

# FINAL BILL REPORT

## SSB 6134

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### C 34 L 15 E 3

Synopsis as Enacted

**Brief Description:** Exempting pretrial electronic alcohol monitoring programs from statutory limitations on pretrial supervision costs.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senator Padden).

#### **Senate Committee on Law & Justice**

**Background:** Costs in criminal cases are expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program or pretrial supervision. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.

The court may require a defendant to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program, costs imposed upon a defendant for pretrial supervision, or costs imposed upon a defendant for preparing and serving a warrant for failure to appear. Expenses incurred for serving of warrants for failure to appear and jury fees may be included in costs.

Costs for preparing and serving a warrant for failure to appear may not exceed \$100. Costs for administering a deferred prosecution may not exceed \$250. Costs for administering a pretrial supervision may not exceed \$150.

Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed the actual cost of incarceration. In no case may the court require the offender to pay more than \$100 per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision take precedence over the payment of the cost of incarceration ordered by the court.

The court cannot order a defendant to pay costs unless 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. If it appears to the satisfaction of the court that payment of the amount

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due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment.

In *State v. Hardtke*, the defendant was required to wear an alcohol monitoring bracelet while waiting for trial. He wore the bracelet as required, but objected to paying for the cost. Upon conviction, the trial court imposed the cost of \$3,972 for pretrial alcohol monitoring. The Court of Appeals affirmed, holding that Superior Court Criminal Rule 3.2 gave the trial court authority to require that Hardtke pay the cost because the court rule authorized the trial court to order pretrial electronic monitoring.

The Washington State Supreme Court disagreed. The court found that sentencing issues authorizing costs are substantive rather than procedural, so they are controlled by statute rather than court rule. While pretrial supervision is not statutorily defined, the definition of pretrial release program includes supervision which specifically includes work release, day monitoring, or electronic monitoring. By statute, costs assessed for administering pretrial supervision may not exceed \$150. The court held that the trial court exceeded its statutory authority when it imposed the \$3,972 cost for electronic monitoring.

**Summary:** The \$150 limitation on costs for pretrial supervision does not apply to those for pretrial electronic alcohol monitoring, drug monitoring, or the 24/7 sobriety program. In cases involving driving under the influence or being in physical control of a motor vehicle while under the influence, if electronic monitoring or alcohol abstinence monitoring is ordered, the court must specify (1) who will provide the monitoring services, (2) the terms under which the monitoring is performed, and (3) upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring or abstinence monitoring.

**Votes on Final Passage:**

Second Special Session

Senate 41 3

Third Special Session

Senate 42 2

House 92 6

**Effective:** October 9, 2015