
Judiciary Committee

HB 1783

Title: An act relating to legal financial obligations.

Brief Description: Concerning legal financial obligations.

Sponsors: Representatives Holy, Goodman, Hansen, Hayes, Stokesbary, Senn, Orwall, Kagi, Appleton, Kilduff, Rodne, Jinkins, Taylor, Shea, Tharinger, Frame, Fitzgibbon, Bergquist, Fey, Macri, Ryu, Doglio, Pellicciotti, Peterson, Santos, Reeves, Kloba, Robinson, Stanford, Hudgins, McBride, Ormsby and Pollet.

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.
- Requires the Administrative Office of the Courts to conduct a study and report on the effectiveness of the reform measures of the act in encouraging offenders to pay their LFOs.

Hearing Date: 2/8/17

Staff: Edie Adams (786-7180).

Background:

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.

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. Legal financial obligations include: victim restitution; crime victims' compensation fees; costs associated with the offender's prosecution and sentence; fines; penalties; and assessments.

Interest on Legal Financial Obligations.

Interest Rate: Legal financial obligations 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 his or her 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 Legal Financial Obligations.

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 his or her family.

Priority of Payment: An offender's payments towards LFOs 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 Legal Financial Obligations.

The requirement that an offender pay a monthly sum towards LFOs 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 LFOs. 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 legal 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.

Crime Victim Penalty Assessment.

A crime victim penalty assessment must be imposed on any adult convicted of a criminal offense in superior court, with some exceptions for vehicle-related offenses. The penalty assessment is \$500 in the case of a felony or gross misdemeanor offense and \$250 in the case of a misdemeanor offense. A juvenile offender who is found to have committed a most serious offense must be assessed a penalty assessment in the amount of \$100.

The county treasurer must remit 32 percent of the amounts collected to the State Treasurer for deposit in the State General Fund. Of the remaining 68 percent of amounts collected, the county treasurer must remit 50 percent to a fund maintained exclusively for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes. Comprehensive programs must be approved by the Department of Labor & Industries upon application of the county prosecutor.

Summary of Bill:

LFO Interest.

Interest Rate: Interest accrual on the non-restitution portion of an offender's legal financial obligations (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 Legal Financial Obligations.

Costs: 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 exists when the defendant is indigent.

Priority of Payment: An offender's LFO payment must be applied in the following order of priority until satisfied:

- first, proportionally to restitution to victims that have not been fully compensated from other resources;
- second, proportionally to restitution to insurance or other sources with respect to a loss that has provided compensation to victims;
- third, proportionally to crime victims' assessment; and
- fourth, proportionally to costs, fines, and other assessments.

The requirement that costs of incarceration be paid last after all other LFOs are satisfied is removed. 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 Legal Financial Obligations.

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.

Crime Victim Penalty Assessment.

One hundred percent of the crime victim penalty assessment amounts received by the county treasurer must be deposited into a fund maintained exclusively for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes.

Other.

The Administrative Office of the Courts (AOC) must conduct a study and report on the effectiveness of the reform measures of the act in encouraging offenders to pay their LFOs. The report must include the following information compared with historical LFO collection data: the amount and percentage of LFOs that are paid; the percentage of offenders making payments towards LFOs; the percentage of offenders who satisfy their LFOs in full; the amount and percentage of restitution obligations paid to victims; and the percentage of victims who receive full restitution payments. The AOC must report preliminary findings to the Legislature by December 1, 2018, and a final report by December 1, 2021.

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

Appropriation: None.

Fiscal Note: Requested on 2/1.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.