

CERTIFICATION OF ENROLLMENT

SENATE BILL 5461

Chapter 263, Laws of 2005

59th Legislature
2005 Regular Session

INCARCERATION COSTS

EFFECTIVE DATE: 7/24/05

Passed by the Senate March 15, 2005
YEAS 46 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 13, 2005
YEAS 96 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 4, 2005.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5461** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 4, 2005 - 3:13 p.m.

**Secretary of State
State of Washington**

SENATE BILL 5461

Passed Legislature - 2005 Regular Session

State of Washington

59th Legislature

2005 Regular Session

By Senator Fairley

Read first time 01/26/2005. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to costs of incarceration; and amending RCW
2 9.94A.760 and 10.01.160.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9.94A.760 and 2004 c 121 s 3 are each amended to read
5 as follows:

6 (1) Whenever a person is convicted in superior court, the court may
7 order the payment of a legal financial obligation as part of the
8 sentence. The court must on either the judgment and sentence or on a
9 subsequent order to pay, designate the total amount of a legal
10 financial obligation and segregate this amount among the separate
11 assessments made for restitution, costs, fines, and other assessments
12 required by law. On the same order, the court is also to set a sum
13 that the offender is required to pay on a monthly basis towards
14 satisfying the legal financial obligation. If the court fails to set
15 the offender monthly payment amount, the department shall set the
16 amount if the department has active supervision of the offender,
17 otherwise the county clerk shall set the amount. Upon receipt of an
18 offender's monthly payment, restitution shall be paid prior to any
19 payments of other monetary obligations. After restitution is

1 satisfied, the county clerk shall distribute the payment proportionally
2 among all other fines, costs, and assessments imposed, unless otherwise
3 ordered by the court.

4 (2) If the court determines that the offender, at the time of
5 sentencing, has the means to pay for the cost of incarceration, the
6 court may require the offender to pay for the cost of incarceration at
7 a rate of fifty dollars per day of incarceration, if incarcerated in a
8 prison, or the court may require the offender to pay the actual cost of
9 incarceration per day of incarceration, if incarcerated in a county
10 jail. In no case may the court require the offender to pay more than
11 one hundred dollars per day for the cost of incarceration. Payment of
12 other court-ordered financial obligations, including all legal
13 financial obligations and costs of supervision shall take precedence
14 over the payment of the cost of incarceration ordered by the court.
15 All funds recovered from offenders for the cost of incarceration in the
16 county jail shall be remitted to the county and the costs of
17 incarceration in a prison shall be remitted to the department.

18 (3) The court may add to the judgment and sentence or subsequent
19 order to pay a statement that a notice of payroll deduction is to be
20 issued immediately. If the court chooses not to order the immediate
21 issuance of a notice of payroll deduction at sentencing, the court
22 shall add to the judgment and sentence or subsequent order to pay a
23 statement that a notice of payroll deduction may be issued or other
24 income-withholding action may be taken, without further notice to the
25 offender if a monthly court-ordered legal financial obligation payment
26 is not paid when due, and an amount equal to or greater than the amount
27 payable for one month is owed.

28 If a judgment and sentence or subsequent order to pay does not
29 include the statement that a notice of payroll deduction may be issued
30 or other income-withholding action may be taken if a monthly legal
31 financial obligation payment is past due, the department or the county
32 clerk may serve a notice on the offender stating such requirements and
33 authorizations. Service shall be by personal service or any form of
34 mail requiring a return receipt.

35 (4) Independent of the department or the county clerk, the party or
36 entity to whom the legal financial obligation is owed shall have the
37 authority to use any other remedies available to the party or entity to
38 collect the legal financial obligation. These remedies include

1 enforcement in the same manner as a judgment in a civil action by the
2 party or entity to whom the legal financial obligation is owed.
3 Restitution collected through civil enforcement must be paid through
4 the registry of the court and must be distributed proportionately
5 according to each victim's loss when there is more than one victim.
6 The judgment and sentence shall identify the party or entity to whom
7 restitution is owed so that the state, party, or entity may enforce the
8 judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or
9 9.94A.753(6) to a victim of rape of a child or a victim's child born
10 from the rape, the Washington state child support registry shall be
11 identified as the party to whom payments must be made. Restitution
12 obligations arising from the rape of a child in the first, second, or
13 third degree that result in the pregnancy of the victim may be enforced
14 for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6).
15 All other legal financial obligations for an offense committed prior to
16 July 1, 2000, may be enforced at any time during the ten-year period
17 following the offender's release from total confinement or within ten
18 years of entry of the judgment and sentence, whichever period ends
19 later. Prior to the expiration of the initial ten-year period, the
20 superior court may extend the criminal judgment an additional ten years
21 for payment of legal financial obligations including crime victims'
22 assessments. All other legal financial obligations for an offense
23 committed on or after July 1, 2000, may be enforced at any time the
24 offender remains under the court's jurisdiction. For an offense
25 committed on or after July 1, 2000, the court shall retain jurisdiction
26 over the offender, for purposes of the offender's compliance with
27 payment of the legal financial obligations, until the obligation is
28 completely satisfied, regardless of the statutory maximum for the
29 crime. The department may only supervise the offender's compliance
30 with payment of the legal financial obligations during any period in
31 which the department is authorized to supervise the offender in the
32 community under RCW 9.94A.728, 9.94A.501, or in which the offender is
33 confined in a state correctional institution or a correctional facility
34 pursuant to a transfer agreement with the department, and the
35 department shall supervise the offender's compliance during any such
36 period. The department is not responsible for supervision of the
37 offender during any subsequent period of time the offender remains
38 under the court's jurisdiction. The county clerk is authorized to

1 collect unpaid legal financial obligations at any time the offender
2 remains under the jurisdiction of the court for purposes of his or her
3 legal financial obligations.

4 (5) In order to assist the court in setting a monthly sum that the
5 offender must pay during the period of supervision, the offender is
6 required to report to the department for purposes of preparing a
7 recommendation to the court. When reporting, the offender is required,
8 under oath, to respond truthfully and honestly to all questions
9 concerning present, past, and future earning capabilities and the
10 location and nature of all property or financial assets. The offender
11 is further required to bring all documents requested by the department.

12 (6) After completing the investigation, the department shall make
13 a report to the court on the amount of the monthly payment that the
14 offender should be required to make towards a satisfied legal financial
15 obligation.

16 (7)(a) During the period of supervision, the department may make a
17 recommendation to the court that the offender's monthly payment
18 schedule be modified so as to reflect a change in financial
19 circumstances. If the department sets the monthly payment amount, the
20 department may modify the monthly payment amount without the matter
21 being returned to the court. During the period of supervision, the
22 department may require the offender to report to the department for the
23 purposes of reviewing the appropriateness of the collection schedule
24 for the legal financial obligation. During this reporting, the
25 offender is required under oath to respond truthfully and honestly to
26 all questions concerning earning capabilities and the location and
27 nature of all property or financial assets. The offender shall bring
28 all documents requested by the department in order to prepare the
29 collection schedule.

30 (b) Subsequent to any period of supervision, or if the department
31 is not authorized to supervise the offender in the community, the
32 county clerk may make a recommendation to the court that the offender's
33 monthly payment schedule be modified so as to reflect a change in
34 financial circumstances. If the county clerk sets the monthly payment
35 amount, or if the department set the monthly payment amount and the
36 department has subsequently turned the collection of the legal
37 financial obligation over to the county clerk, the clerk may modify the
38 monthly payment amount without the matter being returned to the court.

1 During the period of repayment, the county clerk may require the
2 offender to report to the clerk for the purpose of reviewing the
3 appropriateness of the collection schedule for the legal financial
4 obligation. During this reporting, the offender is required under oath
5 to respond truthfully and honestly to all questions concerning earning
6 capabilities and the location and nature of all property or financial
7 assets. The offender shall bring all documents requested by the county
8 clerk in order to prepare the collection schedule.

9 (8) After the judgment and sentence or payment order is entered,
10 the department is authorized, for any period of supervision, to collect
11 the legal financial obligation from the offender. Subsequent to any
12 period of supervision or, if the department is not authorized to
13 supervise the offender in the community, the county clerk is authorized
14 to collect unpaid legal financial obligations from the offender. Any
15 amount collected by the department shall be remitted daily to the
16 county clerk for the purpose of disbursements. The department and the
17 county clerks are authorized, but not required, to accept credit cards
18 as payment for a legal financial obligation, and any costs incurred
19 related to accepting credit card payments shall be the responsibility
20 of the offender.

21 (9) The department or any obligee of the legal financial obligation
22 may seek a mandatory wage assignment for the purposes of obtaining
23 satisfaction for the legal financial obligation pursuant to RCW
24 9.94A.7701. Any party obtaining a wage assignment shall notify the
25 county clerk. The county clerks shall notify the department, or the
26 administrative office of the courts, whichever is providing the monthly
27 billing for the offender.

28 (10) The requirement that the offender pay a monthly sum towards a
29 legal financial obligation constitutes a condition or requirement of a
30 sentence and the offender is subject to the penalties for noncompliance
31 as provided in RCW 9.94A.634, 9.94A.737, or 9.94A.740.

32 (11)(a) Until January 1, 2004, the department shall mail
33 individualized monthly billings to the address known by the department
34 for each offender with an unsatisfied legal financial obligation.

35 (b) Beginning January 1, 2004, the administrative office of the
36 courts shall mail individualized monthly billings to the address known
37 by the office for each offender with an unsatisfied legal financial
38 obligation.

1 (c) The billing shall direct payments, other than outstanding cost
2 of supervision assessments under RCW 9.94A.780, parole assessments
3 under RCW 72.04A.120, and cost of probation assessments under RCW
4 9.95.214, to the county clerk, and cost of supervision, parole, or
5 probation assessments to the department.

6 (d) The county clerk shall provide the administrative office of the
7 courts with notice of payments by such offenders no less frequently
8 than weekly.

9 (e) The county clerks, the administrative office of the courts, and
10 the department shall maintain agreements to implement this subsection.

11 (12) The department shall arrange for the collection of unpaid
12 legal financial obligations during any period of supervision in the
13 community through the county clerk. The department shall either
14 collect unpaid legal financial obligations or arrange for collections
15 through another entity if the clerk does not assume responsibility or
16 is unable to continue to assume responsibility for collection pursuant
17 to subsection (4) of this section. The costs for collection services
18 shall be paid by the offender.

19 (13) The county clerk may access the records of the employment
20 security department for the purposes of verifying employment or income,
21 seeking any assignment of wages, or performing other duties necessary
22 to the collection of an offender's legal financial obligations.

23 (14) Nothing in this chapter makes the department, the state, the
24 counties, or any state or county employees, agents, or other persons
25 acting on their behalf liable under any circumstances for the payment
26 of these legal financial obligations or for the acts of any offender
27 who is no longer, or was not, subject to supervision by the department
28 for a term of community custody, community placement, or community
29 supervision, and who remains under the jurisdiction of the court for
30 payment of legal financial obligations.

31 **Sec. 2.** RCW 10.01.160 and 1995 c 221 s 1 are each amended to read
32 as follows:

33 (1) The court may require a defendant to pay costs. Costs may be
34 imposed only upon a convicted defendant, except for costs imposed upon
35 a defendant's entry into a deferred prosecution program or costs
36 imposed upon a defendant for preparing and serving a warrant for
37 failure to appear.

1 (2) Costs shall be limited to expenses specially incurred by the
2 state in prosecuting the defendant or in administering the deferred
3 prosecution program under chapter 10.05 RCW. They cannot include
4 expenses inherent in providing a constitutionally guaranteed jury trial
5 or expenditures in connection with the maintenance and operation of
6 government agencies that must be made by the public irrespective of
7 specific violations of law. Expenses incurred for serving of warrants
8 for failure to appear and jury fees under RCW 10.46.190 may be included
9 in costs the court may require a defendant to pay. Costs for
10 administering a deferred prosecution may not exceed one hundred fifty
11 dollars. Costs for preparing and serving a warrant for failure to
12 appear may not exceed one hundred dollars. Costs of incarceration
13 imposed on a defendant convicted of a misdemeanor or a gross
14 misdemeanor may not exceed (~~fifty dollars per day~~) the actual cost of
15 incarceration. In no case may the court require the offender to pay
16 more than one hundred dollars per day for the cost of incarceration.
17 Payment of other court-ordered financial obligations, including all
18 legal financial obligations and costs of supervision take precedence
19 over the payment of the cost of incarceration ordered by the court.
20 All funds received from defendants for the cost of incarceration in the
21 county or city jail must be remitted for criminal justice purposes to
22 the county or city that is responsible for the defendant's jail costs.
23 Costs imposed constitute a judgment against a defendant and survive a
24 dismissal of the underlying action against the defendant. However, if
25 the defendant is acquitted on the underlying action, the costs for
26 preparing and serving a warrant for failure to appear do not survive
27 the acquittal, and the judgment that such costs would otherwise
28 constitute shall be vacated.

29 (3) The court shall not sentence a defendant to pay costs unless
30 the defendant is or will be able to pay them. In determining the
31 amount and method of payment of costs, the court shall take account of
32 the financial resources of the defendant and the nature of the burden
33 that payment of costs will impose.

34 (4) A defendant who has been sentenced to pay costs and who is not
35 in contumacious default in the payment thereof may at any time petition
36 the sentencing court for remission of the payment of costs or of any
37 unpaid portion thereof. If it appears to the satisfaction of the court
38 that payment of the amount due will impose manifest hardship on the

1 defendant or the defendant's immediate family, the court may remit all
2 or part of the amount due in costs, or modify the method of payment
3 under RCW 10.01.170.

Passed by the Senate March 15, 2005.

Passed by the House April 13, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.