

HOUSE BILL REPORT

HB 1412

As Reported by House Committee On:

Civil Rights & Judiciary
Appropriations

Title: An act relating to legal financial obligations.

Brief Description: Concerning legal financial obligations.

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

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/3/21, 2/10/21 [DPS];

Appropriations: 2/19/21, 2/22/21 [DP2S(w/o sub CRJ)].

Brief Summary of Second Substitute Bill

- Allows a court to not impose 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 current or likely future ability to pay.
- Allows a court to not impose interest on restitution after inquiring into and considering specified factors and input of the victim, and revises standards for 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.

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.

- Establishes standards for the waiver or reduction of the crime victim penalty assessment, DNA database fee, and criminal filing fee.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Hansen, Chair; Simmons, Vice Chair; Davis, Entenman, Goodman, Kirby, Orwall, Peterson, Thai, Valdez and Walen.

Minority Report: Do not pass. Signed by 6 members: Representatives Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno, Klippert and Ybarra.

Staff: Edie Adams (786-7180).

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 non-restitution 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 Substitute 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 current or likely future ability to pay 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, a court may waive or reduce 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, and that is outstanding on the effective date of the act must be automatically waived without motion of the defendant.

Time Period for Enforcement of Legal Financial Obligations.

A judgment for restitution and other LFOs may be enforced during the 10-year period following the offender's release from confinement or within 10 years of the judgment and sentence, whichever is later. The judgment may be extended by the court beyond the initial 10-year enforcement period only if the court finds that the offender has the current or likely future ability to pay the obligation. A person does not have the current ability to pay if the person is indigent as defined in the act.

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 LFO provisions, including:

- 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 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.

Other.

Nothing in the act requires the court to refund or reimburse LFO amounts or accrued interest previously paid.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes:

- establishes a standard of "current or likely future ability to pay" for provisions governing when a court may waive or not impose restitution and when enforcement of a judgment for LFOs may be extended beyond the initial enforcement period;
- provides that nonrestitution LFOs are subject to the same enforcement period as restitution, rather than a shorter five-year period;
- provides that an automatic waiver of nonrestitution interest that accrued prior to June 7, 2018, applies to interest outstanding on the effective date of the act; and
- revises the definition of "individual," and the definition of "legal financial obligation" for purposes of courts of limited jurisdiction.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Individuals face difficult hurdles as they try to reintegrate and become contributing members of society. Legal financial obligations can create a real barrier to reentry for poor offenders. There has been substantial work done over the last three years on this issue and most of the changes in the bill are based on recommendations of the Sentencing Reform Task Force. The bill gives judges more discretion over whether poor and indigent people should suffer the life-long consequences that can result from LFOs.

The system labels, stigmatizes, and financially burdens poor people because they have no ability to pay. This is a direct policy intervention that the Legislature has created that exacerbates poverty for poor people and people of color. It has created a two-tiered system: one for poor people and one for wealthy people, and poor people cannot get out of this system. Debt from LFOs directly impacts the basics that people need to be able to survive. When a person has overwhelming LFO debt, there is no incentive to try to repay the obligation since it seems pointless. When some relief from LFOs is provided, it creates an incentive for people to try to meet those obligations.

It is important to have a fair and bias-free system. The bill gives judges discretion regarding imposing LFOs, which will reduce the disproportionate impact of LFOs on people of color that is prevalent in the justice system. It also allows discretion to not impose the statutorily set 12 percent interest rate. Not every victim is the same. The bill gives judges the ability to consider the particular circumstances of the victim and the defendant to determine whether interest should be waived.

There should be a way for people to move forward and become productive members of society. Exorbitant LFOs that cannot be paid back create life-long barriers because a criminal conviction cannot be vacated until all LFOs are paid. Barriers include the inability to find employment, maintain stable housing, or access educational opportunities. The barriers are often insurmountable, especially for people with disabilities, which places a huge weight on people and their families and prevents them from moving forward. This can lead to increased recidivism and a revolving door to incarceration, which reduces public safety. Giving courts the ability to review and modify LFO debt under updated standards would give people more confidence and incentive to pay the obligations.

The bill will help correct some of the socioeconomic issues that perpetuate inequality in the system. Persons released from prison have no assets or income and they have difficulty

finding employment or housing because of the conviction. The bill gives people a fair shot to reintegrate. The justice system should not prevent the opportunity for people to lead successful lives.

(Opposed) Many provisions of the bill are good policy. There is concern with allowing waiver of the victim penalty assessment. This should not be taken away unless there is another revenue source for victim services in the community. The five-year enforcement period for nonrestitution LFOs is not adequate since these are not collected until after all restitution has been paid. Restitution should not be waived where there are noninsured losses. For waiver of interest on restitution, the court should consider likely future ability to pay in making this determination. The definition of "individual" should be revised to include a person who suffers noneconomic loss such as counseling services for emotional loss. An insurer's duty is to protect policyholders and compensate them when they suffer loss. Allowing insurers to pursue restitution from the person at fault is important to help limit further rate increases for policyholders.

(Other) The bill diminishes victim rights. The waiver of restitution does not apply to just insurers but also to other business entities. This could be devastating to small businesses. Business entities should not be treated as second-class victims. The period for enforcement of LFOs is too short. The purpose of LFOs, in part, is to provide courts with a source of revenue. Counties are limited in their ability to raise money and the state contributes very little to the local court system. Reducing LFOs will result in loss of revenue to counties that are struggling to keep up with their obligations.

Persons Testifying: (In support) Representative Simmons, prime sponsor; David Keenan, Washington Minority and Justice Commission; Sean O'Donnell, Superior Court Judges' Association; Marisa Berner, Young Women's Christian Association of Olympia; Amanda Chick, Northwest Resources II, Inc.; Alexis Harris and Karin Martin, University of Washington; Robert Boyer, Civil Survival; Amber Letchworth, I Did the Time; Jefferson Coulter, Northwest Justice Project; Karen Peacey; Suzanne Cook; Arthur Rizer, Lincoln Network; Bryan L. Adamson, Case Western Reserve University School of Law; Christopher Poulos, Washington Statewide Reentry Council; Hannah Woerner, Columbia Legal Services; Marisa Berner; Vicki Christophersen, Justice Action Network; and Vidal Vincent, Black Prisoners Caucus, Stafford Creek chapter.

(Opposed) Katie Kolan, State Farm Insurance Companies, Nationwide Insurance, and National Association of Mutual Insurance Companies; and Russell Brown, Washington Association of Prosecuting Attorneys.

(Other) Juliana Roe, Washington State Association of Counties; and Kevin Underwood, Washington Collectors Association.

Persons Signed In To Testify But Not Testifying: None.

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 Civil Rights & Judiciary. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 11 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Dye, Harris, Hoff, Rude, Schmick and Steele.

Minority Report: Without recommendation. Signed by 2 members: Representatives Caldier and Jacobsen.

Staff: Yvonne Walker (786-7841).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Civil Rights & Judiciary:

The substitute bill strikes the provisions that require the automatic waiver, without motion of a defendant, of all nonrestitution interest that accrued prior to June 7, 2018, and that is outstanding on the effective date of the act. The current law is retained that, upon motion of an offender, the court must waive nonrestitution interest that accrued prior to June 7, 2018.

The enforcement of judgments statute is amended to provide that nonrestitution legal financial obligations (LFOs) may be enforced for the same time period as restitution (10 years, with an extension of an additional 10 years if the offender has the current or likely future ability to pay).

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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

Staff Summary of Public Testimony:

(In support) This bill does not change the judge's front-end discretion but what it does change is post-sentencing discretion. It allows judges to exercise their discretion when appropriate, and when everyone is in court considering the nature of the crime, the impact on the victim, and the resources of the defendant. Implementation of this bill will open

opportunities for relief from LFOs for individuals living in poverty. It allows for individuals who lack the current and likely future ability to pay for LFOs to qualify for a waiver. This will remove uncollectable debts off the books but keep amounts likely to be paid. In addition, since restitution owed to local governments will still be mandatorily imposed at sentencing and local governments can present evidence of their losses at a post sentencing waiver hearing, there will be minimal impacts to local budgets.

Only about 5 percent of LFOs are actually paid back. There is plenty of literature that states when people are drowning in debt it increases the likelihood of crime. If individuals are poor, then LFOs shackle them to the criminal justice system long after they have paid their debt to society. There is overwhelming evidence that shows that the explosion of criminal justice debt deepens the system of racial inequality and blocks millions of Americans from the capacity to earn a living and care for their families.

(Opposed) Although this bill was supposed to be a recommendation from the Criminal Sentencing Task Force (Task Force), it does not reflect the actual agreement from the Task Force. There was discussion among Task Force members to specifically allow local governments, including law enforcement agencies to seek restitution in these cases. However, the current version of the bill treats local governments the same as insurance companies.

There are also two issues that have significant possible financial significance. The first issue allows courts to waive the victim penalty assessment, however, these are funds used to pay for victim services in local counties. Discussion by the Task Force stated that if these penalties were waived, that a separate fund would be established to backfill that revenue. The second fiscal issue centers around whether the state should allow a judge to be able to waive insured or noninsured loss. The Task Force stated that any noninsured loss should be ordered by the court and an individual should be required to pay.

Lastly, there is a question relating to the time period for enforcing the criminal piece of the LFOs which are otherwise known as non-restitution LFOs. Although the prior committee's bill report references authorization for a 10-year enforcement, the same as the restitution, the substitute bill still states a five-year enforcement period. As a result, the current draft of the bill may need clarification.

(Other) Historically, the Legislature originally imposed LFOs to fund the court system but over time that has fallen out of favor given the number of bills over the years that have chipped away at LFOs. This bill is just example of that. The Legislature needs to review how they want to continue to fund the court system in the future if they are not going to use revenue from LFOs as a revenue option that is sustainable.

Persons Testifying: (In support) Arthur Rizer, Lincoln Network; Hannah Woerner, Columbia Legal Services; David Keenan, Superior Court Judges Association; and Bob Cooper, National Association of Social Workers Washington Chapter.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs; Russell Brown, Washington Association of Prosecuting Attorneys; and Kevin Underwood, Washington Collectors Association.

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

Persons Signed In To Testify But Not Testifying: None.