

HB 1058 - S COMM AMD

By Committee on Law & Justice

ADOPTED 04/12/2017

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 10.01.170 and 1975-'76 2nd ex.s. c 96 s 2 are each
11 amended to read as follows:

12 (1) When a defendant is sentenced to pay ((a)) fines, penalties,
13 assessments, fees, restitution, or costs, the court may grant
14 permission for payment to be made within a specified period of time
15 or in specified installments. If no such permission is included in
16 the sentence the fine or costs shall be payable forthwith.

17 (2) The offender's monthly payment shall be applied in the
18 following order of priority:

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

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

24 (c) Third, proportionally to crime victims' assessments until
25 satisfied; and

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

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

1 (1) Whenever a person is convicted in superior court, the court
2 may order the payment of a legal financial obligation as part of the
3 sentence. The court must on either the judgment and sentence or on a
4 subsequent order to pay, designate the total amount of a legal
5 financial obligation and segregate this amount among the separate
6 assessments made for restitution, costs, fines, and other assessments
7 required by law. On the same order, the court is also to set a sum
8 that the offender is required to pay on a monthly basis towards
9 satisfying the legal financial obligation. If the court fails to set
10 the offender monthly payment amount, the department shall set the
11 amount if the department has active supervision of the offender,
12 otherwise the county clerk shall set the amount.

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

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

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

25 (c) Third, proportionally to crime victims' assessments until
26 satisfied; and

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

29 ~~((+2))~~ (3) If the court determines that the offender, at the
30 time of sentencing, has the means to pay for the cost of
31 incarceration, the court may require the offender to pay for the cost
32 of incarceration at a rate of fifty dollars per day of incarceration,
33 if incarcerated in a prison, or the court may require the offender to
34 pay the actual cost of incarceration per day of incarceration, if
35 incarcerated in a county jail. In no case may the court require the
36 offender to pay more than one hundred dollars per day for the cost of
37 incarceration. Payment of other court-ordered financial obligations,
38 including all legal financial obligations and costs of supervision
39 shall take precedence over the payment of the cost of incarceration
40 ordered by the court. All funds recovered from offenders for the cost

1 of incarceration in the county jail shall be remitted to the county
2 and the costs of incarceration in a prison shall be remitted to the
3 department.

4 (4) The court may add to the judgment and sentence or subsequent
5 order to pay a statement that a notice of payroll deduction is to be
6 issued immediately. If the court chooses not to order the immediate
7 issuance of a notice of payroll deduction at sentencing, the court
8 shall add to the judgment and sentence or subsequent order to pay a
9 statement that a notice of payroll deduction may be issued or other
10 income-withholding action may be taken, without further notice to the
11 offender if a monthly court-ordered legal financial obligation
12 payment is not paid when due, and an amount equal to or greater than
13 the amount payable for one month is owed.

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

21 ~~((4))~~ (5) Independent of the department or the county clerk,
22 the party or entity to whom the legal financial obligation is owed
23 shall have the authority to use any other remedies available to the
24 party or entity to collect the legal financial obligation. These
25 remedies include enforcement in the same manner as a judgment in a
26 civil action by the party or entity to whom the legal financial
27 obligation is owed. Restitution collected through civil enforcement
28 must be paid through the registry of the court and must be
29 distributed proportionately according to each victim's loss when
30 there is more than one victim. The judgment and sentence shall
31 identify the party or entity to whom restitution is owed so that the
32 state, party, or entity may enforce the judgment. If restitution is
33 ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of
34 rape of a child or a victim's child born from the rape, the
35 Washington state child support registry shall be identified as the
36 party to whom payments must be made. Restitution obligations arising
37 from the rape of a child in the first, second, or third degree that
38 result in the pregnancy of the victim may be enforced for the time
39 periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other
40 legal financial obligations for an offense committed prior to July 1,

1 2000, may be enforced at any time during the ten-year period
2 following the offender's release from total confinement or within ten
3 years of entry of the judgment and sentence, whichever period ends
4 later. Prior to the expiration of the initial ten-year period, the
5 superior court may extend the criminal judgment an additional ten
6 years for payment of legal financial obligations including crime
7 victims' assessments. All other legal financial obligations for an
8 offense committed on or after July 1, 2000, may be enforced at any
9 time the offender remains under the court's jurisdiction. For an
10 offense committed on or after July 1, 2000, the court shall retain
11 jurisdiction over the offender, for purposes of the offender's
12 compliance with payment of the legal financial obligations, until the
13 obligation is completely satisfied, regardless of the statutory
14 maximum for the crime. The department may only supervise the
15 offender's compliance with payment of the legal financial obligations
16 during any period in which the department is authorized to supervise
17 the offender in the community under RCW 9.94A.728, 9.94A.501, or in
18 which the offender is confined in a state correctional institution or
19 a correctional facility pursuant to a transfer agreement with the
20 department, and the department shall supervise the offender's
21 compliance during any such period. The department is not responsible
22 for supervision of the offender during any subsequent period of time
23 the offender remains under the court's jurisdiction. The county clerk
24 is authorized to collect unpaid legal financial obligations at any
25 time the offender remains under the jurisdiction of the court for
26 purposes of his or her legal financial obligations.

27 ~~((+5))~~ (6) In order to assist the court in setting a monthly sum
28 that the offender must pay during the period of supervision, the
29 offender is required to report to the department for purposes of
30 preparing a recommendation to the court. When reporting, the offender
31 is required, under oath, to respond truthfully and honestly to all
32 questions concerning present, past, and future earning capabilities
33 and the location and nature of all property or financial assets. The
34 offender is further required to bring all documents requested by the
35 department.

36 ~~((+6))~~ (7) After completing the investigation, the department
37 shall make a report to the court on the amount of the monthly payment
38 that the offender should be required to make towards a satisfied
39 legal financial obligation.

1 (~~(7)~~) (8)(a) During the period of supervision, the department
2 may make a recommendation to the court that the offender's monthly
3 payment schedule be modified so as to reflect a change in financial
4 circumstances. If the department sets the monthly payment amount, the
5 department may modify the monthly payment amount without the matter
6 being returned to the court. During the period of supervision, the
7 department may require the offender to report to the department for
8 the purposes of reviewing the appropriateness of the collection
9 schedule for the legal financial obligation. During this reporting,
10 the offender is required under oath to respond truthfully and
11 honestly to all questions concerning earning capabilities and the
12 location and nature of all property or financial assets. The offender
13 shall bring all documents requested by the department in order to
14 prepare the collection schedule.

15 (b) Subsequent to any period of supervision, or if the department
16 is not authorized to supervise the offender in the community, the
17 county clerk may make a recommendation to the court that the
18 offender's monthly payment schedule be modified so as to reflect a
19 change in financial circumstances. If the county clerk sets the
20 monthly payment amount, or if the department set the monthly payment
21 amount and the department has subsequently turned the collection of
22 the legal financial obligation over to the county clerk, the clerk
23 may modify the monthly payment amount without the matter being
24 returned to the court. During the period of repayment, the county
25 clerk may require the offender to report to the clerk for the purpose
26 of reviewing the appropriateness of the collection schedule for the
27 legal financial obligation. During this reporting, the offender is
28 required under oath to respond truthfully and honestly to all
29 questions concerning earning capabilities and the location and nature
30 of all property or financial assets. The offender shall bring all
31 documents requested by the county clerk in order to prepare the
32 collection schedule.

33 (~~(8)~~) (9) After the judgment and sentence or payment order is
34 entered, the department is authorized, for any period of supervision,
35 to collect the legal financial obligation from the offender.
36 Subsequent to any period of supervision or, if the department is not
37 authorized to supervise the offender in the community, the county
38 clerk is authorized to collect unpaid legal financial obligations
39 from the offender. Any amount collected by the department shall be
40 remitted daily to the county clerk for the purpose of disbursements.

1 The department and the county clerks are authorized, but not
2 required, to accept credit cards as payment for a legal financial
3 obligation, and any costs incurred related to accepting credit card
4 payments shall be the responsibility of the offender.

5 ~~((+9))~~ (10) The department or any obligee of the legal financial
6 obligation may seek a mandatory wage assignment for the purposes of
7 obtaining satisfaction for the legal financial obligation pursuant to
8 RCW 9.94A.7701. Any party obtaining a wage assignment shall notify
9 the county clerk. The county clerks shall notify the department, or
10 the administrative office of the courts, whichever is providing the
11 monthly billing for the offender.

12 ~~((+10))~~ (11) The requirement that the offender pay a monthly sum
13 towards a legal financial obligation constitutes a condition or
14 requirement of a sentence and the offender is subject to the
15 penalties for noncompliance as provided in RCW 9.94B.040, 9.94A.737,
16 or 9.94A.740.

17 ~~((+11))~~ (12)(a) The administrative office of the courts shall
18 mail individualized periodic billings to the address known by the
19 office for each offender with an unsatisfied legal financial
20 obligation.

21 (b) The billing shall direct payments, other than outstanding
22 cost of supervision assessments under RCW 9.94A.780, parole
23 assessments under RCW 72.04A.120, and cost of probation assessments
24 under RCW 9.95.214, to the county clerk, and cost of supervision,
25 parole, or probation assessments to the department.

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

29 (d) The county clerks, the administrative office of the courts,
30 and the department shall maintain agreements to implement this
31 subsection.

32 ~~((+12))~~ (13) The department shall arrange for the collection of
33 unpaid legal financial obligations during any period of supervision
34 in the community through the county clerk. The department shall
35 either collect unpaid legal financial obligations or arrange for
36 collections through another entity if the clerk does not assume
37 responsibility or is unable to continue to assume responsibility for
38 collection pursuant to subsection ~~((+4))~~ (5) of this section. The
39 costs for collection services shall be paid by the offender.

1 (~~(13)~~) (14) The county clerk may access the records of the
2 employment security department for the purposes of verifying
3 employment or income, seeking any assignment of wages, or performing
4 other duties necessary to the collection of an offender's legal
5 financial obligations.

6 (~~(14)~~) (15) Nothing in this chapter makes the department, the
7 state, the counties, or any state or county employees, agents, or
8 other persons acting on their behalf liable under any circumstances
9 for the payment of these legal financial obligations or for the acts
10 of any offender who is no longer, or was not, subject to supervision
11 by the department for a term of community custody, and who remains
12 under the jurisdiction of the court for payment of legal financial
13 obligations."

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14 On page 1, line 1 of the title, after "restitution;" strike the
15 remainder of the title and insert "amending RCW 10.01.170 and
16 9.94A.760; and 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 restitution orders owed by an offender to be paid before any other legal financial obligation.

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