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## Civil Rights & Judiciary Committee

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### HB 1412

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

**Sponsors:** Representatives Simmons, Goodman, Davis, Valdez, Berry, Taylor, Fitzgibbon, Peterson, Ormsby, Harris-Talley, Pollet and Macri.

#### Brief Summary of Bill

- Allows a court to refrain from imposing or waive full or partial restitution and accrued interest owed to any insurer or entity that is not an individual if the offender does not have the means to pay.
- Allows a court to not impose interest on restitution after inquiring into and considering specified factors and input of the victim.
- Revises standards for the waiver of accrued interest on restitution and nonrestitution obligations.
- Revises the time periods in which judgments for restitution and nonrestitution legal financial obligations may be enforced.
- Establishes a revised standard of indigency for purposes of a number of provisions applicable to legal financial obligations.
- Allows a defendant at any time to petition the sentencing court for remission of the payment of any fines or unpaid portion of fines based on manifest hardship.
- Establishes standards for the waiver or reduction of the crime victim penalty assessment, DNA database fee, and criminal filing fee.

**Hearing Date:** 1/11/22

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

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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 part of the legislation nor does it constitute a statement of legislative intent.*

## **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.

### Restitution.

Restitution is a sum ordered by the sentencing court to be paid by the offender over a specified period of time as payment for a victim's damages. A restitution order must be based on easily ascertainable damages for injury to property, expenses incurred for treatment of personal injuries, lost wages, and counseling that is reasonably related to the offense.

A sentencing court must order restitution whenever a victim of the crime is entitled to crime victims compensation benefits. In addition, a court must order restitution when the offender is convicted of an offense that results in personal injury or property damage, unless extraordinary circumstances exist that make restitution inappropriate. In ordering restitution, the court must consider the total amount of restitution owed, the offender's present, past, and future ability to pay, and any assets the offender may have. The court may modify the terms of the restitution order, but may not reduce the total amount of restitution ordered.

### Costs.

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 impose costs on an offender who is indigent at the time of sentencing. 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 level. 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.

### Interest on Legal Financial Obligations.

Restitution imposed in a judgment bears interest from the date of judgment until payment at the rate applicable 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 for over two decades. Upon motion of an offender, the court may reduce interest on restitution only if the principal has been paid in full and as an incentive for the offender to meet his or her other LFOs.

Under legislation enacted in 2018, interest does not accrue on nonrestitution LFOs as of June 7,

2018. Upon motion of an offender, the court must waive all interest on nonrestitution LFOs that accrued prior to June 7, 2018.

Time Period for Enforcement of Legal Financial Obligations.

An offender ordered to pay LFOs under a superior court judgment for an offense committed on or after July 1, 2000, remains under the court's jurisdiction until the obligation is completely satisfied, regardless of the statutory maximum for the offense. For crimes committed prior to July 1, 2000, the offender is under the court's jurisdiction for purposes of enforcement of the obligation for 10 years following release from total confinement or 10 years after entry of the judgment and sentence, whichever is longer. Prior to the expiration of the initial 10-year period, the superior court may extend the judgment an additional 10 years for payment of the LFO.

Restitution obligations ordered as a result of a conviction in a court of limited jurisdiction may be extended beyond the initial 10-year enforcement period only if the court finds the offender has not made a good faith attempt to pay.

Noncompliance.

An offender may not 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.

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.

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. 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.

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. 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.

#### Criminal Filing Fee.

Upon conviction or plea of guilty, a defendant in superior court is liable for a fee of \$200, and a defendant in a court of limited jurisdiction is liable for a fee of \$43. These fees may not be imposed on a defendant who is indigent.

#### **Summary of Bill:**

##### Restitution.

A court may refrain from imposing, or relieve an offender of the requirement to pay, full or partial restitution and accrued interest on restitution to any insurer or entity that is not an individual if the court finds the offender does not have the means to make full or partial restitution.

The court may elect not to impose interest on any restitution ordered by the court after inquiring into and considering the following factors:

- whether the offender is indigent under statutory standards for appointment of counsel or under General Rule 24 of the court rules;
- the offender's available funds and other liabilities, including child support and other LFOs; and
- whether the offender is homeless or mentally ill as defined under the Sentencing Reform Act (SRA).

The court also must consider input from the victim as to hardship caused to the victim if interest on restitution is not imposed. The court may consider any other information the court believes, in the interest of justice, relates to the determination of whether or not to impose interest on restitution.

Restitution imposed in a judgment bears interest from the later of the date of judgment or the date of release of the offender from total confinement. Upon motion of an offender following release from confinement, a court may waive any interest imposed on restitution if the restitution principal has been paid in full.

##### Interest on Nonrestitution Legal Financial Obligations.

All nonrestitution interest that accrued prior to June 7, 2018, must be automatically waived without motion of the defendant.

##### Time Period for Enforcement of Legal Financial Obligations.

The time periods during which a judgment for restitution and other LFOs may be enforced are revised.

A judgment for restitution may be extended by the court beyond the initial 10-year enforcement period only if the court finds that the offender has willfully failed to pay the restitution obligation.

A judgment for all LFOs other than restitution may be enforced only during the five-year period following the offender's release from total confinement or within five years of the entry of the judgment and sentence, whichever is longer.

#### Indigency Standard.

A new definition of "indigent" is provided. A defendant is "indigent" if the defendant:

- 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 level;
- is homeless or mentally ill as defined under the SRA;
- has household income above 125 percent of the federal poverty guidelines and has recurring basic living costs that render the defendant without the financial ability to pay; or
- has other compelling circumstances that exist that demonstrate an inability to pay.

The new definition of "indigent" applies for purposes of the following provisions:

- A court may not order an offender to pay costs if the offender is indigent.
- An offender may petition for remission of costs where manifest hardship exists, and manifest hardship is presumed where the offender is indigent.
- Noncompliance with LFO payment obligations is not willful, and therefore not subject to sanction, if the offender lacks the ability to pay, and an offender who is indigent is presumed to lack the ability to pay.
- The court may not impose the criminal filing fee on an offender who is indigent.
- The court must allow an indigent offender to pay LFOs in designated installments or within designated periods.

#### Remission of Fines.

A defendant may at any time petition the sentencing court for remission of the payment of any fines or unpaid portion of fines. The court may remit all or part of the amount due in fines or convert the amount to community restitution hours if the court finds that payment of the amount due will impose a manifest hardship on the defendant or the defendant's immediate family. Manifest hardship exists where the defendant is indigent.

#### Crime Victim Penalty Assessment.

Upon motion by the defendant, the court may waive or reduce the crime victim penalty assessment if the court finds that the defendant is indigent, as defined under the act, and lacks the future ability to pay. Provisions indicating the crime victim penalty assessment may not be reduced, waived, or converted to community restitution hours are removed.

#### DNA Database Fee.

Upon motion of the offender, the court must waive all but one previously imposed DNA database fee.

Criminal Filing Fee.

Upon motion of the offender, the court may waive any previously imposed superior court criminal filing fee if the court finds that the defendant is indigent.

**Appropriation:** None.

**Fiscal Note:** Available.

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