

HOUSE BILL REPORT

ESHB 1169

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 Simmons, Taylor, Berry, Bateman, Goodman, Wylie, Santos and Ormsby).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/18/23, 1/27/23 [DP];

Appropriations: 2/8/23, 2/20/23 [DPS].

Floor Activity:

Passed House: 2/28/23, 56-41.

Senate Amended.

Passed Senate: 4/12/23, 30-19.

Brief Summary of Engrossed Substitute Bill

- Eliminates the crime victim penalty assessment for juveniles, and provides that a court must not impose the crime victim penalty assessment upon an adult defendant who is indigent at the time of sentencing.
- Establishes a Crime Victim and Witness Assistance Account to support county crime victim and witness programs.
- Eliminates the DNA database fee and establishes alternative state funding for the DNA database and DNA collection costs.
- Requires a court, upon motion of an offender, to waive a previously imposed DNA database fee.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

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.

Majority Report: Do pass. Signed by 6 members: Representatives Hansen, Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson and Walen.

Minority Report: Do not pass. Signed by 4 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Cheney and Rude.

Staff: Edie Adams (786-7180).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Davis, Fitzgibbon, Hansen, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

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

Minority Report: Without recommendation. Signed by 10 members: Representatives Stokesbary, Ranking Minority Member; Corry, Assistant Ranking Minority Member; Connors, Couture, Dye, Harris, Rude, Sandlin, Schmick and Steele.

Staff: Yvonne Walker (786-7841).

Background:

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, court costs, costs associated with the defendant's prosecution and sentence, criminal offense fines, and other fees, penalties, and assessments. Some types of LFOs are mandatory and must be imposed by the court, including the crime victim penalty assessment and the DNA database fee.

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 are transferred to the county treasurer and 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 DNA Database Account, and 20 percent of the fee is transmitted to the local agency that collected the biological sample. Money in the DNA Database Account may be expended by the chief of the Washington State Patrol or the chief's designee only for the creation, operation, and maintenance of the DNA database.

Ability to Pay Legal Financial Obligations.

A number of provisions governing the imposition and enforcement of LFOs take into consideration the defendant's ability to pay, and provide that a defendant who is indigent does not have the ability to pay. For these purposes, a defendant is "indigent" if the defendant:

- is receiving certain types of public assistance;
- is involuntarily committed to a public mental health facility;
- is receiving an annual income after taxes of 125 percent of the federal poverty level;
- is homeless or mentally ill as defined under the Sentencing Reform Act;
- 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.

Summary of Engrossed Substitute Bill:

Crime Victim Penalty Assessment.

The crime victim penalty assessment is eliminated for juveniles. Upon motion by the defendant, the court must waive any crime victim penalty assessment imposed upon a juvenile prior to the effective date of the act.

For an adult defendant convicted of an offense, the court must not impose the crime victim penalty assessment if the court finds that the defendant is indigent at the time of sentencing. Upon motion of a defendant, the court must waive any crime victim penalty assessment imposed against an adult defendant prior to the effective date of the act if the person does not have the ability to pay. A person does not have the ability to pay if the person is indigent.

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. The account must consist of funds appropriated by the Legislature for comprehensive crime

victim and witness programs. Every quarter, the State Treasurer must distribute moneys in the account to counties on the basis of a distribution factor that is based on a combination of factors, including population, crime rate, and criminal filings. Counties 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 any DNA database fee imposed prior to the effective date of the act. Any amounts collected for DNA database fees imposed prior to the effective date of the act will continue to be distributed as follows: 80 percent into the DNA Database Account and 20 percent to the agency collecting the DNA sample.

The DNA Database Account must consist of funds appropriated by the Legislature for operation and maintenance of the DNA database and for distribution to agencies responsible for collection of the biological sample from the offender, as well as any receipts from previously imposed DNA database fees. 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.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

- specifies that the purpose of the Crime Victim and Witness Assistance (CVWA) Account is to mitigate to fiscal impact from elimination of the crime victim penalty assessment on juveniles and indigent adults;
- removes the provision allowing funds in the DNA Database Account to be used for the purpose of distribution to agencies responsible for collection of the biological samples, and requiring 20 percent of funds in the account to be distributed to agencies collecting the biological samples;
- requires the Administrative Office of the Courts (AOC) to review revenue collection data to provide a more accurate assessment of the fiscal impact of eliminating the crime victim penalty assessment for juveniles and indigent adults, and to report its findings to the Legislature by February 1, 2025, to inform future distributions to the CVWA Account;
- requires the AOC, in consultation with county clerks, to review the grant program that provides funds to counties for county clerk collection budgets to determine if the grant program continues to serve its intended purpose in light of legislative changes to legal financial obligations (LFOs), and to report its findings to the Legislature by December 1, 2023; and
- amends laws governing juvenile offender proceedings to:
 - prohibit imposition or collection of any fine, administrative fee, cost, or surcharge against any juvenile or a juvenile's parent, guardian, or custodian, in connection with any juvenile offender proceeding;

- provide that a judgment against a juvenile for any non-restitution LFOs is not enforceable and superior court clerks must not accept payments from a respondent who was ordered to pay LFOs, including fines, penalty assessments, attorneys' fees, and court costs as of the effective date of the act;
- provide that courts are not required to refund or reimburse amounts previously paid towards LFOs, interest on LFOs, or any other costs;
- provide that a juvenile or parent may not be required to pay the cost of an evaluation or treatment of a juvenile offender ordered for purposes of a special sex offender disposition alternative or a substance use disorder or mental health disposition alternative, and the state must pay for any examination costs relating to chemical dependency, mental health, or co-occurring disorders, unless third party insurance coverage is available;
- remove or repeal provisions that establish or refer to nonrestitution LFOs; and
- provide that there must be good cause to order a second examination regarding a juvenile offender's amenability to treatment for purposes of a special sex offender disposition alternative.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on April 8, 2023.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2023. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Civil Rights & Judiciary):

(In support) The bill eliminates two of the last mandatory LFOs and replaces them with dedicated and stable state funding for victim and witness programs. Mandatory LFOs have a devastating impact on people living in poverty because they must be imposed regardless of a person's ability to pay and they cannot later be waived. These obligations have an impact on individuals long after they have served their sentences because they are unable to vacate a conviction until LFOs are paid.

Funding government, especially victim services, through financial obligations is extremely inefficient and ineffective. Just 5 percent of levied LFOs are actually collected in Washington. Eliminating the fees would stop the practice of spending dollars to collect dimes, and will free up clerks from having to enforce debts that cannot be collected so that they can use their resources to enforce restitution. Assessing and collecting from people who cannot pay saddles people and their families with economic insecurity.

The bill advances racial, economic, and legal justice and brings relief for those who are unable to pay so that they may begin rebuilding their lives. These fees are unethical because they disproportionately impact people of color as well as those who are on social security disability or already living in poverty. The inability to pay off LFOs can result in a

life sentence of debt that keeps people in poverty by creating a barrier to work and stable housing.

These are the only mandatory fees remaining in juvenile court. Children under age 14 are unable to legally work, but they are being charged with these fees. Youth are suffering trauma from being sent back to detention because they cannot pay their fines. Court fines and fees are not an effective tool for accountability or rehabilitation. Research shows that monetary sanctions actually increase recidivism for youth.

(Opposed) None.

(Other) There is no objection to the policy of the bill, only concern regarding whether there will be adequate funding to replace the funds that have been available for crime victim and witness programs. The LFO legislation last year had language to manually adjust on an annual basis the funding that would be provided. The account needs to be properly set up and funded to maintain stable funding over the years.

The health impact review indicates the bill will likely reduce LFOs for some people, which will likely improve health outcomes, reduce reincarceration, and decrease collateral consequences.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill is an effort to stop funding the courts and victim services from indigent defendants and to instead create a system where the state funds these items. Currently, the victim penalty assessment funds the victim advocates and prosecutor offices. The enactment of this bill would make the system more efficient and would free up county clerks' time to enforce and collect victim restitution.

This year, a Justice from the Supreme Court recognized the inequalities inherent in funding Washington's court services. The current fee model is unreliable and is an ineffective way to fund court programs and services because it relies on funding from individuals with limited to no resources. Criminal justice fees are difficult to collect and instead the state should eliminate the victim penalty assessment and invest in crime victim and witness services through a dedicated funding account. This bill will help align Washington further with the national movement to eliminate harmful fines and fees.

This bill will promote judicial economy and quality victim advocate programs.

(Opposed) None.

(Other) The prosecutors are not opposed to the idea of removing legal financial obligations. However, the concern is that this money currently funds victim programs within the prosecutor offices. Previous versions of this bill language not only included a specific

appropriation of \$4.1 million but it also included additional language that would allow that amount that is transferred to be increased in future years based upon inflation. It is recommended that similar language be included in this bill version.

Persons Testifying (Civil Rights & Judiciary): (In support) Representative Tarra Simmons, prime sponsor; Nick Jeffreys and Teirenney Fincher, Urban League of Metropolitan Seattle; Evan Walker, Washington State Budget and Policy Center; Alex Hur, Statewide Poverty Action Network; Liz Trautman, Stand for Children Washington and Debt Free Youth Justice Coalition; Hannah Woerner, Columbia Legal Services; Karen Peacey; Brooke Davies, Justice Action Network; and Kelly Olson, Civil Survival Project.

(Other) Miranda Calmjoy, Washington State Board of Health; and Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Testifying (Appropriations): (In support) Representative Tarra Simmons, prime sponsor; Catherine Moore; and Hannah Woerner, Columbia Legal Services.

(Other) Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying (Civil Rights & Judiciary): None.

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