

HOUSE BILL REPORT

E2SHB 1390

As Passed House:
February 3, 2016

Title: An act relating to legal financial obligations.

Brief Description: Concerning legal financial obligations.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Goodman, Holy, Jinkins, Kagi, Moscoso, Ormsby and Pollet).

Brief History:

Committee Activity:

Judiciary: 1/21/15, 2/19/15 [DPS];

Appropriations: 2/26/15, 2/27/15 [DP2S(w/o sub JUDI)].

Floor Activity:

Passed House: 3/9/15, 94-4.

Floor Activity:

Passed House: 2/3/16, 97-0.

Brief Summary of Engrossed Second Substitute Bill

- Eliminates interest accrual on the non-restitution portions of legal financial obligations (LFOs).
- Provides that a court may not impose costs on a defendant who is indigent at the time of sentencing.
- Establishes provisions governing payment plans and priority of payment of LFOs.
- Addresses actions a court may take in sanction proceedings for failure to pay LFOs where the offender's failure to pay is not willful and establishes standards for what constitutes willful failure to pay.
- Provides that the DNA database fee is not mandatory if the state has already collected the offender's DNA as a result of a prior conviction.

HOUSE COMMITTEE ON JUDICIARY

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

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Muri, Orwall, Stokesbary and Walkinshaw.

Minority Report: Do not pass. Signed by 1 member: Representative Klippert.

Staff: Edie Adams (786-7180).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed by 33 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Condotta, Dent, Haler, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Sawyer, Schmick, Senn, Springer, Stokesbary, Sullivan, Taylor, Tharinger, Van Werven, Walkinshaw, Fagan, G. Hunt and Hunter.

Staff: Meghan Bunch (786-7119).

Background:

Legal Financial Obligations.

When a defendant is convicted of a crime, the court may impose legal financial obligations (LFOs) as part of the judgment and sentence. Legal financial obligations include: victim restitution; crime victims' compensation fees; costs associated with the offender's prosecution and sentence; fines; penalties; and assessments.

Interest on Legal Financial Obligations.

Interest Rate: Legal financial obligations judgments bear interest from the date of judgment at the same rate that applies to civil judgments. The rate of interest generally applicable to civil judgments is the greater of 12 percent or four points above the 26-week treasury bill rate. As a result of low treasury bill rates, 12 percent has been the applicable interest rate on LFOs for over two decades. For cases in courts of limited jurisdiction, interest accrues on non-restitution financial obligations at the rate of 12 percent upon assignment to a collection agency.

Interest that accrues on the restitution portion of the LFO is paid to the victim of the offense. All other accrued interest is split between the state and the county as follows: 25 percent to the State General Fund; 25 percent to the state Judicial Information System Account; and 50 percent to the county, 25 percent of which must be used to fund local courts.

Reduction or Waiver of Interest: An offender may petition a court to reduce or waive the interest on LFOs as an incentive for the offender to pay the principal. The court must waive interest on the portion of LFOs that accrued during the term of total confinement for the conviction giving rise to the LFOs if it creates a hardship for the offender or his or her family.

The court may otherwise reduce interest on non-restitution LFOs if the offender has made a good faith effort to pay. Interest on restitution may not be waived, but may be reduced if the offender has paid the restitution principal in full.

Imposition and Collection of LFOs.

Costs: Costs that may be imposed on a defendant include public defense costs, jury fee, criminal filing fee, bench warrant fee, deferred prosecution fee, pre-trial supervision fee, witness costs, incarceration costs, and other costs as ordered by the court.

A court may not order a defendant to pay costs unless the court finds that the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court must take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose. A defendant not in default in the payment of costs may petition for remission of all or part of the costs owed if payment of the amount due will result in manifest hardship to the defendant or his or her family.

Priority of Payment: An offender's payments towards a legal financial obligation are applied first to restitution, and then proportionally to other monetary obligations after restitution has been satisfied. Costs of incarceration, if ordered, are paid last.

Failure to Pay Legal Financial Obligations.

The requirement that an offender pay a monthly sum towards a legal financial obligation is a condition of the sentence and an offender is subject to penalties for noncompliance. Under the Sentencing Reform Act, sanctions for a willful failure to pay can include incarceration or other penalties such as work crew or community restitution. If the failure to pay is not willful, the court may modify the offender's LFOs.

Civil contempt sanctions may also apply to an offender who fails to pay financial obligations. If the court finds that the failure to pay was willful, the court may impose contempt sanctions including incarceration. If the court determines the failure to pay was not willful, the court may modify the terms of payment, or reduce or revoke the amount of the financial obligation.

DNA Database Fee.

A biological sample must be collected for purposes of DNA identification analysis from every person convicted of a felony or certain other offenses, and the court must impose a \$100 fee as part of the sentence for the offense. Eighty percent of the fee is deposited into the DNA Database Account and 20 percent of the fee is transmitted to the local agency that collected the biological sample.

Summary of Engrossed Second Substitute Bill:

LFO Interest.

Interest Rate: Interest accrual on the non-restitution portion of an offender's LFOs imposed in superior court or courts of limited jurisdiction is eliminated as of the effective date of the act.

Reduction or Waiver of Interest: Standards for the reduction or waiver of interest on LFOs are revised. Upon motion of the offender, the court must waive interest on the non-restitution portion of the LFOs that accrued prior to the effective date of the act.

Imposition and Collection of LFOs.

Costs: A court may not impose costs on an offender who is indigent at the time of sentencing, or appellate costs on an offender who is indigent at the time the request for appellate costs is made. A person is "indigent" if the person is 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 levels.

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 occurs when the defendant is indigent and the defendant's indigency is unlikely to end.

Priority of Payment: An offender's LFO payment must be applied to the principal on restitution obligations in all cases within a jurisdiction prior to payment of any other monetary obligations. The priority of payment applies to cases in courts of limited jurisdiction as well as superior court.

Payment plans: If the court finds that the defendant is indigent, the court must grant permission for payment of LFOs to be made within a specified period of time or in specified installments.

Enforcement of LFOs.

An offender cannot be sanctioned for failure to pay LFOs unless the failure to pay is willful. An offender's failure to pay is willful only if the offender has the current ability to pay but refuses to do so. When determining an offender's ability to pay, the court must consider the offender's: income and assets; basic living costs and other liabilities including child support and other LFOs; and bona fide efforts to acquire additional resources. An offender who is indigent is presumed to lack the current ability to pay.

If the court determines that the offender is homeless or is a person who is mentally ill, failure to pay LFOs is not willful noncompliance with the conditions of the sentence and does not subject the offender to penalties.

When a court is considering sanctions for failure to pay LFOs, if the court finds that failure to pay is not willful the court may, and if the defendant is indigent the court must, either: (1) modify the terms of payment; (2) reduce or waive non-restitution amounts; or (3) with the offender's consent allow conversion of non-restitution obligations to be converted to community restitution hours at the rate of no less than the state minimum wage for each hour of community restitution. The crime victim penalty assessment may not be reduced, waived, or converted to community restitution hours.

DNA Database Fee.

The court is not required to impose the DNA database fee if the state has previously collected the offender's DNA as a result of a prior conviction.

Other.

Nothing in the act requires the courts to refund or reimburse amounts previously paid toward LFOs or interest on LFOs.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Judiciary):

(In support) This legislation removes barriers to offender reentry while prioritizing restitution payments to victims. The overwhelming burden of LFOs is preventing the successful reentry of offenders and worsening recidivism rates. We have the highest interest rate in the nation. The high interest rate does not provide an incentive to payment of LFOs, it poses an impediment and increases recidivism, which means that victims will not receive restitution. When individuals are able to pay their LFOs, more money goes to victims.

There are a daunting array of roadblocks that face people leaving the system, and LFOs are one of the biggest. Many offenders are trying their hardest but are not able to get out from under the incredible debt. For many offenders, by the time of their release from prison the obligations are already beyond their reach. Interest accrues at a greater rate than the monthly payment. Offenders become discouraged that they will never be able to keep up with the debt and overcome their pasts. Offenders deserve a chance to redeem themselves and reintegrate with families and the community. The bill does not relieve offenders from the obligation to pay LFOs but waiving interest gives them a chance to pay them off so that they can move forward with their lives.

Debtors' prisons are a documented practice used in some counties for collection of LFOs. Twenty percent of the offenders in jail are there because of failure to pay. Counties are spending more on collection efforts than they are actually collecting. Sending poor people to jail is not an efficient collection method. The LFO system has a racially disproportionate impact. There are costs to families when a person is stigmatized as being unredeemable. Eighty percent of offenders enter the system with an inability to pay, and they will come out with even more debt.

The bill could be strengthened by eliminating interest on non-restitution obligations, providing a clearer standard on imposition of costs, setting a standard for determining willful failure to pay, and making clear that restitution is paid before the \$100 clerk collection fee.

(With concerns) There are two priorities related to LFOs: victim restitution and the crime victim penalty assessment. We support the concept of waiving interest but are disappointed that the court may not impose costs if the person is indigent. Indigency is not an accurate determination of whether the person will be able to pay. It should be made clear that indigency is not a basis for not imposing restitution or the victim penalty assessment.

Victims appreciate that the bill prioritizes restoration payments across jurisdictions, but they should be prioritized state wide. Tolling interest on restitution while incarcerated is not appropriate. Victims incur costs that do not go away while the offender is incarcerated.

(Opposed) We have concerns around the fiscal implications of the legislation, not just to local governments but also to the state and the Judicial Information Systems account. It will be difficult to maintain our justice system if we choke off funding. Interest accrual should not be eliminated. It serves as a mechanism to encourage the offender to pay off the underlying obligation. Other tools like collection agencies are not as efficient.

The clerks stepped up and became a part of the collection process since they have a relationship with offenders and victims. Courts of limited jurisdiction use a collection process. This bill will result in a significant loss of revenues to the state and counties and it will be very expensive to implement. The clerks have no way to toll interest while an offender is incarcerated. The provision requiring payments to be applied to restitution in all cases across a jurisdiction will be expensive and will inhibit the use of online payments. It will also significantly impact the crime victim penalty assessment collection.

Staff Summary of Public Testimony (Appropriations):

(In support) There is bipartisan consensus that the state has a failing system. As a nation with 5 percent of the world's population and 20 percent of the world's prisoners, the state must look at the whole system. Legal financial obligations (LFOs) criminalize poverty. People with criminal records and LFOs collecting interest must decide between paying LFOs, putting a roof over their heads or being homeless. This bill sets the conditions for people to be able to succeed in society. Some people have over \$6,000 in non-restitution fines. At the same time, upon release from jail or prison, many people cannot find employment. Even after complying with every sentence, interest accrues the day people are sentenced, despite incarceration and ability to pay. People are more motivated to pay off fines when payments actually help pay off the debts. The LFOs are unrealistic debts against these people and debt doubles every seven years at a 12 percent interest rate. This bill makes recovery realistic and gives people hope to pay debts and move on. House Bill 1390 is a long-term investment and saves people from re-incarceration.

The fiscal note is not accurate and calculates lost revenue that will never be paid. Someone who is indigent will not be able to pay all assessments, plus restitution and other fees. Old debts sell for pennies on the dollar, and counties are spending dollars to chase dimes. In addition, the fiscal note does not include the cost for collecting debts. Furthermore, the fiscal note assumes the time for hearings to convert LFOs to community service restitution will take about 30 minutes, but these hearings could take less than five minutes each. Other pieces missing from the fiscal note include the savings of allowing people to pay debts and be productive in society and the benefits of community service provisions.

(In support with concerns) Substitute House Bill 1390 recognizes that restitution must be paid to victims first, and helps people who are trying to pay LFOs and engage in their communities. In current law, restitution is a priority. In reality, however, restitution is not a priority across all cases. Restitution is an important tool for the recovery of victims in

Washington. Delays in restitution only exasperate crimes for survivors. As a whole, the state is not meeting the needs for collecting the restitution, but this bill is an important step.

(Opposed) None.

Persons Testifying (Judiciary): (In support) Representative Goodman, prime sponsor; Shankar Narayan, Valarie Badeau, and Tarra Lawson, American Civil Liberties Union; Justin Pimsanguau; Rolando Avila and Ardell Shaw, State Poverty Action Network; Bob Cooper, Post Prison Education Program; Emily Murphy, Children's Alliance; Nick Allen, Columbia Legal Services; Seth Dawson, National Alliance on Mental Illness; Steven Aldrich, Friends Committee on Washington Public Policy; and Senait Brown, Seattle and King County NAACP and Blackout Washington.

(With concerns) Tom McBride, Washington Association of Prosecuting Attorneys; and Rebecca Johnson, Washington Coalition of Sexual Assault Programs.

(Opposed) Brian Enslow, Washington State Association of Counties; and Barbara Miner and Joel McAllister, Washington State Association of County Clerks.

Persons Testifying (Appropriations): (In support) Shankar Narayan, American Civil Liberties Union of Washington; Luther Walker, Statewide Poverty Action Network; Leo Flor, Northwest Justice Project; Tarra Lawson; Nick Allen, Columbia Legal Services; Bob Cooper, Washington Defender Association and Washington Association of Criminal Defense Lawyers; and Steven Aldrich, Friends Committee on Washington Public Policy.

(In support with concerns) Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs.

Persons Signed In To Testify But Not Testifying (Judiciary): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.