

# SENATE BILL REPORT

## ESHB 1169

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As of March 19, 2023

**Title:** An act relating to legal financial obligations.

**Brief Description:** Concerning legal financial obligations.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Simmons, Taylor, Berry, Bateman, Goodman, Wylie, Santos and Ormsby).

**Brief History:** Passed House: 2/28/23, 56-41.

**Committee Activity:** Law & Justice: 3/20/23.

### Brief Summary of Bill

- Eliminates the crime victim penalty assessment for juveniles, and provides that a court must not impose the crime victim penalty assessment upon an adult defendant who is indigent at the time of sentencing.
- Establishes a Crime Victim and Witness Assistance Account to support county crime victim and witness programs.
- Eliminates the DNA database fee and establishes alternative state funding for the DNA database and DNA collection costs.
- Requires a court, upon motion of an offender, to waive a previously imposed DNA database fee.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Tim Ford (786-7423)

**Background:** 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

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restitution, court costs, costs associated with the defendant's prosecution and sentence, criminal offense fines, and other fees, penalties, and assessments. Some types of LFOs are mandatory and must be imposed by the court, including the crime victim penalty assessment and the DNA database fee.

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 \$100 penalty assessment. One hundred percent of the crime victim penalty assessment amounts received are transferred to the county treasurer and 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.

DNA Database Fee. A biological sample must be collected for 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. 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.

Eighty percent of the fee is deposited into the DNA Database Account, and 20 percent is transmitted to the local agency that collected the biological sample. Money in the DNA Database Account may be expended by the chief of the Washington State Patrol or the chief's designee only for the creation, operation, and maintenance of the DNA database.

Ability to Pay Legal Financial Obligations. A number of provisions governing the imposition and enforcement of LFOs take into consideration the defendant's ability to pay, and provide that a defendant who is indigent does not have the ability to pay. A defendant is indigent if the defendant:

- is receiving certain types of public assistance;
- is involuntarily committed to a public mental health facility;
- is receiving an annual income after taxes of 125 percent of the federal poverty level;
- is homeless or mentally ill as defined under the Sentencing Reform Act;
- has household income above 125 percent of the federal poverty guidelines and has recurring basic living costs that render the defendant without the financial ability to pay; or
- has other compelling circumstances that exist that demonstrate an inability to pay.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Striking Amendment):** Crime Victim Penalty Assessment. The crime victim penalty assessment is eliminated for juveniles.

For an adult defendant convicted of an offense, the court must not impose the crime victim penalty assessment if the court finds that the defendant is indigent at the time of sentencing. Upon motion of a defendant, the court must waive any crime victim penalty assessment imposed against an adult defendant prior to the effective date of the act if the person does not have the ability to pay. A person does not have the ability to pay if the person is indigent.

Provisions indicating the crime victim penalty assessment may not be reduced, waived, or converted to community restitution hours are removed.

A new Crime Victim and Witness Assistance Account is created in the State Treasury. The account must consist of funds appropriated by the Legislature for comprehensive crime victim and witness programs. Every quarter, the state treasurer must distribute moneys in the account to counties on the basis of a distribution factor that is based on a combination of factors, including population, crime rate, and criminal filings. Counties may use the funds only for comprehensive crime victim and witness programs.

DNA Database Fee. The DNA database fee is eliminated. Upon motion of the offender, the court must waive any DNA database fee imposed prior to the effective date of the act. Any amounts collected for DNA database fees imposed prior to the effective date of the act will continue to be distributed as follows: 80 percent into the DNA Database Account and 20 percent to the agency collecting the DNA sample.

The DNA Database Account must consist of funds appropriated by the Legislature for operation and maintenance of the DNA database and for distribution to agencies responsible for collection of the biological sample from the offender, as well as any receipts from previously imposed DNA database fees. The Washington State Patrol must expend 80 percent of these funds for maintenance and operation of the DNA database and 20 percent for distribution to the agency responsible for collection of the offender's biological sample.

Non-Restitution Juvenile Legal Financial Obligations. Non-restitution legal financial obligations for juveniles are eliminated. No fine, administrative fee, cost, or surcharge may be imposed or collected by the court against any juvenile or a juvenile's parent or guardian in connection with any juvenile proceeding including, but not limited to, fees for diversion, DNA sampling, or victims' penalty assessments. The authority of a court to convert unpaid fines or monetary penalties to community restitution, due to an inability to pay, upon motion of the juvenile, is removed.

A judgment against the juvenile for any legal financial obligation, other than restitution, including, but not limited to, fines, penalty assessments, attorneys' fees, court costs, and other administrative fees, is not enforceable. The superior court clerk shall not accept payments from a respondent who was ordered to pay legal financial obligations, including fines, penalty assessments, attorneys' fees, and court costs as of the effective date of this section.

The courts are not required to refund or reimburse amounts previously paid towards legal financial obligations, interests on legal financial obligations, or any other costs.

Evaluation or Treatment Costs. The state shall pay any examination costs, unless third party insurance coverage is available, related to treatment options to determine if a juvenile is chemically dependent, substance abusing, or suffers from significant mental health or co-occurring disorders. A juvenile, or the parent, guardian, or other person having custody of the juvenile shall not be required to pay the cost of any evaluation or treatment.

**Appropriation:** The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

**Fiscal Note:** Available. New fiscal note requested on February 28, 2023.

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

**Effective Date:** The bill contains several effective dates. Please refer to the bill.