

SENATE BILL REPORT

SB 5713

As of October 13, 2016

Title: An act relating to legal financial obligations.

Brief Description: Concerning legal financial obligations.

Sponsors: Senators Kohl-Welles, Hasegawa, Jayapal, Keiser, Darneille, Chase, Rolfes, Billig and Frockt.

Brief History:

Committee Activity: Law & Justice: 2/17/15.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: Legal Financial Obligations. When a defendant is convicted of a crime, the court may impose legal financial obligations (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 offender's

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.

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 fees, criminal filing fees, bench warrant fees, deferred prosecution fees, pre-trial supervision fees, 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 into account 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.

A Health Impact Review of this legislation was requested and is available at the Washington State Board of Health's website, <http://sboh.wa.gov/Portals/7/Doc/HealthImpactReviews/HIR-2016-07-SB5713.pdf>.

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

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. In addition the court

must waive interest that accrued on restitution while the offender was in total confinement for the conviction that gave rise to the LFO.

Imposition and collection of LFOs. *Costs.* A court may not impose costs on an offender if the court finds the offender is, at the time of sentencing, indigent as defined in laws governing the provision of indigent defense services. A person is indigent under these standards 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.

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. When a court is considering sanctions for failure to pay LFOs, if 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.

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.

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.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: These changes will help make it more likely that victims will be able to collect their full restitution. By making the debt burden more

manageable, offenders will be able to have hope that they can pay off their LFOs and get on with their lives. People can not overcome the reentry barriers and reintegrate into society with these LFOs and interest hanging over their heads. Offenders want to comply, but the accrued interest makes it almost impossible.

CON: The fiscal estimates are too low and undercount the number of offenders who will not be required to pay their LFOs.

OTHER: Most offenders will be found indigent at the time they are convicted, but may have resources to pay their LFOs after their release. If people are not required to pay costs, the court system will become more underfunded.

Persons Testifying: PRO: Senator Kohl-Welles, prime sponsor; Shankar Narayan, American Civil Liberties Union; Valerie Bodeau; Hickory Gafeliss, Center for Children and Youth Justice; Dee Willis, Corrections Chaplin; Ardill Shaw, Statewide Poverty Action Network; Deborah Hawley, Mothers and Others Rallying and Educating for Public Support of Prison Reform.

CON: Barbara Miner, WA State Assn. of County Clerks.

OTHER: Judge Steve Warning, Superior Court Judges Assn.