a court to reduce or waive the interest on LFOs as an incentive for the offender to pay the principal. The court must waive interest on the portion of LFOs that accrued during the term of total confinement for the conviction giving rise to the LFOs if it creates a hardship for the offender or the defendant's family. The court may otherwise reduce interest on non-restitution LFOs if the offender has made a good faith effort to pay. Interest on restitution may not be waived, but may be reduced if the offender has paid the restitution principal in full.

Imposition and Collection of LFOs. *Costs.* Costs that may be imposed on a defendant include public defense costs, jury fee, criminal filing fee, bench warrant fee, deferred prosecution fee, pre-trial supervision fee, witness costs, incarceration costs, and other costs as ordered by the court.

A court may not order a defendant to pay costs unless the court finds that the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court must take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose. A defendant not in default in the payment of costs

may petition for remission of all or part of the costs owed if payment of the amount due will result in manifest hardship to the defendant or the defendant's family.

Priority of Payment. An offender's payments toward an LFO are applied first to restitution, and then proportionally to other monetary obligations after restitution has been satisfied. Costs of incarceration, if ordered, are paid last.

Failure to Pay LFOs. The requirement that an offender pay a monthly sum toward an LFO is a condition of the sentence and an offender is subject to penalties for noncompliance. Under the Sentencing Reform Act, sanctions for a willful failure to pay can include incarceration or other penalties such as work crew or community restitution. If the failure to pay is not willful, the court may modify the offender's LFOs.

Civil contempt sanctions may also apply to an offender who fails to pay financial obligations. If the court finds that the failure to pay was willful, the court may impose contempt sanctions including incarceration. If the court determines the failure to pay was not willful, the court may modify the terms of payment, or reduce or revoke the amount of the financial obligation.

DNA Database Fee. A biological sample must be collected for purposes of DNA identification analysis from every person convicted of a felony or certain other offenses, and the court must impose a \$100 fee as part of the sentence for the offense. Eighty percent of the fee is deposited into the DNA Database Account and 20 percent of the fee is transmitted to the local agency that collected the biological sample.

Summary of Bill: LFO Interest. *Interest Rat.:* Interest accrual on the non-restitution portion of an offender's LFOs imposed in superior court or courts of limited jurisdiction is eliminated as of the effective date of the act.

Reduction or Waiver of Interest. Standards for the reduction or waiver of interest on LFOs are revised. Upon motion of the offender, the court must waive interest on the non-restitution portion of the LFOs that accrued prior to the effective date of the act.

Imposition and Collection of LFOs. *Cost.:* A court may not impose costs on an offender who is indigent at the time of sentencing, or appellate costs on an offender who is indigent at the time the request for appellate costs is made. A person is "indigent" if the person is receiving certain types of public assistance, involuntarily committed to a public mental health facility, or receiving an annual income after taxes of 125 percent of the federal poverty levels.

An offender who is not in default in the payment of costs may request the court to convert unpaid costs to community restitution hours at the rate of the minimum wage if payment of the amount due will result in manifest hardship to the defendant. Manifest hardship occurs when the defendant is indigent and the defendant's indigency is unlikely to end.

Priority of Payment. An offender's LFO payment must be applied to the principal on restitution obligations in all cases within a jurisdiction prior to payment of any other monetary obligations. The priority of payment applies to cases in courts of limited jurisdiction as well as superior court.

Payment plans. If the court finds that the defendant is indigent, the court must grant permission for payment of LFOs to be made within a specified period of time or in specified installments.

Enforcement of LFOs. An offender cannot be sanctioned for failure to pay LFOs unless the failure to pay is willful. An offender's failure to pay is willful only if the offender has the current ability to pay but refuses to do so. When determining an offender's ability to pay, the court must consider the offender's: income and assets; basic living costs and other liabilities including child support and other LFOs; and bona fide efforts to acquire additional resources. An offender who is indigent is presumed to lack the current ability to pay.

If the court determines that the offender is homeless or is a person who is mentally ill, failure to pay LFOs is not willful noncompliance with the conditions of the sentence and does not subject the offender to penalties.

When a court is considering sanctions for failure to pay LFOs, if the court finds that failure to pay is not willful the court may, and if the defendant is indigent the court must, either: (1) modify the terms of payment; (2) reduce or waive non-restitution amounts; or (3) with the offender's consent allow conversion of non-restitution obligations to be converted to community restitution hours at the rate of no less than the state minimum wage for each hour of community restitution. The crime victim penalty assessment may not be reduced, waived, or converted to community restitution hours.

DNA Database Fee. The court is not required to impose the DNA database fee if the state has previously collected the offender's DNA as a result of a prior conviction.

Other. Nothing in the act requires the courts to refund or reimburse amounts previously paid toward LFOs or interest on LFOs.

Appropriation: None.

Fiscal Note: Available for the original bill.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Law & Justice): Testimony From 2015 Regular Session on Bill as Heard in Committee. PRO: This is an effort to fix the broken LFO system. We are failing to collect LFOs. The striking amendment preserves current judicial discretion. Collecting 100 percent of something is better than 100 percent of nothing. We need to get offenders off the treadmill of paying LFO interest. The current LFO system affects families of color and those with limited financial means. Restitution needs to be a priority. LFOs are imposed disproportionately on people of color. LFOs punish poverty. This properly recognizes the value of restitution while helping offenders reintegrate into society. Even a person trying to pay LFOs can fall behind because of the high interest rate.

CON: The striking amendment lessens the fiscal impact, but it is still significant. The current system is case based, so it would be difficult to apply the restitution priority without significant changes to the system or court clerk time. The technology is not currently available to do electronic transfers with the priorities in the bill. A fixed interest rate will be simpler.

OTHER: We need to know how this would effect net collections.

Persons Testifying (Law & Justice): Persons Testifying From 2015 Regular Session. PRO: Representative Goodman, prime sponsor; Representative Holy; Judge Steve Warning, Superior Court Judges Assn.; Deborah Hawley; Gerald Hankerson, National Assn. for the Advancement of Colored People (NAACP) Seattle King County; Senait Brown, NAACP, Black Out WA; Shankar Nareyan; American Civil Liberties Union of WA; Leo Flor, NW Justice Project; Nick Allers, Columbia Legal Services; Bob Cooper, WA Defender Assn., WA Assn of Criminal Defense Lawyers; Judge Theresa Doyle, WA Minority and Justice Commission; Michele Dovres, Valorie Bodeau, citizens.

CON: Ruth Gordon, WA State Assn. of County Clerks (WSACC); Sonya Kraske, Snohomish County; Joel McAllister, WSACC, King County Clerk; Brian Enslow WA State Assn. of Counties.

OTHER: Greg Luhn, WA Collectors Assn.

Persons Signed In To Testify But Not Testifying: No one.

Staff Summary of Public Testimony (Ways & Means): Testimony From 2015 Regular Session on Bill as Amended by Law & Justice. PRO: This bill is the result of town hall meetings, community input, and action. We consistently heard from the community that the LFO system needed reform. It exacerbates racial disparity. Offenders cannot fully close out their sentences. Interest rates are a deterrent to payment. We ask for three amendments: (1) interest rate for restitution LFO maintained at 12 percent and non-restitution LFOs at 0 percent; (2) place payment of victim restitution first in the payment scheme; and (3) remove the section that seeks to overturn the *Balzina* case. LFOs are a crushing burden on a person. The Senate budget reduces grants to counties for LFO collections. Grants are an example of spending dollars to chase dimes. We ask that the Senate make changes to restore bill as it passed the House. I have two sons – one in prison, one out of prison. LFOs has made it difficult for my son out of prison to maintain employment. My son in prison will have a massive debt upon release. The bill as passed the House will help offenders make a successful transition into society. Veterans are an overrepresented population in our prison system. The burden of LFOs are at odds with the investments we need to make in veterans' mental health. Reducing LFOs will allow offenders who are veterans an easier path to reintegrate with society.

OTHER: We prefer the Senate bill alone based on lower fiscal impact to counties. Changes in section 7 on the *Balzina* case are meaningful to counties; a meaningful determination of ability to pay can be accomplished without an individualized inquiry. First priority of restitution is not being followed. First priority is to the oldest case, not current restitution orders. We do not like de-emphasis on payment of restitution. Ability to pay should be

considered, but restitution should be top priority. We ask that the new interest rate apply to new judgments only so to avoid different rates being applied to the same judgment. Duty of inquiry on ability to pay should apply to future judgments, not current judgments.

Persons Testifying (Ways & Means): Persons Testifying From 2015 Regular Session. PRO: Alex Hur, Statewide Poverty Action Network; Shankar Narayan, American Civil Liberties Union of WA; Bob Cooper, WA Defenders Assn., WA Assn. of Criminal Defense Lawyers; Leo Flor, Deborah Hawley, NW Justice Project.

OTHER: Kevin Underwood, WA Collector's Assn.; Andrea Piper-Wentland, WA Coalition of Sexual Assault Programs; Steven Aldrich, Friends Committee on WA Public Policy; Brian Enslow, WA State Assn. of Counties.

Persons Signed In To Testify But Not Testifying: No one.

Staff Summary of Public Testimony (Law & Justice): Testimony From 2016 Regular Session on Engrossed Second Substitute Bill. PRO: This bill will improve public safety and encourage restitution for victims. It will also encourage reintegration. Interest has become an impediment rather than an incentive to pay. Many offenders simply cannot pay. Only 24% of LFOs are actually paid and this indicates that the system is not working. Ex-felons also need to be given the ability to survive. It will give people a better chance of turning their lives around. LFOs create long-term debt for families. 12% is an egregious interest rate. Offenders are currently burdened with a lifetime of debt. These offenders struggle to find employment and a place to live because credit checks reveal the LFO debt. One-half of cases three years down the road have made no payment. This will increase the collection of restitution. Persons with limited income never get away from their past. LFOs cause hardship for families and communities.

CON: Sixty-six percent of LFOs are paid in full. LFOs hold criminal accountable and fund important state and county programs in the criminal justice system. This will eliminate the ability of offenders to pay LFOs online. Other statutes already prioritize restitution. The court can waive LFOs in appropriate cases. There is no current mechanism to prioritize LFOs in multiple jurisdictions. Interest is an incentive to pay. Often a simple telephone call can help offenders avoid this any hardship that LFOs may cause. Courts can currently waive many LFOs if they cause undue hardship.

Persons Testifying (Law & Justice): Persons Testifying From 2016 Regular Session. PRO: Representative Goodman, Prime Sponsor; Michael Shoemaker, Civil Survivor; Shankar Narayan, ACLU; Michael Fisher, I Did the Time; Tahoti, Black Out Washington; Ardell Shaw, Black Prisoners Care; Tarra Simmons, citizen; Kelly Thompson, Voices for Justice; Dr. Alexis Harris, University of Washington;

CON: Kevin Underwood and Kelsi Hamilton, Washington Collectors Association; Ruth Gordon, Rebecca Johnson, Tawni Sharp, and Staci Myklebust, Washington Association of County Clerks

Persons Signed In To Testify But Not Testifying: No one.