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HOUSE BILL 1093

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State of Washington                      65th Legislature                      2017 Regular Session

By Representatives Appleton, Ormsby, Jinkins, Stanford, Dolan,  
Santos, Pollet, and Peterson

Read first time 01/11/17. Referred to Committee on Judiciary.

1            AN ACT Relating to legal financial obligations; and amending RCW  
2            9.94A.760, 9.94B.040, and 9.94A.6333.

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

4            **Sec. 1.** RCW 9.94A.760 and 2011 c 106 s 3 are each amended to  
5            read as follows:

6            (1) Whenever a person is convicted in superior court, the court  
7            may 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  
20           satisfied, the county clerk shall distribute the payment

1 proportionally among all other fines, costs, and assessments imposed,  
2 unless otherwise ordered by the court.

3 (2) If the court determines that the offender, at the time of  
4 sentencing, has the means to pay for the cost of incarceration, the  
5 court may require the offender to pay for the cost of incarceration  
6 at a rate of fifty dollars per day of incarceration, if incarcerated  
7 in a prison, or the court may require the offender to pay the actual  
8 cost of incarceration per day of incarceration, if incarcerated in a  
9 county jail. In no case may the court require the offender to pay  
10 more than one hundred dollars per day for the cost of incarceration.  
11 Payment of other court-ordered financial obligations, including all  
12 legal financial obligations and costs of supervision shall take  
13 precedence over the payment of the cost of incarceration ordered by  
14 the court. All funds recovered from offenders for the cost of  
15 incarceration in the county jail shall be remitted to the county and  
16 the costs of incarceration in a prison shall be remitted to the  
17 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  
26 payment is not paid when due, and an amount equal to or greater than  
27 the amount 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  
30 issued or other income-withholding action may be taken if a monthly  
31 legal financial obligation payment is past due, the department or the  
32 county clerk may serve a notice on the offender stating such  
33 requirements and authorizations. Service shall be by personal service  
34 or any form of mail requiring a return receipt.

35 (4) Independent of the department or the county clerk, the party  
36 or entity to whom the legal financial obligation is owed shall have  
37 the authority to use any other remedies available to the party or  
38 entity to collect the legal financial obligation. These remedies  
39 include enforcement in the same manner as a judgment in a civil  
40 action by the party or entity to whom the legal financial obligation

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

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

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

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

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

1 required under oath to respond truthfully and honestly to all  
2 questions concerning earning capabilities and the location and nature  
3 of all property or financial assets. The offender shall bring all  
4 documents requested by the county clerk in order to prepare the  
5 collection schedule.

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

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

25 (10) The requirement that the offender pay a monthly sum towards  
26 a legal financial obligation constitutes a condition or requirement  
27 of a sentence and the offender is subject to the penalties for  
28 noncompliance as provided in RCW 9.94B.040, 9.94A.737, or 9.94A.740.  
29 However, if the court determines that the offender is homeless or a  
30 person who is mentally ill, as defined in RCW 71.24.025, failure to  
31 pay is not willful noncompliance and shall not subject the offender  
32 to penalties.

33 (11)(a) The administrative office of the courts shall mail  
34 individualized periodic billings to the address known by the office  
35 for each offender with an unsatisfied legal financial obligation.

36 (b) The billing shall direct payments, other than outstanding  
37 cost of supervision assessments under RCW 9.94A.780, parole  
38 assessments under RCW 72.04A.120, and cost of probation assessments  
39 under RCW 9.95.214, to the county clerk, and cost of supervision,  
40 parole, or probation assessments to the department.

1 (c) The county clerk shall provide the administrative office of  
2 the courts with notice of payments by such offenders no less  
3 frequently than weekly.

4 (d) The county clerks, the administrative office of the courts,  
5 and the department shall maintain agreements to implement this  
6 subsection.

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

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

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

27 **Sec. 2.** RCW 9.94B.040 and 2002 c 175 s 8 are each amended to  
28 read as follows:

29 (1) If an offender violates any condition or requirement of a  
30 sentence, the court may modify its order of judgment and sentence and  
31 impose further punishment in accordance with this section.

32 (2) In cases where conditions from a second or later sentence of  
33 community supervision begin prior to the term of the second or later  
34 sentence, the court shall treat a violation of such conditions as a  
35 violation of the sentence of community supervision currently being  
36 served.

37 (3) If an offender fails to comply with any of the requirements  
38 or conditions of a sentence the following provisions apply:

1 (a)(i) Following the violation, if the offender and the  
2 department make a stipulated agreement, the department may impose  
3 sanctions such as work release, home detention with electronic  
4 monitoring, work crew, community restitution, inpatient treatment,  
5 daily reporting, curfew, educational or counseling sessions,  
6 supervision enhanced through electronic monitoring, jail time, or  
7 other sanctions available in the community.

8 (ii) Within seventy-two hours of signing the stipulated  
9 agreement, the department shall submit a report to the court and the  
10 prosecuting attorney outlining the violation or violations, and  
11 sanctions imposed. Within fifteen days of receipt of the report, if  
12 the court is not satisfied with the sanctions, the court may schedule  
13 a hearing and may modify the department's sanctions. If this occurs,  
14 the offender may withdraw from the stipulated agreement.

15 (iii) If the offender fails to comply with the sanction  
16 administratively imposed by the department, the court may take action  
17 regarding the original noncompliance. Offender failure to comply with  
18 the sanction administratively imposed by the department may be  
19 considered an additional violation.

20 (b) In the absence of a stipulated agreement, or where the court  
21 is not satisfied with the department's sanctions as provided in (a)  
22 of this subsection, the court, upon the motion of the state, or upon  
23 its own motion, shall require the offender to show cause why the  
24 offender should not be punished for the noncompliance. The court may  
25 issue a summons or a warrant of arrest for the offender's appearance;

26 (c) The state has the burden of showing noncompliance by a  
27 preponderance of the evidence. If the court finds that the violation  
28 has occurred, it may order the offender to be confined for a period  
29 not to exceed sixty days for each violation, and may (i) convert a  
30 term of partial confinement to total confinement, (ii) convert  
31 community restitution obligation to total or partial confinement,  
32 (iii) convert monetary obligations, except restitution and the crime  
33 victim penalty assessment, to community restitution hours at the rate  
34 of the state minimum wage as established in RCW 49.46.020 for each  
35 hour of community restitution, or (iv) order one or more of the  
36 penalties authorized in (a)(i) of this subsection. Any time served in  
37 confinement awaiting a hearing on noncompliance shall be credited  
38 against any confinement order by the court;

39 (d) If the court finds that the violation was not willful, the  
40 court may modify its previous order regarding payment of legal

1 financial obligations and regarding community restitution  
2 obligations. If the violation is nonpayment of legal financial  
3 obligations and the court determines that the offender is homeless or  
4 a person who is mentally ill, as defined in RCW 71.24.025, the  
5 failure to pay is not a willful violation; and

6 (e) If the violation involves a failure to undergo or comply with  
7 mental status evaluation and/or outpatient mental health treatment,  
8 the community corrections officer shall consult with the treatment  
9 provider or proposed treatment provider. Enforcement of orders  
10 concerning outpatient mental health treatment must reflect the  
11 availability of treatment and must pursue the least restrictive means  
12 of promoting participation in treatment. If the offender's failure to  
13 receive care essential for health and safety presents a risk of  
14 serious physical harm or probable harmful consequences, the civil  
15 detention and commitment procedures of chapter 71.05 RCW shall be  
16 considered in preference to incarceration in a local or state  
17 correctional facility.

18 (4) The community corrections officer may obtain information from  
19 the offender's mental health treatment provider on the offender's  
20 status with respect to evaluation, application for services,  
21 registration for services, and compliance with the supervision plan,  
22 without the offender's consent, as described under RCW 71.05.630.

23 (5) An offender under community placement or community  
24 supervision who is civilly detained under chapter 71.05 RCW, and  
25 subsequently discharged or conditionally released to the community,  
26 shall be under the supervision of the department of corrections for  
27 the duration of his or her period of community placement or community  
28 supervision. During any period of inpatient mental health treatment  
29 that falls within the period of community placement or community  
30 supervision, the inpatient treatment provider and the supervising  
31 community corrections officer shall notify each other about the  
32 offender's discharge, release, and legal status, and shall share  
33 other relevant information.

34 (6) Nothing in this section prohibits the filing of escape  
35 charges if appropriate.

36 **Sec. 3.** RCW 9.94A.6333 and 2008 c 231 s 19 are each amended to  
37 read as follows:

38 (1) If an offender violates any condition or requirement of a  
39 sentence, and the offender is not being supervised by the department,



1 the court may modify its order of judgment and sentence and impose  
2 further punishment in accordance with this section.

3 (2) If an offender fails to comply with any of the conditions or  
4 requirements of a sentence the following provisions apply:

5 (a) The court, upon the motion of the state, or upon its own  
6 motion, shall require the offender to show cause why the offender  
7 should not be punished for the noncompliance. The court may issue a  
8 summons or a warrant of arrest for the offender's appearance;

9 (b) The state has the burden of showing noncompliance by a  
10 preponderance of the evidence;

11 (c) If the court finds that a violation has been proved, it may  
12 impose the sanctions specified in RCW 9.94A.633(1). Alternatively,  
13 the court may:

14 (i) Convert a term of partial confinement to total confinement;

15 (ii) Convert community restitution obligation to total or partial  
16 confinement; or

17 (iii) Convert monetary obligations, except restitution and the  
18 crime victim penalty assessment, to community restitution hours at  
19 the rate of the state minimum wage as established in RCW 49.46.020  
20 for each hour of community restitution;

21 (d) If the court finds that the violation was not willful, the  
22 court may modify its previous order regarding payment of legal  
23 financial obligations and regarding community restitution  
24 obligations. If the violation is nonpayment of legal financial  
25 obligations and the court determines that the offender is homeless or  
26 a person who is mentally ill, as defined in RCW 71.24.025, the  
27 failure to pay is not a willful violation; and

28 (e) If the violation involves a failure to undergo or comply with  
29 a mental health status evaluation and/or outpatient mental health  
30 treatment, the court shall seek a recommendation from the treatment  
31 provider or proposed treatment provider. Enforcement of orders  
32 concerning outpatient mental health treatment must reflect the  
33 availability of treatment and must pursue the least restrictive means  
34 of promoting participation in treatment. If the offender's failure to  
35 receive care essential for health and safety presents a risk of  
36 serious physical harm or probable harmful consequences, the civil  
37 detention and commitment procedures of chapter 71.05 RCW shall be  
38 considered in preference to incarceration in a local or state  
39 correctional facility.

1           (3) Any time served in confinement awaiting a hearing on  
2 noncompliance shall be credited against any confinement ordered by  
3 the court.

4           (4) Nothing in this section prohibits the filing of escape  
5 charges if appropriate.

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