

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5423

62nd Legislature
2011 Regular Session

Passed by the Senate March 4, 2011
YEAS 46 NAYS 1

President of the Senate

Passed by the House April 7, 2011
YEAS 53 NAYS 39

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5423** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5423

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By Senate Human Services & Corrections (originally sponsored by
Senators Regala, Hargrove, Chase, and Kline)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to legal financial obligations; amending RCW
2 10.82.090, 9.94A.760, 4.56.190, 9.94A.7606, 9.94A.7607, 9.94A.7608, and
3 9.94A.7609; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that it is in the
6 interest of the public to promote the reintegration into society of
7 individuals convicted of crimes. Research indicates that legal
8 financial obligations may constitute a significant barrier to
9 successful reintegration. The legislature further recognizes that the
10 accrual of interest on nonrestitution debt during the term of
11 incarceration results in many individuals leaving prison with
12 insurmountable debt. These circumstances make it less likely that
13 restitution will be paid in full and more likely that former offenders
14 and their families will remain in poverty. In order to foster
15 reintegration, this act creates a mechanism for courts to eliminate
16 interest accrued on nonrestitution debt during incarceration and
17 improves incentives for payment of legal financial obligations.

18 (2) At the same time, the legislature believes that payment of
19 legal financial obligations is an important part of taking personal

1 responsibility for one's actions. The legislature therefore, supports
2 the efforts of county clerks in taking collection action against those
3 who do not make a good faith effort to pay.

4 **Sec. 2.** RCW 10.82.090 and 2009 c 479 s 14 are each amended to read
5 as follows:

6 (1) Except as provided in subsection (2) of this section, financial
7 obligations imposed in a judgment shall bear interest from the date of
8 the judgment until payment, at the rate applicable to civil judgments.
9 All nonrestitution interest retained by the court shall be split
10 twenty-five percent to the state treasurer for deposit in the state
11 general fund, twenty-five percent to the state treasurer for deposit in
12 the judicial information system account as provided in RCW 2.68.020,
13 twenty-five percent to the county current expense fund, and twenty-five
14 percent to the county current expense fund to fund local courts.

15 (2) The court may, on motion by the offender, following the
16 offender's release from total confinement, reduce or waive the interest
17 on legal financial obligations levied as a result of a criminal
18 conviction(~~(-)~~) as follows:

19 (a) The court shall waive all interest on the portions of the legal
20 financial obligations that are not restitution that accrued during the
21 term of total confinement for the conviction giving rise to the
22 financial obligations, provided the offender shows that the interest
23 creates a hardship for the offender or his or her immediate family;

24 (b) The court may reduce interest on the restitution portion of the
25 legal financial obligations only if the principal has been paid in
26 full;

27 (c) The court may otherwise reduce or waive the interest (~~(only as~~
28 ~~an incentive for the offender to meet his or her)~~) on the portions of
29 the legal financial obligations(~~(. The court may not waive the~~
30 ~~interest on the restitution portion of the legal financial obligation~~
31 ~~and may only reduce the interest on the restitution portion of the~~
32 ~~legal financial obligation if the principal of the restitution has been~~
33 ~~paid in full.)~~) that are not restitution if the offender ((~~must~~)) shows
34 that he or she has personally made a good faith effort to pay(~~(-)~~) and
35 that the interest accrual is causing a significant hardship(~~(, and that~~
36 ~~he or she will be unable to pay the principal and interest in full and~~
37 ~~that reduction or waiver of the interest will likely enable the~~

1 offender to pay the full principal and any remaining interest
2 thereon)). For purposes of this section, "good faith effort" means
3 that the offender has either ((+a)) (i) paid the principal amount in
4 full; or ((+b)) (ii) made ((twenty-four consecutive)) at least fifteen
5 monthly payments within an eighteen-month period, excluding any
6 payments mandatorily deducted by the department of corrections(~~(, on~~
7 ~~his or her legal financial obligations under his or her payment~~
8 ~~agreement with the court))~~);

9 (d) For purposes of (a) through (c) of this subsection, the court
10 may reduce or waive interest on legal financial obligations only as an
11 incentive for the offender to meet his or her legal financial
12 obligations. The court may grant the motion, establish a payment
13 schedule, and retain jurisdiction over the offender for purposes of
14 reviewing and revising the reduction or waiver of interest.

15 (3) This section applies to persons convicted as adults or
16 adjudicated in juvenile court.

17 **Sec. 3.** RCW 9.94A.760 and 2008 c 231 s 35 are each amended to read
18 as follows:

19 (1) Whenever a person is convicted in superior court, the court may
20 order the payment of a legal financial obligation as part of the
21 sentence. The court must on either the judgment and sentence or on a
22 subsequent order to pay, designate the total amount of a legal
23 financial obligation and segregate this amount among the separate
24 assessments made for restitution, costs, fines, and other assessments
25 required by law. On the same order, the court is also to set a sum
26 that the offender is required to pay on a monthly basis towards
27 satisfying the legal financial obligation. If the court fails to set
28 the offender monthly payment amount, the department shall set the
29 amount if the department has active supervision of the offender,
30 otherwise the county clerk shall set the amount. Upon receipt of an
31 offender's monthly payment, restitution shall be paid prior to any
32 payments of other monetary obligations. After restitution is
33 satisfied, the county clerk shall distribute the payment proportionally
34 among all other fines, costs, and assessments imposed, unless otherwise
35 ordered by the court.

36 (2) If the court determines that the offender, at the time of
37 sentencing, has the means to pay for the cost of incarceration, the

1 court may require the offender to pay for the cost of incarceration at
2 a rate of fifty dollars per day of incarceration, if incarcerated in a
3 prison, or the court may require the offender to pay the actual cost of
4 incarceration per day of incarceration, if incarcerated in a county
5 jail. In no case may the court require the offender to pay more than
6 one hundred dollars per day for the cost of incarceration. Payment of
7 other court-ordered financial obligations, including all legal
8 financial obligations and costs of supervision shall take precedence
9 over the payment of the cost of incarceration ordered by the court.
10 All funds recovered from offenders for the cost of incarceration in the
11 county jail shall be remitted to the county and the costs of
12 incarceration in a prison shall be remitted to the department.

13 (3) The court may add to the judgment and sentence or subsequent
14 order to pay a statement that a notice of payroll deduction is to be
15 issued immediately. If the court chooses not to order the immediate
16 issuance of a notice of payroll deduction at sentencing, the court
17 shall add to the judgment and sentence or subsequent order to pay a
18 statement that a notice of payroll deduction may be issued or other
19 income-withholding action may be taken, without further notice to the
20 offender if a monthly court-ordered legal financial obligation payment
21 is not paid when due, and an amount equal to or greater than the amount
22 payable for one month is owed.

23 If a judgment and sentence or subsequent order to pay does not
24 include the statement that a notice of payroll deduction may be issued
25 or other income-withholding action may be taken if a monthly legal
26 financial obligation payment is past due, the department or the county
27 clerk may serve a notice on the offender stating such requirements and
28 authorizations. Service shall be by personal service or any form of
29 mail requiring a return receipt.

30 (4) Independent of the department or the county clerk, the party or
31 entity to whom the legal financial obligation is owed shall have the
32 authority to use any other remedies available to the party or entity to
33 collect the legal financial obligation. These remedies include
34 enforcement in the same manner as a judgment in a civil action by the
35 party or entity to whom the legal financial obligation is owed.
36 Restitution collected through civil enforcement must be paid through
37 the registry of the court and must be distributed proportionately
38 according to each victim's loss when there is more than one victim.

1 The judgment and sentence shall identify the party or entity to whom
2 restitution is owed so that the state, party, or entity may enforce the
3 judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or
4 9.94A.753(6) to a victim of rape of a child or a victim's child born
5 from the rape, the Washington state child support registry shall be
6 identified as the party to whom payments must be made. Restitution
7 obligations arising from the rape of a child in the first, second, or
8 third degree that result in the pregnancy of the victim may be enforced
9 for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6).
10 All other legal financial obligations for an offense committed prior to
11 July 1, 2000, may be enforced at any time during the ten-year period
12 following the offender's release from total confinement or within ten
13 years of entry of the judgment and sentence, whichever period ends
14 later. Prior to the expiration of the initial ten-year period, the
15 superior court may extend the criminal judgment an additional ten years
16 for payment of legal financial obligations including crime victims'
17 assessments. All other legal financial obligations for an offense
18 committed on or after July 1, 2000, may be enforced at any time the
19 offender remains under the court's jurisdiction. For an offense
20 committed on or after July 1, 2000, the court shall retain jurisdiction
21 over the offender, for purposes of the offender's compliance with
22 payment of the legal financial obligations, until the obligation is
23 completely satisfied, regardless of the statutory maximum for the
24 crime. The department may only supervise the offender's compliance
25 with payment of the legal financial obligations during any period in
26 which the department is authorized to supervise the offender in the
27 community under RCW 9.94A.728, 9.94A.501, or in which the offender is
28 confined in a state correctional institution or a correctional facility
29 pursuant to a transfer agreement with the department, and the
30 department shall supervise the offender's compliance during any such
31 period. The department is not responsible for supervision of the
32 offender during any subsequent period of time the offender remains
33 under the court's jurisdiction. The county clerk is authorized to
34 collect unpaid legal financial obligations at any time the offender
35 remains under the jurisdiction of the court for purposes of his or her
36 legal financial obligations.

37 (5) In order to assist the court in setting a monthly sum that the
38 offender must pay during the period of supervision, the offender is

1 required to report to the department for purposes of preparing a
2 recommendation to the court. When reporting, the offender is required,
3 under oath, to respond truthfully and honestly to all questions
4 concerning present, past, and future earning capabilities and the
5 location and nature of all property or financial assets. The offender
6 is further required to bring all documents requested by the department.

7 (6) After completing the investigation, the department shall make
8 a report to the court on the amount of the monthly payment that the
9 offender should be required to make towards a satisfied legal financial
10 obligation.

11 (7)(a) During the period of supervision, the department may make a
12 recommendation to the court that the offender's monthly payment
13 schedule be modified so as to reflect a change in financial
14 circumstances. If the department sets the monthly payment amount, the
15 department may modify the monthly payment amount without the matter
16 being returned to the court. During the period of supervision, the
17 department may require the offender to report to the department for the
18 purposes of reviewing the appropriateness of the collection schedule
19 for the legal financial obligation. During this reporting, the
20 offender is required under oath to respond truthfully and honestly to
21 all questions concerning earning capabilities and the location and
22 nature of all property or financial assets. The offender shall bring
23 all documents requested by the department in order to prepare the
24 collection schedule.

25 (b) Subsequent to any period of supervision, or if the department
26 is not authorized to supervise the offender in the community, the
27 county clerk may make a recommendation to the court that the offender's
28 monthly payment schedule be modified so as to reflect a change in
29 financial circumstances. If the county clerk sets the monthly payment
30 amount, or if the department set the monthly payment amount and the
31 department has subsequently turned the collection of the legal
32 financial obligation over to the county clerk, the clerk may modify the
33 monthly payment amount without the matter being returned to the court.
34 During the period of repayment, the county clerk may require the
35 offender to report to the clerk for the purpose of reviewing the
36 appropriateness of the collection schedule for the legal financial
37 obligation. During this reporting, the offender is required under oath
38 to respond truthfully and honestly to all questions concerning earning

1 capabilities and the location and nature of all property or financial
2 assets. The offender shall bring all documents requested by the county
3 clerk in order to prepare the collection schedule.

4 (8) After the judgment and sentence or payment order is entered,
5 the department is authorized, for any period of supervision, to collect
6 the legal financial obligation from the offender. Subsequent to any
7 period of supervision or, if the department is not authorized to
8 supervise the offender in the community, the county clerk is authorized
9 to collect unpaid legal financial obligations from the offender. Any
10 amount collected by the department shall be remitted daily to the
11 county clerk for the purpose of disbursements. The department and the
12 county clerks are authorized, but not required, to accept credit cards
13 as payment for a legal financial obligation, and any costs incurred
14 related to accepting credit card payments shall be the responsibility
15 of the offender.

16 (9) The department or any obligee of the legal financial obligation
17 may seek a mandatory wage assignment for the purposes of obtaining
18 satisfaction for the legal financial obligation pursuant to RCW
19 9.94A.7701. Any party obtaining a wage assignment shall notify the
20 county clerk. The county clerks shall notify the department, or the
21 administrative office of the courts, whichever is providing the monthly
22 billing for the offender.

23 (10) The requirement that the offender pay a monthly sum towards a
24 legal financial obligation constitutes a condition or requirement of a
25 sentence and the offender is subject to the penalties for noncompliance
26 as provided in RCW 9.94B.040, 9.94A.737, or 9.94A.740.

27 ~~(11)(a) ((Until January 1, 2004, the department shall mail
28 individualized monthly billings to the address known by the department
29 for each offender with an unsatisfied legal financial obligation.~~

30 ~~(b) Beginning January 1, 2004,))~~ The administrative office of the
31 courts shall mail individualized ~~((monthly))~~ periodic billings to the
32 address known by the office for each offender with an unsatisfied legal
33 financial obligation.

34 ~~((+e))~~ (b) The billing shall direct payments, other than
35 outstanding cost of supervision assessments under RCW 9.94A.780, parole
36 assessments under RCW 72.04A.120, and cost of probation assessments
37 under RCW 9.95.214, to the county clerk, and cost of supervision,
38 parole, or probation assessments to the department.

1 ~~((d))~~ (c) The county clerk shall provide the administrative
2 office of the courts with notice of payments by such offenders no less
3 frequently than weekly.

4 ~~((e))~~ (d) The county clerks, the administrative office of the
5 courts, and the department shall maintain agreements to implement this
6 subsection.

7 (12) The department shall arrange for the collection of unpaid
8 legal financial obligations during any period of supervision in the
9 community through the county clerk. The department shall either
10 collect unpaid legal financial obligations or arrange for collections
11 through another entity if the clerk does not assume responsibility or
12 is unable to continue to assume responsibility for collection pursuant
13 to subsection (4) of this section. The costs for collection services
14 shall be paid by the offender.

15 (13) The county clerk may access the records of the employment
16 security department for the purposes of verifying employment or income,
17 seeking any assignment of wages, or performing other duties necessary
18 to the collection of an offender's legal financial obligations.

19 (14) Nothing in this chapter makes the department, the state, the
20 counties, or any state or county employees, agents, or other persons
21 acting on their behalf liable under any circumstances for the payment
22 of these legal financial obligations or for the acts of any offender
23 who is no longer, or was not, subject to supervision by the department
24 for a term of community custody, and who remains under the jurisdiction
25 of the court for payment of legal financial obligations.

26 **Sec. 4.** RCW 4.56.190 and 1994 c 189 s 3 are each amended to read
27 as follows:

28 The real estate of any judgment debtor, and such as the judgment
29 debtor may acquire, not exempt by law, shall be held and bound to
30 satisfy any judgment of the district court of the United States
31 rendered in this state and any judgment of the supreme court, court of
32 appeals, superior court, or district court of this state, and every
33 such judgment shall be a lien thereupon to commence as provided in RCW
34 4.56.200 and to run for a period of not to exceed ten years from the
35 day on which such judgment was entered unless the ten-year period is
36 extended in accordance with RCW 6.17.020(3), or unless the judgment
37 results from a criminal sentence for a crime that was committed on or

1 after July 1, 2000, in which case the lien will remain in effect until
2 the judgment is fully satisfied. As used in this chapter, real estate
3 shall not include the vendor's interest under a real estate contract
4 for judgments rendered after August 23, 1983. If a judgment debtor
5 owns real estate, subject to execution, jointly or in common with any
6 other person, the judgment shall be a lien on the interest of the
7 defendant only.

8 Personal property of the judgment debtor shall be held only from
9 the time it is actually levied upon.

10 **Sec. 5.** RCW 9.94A.7606 and 1991 c 93 s 7 are each amended to read
11 as follows:

12 (1) The department or county clerk may issue to any person or
13 entity, except to the department, an order to withhold and deliver
14 property of any kind, including but not restricted to, earnings that
15 are due, owing, or belonging to the offender, if the department or
16 county clerk has reason to believe that there is in the possession of
17 such person or entity, property that is due, owing, or belonging to the
18 offender. Such order to withhold and deliver may be issued when a
19 court-ordered legal financial obligation payment is past due:

20 (a) If an offender's judgment and sentence or a subsequent order to
21 pay includes a statement that other income-withholding action under
22 this chapter may be taken without further notice to the offender.

23 (b) If a judgment and sentence or a subsequent order to pay does
24 not include the statement that other income-withholding action under
25 this chapter may be taken without further notice to the offender but
26 the department or county clerk has served a notice on the offender
27 stating such requirements and authorizations. The service shall have
28 been made by personal service or any form of mail requiring a return
29 receipt.

30 (2) The order to withhold and deliver shall:

31 (a) Include the amount of the court-ordered legal financial
32 obligation;

33 (b) Contain a summary of moneys that may be exempt from the order
34 to withhold and deliver and a summary of the civil liability upon
35 failure to comply with the order; and

36 (c) Be served by personal service or by any form of mail requiring
37 a return receipt.

1 (3) The department or county clerk shall also, on or before the
2 date of service of the order to withhold and deliver, mail or cause to
3 be mailed by any form of mail requiring a return receipt, a copy of the
4 order to withhold and deliver to the offender at the offender's last
5 known post office address, or, in the alternative, a copy of the order
6 shall be personally served on the offender on or before the date of
7 service of the order or within two days thereafter. The copy of the
8 order shall be mailed or served together with an explanation of the
9 right to petition for judicial review. If the copy is not mailed or
10 served as this section provides, or if any irregularity appears with
11 respect to the mailing or service, the superior court, in its
12 discretion on motion of the offender promptly made and supported by
13 affidavit showing that the offender has suffered substantial injury due
14 to the failure to mail the copy, may set aside the order to withhold
15 and deliver.

16 **Sec. 6.** RCW 9.94A.7607 and 1991 c 93 s 8 are each amended to read
17 as follows:

18 (1) A person or entity upon whom service has been made is hereby
19 required to:

20 (a) Answer the order to withhold and deliver within twenty days,
21 exclusive of the day of service, under oath and in writing, and shall
22 make true answers to the matters inquired of in the order; and

23 (b) Provide further and additional answers when requested by the
24 department or county clerk.

25 (2) Any person or entity in possession of any property that may be
26 subject to the order to withhold and deliver shall:

27 (a)(i) Immediately withhold such property upon receipt of the order
28 to withhold and deliver;

29 (ii) Deliver the property to the appropriate clerk of the court as
30 soon as the twenty-day answer period expires;

31 (iii) Continue to withhold earnings payable to the offender at each
32 succeeding disbursement interval and deliver amounts withheld from
33 earnings to the appropriate clerk of the court within ten days of the
34 date earnings are payable to the offender;

35 (iv) Inform the department or county clerk of the date the amounts
36 were withheld as requested under this section; or

1 (b) Furnish the appropriate clerk of the court a good and
2 sufficient bond, satisfactory to the clerk, conditioned upon final
3 determination of liability.

4 (3) Where money is due and owing under any contract of employment,
5 expressed or implied, or other employment arrangement, or is held by
6 any person or entity subject to withdrawal by the offender, the money
7 shall be delivered by remittance payable to the order of the
8 appropriate clerk of the court.

9 (4) Delivery to the appropriate clerk of the court of the money or
10 other property held or claimed shall satisfy the requirement and serve
11 as full acquittance of the order to withhold and deliver.

12 (5) The person or entity required to withhold and deliver the
13 earnings of a debtor under this action may deduct a processing fee from
14 the remainder of the offender's earnings, even if the remainder would
15 otherwise be exempt under RCW 9.94A.761. The processing fee may not
16 exceed:

17 (a) Ten dollars for the first disbursement to the appropriate clerk
18 of the court; and

19 (b) One dollar for each subsequent disbursement.

20 (6) A person or entity shall be liable to the obligee in an amount
21 equal to one hundred percent of the value of the court-ordered legal
22 financial obligation that is the basis of the order to withhold and
23 deliver, or the amount that should have been withheld, whichever amount
24 is less, together with costs, interest, and reasonable attorneys' fees
25 if that person or entity fails or refuses to deliver property under the
26 order.

27 The department or county clerk is authorized to issue a notice of
28 debt pursuant to and to take appropriate action to collect the debt
29 under this chapter if a judgment has been entered as the result of an
30 action by the court against a person or entity based on a violation of
31 this section.

32 (7) Persons or entities delivering money or property to the
33 appropriate clerk of the court under this chapter shall not be held
34 liable for wrongful delivery.

35 (8) Persons or entities withholding money or property under this
36 chapter shall not be held liable for wrongful withholding.

1 **Sec. 7.** RCW 9.94A.7608 and 1991 c 93 s 9 are each amended to read
2 as follows:

3 An order to withhold and deliver or any other income-withholding
4 action authorized by this chapter may be served on the main office of
5 a bank, savings and loan association, or credit union or on a branch
6 office of the financial institution. Service on the main office shall
7 be effective to attach the deposits of an offender in the financial
8 institution and compensation payable for personal services due the
9 offender from the financial institution. Service on a branch office
10 shall be effective to attach the deposits, accounts, credits, or other
11 personal property of the offender, excluding compensation payable for
12 personal services, in the possession or control of the particular
13 branch served.

14 Notwithstanding any other provision of RCW 9.94A.760 and 9.94A.7601
15 through 9.94A.761, if the department or county clerk initiates
16 collection action against a joint bank account, with or without the
17 right of survivorship, or any other funds which are subject to the
18 community property laws of this state, notice shall be given to all
19 affected parties that the account or funds are subject to potential
20 withholding. Such notice shall be by first-class mail, return receipt
21 required, or by personal service and be given at least twenty calendar
22 days before withholding is made. Upon receipt of such notice, the
23 nonobligated person shall have ten calendar days to file a petition
24 with the department or the superior court contesting the withholding of
25 his or her interest in the account or funds. The department or county
26 clerk shall provide notice of the right of the filing of the petition
27 with the notice provided in this paragraph. If the petition is not
28 filed within the period provided for herein, the department or county
29 clerk is authorized to proceed with the collection action.

30 **Sec. 8.** RCW 9.94A.7609 and 1991 c 93 s 10 are each amended to read
31 as follows:

32 (1) The department or county clerk may issue a notice of debt in
33 order to enforce and collect a court-ordered legal financial obligation
34 debt through either a notice of payroll deduction or an order to
35 withhold and deliver.

36 (2) The notice of debt may be personally served upon the offender

1 or be mailed to the offender at his or her last known address by any
2 form of mail requiring a return receipt, demanding payment within
3 twenty days of the date of receipt.

4 (3) The notice of debt shall include:

5 (a) A statement of the total court-ordered legal financial
6 obligation and the amount to be paid each month.

7 (b) A statement that earnings are subject to a notice of payroll
8 deduction.

9 (c) A statement that earnings or property, or both, are subject to
10 an order to withhold and deliver.

11 (d) A statement that the net proceeds will be applied to the
12 satisfaction of the court-ordered legal financial obligation.

13 (4) Action to collect a court-ordered legal financial obligation by
14 notice of payroll deduction or an order to withhold and deliver shall
15 be lawful after twenty days from the date of service upon the offender
16 or twenty days from the receipt or refusal by the offender of the
17 notice of debt.

18 (5) The notice of debt will take effect only if the offender's
19 monthly court-ordered legal financial obligation payment is not paid
20 when due, and an amount equal to or greater than the amount payable for
21 one month is owed.

22 (6) The department or county clerk shall not be required to issue
23 or serve the notice of debt in order to enforce and collect a court-
24 ordered legal financial obligation debt through either a notice of
25 payroll deduction or an order to withhold and deliver if either the
26 offender's judgment and sentence or a subsequent order to pay includes
27 a statement that income-withholding action under this chapter may be
28 taken without further notice to the offender.

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