

SENATE BILL REPORT

E2SHB 1783

As of February 13, 2018

Title: An act relating to legal financial obligations.

Brief Description: Concerning legal financial obligations.

Sponsors: House Committee on Appropriations (originally sponsored by 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 History: Passed House: 3/02/17, 91-7; 5/02/17, 89-3; 5/25/17, 86-8; 1/11/18, 86-12.

Committee Activity: Law & Justice: 3/23/17, 3/29/17 [DPA-WM]; 2/07/18.

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 100 percent of the crime victim penalty assessment must be deposited into a fund for crime victim and witness programs.
- Provides that the DNA database fee is not mandatory if the offender's DNA has been collected as a result of a prior conviction.
- Replaces the word, contumacious with the word, willful.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to 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.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

Staff: Tim Ford (786-7423)

Background: 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 contumacious 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. Webster's defines "contumacious" as "perverse in resisting authority" and "stubbornly disobedient."

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.

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.

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 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. *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 of the request for appellate costs. 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.

The character of default in the payment of LFOs is changed from contumacious default to willful default. An offender who is not in willful 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 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 fails 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 and if the defendant is indigent the court must, either: modify the terms of payment; reduce or waive non-restitution amounts; or allow conversion of non-restitution obligations to community restitution hours, if the jurisdiction operates a community restitution program, 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 for the

support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes.

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.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed. Includes a null and void clause.

Staff Summary of Public Testimony: *Testimony from 2017 Regular Session. The committee recommended a different version of the bill than what was heard.* PRO: LFOs are a barrier to successful reentry by offenders. This burden makes it more likely that offenders will re-offend. Washington has one of the highest interest rates in the nation for LFOs. Debtor prisons were outlawed but a high interest rate on LFOs could result in re-arrest. Victims will not receive restitution if the offender gives up trying to pay. There is no way to catch up with the debt because the interest accrues at a greater rate than the monthly payment. The bill does not relieve offenders from the obligation to pay the principal in restitution. Counties spend more on court costs and collection efforts than they will ever collect. Sending poor people to jail means they will lose their jobs and not be able to pay restitution. The LFO system has a racially disproportionate impact. Some judges impose costs and others don't.

CON: Counties will lose millions with this bill and that will result in bad policy.

OTHER: Judges should have discretion whether to reduce or eliminate costs for persons who use counsel for the indigent. Counties depend on fees to run probation programs and other services. These programs aren't free and by removing the funding source, the Legislature is sending a message that undermines the value of these successful programs. It shouldn't be all or nothing. The Legislature can find a middle ground somewhere between 12 percent and 0 percent interest.

Persons Testifying: PRO: Representative Jeff Holy, Prime Sponsor; Tarra Simmons, Statewide Reentry Council Civil Survival; Nick Allen, Columbia Legal Services; Rebecca Johnson, WA Coalition of Sexual Assault Victims; Alex Hur, Statewide Poverty Action Network; Eric Gonzalez, WA State Labor Council, AFL-CIO; Judge Kevin Hall, Kitsap County Superior Court; Alex Frix, Thurston County Public Defender; Brad Tower, WA Coalition of Crime Victims Advocates; Elizabeth Morrison, citizen; Tom McBride, WAPA; Zachary Kinnewan, citizen; Noah Martin, Quaker Voice on Washington Public Policy; Bob Cooper, WACDL WDA; Billie Schwalbe-Milliken, I Did the Time Spokane.

CON: Kelsi Hamilton, WA Collectors Association.

OTHER: Candace Bock, Association of WA Cities; Melanie Stewart, District and Municipal Court Judges Association; Doug Levy, Cities of Everett, Kent, Renton, Puyallup, Issaquah, and Fife; Julianna Roe, WA State Association of Counties; Alexandra Montano, WA State Board of Health.

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

Staff Summary of Public Testimony: PRO: LFOs are difficult barriers. Interest on non-restitution increased the total owed by the time I was released. The basic needs for myself and children were not met with a job at Burger King. It is a miracle that I did not recidivate. There are limited opportunities for alternatives to payment. Poverty is exacerbated and opportunities for success are diminished. Comprehensive changes are required so that poor persons are not burdened. LFOs are a burden that makes it more likely that offenders will re-offend. Debtor prisons were outlawed, but the interest rate of 12 percent on LFOs may never be paid off. If you miss a payment a new warrant can be issued and result in re-arrest. Sending poor people to jail means they will lose their jobs and not be able to pay restitution. There is no way to catch up with the debt because the interest accrues at a greater rate than the monthly payment.

CON: Interest should not be eliminated. Many persons do have jobs and can pay. Cities and counties will lose millions with this bill. This will affect court operations that rely on payments for operations. We are not opposed to reform on interest. It makes more sense to have interest accrue once a person has been released from confinement. Most interest does not accrue until it is sent to collections. Interest can already be waived by the court.

OTHER: Section 9 and 10 in this bill is concerning because it says that there are not going to be any costs. Courts depend on these costs to run programs such as probation, home detention, payment and relicensing. Without funding courts may not operate these programs. There are a mix of defendants in district court with LFOs. One-third of defendants have been convicted of Driving While License Suspended, a third minor theft, and a third Driving Under the Influence (DUI) and domestic violence. Some are repeat offenders and you should think about whether someone with three or four DUIs should really not have to pay any costs.

Persons Testifying: PRO: Representative Jeff Holy, Prime Sponsor; Joseph Tyson, Bishop, Roman Catholic Diocese of Yakima; Nick Allen, Columbia Legal Services; Tarra Simmons, Statewide Reentry Council; Dante Pollard, citizen; Deborah Hawley, citizen; Rebecca Johnson, Washington Coalition of Sexual Assault Programs; Tonya Tolliver, I Did The Time; Brad Tower, Washington Coalition of Crime Victims Advocates; Tom McBride, Washington Association of Prosecuting Attorneys; April Harris, Not This Time; Ronna Jo LaBree, I Did The Time; Dana Drew, I Did The Time\Revive Reentry; Valente Abundez Ramirez, I Did The Time; Sean O'Donnell, Superior Court Judges Association; Kelly Thompson, Unitarian Universalist Voices for Justice; Steve Tilley, Justice Not Jails.

CON: Kelsi Hamilton, Washington Collectors Association; Chester Baldwin, Washington Collectors Association.

OTHER: Doug Levy, Cities of Renton, Kent, Issaquah, Fife.

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