

SENATE BILL REPORT

SB 5474

As Reported by Senate Committee On:
Human Services, February 9, 2023

Title: An act relating to decreasing barriers to successful community participation for individuals involved in the juvenile justice system.

Brief Description: Concerning juvenile justice.

Sponsors: Senators Frame, Trudeau, Kuderer, Lovelett, Nguyen, Saldaña and Wilson, C..

Brief History:

Committee Activity: Human Services: 1/30/23, 2/09/23 [DPS-WM, DNP].

Brief Summary of First Substitute Bill

- Eliminates juvenile legal financial obligations and associated costs.
- Creates the Community Compensation Program, the Community Compensation Task Force, and the Community Compensation Account.
- Requires courts to seal records that were previously ineligible for sealing because of owed restitution.

SENATE COMMITTEE ON HUMAN SERVICES

Majority Report: That Substitute Senate Bill No. 5474 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Wilson, C., Chair; Kauffman, Vice Chair; Frame and Nguyen.

Minority Report: Do not pass.

Signed by Senators Boehnke, Ranking Member; Warnick and Wilson, J..

Staff: Delika Steele (786-7486)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: The Administrative Office of the Courts (AOC) provides support for Washington's courts through a wide range of services to promote the efficient administration of justice.

Legal financial obligation (LFO) means any financial obligation a person is required to pay as a result of a charge or conviction for an offense, including victim 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.

Restitution. Restitution is a sum ordered by the sentencing court to be paid by the offender over a specified period of time as payment for a victim's damages. A restitution order must be based on easily ascertainable damages for injury to property, expenses incurred for treatment of personal injuries, lost wages, and counseling that is reasonably related to the offense. Restitution must not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses.

Costs. Costs that may be imposed on a individual include public defense costs, jury fees, criminal filing fees, bench warrant fees, deferred prosecution fees, pretrial supervision fees, witness costs, incarceration costs, and other costs ordered by the court.

A court may not impose costs on an offender who is indigent at the time of sentencing. 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.

Crime Victim Penalty Assessment. A crime victim penalty assessment must be imposed on any person 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 for a misdemeanor offense. A juvenile offender who is found to have committed a most serious offense must be assessed a penalty assessment of \$100 in addition to any other penalty or fine imposed by law. One hundred percent of the crime victim penalty assessment amounts received by the county treasurer must be deposited into a fund for supporting comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes.

Reimbursement. The Department of Labor and Industries (L&I) may issue a notice of debt due and owing to a person who, in a civil or criminal court proceeding, is found to have committed a criminal act that resulted in the payment of benefits. L&I may not seek payment for a debt due and owing if it would deprive the victim of any community property.

Indigency Standard. Indigency applies with respect to a number of purposes relating to LFOs, including when LFOs may be imposed, waived or reduced, or enforced, and when a person may be sanctioned for failure to pay LFOs. A person is indigent if, at any stage of a court proceeding, they:

- are 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 level;
- are homeless or mentally ill as defined under the Sentencing Reform Act;
- have household income above 125 percent of the federal poverty guidelines and have recurring basic living costs that render the defendant without the financial ability to pay;
- have other compelling circumstances that exist that demonstrate an inability to pay.

Time Period for Enforcement of LFOs. Regardless of when a judgment was entered, nonrestitution LFOs may be enforced during the ten-year period following the offender's release from confinement or within ten years of the judgment and sentence, whichever is later. The judgment may be extended beyond the initial ten-year enforcement period only if the court finds that the offender has the current or likely future ability to pay the obligation. A person does not have the current ability to pay if the person is indigent.

Community-Based Sanctions and Community Restitution. Community-based sanctions may include a fine that does not exceed \$500 and community restitution, not to exceed 150 hours. Community restitution means compulsory service, without compensation, performed for the benefit of the community by an offender as punishment for committing an offense. This may be performed through public or private organizations or through work crews.

Diversion Agreement. A diversion agreement is a contract between a juvenile accused of an offense and a diversion unit where the juvenile agrees to fulfill certain conditions in lieu of prosecution. Agreements may be made only after a prosecutor or probation counselor determines probable cause exists to believe a crime was committed and the juvenile committed it. These agreements must be entered into expeditiously and must be limited to one or more of the following:

- community restitution not to exceed 150 hours and not to be performed during school hours if the juvenile is attending school;
- up to ten hours of counseling or up to 20 hours of positive youth development, educational, or informational sessions at a community agency;
- requirements to remain at home, school, or work during specified hours and restrictions on leaving or entering specified geographical areas; and
- requirements to refrain from any contact with victims or witnesses of the juvenile's offenses, upon the request of a victim or witness.

Sealing Juvenile Records. There are two methods by which individuals may seal their juvenile records, including filing a motion to seal the official juvenile court record, the social file, and records of the court and any other agency in the case; or through a regularly

held administrative sealing hearing. Once a juvenile record is sealed, the proceedings in the case must be treated as if they never occurred. Any subsequent criminal adjudication or filing of an adult felony charge unseals the case.

At the disposition hearing of a juvenile offender, courts must schedule an administrative sealing hearing after an offender turns 18 years old and is anticipated to have completed any probation and confinement. A juvenile court record must be sealed if the offense is not a most serious offense, a sex offense, or a felony drug offense. Respondents must also have completed the terms and conditions of disposition, including financial obligations, to seal a record during a regular sealing hearing.

An individual may file a motion requesting that the court seal their juvenile record after remaining in the community without further conviction for a period of time and paying any restitution associated with the case. Individuals convicted of rape in the first degree, rape in the second degree, and indecent liberties with forcible compulsion are not eligible for record sealing. Other sex offenses are eligible for sealing, but an individual must be relieved of the obligation to register as a sex offender.

Summary of Bill (First Substitute): No fine, administrative fee, cost, or surcharge can be imposed or collected by courts or agents of the courts against any juvenile or a juvenile's parent or guardian, or any other person who has custody of a juvenile, in connection with any juvenile offender proceeding. These proceedings include, but are not limited to, fees for diversion, DNA sampling, victims' penalty assessments, fees for evaluations or treatments, community transition services, or electronic monitoring. Beginning July 1, 2025, no restitution may be imposed or collected against any juvenile, juvenile's parent or guardian or any other person with custody of the juvenile in connection with any juvenile offender proceeding.

The juvenile court prosecutor must coordinate with the clerk and other appropriate entities to develop a list of all outstanding LFOs repealed by this act. It must include LFOs owing to private, third-party agencies with whom the courts or local jurisdictions have contractual relationships for the collection of legal financial obligations, the Department of Children, Youth, and Families (DCYF), and other private entities if the amounts are known or readily ascertainable, or if the indebted person has provided the prosecutor with documentation of amounts owed to private entities.

The prosecutor must file an ex parte motion to waive any outstanding LFOs where the underlying statutory authority was repealed by this act or under other relevant laws, within one year of the relevant effective date. The prosecuting attorney is not required to notify the defendant of the motion, and the court must consider a motion without requiring the presence of the prosecuting attorney or defendant. If a judgment was entered after the expiration of juvenile court jurisdiction based on relevant laws, the court must direct the clerk to satisfy the judgment.

On or before September 1, 2024, AOC must report to the Legislature the number of

judgment and orders vacated or partially vacated in each judicial district and the amount of the balances waived in each judicial district. On or before September 1, 2023, and annually thereafter, AOC must report to the Legislature the total amount assessed to and collected from individuals charged in superior court and other courts of limited jurisdiction, in fees, court costs, fines, and restitution. This annual report must include information about total amounts assessed and collected, disaggregated by the defendants' age at the time of adjudication, race, gender, LFO type, and charging court.

The courts must notify victims that they may be eligible to collect compensation through the community compensation program.

A community compensation account is created in the custody of the state treasurer. The Community Compensation Program is created in and will be operated by L&I. The program, using funds available in the account, will provide compensation to victims of juvenile offenses based on the recommendations of the Community Compensation Task Force. L&I is authorized to work with community-based organizations or third-party vendors to operate the program and must implement the recommendations of the task force, to the greatest extent feasible, on or before July 1, 2025. The program may also accept private contributions and funds.

L&I is directed to staff and convene a Community Compensation Task Force. The task force's purpose is to address the elimination of juvenile restitution and the compensation of parties harmed by juveniles. The task force's core consideration should be reliant on restorative principles and best practices and its first meeting must be held on or before October 1, 2023. A final implementation plan must be submitted to the Legislature on or before October 1, 2024 and must include:

- a description of the recommended decision-making structure;
- details on the infrastructure of the community compensation program, how it will operate, and an estimate of the administrative cost required to maintain the program including the salaries of necessary staff;
- a process for victims, potentially including those who do not meet the statutory definition of "victim" to participate in the community compensation program;
- a process for determining who is eligible to participate in the program; and
- standards and practices for calculating the amount of compensation applicants may receive.

The process for victims to participate in the community compensation program must:

- ensure participation regardless of an individual's legal status;
- guarantee anonymity of those participating in the program;
- allow participation with or without court order;
- limit the amount of documentation required to participate and the administrative burden of individuals seeking payment;
- consider capping amounts and types of costs eligible for compensation; and
- consider critically the ability of government entities, corporations, insurance

companies, and other nonindividual victims to participate in the program.

Individual victims have priority access to the Community Compensation Program.

Representatives on the Community Compensation Task Force must be selected by L&I and must include:

- three people ordered to pay juvenile LFOs either as juveniles or parents;
- three people ordered to receive restitution payments from a respondent;
- one representative from a statewide coalition focused on LFOs and youth justice;
- one representative from a civil society organization focused on LFO reform;
- one member of the Washington State Partnership Council on Juvenile Justice;
- one public defender specializing in juvenile law;
- one juvenile court judge;
- one prosecutor specializing in juvenile law;
- one county clerk or juvenile court administrator;
- one member of the Washington State Supreme Court Minority and Justice Commission;
- one individual with expertise in restorative justice practices or expertise in community compensation programs;
- One representative from DCYF; and
- One representative from AOC.

Upon submission of the implementation plan, the L&I director may convene the task force as necessary to assist with implementing the task force's recommendations.

Victims of juvenile offenses should not receive funds from both the crime victims' compensation fund and the community compensation account or program.

Juveniles must not be assessed crime victim penalty assessments and cannot be required to reimburse L&I for any payment of benefits.

A person is indigent if they were a minor at the time a crime occurred.

Community-based sanctions may only include community service not to exceed 120 hours. Community restitution is now referred to as community service and may be performed by attending school, work, therapy, treatment, or other prosocial activities determined by the judge in consultation with the juvenile and the victim, if any.

Diversion agreements may now include community service not to exceed 120 hours rather than 150 hours of community restitution.

Beginning July 2025, restitution will be referred to as community compensation and will not include an offender's payment for a victim's damages.

Owed restitution must not be a barrier to record sealing. Records previously deemed ineligible for sealing on the basis of owed restitution must be automatically sealed by the courts.

Courts are not required to refund or reimburse amounts previously paid towards LFOs, interests on LFOs, or any other costs.

EFFECT OF CHANGES MADE BY HUMAN SERVICES COMMITTEE (First Substitute):

- Reverts "harmed parties" and "party" or "parties harmed by juveniles" back to victims.
- Changes community services hour limit from 8 hours to 120 hours.
- Allows failure to perform community service to be a reason for confinement.
- Requires the juvenile court prosecutor to coordinate with the clerk and other appropriate entities to develop a list of outstanding legal financial obligations.
- Requires the court prosecutor to file an ex parte motion to waive outstanding legal financial obligations where underlying statutory authority was repealed by this act.
- Changes the date for when the administrative office of the courts must submit its reports to the Legislature.
- Changes the date for when the task force must submit its implementation plan and hold its first meeting.
- Requires L&I to implement the task force's recommendations by July 1, 2025 and allows L&I to convene the task force as needed to assist with implementation.
- Creates the community compensation account.
- Prevents victims of juvenile offenses from receiving funds from both the Crime Victims' Compensation Fund and the Community Compensation account or program.
- Eliminates restitution effective July 2025.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: If you believe in holding youth accountable when they have caused harm to others, preparing them to re-enter society, ensuring victims get compensation, promoting government efficiency, and changing the government's approach—this is the bill for you. Monetary sanctions increase recidivism and are expensive to collect. This bill provides an inclusive way to reimagine and rebuild

the system. Court debt is negatively impacting young people, both those harmed and those charged. Juvenile court is tasked, unlike adult criminal courts, with rehabilitation. Not only are youths not educated about restitution and court fees, these fees are inappropriate and counterproductive. Under the current system, more money is spent collecting LFOs than what is received and the process is ineffective and unethical, and harmed parties often aren't compensated. Financially disadvantaged youth have no path to pay off their debts and are in debt through adulthood. Being poor shouldn't be a crime and we should reject a juvenile system that treats youth worse because they can't pay. Washington State has fallen behind as it relates to legislation on eliminating fees and costs and the current system is not working. This bill provides an opportunity to make things better.

CON: The policy direction can be supported, but there are concerns in this bill. Judges are already permitted not to impose penalties on juveniles who cannot afford to pay it. Eliminating restitution is worrying. There is a part of restorative justice and accountability to recognizing the harm a young person has caused another and restitution accomplishes this. There is also a concern about not calling victims what they are—victims, and for how the compensation program will operate. Making the max amount of community service hours eight underplays the significance of the behaviors trying to be corrected.

OTHER: This bill places an administrative burden on those who must go back through these cases to determine what must now be considered null and void. If a new benefit process is created, the state must be asked to fund the service and make it subject to appropriation, and there must be a new way to fund court technology if fines and fees are removed. Sections two and three are currently at odds and there is little clarity on who has jurisdiction. The bill does not provide a fund source despite requiring victims to be compensated, and it also provides no recourse for restitution between the effective date of the act and when the implementation plan must be submitted. The bill also limits community service to a maximum of eight hours which may have some unintended consequences, including limiting incentives for youths to engage.

Persons Testifying: PRO: Senator Noel Frame, Prime Sponsor; Elizabeth Mustin, Washington State Office of Public Defense; Jaimie Cavanaugh, Institute for Justice; Nick Jeffreys, Urban League of Metropolitan Seattle; Nuu Leae; Kia Franklin, Stand for Children; Meghan Grace; Agnes Cho, UC Berkeley Law, Policy Advocacy Clinic; Arthur Longworth, Treehouse.org; Isadora Eads, Choose 180; Arthur Longworth.

CON: Russell Brown, WA Association of Prosecuting Attorneys; James McMahan, WA Assoc Sheriffs & Police Chiefs.

OTHER: Brittany Gregory, Administrative Office of the Courts; Jack Murphy, Washington Association of Juvenile Court Administrators; Juliana Roe, Washington State Association of Counties; Tammy Fellin, Labor & Industries.

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