

HB 1058 - S AMD 273
By Senator Padden

ADOPTED 04/19/2017

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that providing a
4 victim with the opportunity for restitution from the perpetrator of
5 the crime is an important part of the criminal justice system. It is
6 the intent of the legislature to reaffirm the priority of restitution
7 and, by this act, clarify that any outstanding debt for restitution
8 be paid prior to the payment of any other legal financial obligation
9 owed by the offender.

10 **Sec. 2.** RCW 9.94A.760 and 2011 c 106 s 3 are each amended to
11 read as follows:

12 (1) Whenever a person is convicted in superior court, the court
13 may order the payment of a legal financial obligation as part of the
14 sentence. The court must on either the judgment and sentence or on a
15 subsequent order to pay, designate the total amount of a legal
16 financial obligation and segregate this amount among the separate
17 assessments made for restitution, costs, fines, and other assessments
18 required by law. On the same order, the court is also to set a sum
19 that the offender is required to pay on a monthly basis towards
20 satisfying the legal financial obligation. If the court fails to set
21 the offender monthly payment amount, the department shall set the
22 amount if the department has active supervision of the offender,
23 otherwise the county clerk shall set the amount.

24 (2) Upon receipt of ~~((an offender's monthly))~~ each payment~~((~~
25 ~~restitution shall be paid prior to any payments of other monetary~~
26 ~~obligations. After restitution is satisfied))~~ made by or on behalf of
27 an offender, the county clerk shall distribute the payment
28 ~~((proportionally among all other fines, costs, and assessments~~
29 ~~imposed, unless otherwise ordered by the court))~~ in the following
30 order of priority:

1 (a) First, proportionally to restitution owed to victims that
2 have not been fully compensated from other sources until satisfied;

3 (b) Second, proportionally to restitution owed to insurance or
4 other sources with respect to a loss that has provided compensation
5 to victims until satisfied;

6 (c) Third, proportionally to crime victims' assessments until
7 satisfied; and

8 (d) Fourth, proportionally to costs, fines, and other assessments
9 required by law.

10 ~~((+2))~~ (3) If the court determines that the offender, at the
11 time of sentencing, has the means to pay for the cost of
12 incarceration, the court may require the offender to pay for the cost
13 of incarceration at a rate of fifty dollars per day of incarceration,
14 if incarcerated in a prison, or the court may require the offender to
15 pay the actual cost of incarceration per day of incarceration, if
16 incarcerated in a county jail. In no case may the court require the
17 offender to pay more than one hundred dollars per day for the cost of
18 incarceration. Payment of other court-ordered financial obligations,
19 including all legal financial obligations and costs of supervision
20 shall take precedence over the payment of the cost of incarceration
21 ordered by the court. All funds recovered from offenders for the cost
22 of incarceration in the county jail shall be remitted to the county
23 and the costs of incarceration in a prison shall be remitted to the
24 department.

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

35 If a judgment and sentence or subsequent order to pay does not
36 include the statement that a notice of payroll deduction may be
37 issued or other income-withholding action may be taken if a monthly
38 legal financial obligation payment is past due, the department or the
39 county clerk may serve a notice on the offender stating such

1 requirements and authorizations. Service shall be by personal service
2 or any form of mail requiring a return receipt.

3 ~~((4))~~ (5) Independent of the department or the county clerk,
4 the party or entity to whom the legal financial obligation is owed
5 shall have the authority to use any other remedies available to the
6 party or entity to collect the legal financial obligation. These
7 remedies include enforcement in the same manner as a judgment in a
8 civil action by the party or entity to whom the legal financial
9 obligation is owed. Restitution collected through civil enforcement
10 must be paid through the registry of the court and must be
11 distributed proportionately according to each victim's loss when
12 there is more than one victim. The judgment and sentence shall
13 identify the party or entity to whom restitution is owed so that the
14 state, party, or entity may enforce the judgment. If restitution is
15 ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of
16 rape of a child or a victim's child born from the rape, the
17 Washington state child support registry shall be identified as the
18 party to whom payments must be made. Restitution obligations arising
19 from the rape of a child in the first, second, or third degree that
20 result in the pregnancy of the victim may be enforced for the time
21 periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other
22 legal financial obligations for an offense committed prior to July 1,
23 2000, may be enforced at any time during the ten-year period
24 following the offender's release from total confinement or within ten
25 years of entry of the judgment and sentence, whichever period ends
26 later. Prior to the expiration of the initial ten-year period, the
27 superior court may extend the criminal judgment an additional ten
28 years for payment of legal financial obligations including crime
29 victims' assessments. All other legal financial obligations for an
30 offense committed on or after July 1, 2000, may be enforced at any
31 time the offender remains under the court's jurisdiction. For an
32 offense committed on or after July 1, 2000, the court shall retain
33 jurisdiction over the offender, for purposes of the offender's
34 compliance with payment of the legal financial obligations, until the
35 obligation is completely satisfied, regardless of the statutory
36 maximum for the crime. The department may only supervise the
37 offender's compliance with payment of the legal financial obligations
38 during any period in which the department is authorized to supervise
39 the offender in the community under RCW 9.94A.728, 9.94A.501, or in
40 which the offender is confined in a state correctional institution or

1 a correctional facility pursuant to a transfer agreement with the
2 department, and the department shall supervise the offender's
3 compliance during any such period. The department is not responsible
4 for supervision of the offender during any subsequent period of time
5 the offender remains under the court's jurisdiction. The county clerk
6 is authorized to collect unpaid legal financial obligations at any
7 time the offender remains under the jurisdiction of the court for
8 purposes of his or her legal financial obligations.

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

18 ~~((+6))~~ (7) After completing the investigation, the department
19 shall make a report to the court on the amount of the monthly payment
20 that the offender should be required to make towards a satisfied
21 legal financial obligation.

22 ~~((+7))~~ (8)(a) During the period of supervision, the department
23 may make a recommendation to the court that the offender's monthly
24 payment schedule be modified so as to reflect a change in financial
25 circumstances. If the department sets the monthly payment amount, the
26 department may modify the monthly payment amount without the matter
27 being returned to the court. During the period of supervision, the
28 department may require the offender to report to the department for
29 the purposes of reviewing the appropriateness of the collection
30 schedule for the legal financial obligation. During this reporting,
31 the offender is required under oath to respond truthfully and
32 honestly to all questions concerning earning capabilities and the
33 location and nature of all property or financial assets. The offender
34 shall bring all documents requested by the department in order to
35 prepare the collection schedule.

36 (b) Subsequent to any period of supervision, or if the department
37 is not authorized to supervise the offender in the community, the
38 county clerk may make a recommendation to the court that the
39 offender's monthly payment schedule be modified so as to reflect a
40 change in financial circumstances. If the county clerk sets the

1 monthly payment amount, or if the department set the monthly payment
2 amount and the department has subsequently turned the collection of
3 the legal financial obligation over to the county clerk, the clerk
4 may modify the monthly payment amount without the matter being
5 returned to the court. During the period of repayment, the county
6 clerk may require the offender to report to the clerk for the purpose
7 of reviewing the appropriateness of the collection schedule for the
8 legal financial obligation. During this reporting, the offender is
9 required under oath to respond truthfully and honestly to all
10 questions concerning earning capabilities and the location and nature
11 of all property or financial assets. The offender shall bring all
12 documents requested by the county clerk in order to prepare the
13 collection schedule.

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

26 ~~((+9))~~ (10) The department or any obligee of the legal financial
27 obligation may seek a mandatory wage assignment for the purposes of
28 obtaining satisfaction for the legal financial obligation pursuant to
29 RCW 9.94A.7701. Any party obtaining a wage assignment shall notify
30 the county clerk. The county clerks shall notify the department, or
31 the administrative office of the courts, whichever is providing the
32 monthly billing for the offender.

33 ~~((+10))~~ (11) The requirement that the offender pay a monthly sum
34 towards a legal financial obligation constitutes a condition or
35 requirement of a sentence and the offender is subject to the
36 penalties for noncompliance as provided in RCW 9.94B.040, 9.94A.737,
37 or 9.94A.740.

38 ~~((+11))~~ (12)(a) The administrative office of the courts shall
39 mail individualized periodic billings to the address known by the

1 office for each offender with an unsatisfied legal financial
2 obligation.

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

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

11 (d) The county clerks, the administrative office of the courts,
12 and the department shall maintain agreements to implement this
13 subsection.

14 ~~((12))~~ (13) The department shall arrange for the collection of
15 unpaid legal financial obligations during any period of supervision
16 in the community through the county clerk. The department shall
17 either collect unpaid legal financial obligations or arrange for
18 collections through another entity if the clerk does not assume
19 responsibility or is unable to continue to assume responsibility for
20 collection pursuant to subsection ~~((4))~~ (5) of this section. The
21 costs for collection services shall be paid by the offender.

22 ~~((13))~~ (14) The county clerk may access the records of the
23 employment security department for the purposes of verifying
24 employment or income, seeking any assignment of wages, or performing
25 other duties necessary to the collection of an offender's legal
26 financial obligations.

27 ~~((14))~~ (15) Nothing in this chapter makes the department, the
28 state, the counties, or any state or county employees, agents, or
29 other persons acting on their behalf liable under any circumstances
30 for the payment of these legal financial obligations or for the acts
31 of any offender who is no longer, or was not, subject to supervision
32 by the department for a term of community custody, and who remains
33 under the jurisdiction of the court for payment of legal financial
34 obligations."

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1 On page 1, line 1 of the title, after "restitution;" strike the
2 remainder of the title and insert "amending RCW 9.94A.760; and
3 creating a new section."

EFFECT: Adds an intent section. Removes provisions prohibiting a court from postponing restitution payments while an offender is incarcerated as DOC deducts funds from an offender's account for the payment of restitution regardless of the payment amount set by the court. Requires restitution for all superior court restitution orders owed by an offender to be paid before any other legal financial obligation ordered by the superior court.

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