



STATE OF WASHINGTON

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SENTENCING GUIDELINES COMMISSION

June 1, 2018

TO: Sentencing Guidelines Commission
FROM: Legal Financial Obligations Work Group
SUBJECT: SRA Reform Recommendations

The LFO Work Group for the ongoing SGC effort to consider proposed reforms of the Washington Sentencing Reform Act (SRA) met by telephone today.

The following are the recommendations of the Work Group to the SGC:

1. The Work Group supports the revised provisions of ESSHB 1783, which become effective on June 7, 2018, and recommends they be incorporated into any reform or revision of the SRA. These include the following:
 - a. ESSHB 1783 provides that only restitution shall bear interest, at the prevailing civil judgment rate. Interest is not imposed on any other legal financial obligation.
 - b. ESSHB 1783 requires that discretionary costs not be imposed on indigent defendants.
 - c. ESSHB 1783 provides that indigent defendants can be given the option to pay mandatory legal financial obligations (i.e. restitution, the victim penalty assessment and the DNA fee) over time. In addition, it sets forth the following priority of payment: first, restitution owing to victims; second, restitution owing to subrogated insurers; third, the victim penalty assessment; and finally, any other amounts or costs.
 - d. ESSHB 1783 provides that defendants cannot be sanctioned for failure to pay unless the government demonstrates that the defendant at issue is acting willfully, meaning that the defendant has the current ability to pay and has refused to do so. Defendants who are homeless or mentally ill cannot be adjudicated to be acting willfully in failing to pay.

2. The work group further recommends that the SRA be revised to require a showing to the judicial officer before an LFO (legal financial obligation) warrant can issue that the offender does in fact have the ability to pay and is simply deciding not to do so. This would cut local costs in enforcing warrants and prevent detentions of people who are not eligible to be sanctioned in any event.
3. The Work Group has ongoing consensus that crime victim restitution is a key component of Washington sentencing, and should be carried over to any reform or revision of the SRA as a financial priority obligation for qualifying offenders.
4. The Work Group recommends that any SRA revision continue the requirements of ESSHB 1783, which now routes 100 % of the victim penalty assessment to the county treasurer into a fund exclusively for “the support of comprehensive programs to encourage and facilitate testimony by the victims of crime and witnesses to crime. A program shall be considered ‘comprehensive’ only after approval of the department [Commerce] upon application by the county prosecuting attorney.” Although some may question why an assessment against defendants at sentencing is the route to help support victim advocate programs in local communities, the Work Group thinks it is not feasible to get the State to pick up this financial cost for local victim support.
5. The Work Group recommends that the DNA fee, which is used to maintain the DNA data base and, in small part, to support the crime laboratory, be eliminated for criminal defendants at sentencing. The data base and the crime lab are both essential criminal justice resources, but they should not be dependent on criminal sentencings for support, and their costs are not generated by most of the defendants who are required to pay the fee. Rather, maintenance of the data base and adequate funding of the crime lab are part of the basic state obligation to provide an adequate criminal justice system. It is recommended that the SRA revisions include a clear mandate to the State itself to fully meet this obligation.