

2 **ESSB 5363** - H COMM AMD **ADOPTED 4-11-91**

3 By Committee on Human Services

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5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** "EARNINGS," "DISPOSABLE EARNINGS," AND
8 "OBLIGEE" DEFINED. As used in this chapter, the term "earnings" means
9 compensation paid or payable for personal services, whether denominated
10 as wages, salary, commission, hours, or otherwise, and notwithstanding
11 any other provision of law making such payments exempt from
12 garnishment, attachment, or other process to satisfy court-ordered
13 legal financial obligations, specifically includes periodic payments
14 pursuant to pension or retirement programs, or insurance policies of
15 any type. Earnings shall specifically include all gain derived from
16 capital, from labor, or from both, not including profit gained through
17 sale or conversion of capital assets. The term "disposable earnings"
18 means that part of the earnings of any individual remaining after the
19 deduction from those earnings of any amount required by law to be
20 withheld. The term "obligee" means the department, party, or entity to
21 whom the legal financial obligation is owed, or the department, party,
22 or entity to whom the right to receive or collect support has been
23 assigned."

24 **"Sec. 2.** RCW 9.94A.145 and 1989 c 252 s 3 are each amended to read
25 as follows:

26 (1) Whenever a person is convicted of a felony, the court may order
27 the payment of a legal financial obligation as part of the sentence.

1 The court must on either the judgment and sentence or on a subsequent
2 order to pay, designate the total amount of a legal financial
3 obligation and segregate this amount among the separate assessments
4 made for restitution, costs(~~(+,-)~~), fines, and other assessments
5 required by law. On the same order, the court is also to set a sum
6 that the offender is required to pay on a monthly basis towards
7 satisfying the legal financial obligation. If the court fails to set
8 the offender monthly payment amount, the department shall set the
9 amount. Upon receipt of an offender's monthly payment, after
10 restitution is satisfied, the county clerk shall distribute the payment
11 proportionally among all other fines, costs, and assessments imposed,
12 unless otherwise ordered by the court.

13 (2) If the court determines that the offender, at the time of
14 sentencing, has the means to pay for the cost of incarceration, the
15 court may require the offender to pay for the cost of incarceration at
16 a rate of fifty dollars per day of incarceration. Payment of other
17 court-ordered financial obligations, including all legal financial
18 obligations and costs of supervision shall take precedence over the
19 payment of the cost of incarceration ordered by the court. All funds
20 recovered from offenders for the cost of incarceration in the county
21 jail shall be remitted to the county and the costs of incarceration in
22 a prison shall be remitted to the department of corrections.

23 (3) The court may add to the judgment and sentence or subsequent
24 order to pay a statement that a notice of payroll deduction is to be
25 immediately issued. If the court chooses not to order the immediate
26 issuance of a notice of payroll deduction at sentencing, the court
27 shall add to the judgment and sentence or subsequent order to pay a
28 statement that a notice of payroll deduction may be issued or other
29 income-withholding action may be taken, without further notice to the
30 offender if a monthly court-ordered legal financial obligation payment

1 is not paid when due, and an amount equal to or greater than the amount
2 payable for one month is owed.

3 If a judgment and sentence or subsequent order to pay does not
4 include the statement that a notice of payroll deduction may be issued
5 or other income-withholding action may be taken if a monthly legal
6 financial obligation payment is past due, the department may serve a
7 notice on the offender stating such requirements and authorizations.
8 Service shall be by personal service or any form of mail requiring a
9 return receipt.

10 (4) All legal financial obligations that are ordered as a result of
11 a conviction for a felony, may also be enforced in the same manner as
12 a judgment in a civil action by the party or entity to whom the legal
13 financial obligation is owed. These obligations may be enforced at any
14 time during the ten-year period following the offender's release from
15 total confinement or within ten years of entry of the judgment and
16 sentence, whichever period is longer. Independent of the department,
17 the party or entity to whom the legal financial obligation is owed
18 shall have the authority to utilize any other remedies available to the
19 party or entity to collect the legal financial obligation.

20 ((+3+)) (5) In order to assist the court in setting a monthly sum
21 that the offender must pay during the period of supervision, the
22 offender is required to report to the department for purposes of
23 preparing a recommendation to the court. When reporting, the offender
24 is required, under oath, to truthfully and honestly respond to all
25 questions concerning present, past, and future earning capabilities and
26 the location and nature of all property or financial assets. The
27 offender is further required to bring any and all documents as
28 requested by the department.

29 ((+4+)) (6) After completing the investigation, the department
30 shall make a report to the court on the amount of the monthly payment

1 that the offender should be required to make towards a satisfied legal
2 financial obligation.

3 ((+5+)) (7) During the period of supervision, the department may
4 make a recommendation to the court that the offender's monthly payment
5 schedule be modified so as to reflect a change in financial
6 circumstances. If the department sets the monthly payment amount, the
7 department may modify the monthly payment amount without the matter
8 being returned to the court. Also, during the period of supervision,
9 the offender may be required at the request of the department to report
10 to the department for the purposes of reviewing the appropriateness of
11 the collection schedule for the legal financial obligation. During this
12 reporting, the offender is required under oath to truthfully and
13 honestly respond to all questions concerning earning capabilities and
14 the location and nature of all property or financial assets. Also, the
15 offender is required to bring any and all documents as requested by the
16 department in order to prepare the collection schedule.

17 ((+6+)) (8) After the judgment and sentence or payment order is
18 entered, the department shall for any period of supervision be
19 authorized to collect the legal financial obligation from the offender.
20 Any amount collected by the department shall be remitted daily to the
21 county clerk for the purposes of disbursements. The department is
22 authorized to accept credit cards as payment for a legal financial
23 obligation, and any costs incurred related to accepting credit card
24 payments shall be the responsibility of the offender.

25 ((+7+)) (9) The department or any obligee of the legal financial
26 obligation may seek a mandatory wage assignment for the purposes of
27 obtaining satisfaction for the legal financial obligation pursuant to
28 RCW 9.94A.2001.

29 ((+8+)) (10) The requirement that the offender pay a monthly sum
30 towards a legal financial obligation constitutes a condition ((and term

1 of ~~community supervision~~) or requirement of a sentence and the
2 offender is subject to the penalties as provided in RCW 9.94A.200 for
3 noncompliance.

4 ((+9)) (11) The county clerk shall provide the department with
5 individualized monthly billings for each offender with an unsatisfied
6 legal financial obligation and shall provide the department with
7 ((written)) notice of payments by such offenders no less frequently
8 than weekly."

9 "NEW SECTION. Sec. 3. LEGAL FINANCIAL OBLIGATION--NOTICE OF
10 PAYROLL DEDUCTION--ISSUANCE AND CONTENT. (1) The department may issue
11 a notice of payroll deduction in a criminal action if:

12 (a) The court at sentencing orders its immediate issuance; or

13 (b) The offender is more than thirty days past due in monthly
14 payments in an amount equal to or greater than the amount payable for
15 one month, provided:

16 (i) The judgment and sentence or subsequent order to pay contains
17 a statement that a notice of payroll deduction may be issued without
18 further notice to the offender; or

19 (ii) The department has served a notice on the offender stating
20 such requirements and authorization. Service of such notice shall be
21 made by personal service or any form of mail requiring a return
22 receipt.

23 (2) The notice of payroll deduction is to be in writing and
24 include:

25 (a) The name, social security number, and identifying court case
26 number of the offender/employee;

27 (b) The amount to be deducted from the offender/employee's
28 disposable earnings each month, or alternative amounts and frequencies

1 as may be necessary to facilitate processing of the payroll deduction
2 by the employer;

3 (c) A statement that the total amount withheld on all payroll
4 deduction notices for payment of court-ordered legal financial
5 obligations combined shall not exceed twenty-five percent of the
6 offender/employee's disposable earnings; and

7 (d) The address to which the payments are to be mailed or
8 delivered.

9 (3) An informational copy of the notice of payroll deduction shall
10 be mailed to the offender's last known address by regular mail or shall
11 be personally served.

12 (4) Neither the department nor any agents of the department shall
13 be held liable for actions taken under RCW 9.94A.145 and sections 1 and
14 3 through 11 of this act."

15 "NEW SECTION. **Sec. 4.** LEGAL FINANCIAL OBLIGATIONS--NOTICE OF
16 PAYROLL DEDUCTION--AMOUNTS TO BE WITHHELD. (1) The total amount to be
17 withheld from the offender/employee's earnings each month, or from each
18 earnings disbursement, shall not exceed twenty-five percent of the
19 disposable earnings of the offender.

20 (2) If the offender is subject to two or more notices of payroll
21 deduction for payment of a court-ordered legal financial obligation
22 from different obligees, the employer or entity shall, if the nonexempt
23 portion of the offender's earnings is not sufficient to respond fully
24 to all notices of payroll deduction, apportion the offender's nonexempt
25 disposable earnings between or among the various obligees equally."

26 "NEW SECTION. **Sec. 5.** LEGAL FINANCIAL OBLIGATIONS--NOTICE OF
27 PAYROLL DEDUCTION--EMPLOYER OR ENTITY RESPONSIBILITIES. (1) An
28 employer or entity upon whom a notice of payroll deduction is served,

1 shall make an answer to the department within twenty days after the
2 date of service. The answer shall confirm compliance and institution
3 of the payroll deduction or explain the circumstances if no payroll
4 deduction is in effect. The answer shall also state whether the
5 offender is employed by or receives earnings from the employer or
6 entity, whether the employer or entity anticipates paying earnings, and
7 the amount of earnings. If the offender is no longer employed, or
8 receiving earnings from the employer or entity, the answer shall state
9 the present employer or entity's name and address, if known.

10 (2) Service of a notice of payroll deduction upon an employer or
11 entity requires an employer or entity to immediately make a mandatory
12 payroll deduction from the offender/employee's unpaid disposable
13 earnings. The employer or entity shall thereafter at each pay period
14 deduct the amount stated in the notice divided by the number of pay
15 periods per month. The employer or entity must remit the proper amounts
16 to the appropriate clerk of the court on each date the
17 offender/employee is due to be paid.

18 (3) The employer or entity may combine amounts withheld from the
19 earnings of more than one employee in a single payment to the clerk of
20 the court, listing separately the amount of the payment that is
21 attributable to each individual employee.

22 (4) The employer or entity may deduct a processing fee from the
23 remainder of the employee's earnings after withholding under the notice
24 of payroll deduction, even if the remainder is exempt under section 11
25 of this act. The processing fee may not exceed:

26 (a) Ten dollars for the first disbursement made by the employer to
27 the clerk of the court; and

28 (b) One dollar for each subsequent disbursement made under the
29 notice of payroll deduction.

1 (5) The notice of payroll deduction shall remain in effect until
2 released by the department or the court enters an order terminating the
3 notice.

4 (6) An employer shall be liable to the obligee for the amount of
5 court-ordered legal financial obligation moneys that should have been
6 withheld from the offender/employee's earnings, if the employer:

7 (a) Fails or refuses, after being served with a notice of payroll
8 deduction, to deduct and promptly remit from unpaid earnings the
9 amounts of money required in the notice; or

10 (b) Fails or refuses to submit an answer to the notice of payroll
11 deduction after being served. In such cases, liability may be
12 established in superior court. Awards in superior court shall include
13 costs, interest under RCW 19.52.020 and 4.56.110, reasonable attorney
14 fees, and staff costs as part of the award.

15 (7) No employer who complies with a notice of payroll deduction
16 under this chapter may be liable to the employee for wrongful
17 withholding.

18 (8) No employer may discipline or discharge an employee or refuse
19 to hire a person by reason of an action authorized in this chapter. If
20 an employer disciplines or discharges an employee or refuses to hire a
21 person in violation of this section, the employee or person shall have
22 a cause of action against the employer. The employer shall be liable
23 for double the amount of lost wages and any other damages suffered as
24 a result of the violation and for costs and reasonable attorney fees,
25 and shall be subject to a civil penalty of not more than two thousand
26 five hundred dollars for each violation. The employer may also be
27 ordered to hire, rehire, or reinstate the aggrieved individual."

28 "NEW SECTION. **Sec. 6.** MOTION TO QUASH, MODIFY, OR TERMINATE
29 PAYROLL DEDUCTION--GROUNDS FOR RELIEF. (1) The offender subject to a

1 payroll deduction under this chapter, may file a motion in superior
2 court to quash, modify, or terminate the payroll deduction. The court
3 may grant relief if:

4 (a) It is demonstrated that the payroll deduction causes extreme
5 hardship or substantial injustice; or

6 (b) In cases where the court did not immediately order the issuance
7 of a notice of payroll deduction at sentencing, that a court-ordered
8 legal financial obligation payment was not more than thirty days past
9 due in an amount equal to or greater than the amount payable for one
10 month.

11 (2) Satisfactions by the offender of all past-due payments
12 subsequent to the issuance of the notice of payroll deduction is not
13 grounds to quash, modify, or terminate the notice of payroll deduction.
14 If a notice of payroll deduction has been in operation for twelve
15 consecutive months and the offender's payment towards a court-ordered
16 legal financial obligation is current, upon motion of the offender, the
17 court may order the department to terminate the payroll deduction,
18 unless the department can show good cause as to why the notice of
19 payroll deduction should remain in effect."

20 "NEW SECTION. **Sec. 7.** LEGAL FINANCIAL OBLIGATIONS--ORDER TO
21 WITHHOLD AND DELIVER--ISSUE AND CONTENTS. (1) The department may issue
22 to any person or entity an order to withhold and deliver property of
23 any kind, including but not restricted to, earnings that are due,
24 owing, or belonging to the offender, if the department has reason to
25 believe that there is in the possession of such person or entity,
26 property that is due, owing, or belonging to the offender. Such order
27 to withhold and deliver may be issued when a court-ordered legal
28 financial obligation payment is past due:

1 (a) If an offender's judgment and sentence or a subsequent order to
2 pay includes a statement that other income-withholding action under
3 this chapter may be taken without further notice to the offender.

4 (b) If a judgment and sentence or a subsequent order to pay does
5 not include the statement that other income-withholding action under
6 this chapter may be taken without further notice to the offender but
7 the department has served a notice on the offender stating such
8 requirements and authorizations. The service shall have been made by
9 personal service or any form of mail requiring a return receipt.

10 (2) The order to withhold and deliver shall:

11 (a) Include the amount of the court-ordered legal financial
12 obligation;

13 (b) Contain a summary of moneys that may be exempt from the order
14 to withhold and deliver and a summary of the civil liability upon
15 failure to comply with the order; and

16 (c) Be served by personal service or by any form of mail requiring
17 a return receipt.

18 (3) The department shall also, on or before the date of service of
19 the order to withhold and deliver, mail or cause to be mailed by any
20 form of mail requiring a return receipt, a copy of the order to
21 withhold and deliver to the offender at the offender's last known post
22 office address, or, in the alternative, a copy of the order shall be
23 personally served on the offender on or before the date of service of
24 the order or within two days thereafter. The copy of the order shall
25 be mailed or served together with an explanation of the right to
26 petition for judicial review. If the copy is not mailed or served as
27 this section provides, or if any irregularity appears with respect to
28 the mailing or service, the superior court, in its discretion on motion
29 of the offender promptly made and supported by affidavit showing that

1 the offender has suffered substantial injury due to the failure to mail
2 the copy, may set aside the order to withhold and deliver."

3 "NEW SECTION. **Sec. 8.** LEGAL FINANCIAL OBLIGATIONS--ORDER TO
4 WITHHOLD AND DELIVER--DUTIES OF PERSON OR ENTITY SERVED. (1) A person
5 or entity upon whom service has been made is hereby required to:

6 (a) Answer the order to withhold and deliver within twenty days,
7 exclusive of the day of service, under oath and in writing, and shall
8 make true answers to the matters inquired of in the order; and

9 (b) Provide further and additional answers when requested by the
10 department.

11 (2) Any person or entity in possession of any property that may be
12 subject to the order to withhold and deliver shall:

13 (a)(i) Immediately withhold such property upon receipt of the order
14 to withhold and deliver;

15 (ii) Deliver the property to the appropriate clerk of the court as
16 soon as the twenty-day answer period expires;

17 (iii) Continue to withhold earnings payable to the offender at each
18 succeeding disbursement interval and deliver amounts withheld from
19 earnings to the appropriate clerk of the court within ten days of the
20 date earnings are payable to the offender;

21 (iv) Inform the department of the date the amounts were withheld as
22 requested under this section; or

23 (b) Furnish the appropriate clerk of the court a good and
24 sufficient bond, satisfactory to the clerk, conditioned upon final
25 determination of liability.

26 (3) Where money is due and owing under any contract of employment,
27 expressed or implied, or is held by any person or entity subject to
28 withdrawal by the offender, the money shall be delivered by remittance
29 payable to the order of the appropriate clerk of the court.

1 (4) Delivery to the appropriate clerk of the court of the money or
2 other property held or claimed shall satisfy the requirement and serve
3 as full acquittance of the order to withhold and deliver.

4 (5) The person or entity required to withhold and deliver the
5 earnings of a debtor under this action may deduct a processing fee from
6 the remainder of the offender's earnings, even if the remainder would
7 otherwise be exempt under section 11 of this act. The processing fee
8 may not exceed:

9 (a) Ten dollars for the first disbursement to the appropriate clerk
10 of the court; and

11 (b) One dollar for each subsequent disbursement.

12 (6) A person or entity shall be liable to the obligee in an amount
13 equal to one hundred percent of the value of the court-ordered legal
14 financial obligation that is the basis of the order to withhold and
15 deliver, or the amount that should have been withheld, whichever amount
16 is less, together with costs, interest, and reasonable attorneys' fees
17 if that person or entity fails or refuses to deliver property under the
18 order.

19 The department is authorized to issue a notice of debt pursuant to
20 and to take appropriate action to collect the debt under this chapter
21 if a judgment has been entered as the result of an action by the court
22 against a person or entity based on a violation of this section.

23 (7) Persons or entities delivering money or property to the
24 appropriate clerk of the court under this chapter shall not be held
25 liable for wrongful delivery.

26 (8) Persons or entities withholding money or property under this
27 chapter shall not be held liable for wrongful withholding."

28 "NEW SECTION. **Sec. 9.** LEGAL FINANCIAL OBLIGATIONS--BANKS, SAVINGS
29 AND LOAN ASSOCIATIONS, CREDIT UNIONS--SERVICE ON MAIN OFFICE OR BRANCH,

1 EFFECT--COLLECTION ACTIONS AGAINST COMMUNITY BANK ACCOUNT, RIGHT TO
2 COURT HEARING. An order to withhold and deliver or any other income-
3 withholding action authorized by this chapter may be served on the main
4 office of a bank, savings and loan association, or credit union or on
5 a branch office of the financial institution. Service on the main
6 office shall be effective to attach the deposits of an offender in the
7 financial institution and compensation payable for personal services
8 due the offender from the financial institution. Service on a branch
9 office shall be effective to attach the deposits, accounts, credits, or
10 other personal property of the offender, excluding compensation payable
11 for personal services, in the possession or control of the particular
12 branch served.

13 Notwithstanding any other provision of this act, if the department
14 initiates collection action against a joint bank account, with or
15 without the right of survivorship, or any other funds which are subject
16 to the community property laws of this state, notice shall be given to
17 all affected parties that the account or funds are subject to potential
18 withholding. Such notice shall be by first class mail, return receipt
19 required, or by personal service and be given at least twenty calendar
20 days before withholding is made. Upon receipt of such notice, the
21 nonobligated person shall have ten calendar days to file a petition
22 with the department contesting the withholding of his or her interest
23 in the account or funds. The department shall provide notice of the
24 right of the filing of the petition with the notice provided in this
25 paragraph. If the petition is not filed within the period provided for
26 herein, the department is authorized to proceed with the collection
27 action."

28 "NEW SECTION. **Sec. 10.** LEGAL FINANCIAL OBLIGATIONS--NOTICE OF
29 DEBT--SERVICE OR MAILING--CONTENTS--ACTION ON, WHEN. (1) The

1 department may issue a notice of debt in order to enforce and collect
2 a court-ordered legal financial obligation debt through either a notice
3 of payroll deduction or an order to withhold and deliver.

4 (2) The notice of debt may be personally served upon the offender
5 or be mailed to the offender at his or her last known address by any
6 form of mail requiring a return receipt, demanding payment within
7 twenty days of the date of receipt.

8 (3) The notice of debt shall include:

9 (a) A statement of the total court-ordered legal financial
10 obligation and the amount to be paid each month.

11 (b) A statement that earnings are subject to a notice of payroll
12 deduction.

13 (c) A statement that earnings or property, or both, are subject to
14 an order to withhold and deliver.

15 (d) A statement that the net proceeds will be applied to the
16 satisfaction of the court-ordered legal financial obligation.

17 (4) Action to collect a court-ordered legal financial obligation by
18 notice of payroll deduction or an order to withhold and deliver shall
19 be lawful after twenty days from the date of service upon the offender
20 or twenty days from the receipt or refusal by the offender of the
21 notice of debt.

22 (5) The notice of debt will take effect only if the offender's
23 monthly court-ordered legal financial obligation payment is not paid
24 when due, and an amount equal to or greater than the amount payable for
25 one month is owed.

26 (6) The department shall not be required to issue or serve the
27 notice of debt in order to enforce and collect a court-ordered legal
28 financial obligation debt through either a notice of payroll deduction
29 or an order to withhold and deliver if either the offender's judgment
30 and sentence or a subsequent order to pay includes a statement that

1 income-withholding action under this chapter may be taken without
2 further notice to the offender."

3 "NEW SECTION. **Sec. 11.** LEGAL FINANCIAL OBLIGATIONS--CERTAIN
4 AMOUNT OF EARNINGS EXEMPT FROM NOTICE OF PAYROLL DEDUCTION OR ORDER TO
5 WITHHOLD AND DELIVER. Whenever a notice of payroll deduction or order
6 to withhold and deliver is served upon a person or entity asserting a
7 court-ordered legal financial obligation debt against earnings and
8 there is in the possession of the person or entity any of the earnings,
9 RCW 6.27.150 shall not apply, but seventy-five percent of the
10 disposable earnings shall be exempt and may be disbursed to the
11 offender whether such earnings are paid, or to be paid weekly, monthly,
12 or at other intervals and whether there is due the offender earnings
13 for one week or for a longer period. The notice of payroll deduction
14 or order to withhold and deliver shall continue to operate and require
15 said person or entity to withhold the nonexempt portion of earnings, at
16 each succeeding earnings disbursement interval until the entire amount
17 of the court-ordered legal financial obligation debt has been
18 withheld."

19 "NEW SECTION. **Sec. 12.** Captions as used in this act constitute
20 no part of the law."

21 "NEW SECTION. **Sec. 13.** Sections 1 and 3 through 11 of this act
22 are each added to chapter 9.94A RCW."

23 "NEW SECTION. **Sec. 14.** The code reviser shall codify sections
24 1 and 3 through 11 of this act between RCW 9.94A.200 and 9.94A.2001."

1 "NEW SECTION. **Sec. 15.** The provisions of this act are
2 retroactive and apply to any actions commenced but not final before the
3 effective date of this act."

4 "NEW SECTION. **Sec. 16.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of the
6 state government and its existing public institutions, and shall take
7 effect immediately."

8 **ESSB 5363** - H COMM AMD
9 By Committee on Human Services

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11 On page 1, line 1 of the title, after "obligations;" strike the
12 remainder of the title and insert "amending RCW 9.94A.145; adding new
13 sections to chapter 9.94A RCW; creating new sections; prescribing
14 penalties; and declaring an emergency."