

# HOUSE BILL REPORT

## HB 1412

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**As Reported by House Committee On:**  
Civil Rights & Judiciary

**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], 1/11/22, 1/14/22 [DP3S].

**Brief Summary of Third Substitute Bill**

- Allows a court to not impose or waive full or partial restitution and accrued interest owed to any insurer or state agency 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.
- Revises standards for the waiver of accrued interest on restitution.
- 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 for remission of the payment of fines based on manifest hardship.
- Eliminates the crime victim penalty assessment and establishes alternative state funding for crime victim and witness programs.
- Eliminates the DNA database fee and establishes alternative state

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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.*

funding for the DNA Database and DNA collection costs.

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

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## HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** The third substitute bill be substituted therefor and the third 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 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. 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. Eighty percent of the fee is deposited into the nonappropriated DNA Database Account, and these funds may be used only for the operation and maintenance of the DNA Database. The remaining 20 percent of the fee is transmitted to the local agency that collected the biological sample.

#### 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.

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### **Summary of Bill (Third Substitute):**

#### 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 state agency if the court finds the offender does not have the current or likely future ability to pay. A person

does not have the current ability to pay if the person is indigent. "Insurer" does not include an individual self-insurance program or joint self-insurance program.

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.

Upon motion of an offender, a court may waive any interest imposed on restitution if the restitution principal has been paid in full. Without regard to whether restitution principal has been paid, after an offender's release from total confinement, the court may waive or reduce interest on restitution that accrued during incarceration if the offender does not have the current or likely future ability to pay. The prosecuting attorney must make reasonable efforts to notify the victim entitled to restitution of the hearing, and the court must consider any input from a victim on the impact of waiving restitution interest.

#### 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 beyond the initial 10-year enforcement period only if the court finds that the offender has the current or likely future ability to pay. A person does not have the current ability to pay if the person is indigent.

#### 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.

The crime victim penalty assessment is eliminated. Upon motion by the defendant, the court may waive or reduce any previously imposed crime victim penalty assessment if the court finds that the defendant is indigent and lacks the current or likely future ability to pay. Provisions indicating the crime victim penalty assessment may not be reduced, waived, or converted to community restitution hours are removed.

A new crime victim and witness assistance account is created in the State Treasury. Beginning with fiscal year 2023, the State Treasurer must transfer \$3.9 million into the account from the General Fund, and increase the total transfer each year by the fiscal growth factor. The State Treasurer must make quarterly distributions of moneys in the account to counties, which may use the funds only for comprehensive crime victim and witness programs.

#### DNA Database Fee.

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

Beginning July 1, 2022, the Legislature must appropriate \$600,000 into the state DNA Database Account and increase the total appropriation each year by the fiscal growth factor. The Washington State Patrol must expend 80 percent of these funds for maintenance and operation of the DNA Database and 20 percent of the funds for distribution to the agency responsible for collection of the offender's biological sample.

#### 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.

### **Third Substitute Bill Compared to Original Bill:**

The third substitute bill makes the following changes:

- allows a court to relieve an offender of the requirement to pay restitution and accrued interest where the restitution is owed to an insurer or state agency, rather than an insurer or entity that is not an individual, and provides that "insurer" does not include self-insurance programs;
- 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;
- allows a court to waive or reduce interest on restitution that accrued during incarceration if the offender does not have the current or likely future ability to pay;
- removes the provision that required automatic waiver, without motion of a defendant, of all nonrestitution interest that accrued prior to June 7, 2018;
- removes the provision that interest on restitution accrues from the date of judgment, rather than from the later of date of judgment or the offender's release from total confinement;
- provides that nonrestitution LFOs are subject to the same enforcement period as restitution, rather than a shorter five-year period;
- eliminates the victim penalty assessment and establishes alternate state funding for county crime victim and witness programs;
- eliminates the DNA collection fee and establishes alternate state funding for maintenance of the DNA Database and DNA collection costs; and
- revises the definition of "individual," and the definition of "legal financial obligation" for purposes of courts of limited jurisdiction.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on January 11, 2022.

**Effective Date of Third Substitute Bill:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 20, relating to superior court clerk fees, which takes effect on July 1, 2022.

#### **Staff Summary of Public Testimony:**

(In support) This bill is about reentry and helping people to succeed after incarceration. Legal financial obligations impose many barriers to successful reentry. Formerly incarcerated individuals struggle to find and maintain employment and housing because of their convictions. This is especially true for individuals with disabilities. This leads to a constant cycle of poverty. Because of the high 12 percent interest rate, LFOs balloon over time to excessive amounts that can never be paid back. As a result, the conviction will



remain on their records for life. This means that individuals will never be able to move forward with their lives or have a vision for their future.

The bill strikes a balance between giving judges discretion to address the needs of victims while imposing appropriate and enforceable sentences. Research on LFOs supports giving more discretion in assessing ability to pay. Legal financial obligations create negative legal, social, and economic consequences for individuals and families. They should be proportionate to the wrong and not so excessive as to deprive a person of their livelihood.

The bill is largely based on recommendations developed by the Washington State Criminal Sentencing Task Force (Task Force). The proposed third substitute bill reflects work with prosecutors to eliminate mandatory fees and instead to establish dedicated funding for victim services. This will save taxpayer money by eliminating all the time and money that is spent on trying to collect fees from people who are unable to pay. Generally only 2 percent of these obligations are being collected. It is cheaper to waive the obligations than to hold this uncollectible debt over people's heads. The goals advanced in this bill are not ideological; there have been bipartisan efforts across the country to limit the impact of fines, fees, and restitution obligations.

Relief from restitution is allowed only if owed to insurers or state agencies, with an exemption for self-insurance programs, which will exempt some cities and counties. The bill appropriately limits the period for collection of LFOs to persons without any capacity to pay now or in the future. Another important part of the bill is the expansion of the definition of indigency to include those individuals who have basic expenses that exceed their income. Many clients have minimum wage jobs and high expenses and cannot afford to pay their LFOs.

(Opposed) Many concerns with previous versions of this bill have been addressed in the proposed third substitute bill. This bill originated from Task Force recommendations that included a specific agreement around restitution for victims, which was not addressed in prior versions of the bill. The proposed third substitute bill does reflect that agreement. Replacement of the victim penalty assessment with stable state funding will provide continued support to victim services.

One main area of concern relates to restitution for noninsured losses. The bill sets a 10-year limitation on enforcement of restitution and allows renewal for another 10 years only if there is a finding of the defendant's current or future ability to pay. Predicting ability to pay five or 10 years in the future is not realistic. This also creates an incentive for some people to wait out the clock. The 10-year renewal should be granted as a matter of right. People who have suffered an out-of-pocket loss should be able to collect until the obligation is paid.

The bill allows a defendant to petition for waiver of fines at any time, even if the person is still in prison. People's circumstances can and do change over time, so granting waiver of



finer based on the immediate circumstance of a defendant is unwarranted. Courts should not make decisions on inability to pay or manifest hardship until the person has been out in the community for a while.

(Other) Counties are greatly concerned about the chipping away of LFOs, which were originally provided to help fund the court system. The inclusion in the proposed third substitute bill of two funds to help supplement revenues that are being removed is appreciated. There is concern with restitution only being enforced for 10 years if a person is indigent. This incentivizes people to pay no more than the bare minimum and wait out the clock.

Findings of a health impact review on the proposed third substitute bill indicate that it will likely reduce LFOs for some people. There is strong evidence this will improve health outcomes, because LFO debt is associated with negative mental health including stress, a sense of hopelessness, feeling overwhelmed, and substance abuse. There is also strong evidence that it will reduce reincarceration and decrease collateral consequences, which will improve access to employment, housing, and economic stability.

**Persons Testifying:** (In support) Representative Tarra Simmons, prime sponsor; David Keenan, Washington Minority and Justice Commission; Karen Campbell, Northwest Justice Project; Alexes Harris, University of Washington; Hannah Woerner, Columbia Legal Services; Noah Bein, Justice Action Network; Chanel Rhymes; and Karen Peacey.

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

(Other) Juliana Roe, Washington State Association of Counties; and Cait Lang-Perez, Washington State Board of Health.

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