

SENATE BILL REPORT

ESHB 1169

As Reported by Senate Committee On:
Law & Justice, March 22, 2023
Ways & Means, April 3, 2023

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

Committee Activity: Law & Justice: 3/20/23, 3/22/23 [DPA-WM, DNP, w/oRec].
Ways & Means: 3/30/23, 4/03/23 [DPA, DNP, w/oRec].

Brief Summary of Amended 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.
- Requires a court, upon motion of an offender, to waive a previously imposed DNA database fee.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

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.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Torres and Wilson, L..

Minority Report: That it be referred without recommendation.

Signed by Senator Wagoner.

Staff: Tim Ford (786-7423)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Rivers, Assistant Ranking Member, Capital; Billig, Conway, Dhingra, Hasegawa, Hunt, Keiser, Nguyen, Pedersen, Saldaña and Wellman.

Minority Report: Do not pass.

Signed by Senators Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Boehnke, Braun, Torres and Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Mullet, Vice Chair, Capital; Muzzall.

Staff: Julie Murray (786-7711)

Background: When a defendant is convicted of a crime, the court may impose legal financial obligations (LFOs) as part of the judgment and sentence. LFOs 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 \$100 penalty assessment. 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 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 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. 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 Amended Bill: Crime Victim Penalty Assessment. The crime victim penalty assessment is eliminated for juveniles.

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, as well as any receipts from previously imposed DNA database fees.

Non-Restitution Juvenile Legal Financial Obligations. Non-restitution legal financial obligations for juveniles are eliminated. No fine, administrative fee, cost, or surcharge may be imposed or collected by the court against any juvenile or a juvenile's parent or guardian in connection with any juvenile proceeding including, but not limited to, fees for diversion, DNA sampling, or victims' penalty assessments. The authority of a court to convert unpaid fines or monetary penalties to community restitution, due to an inability to pay, upon motion of the juvenile, is removed.

A judgment against the juvenile for any legal financial obligation, other than restitution, including, but not limited to, fines, penalty assessments, attorneys' fees, court costs, and other administrative fees, is not enforceable. The superior court clerk shall not accept payments from a respondent who was ordered to pay legal financial obligations, including fines, penalty assessments, attorneys' fees, and court costs as of the effective date of this section.

The courts are not required to refund or reimburse amounts previously paid towards legal financial obligations, interests on legal financial obligations, or any other costs.

Evaluation or Treatment Costs. The state shall pay any examination costs, unless third party insurance coverage is available, related to treatment options to determine if a juvenile is chemically dependent, substance abusing, or suffers from significant mental health or co-occurring disorders. A juvenile, or the parent, guardian, or other person having custody of the juvenile shall not be required to pay the cost of any evaluation or treatment.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

- Removes the 20 percent distribution to agencies collecting DNA samples from the allowable uses of the Crime Victim and Witness Assistance Account and states the account's purpose is to address the fiscal impact of the act.
- Directs the Administrative Office of the Courts to review revenue collection data before and after the effective date of the act to provide a more accurate fiscal impact on the crime victim penalty assessment elimination to inform future distributions to the Crime Victim and Witness Assistance Account and to review the county clerk legal financial obligation grant program.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Requires good cause on a motion to order a second examination regarding the offender's amenability to treatment.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Proposed Striking Amendment (Law & Justice): *The committee recommended a different version of the bill than what was heard.*

PRO: We are being more efficient by not having mandatory legal financial obligations. People can't get into housing because of these LFO's. A judge doesn't have discretion to remove these fees. Counties will spend less work and money trying to collect LFO's. This is a recommendation from the criminal sentencing task force. The LFO's is a very small part to fund victim's advocates. We can't fund the courts on the backs of defendants. We are chasing dimes with dollars. We are still working to support victims. This bill will make a more efficient court system.

CON: Our opposition is related to the crime victim penalty assessment. The bill gives the court discretion to impose the VPA and that means it will not be imposed. The services are to affirm victim rights. Without VPA victim rights will be violated. The state must appropriate the funds to support victims. While this is not a good source for funding victim advocacy services, but this funding should not be removed without another source of funding. Show us the money.

OTHER: We are not finding this is the best way to fund court systems. Removing this fund will not be a windfall for county court systems. Counties can't raise property taxes because of the 1% caps so we have to cut back on other programs. This will improve health outcomes by reducing LFO's.

Persons Testifying (Law & Justice): **PRO:** Representative Tarra Simmons, Prime Sponsor; Karla Carlisle, Northwest Justice Project; Kari Reardon, Washington Association of Criminal Defense Lawyers/Washington Defender Association; Janel McFeat, Washington Statewide Reentry Council; Kia Franklin, Stand for Children Washington; Meghan Grace, Debt Free Youth Justice Coalition; Alexes Harris, UW Professor of Sociology; Hannah Woerner, Columbia Legal Services; Brooke Davies, Justice Action Network.

CON: Jon Tunheim, Thurston County Prosecutor/WA Assoc of Prosecuting Attorneys; Colleen McIngalls, King County Prosecuting Attorneys Office/WAPA Victim Witness.

OTHER: Miranda Calmjoy, Washington State Board of Health; Juliana Roe, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on Bill as Amended by Law & Justice (Ways & Means): *The committee recommended a different version of the bill than what was heard.*

PRO: Research shows Washington spends three times as much on collecting non restitution fines and fees from youth than it collects. Fines bring little revenue at a high cost to youth and their families; I urge you to support the bill. This bill helps ensure that the judicial system operates both fairly and equitably. This bill helps end the cycle hopelessness for a person who is trying to rejoin society and find work and shelter but are saddled with legal financial obligations. We support this legislation; these fines and fees are not collectable and have no direct correlation to whether someone will reoffend. Our courts should not be funded through fess on the poorest members of our community. This version of the bill has a lower fiscal impact, and the victim penalty will still be paid by those who can afford to pay.

OTHER: We do not oppose the policy of the bill, but we ask that you backfill funding for victim witness programs at the local level.

Persons Testifying (Ways & Means): PRO: Alex Hur, Statewide Poverty Action Network; Evan Walker, Washington State Budget and Policy Center; Vicki Christophersen, Justice Action Network; Hannah Woerner, Columbia Legal Services.

OTHER: Russell Brown, WA Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.