

# HOUSE BILL REPORT

## E2SHB 1783

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### As Amended by the Senate

**Title:** An act relating to legal financial obligations.

**Brief Description:** Concerning legal financial obligations.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Holy, Goodman, Hansen, Hayes, Stokesbary, Senn, Orwall, Kagi, Appleton, Kilduff, Rodne, Jinkins, Taylor, Shea, Tharinger, Frame, Fitzgibbon, Bergquist, Fey, Macri, Ryu, Doglio, Pellicciotti, Peterson, Santos, Reeves, Kloba, Robinson, Stanford, Hudgins, McBride, Ormsby and Pollet).

**Brief History:**

**Committee Activity:**

Judiciary: 2/8/17, 2/16/17 [DPS];

Appropriations: 2/22/17, 2/23/17 [DP2S(w/o sub JUDI)].

**Floor Activity:**

Passed House: 3/2/17, 91-7.

**First Special Session**

**Floor Activity:**

Passed House: 5/2/17, 89-3.

**First Special Session**

**Floor Activity:**

Passed House: 5/25/17, 86-8.

**Floor Activity:**

Passed House: 1/11/18, 86-12.

Senate Amended.

Passed Senate: 2/28/18, 32-17.

**Brief Summary of Engrossed Second Substitute Bill**

- Eliminates interest accrual on the nonrestitution 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.

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*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.*

- 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 100 percent of the crime victim penalty assessment must be deposited into a fund for crime victim and witness programs.
- Provides that the DNA database fee is not mandatory if the offender's DNA has been collected as a result of a prior conviction.

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## HOUSE COMMITTEE ON JUDICIARY

**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; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Orwall and Shea.

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

**Staff:** Edie Adams (786-7180).

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## 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 31 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Buys, Caldier, Cody, Condotta, Fitzgibbon, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Pettigrew, Pollet, Sawyer, Schmick, Senn, Springer, Sullivan, Taylor, Tharinger, Vick, Volz and Wilcox.

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

**Staff:** Meghan Morris (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 nonrestitution 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 nonrestitution 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 Legal Financial Obligations.

*Cost.* Costs that may be imposed on a defendant include public defense costs, jury fees, criminal filing fees, bench warrant fees, deferred prosecution fees, pretrial supervision fees, 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 LFOs 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 LFOs 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 LFOs. 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 LFO.

#### 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.

Crime Victim Penalty Assessment.

A crime victim penalty assessment must be imposed on any adult convicted of a criminal offense in superior court, with some exceptions for vehicle-related offenses. The penalty assessment is \$500 in the case of a felony or gross misdemeanor offense and \$250 in the case of a misdemeanor offense. A juvenile offender who is found to have committed a most serious offense must be assessed a penalty assessment in the amount of \$100.

The county treasurer must remit 32 percent of the amounts collected to the State Treasurer for deposit in the State General Fund. Of the remaining 68 percent of amounts collected, the county treasurer must remit 50 percent to a fund maintained exclusively for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes.

**Summary of Engrossed Second Substitute Bill:**

Legal Financial Obligation Interest.

*Interest Rate.* Interest accrual on the nonrestitution portion of an offender's legal financial obligations (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 nonrestitution portion of the LFOs that accrued prior to the effective date of the act.

Imposition and Collection of Legal Financial Obligations.

*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 exists when the defendant is indigent.

*Priority of Payment.* An offender's LFO payment must be applied in the following order of priority until satisfied:

- first, proportionally to restitution to victims that have not been fully compensated from other resources;
- second, proportionally to restitution to insurance or other sources with respect to a loss that has provided compensation to victims;

- third, proportionally to crime victims' assessment; and
- fourth, proportionally to costs, fines, and other assessments.

The requirement that costs of incarceration be paid last after all other LFOs are satisfied is removed. 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 Legal Financial Obligations.

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 nonrestitution amounts; or (3) allow conversion of nonrestitution obligations to community restitution hours, if the jurisdiction operates a community restitution program, 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.

#### Crime Victim Penalty Assessment.

One hundred percent of the crime victim penalty assessment amounts received by the county treasurer must be deposited into a fund for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes.

#### Other.

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

### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment restores current law criteria that a defendant may petition for remission of the payment of costs if not in "contumacious" default (rather than "willful"

default). The Senate amendment makes technical amendments to: update the date in the null and void section from 2017 to 2018; and update section 17 (RCW 36.18.020, which was amended by other legislation in 2017), so that the bill amends the current version of the statute.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Judiciary):**

(In support) This bill, which passed the House of Representatives unanimously in 2016, is about giving people a fair chance to get back on their feet once they get out of prison. Our current system prevents offenders from being able to get their lives back on the right track. The bill prioritizes restitution and establishes a more rational standard for determining ability to pay. Imposing interest on legal financial obligations (LFOs) was first thought to be an incentive for offenders to pay, but instead it has been shown to be an impediment. The current 12 percent interest rate is onerous and makes the LFO debt skyrocket.

We want offenders to rebuild their lives once they are released from prison. There are many barriers to reentry, but LFOs are one of the hardest to overcome. The LFO system puts people so far down in a hole that they cannot get out, and this encourages them to just give up. Our country leads the world in incarceration rates, and life after imprisonment is a life of poverty and inescapable barriers. Legal financial obligations create a tragic, seemingly endless financial web and have a devastating impact on families. The burden of large LFOs limits the ability of offenders to reenter the workforce and reach stability or prosperity. Nonpayment of LFOs is not a matter of choice in many cases, but rather the only option.

The bill provides clear guidelines for judges in determining indigency and standards for imposing LFOs. There is currently great disparity between judges across the state. It is important to create a system that results in even application of the law across the state. It is especially important to establish clear standards on when LFOs may be imposed and when costs should be waived. Persons who do not have the ability to pay off their LFOs will never have jurisdiction of court go away.

The bill focuses on victim restitution, and it directs more money to victim services by dedicating the entire victim penalty assessment to that purpose. The bill should clarify the prioritization of restitution over other LFOs. The court should be given flexibility to look at a person's assets or future ability to pay when deciding whether to impose costs and given the ability to impose a filing fee for appeals, which can deter frivolous appeals.

The current LFO system runs afoul of the criminal justice system's goals of change, penitence, and reform. The criminal justice system was never meant to be self-financed. The structure of the LFO system affects people of color, poor people, and people from some counties disproportionately. The issue is not what a person deserves, but what the person

needs to have a productive life and not return to prison again. This will save victims from harm and the state from the costs of reincarceration.

(Opposed) None.

(Other) Crimes cost counties money, and the Legislature created the LFO system as a way to help counties recoup some of these costs. Seventy-five percent of county budgets go to criminal justice purposes. Counties rely on the money from LFOs to help pay for these services.

The Department of Health conducted a health impact review of House Bill 1783 and determined that there is strong evidence the bill will lead to reduced financial impact from LFOs. Unpaid debt is associated with poorer physical and mental health. There is very strong evidence that the reduced financial impact of LFOs will likely lead to improved health outcomes and decreased health disparities.

The Minority and Justice Commission has received a grant to study and work on LFO reform. The changes to the prioritization of payments present a real hardship to implement in the timeline provided, and there will be information technology costs to make this change.

**Staff Summary of Public Testimony (Appropriations):**

(In support) The bill rightfully prioritizes restitution and rededicates the victim penalty assessment to the activities for which it was originally intended. Over the years, there has been a reduction in support of that penalty assessment. Cases have been diverted away from superior court, veterans' court, juvenile court or other services. Dedicating the fund source back to victims is timely and essential.

Reforming the legal financial obligations (LFOs) system will allow Washington to meaningfully reduce recidivism and save costs related to incarceration. The LFOs system brings little to no benefit to the government or public. Every person convicted receives LFOs, which are fees, fines, costs and restitution imposed by courts on top of the conviction. The average amount imposed in felony case is \$2,540, which is too big for many to pay in a lump sum. After imposition, LFOs increase rapidly due to the 12 percent interest rate and other fees. Those who cannot afford to pay face a repetitive cycle of court hearings, contempt charges, and arrest warrants, and they are effectively tethered to the criminal justice system for years after the original conviction. Sanctioning people who are too poor to pay LFOs has serious costs. Incarcerating indigent defendants does not deter crime, or help people successfully reenter their communities after incarceration. The funds spent to jail people are better spent on alternatives to incarceration, community outreach, education, and antipoverty efforts. Many people have the potential to recover without defaulting in the system. The prioritization makes sure victims are made whole first before other fees and fines are paid.

The State Board of Health conducted a health impact review of the bill and issued the following findings: (1) LFOs and the interest on them is one of biggest barriers of reentry and perpetuates poverty; and (2) unpaid debt is associated with poor physical and mental health, such as increased rates of depression, anxiety, anger, suicide, drug dependency,

neurotic disorders, and psychotic disorders. These negative impacts create barriers to finding and keeping a job, housing, and maintaining positive family and social networks. The bill takes a big step to reduce barriers to successful reentry and timely restitution payments to crime victims.

The House of Representatives passed a similar bill in 2015 with 94-4 votes and unanimously in 2016, and this bill addresses the same fiscal and moral point-of-views. It is unclear whether the fiscal note captures the collection costs of pursuing LFOs.

(Opposed) This bill has fiscal implications for counties. Criminals and crimes continue to cost money. The Legislature established interest rates on LFOs to recover costs associated with prosecution and defense. Counties have been relying on this money, and if it is taken away, it will have to be recouped elsewhere since the services must be provided. There are also costs to convert LFOs into community service hours, both in courts and with service management. This bill reduces revenues to counties by \$1 million dollars in the 2017-2019 biennium and expenditures of \$3 million. Counties are already struggling to pay public defense costs.

**Persons Testifying (Judiciary):** (In support) Representative Holy, prime sponsor; Representative Goodman; Tarra Simmons, Civil Survival and Reentry Council; Rolando Avila, Statewide Poverty Action Network; Alex Frix, Thurston County Public Defenders Office; Rebecca Johnson, Washington Coalition of Sexual Assault Programs; Eric Gonzalez, Washington State Labor Council; Nick Allen, Columbia Legal Services; Tom McBride, Washington Association of Prosecuting Attorneys; Bob Cooper, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Elizabeth Morrison; and Samuel Merrill, Quaker Voice on Washington Public Policy.

(Other) Juliana Roe, Washington State Association of Counties; Alexandra Montano, Washington State Board of Health; and Brady Horenstein, Administrative Office of the Courts.

**Persons Testifying (Appropriations):** (In support) Representative Holy, prime sponsor; Brad Tower, Washington Coalition of Crime Victims Advocates; Elizabeth Smith, American Civil Liberties Union of Washington; and Alex Hur, Statewide Poverty Action Network.

(Opposed) Juliana Roe, Washington State Association of Counties.

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

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