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**SUBSTITUTE HOUSE BILL 1383**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Sheahan, Dickerson, Ballasiotes, Constantine, Costa, Radcliff, McDonald, Mason, Schoesler, Mitchell, Blalock, L. Thomas, Sheldon, Wensman, Kenney and Kessler)

Read first time 02/14/97.

1 AN ACT Relating to criminal sentencing; amending RCW 9.94A.140 and  
2 9.94A.145; reenacting and amending RCW 9.94A.142 and 9.94A.390; and  
3 prescribing penalties.

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

5 **Sec. 1.** RCW 9.94A.140 and 1995 c 231 s 1 are each amended to read  
6 as follows:

7 (1) If restitution is ordered, the court shall determine the amount  
8 of restitution due at the sentencing hearing or within one hundred  
9 eighty days. The court may continue the hearing beyond the one hundred  
10 eighty days for good cause. The court shall then set a minimum monthly  
11 payment that the offender is required to make towards the restitution  
12 that is ordered. The court should take into consideration the total  
13 amount of the restitution owed, the offender's present, past, and  
14 future ability to pay, as well as any assets that the offender may  
15 have. During the period of supervision, the community corrections  
16 officer may examine the offender to determine if there has been a  
17 change in circumstances that warrants an amendment of the monthly  
18 payment schedule. The community corrections officer may recommend a  
19 change to the schedule of payment and shall inform the court of the

1 recommended change and the reasons for the change. The sentencing  
2 court may then reset the monthly minimum payments based on the report  
3 from the community corrections officer of the change in circumstances.  
4 Except as provided in subsection (3) of this section, restitution  
5 ordered by a court pursuant to a criminal conviction shall be based on  
6 easily ascertainable damages for injury to or loss of property, actual  
7 expenses incurred for treatment for injury to persons, and lost wages  
8 resulting from injury. Restitution shall not include reimbursement for  
9 damages for mental anguish, pain and suffering, or other intangible  
10 losses, but may include the costs of counseling reasonably related to  
11 the offense. The amount of restitution shall not exceed double the  
12 amount of the offender's gain or the victim's loss from the commission  
13 of the crime. For the purposes of this section, the offender shall  
14 remain under the court's jurisdiction for a maximum term of ten years  
15 following the offender's release from total confinement or ten years  
16 subsequent to the entry of the judgment and sentence, whichever period  
17 is longer. The portion of the sentence concerning restitution may be  
18 modified as to amount, terms and conditions during the ten-year period,  
19 regardless of the expiration of the offender's term of community  
20 supervision and regardless of the statutory maximum for the crime. The  
21 court may not reduce the total amount of restitution ordered because  
22 the offender may lack the ability to pay the total amount. The  
23 offender's compliance with the restitution shall be supervised by the  
24 department of corrections.

25 (2) Restitution may be ordered whenever the offender is convicted  
26 of an offense which results in injury to any person or damage to or  
27 loss of property or as provided in subsection (3) of this section. In  
28 addition, restitution may be ordered to pay for an injury, loss, or  
29 damage if the offender pleads guilty to a lesser offense or fewer  
30 offenses and agrees with the prosecutor's recommendation that the  
31 offender be required to pay restitution to a victim of an offense or  
32 offenses which are not prosecuted pursuant to a plea agreement.

33 (3) Restitution for the crime of rape of a child in the first,  
34 second, or third degree, in which the victim becomes pregnant, shall  
35 include: (a) All of the victim's medical expenses that are associated  
36 with the rape and resulting pregnancy; and (b) child support for any  
37 child born as a result of the rape if child support is ordered pursuant  
38 to a civil superior court or administrative order for support for that  
39 child. The clerk must forward any restitution payments made on behalf

1 of the victim's child to the Washington state child support registry  
2 under chapter 26.23 RCW. Identifying information about the victim and  
3 child shall not be included in the order. The defendant shall receive  
4 a credit against any obligation owing under the administrative or  
5 superior court order for support of the victim's child. For the  
6 purposes of this subsection, the offender shall remain under the  
7 court's jurisdiction until the defendant has satisfied support  
8 obligations under the superior court or administrative order but not  
9 longer than a maximum term of twenty-five years following the  
10 offender's release from total confinement or twenty-five years  
11 subsequent to the entry of the judgment and sentence, whichever period  
12 is longer. The court may not reduce the total amount of restitution  
13 ordered because the offender may lack the ability to pay the total  
14 amount. The department shall supervise the offender's compliance with  
15 the restitution ordered under this subsection.

16 (4) In addition to any sentence that may be imposed, a defendant  
17 who has been found guilty of an offense involving fraud or other  
18 deceptive practice or an organization which has been found guilty of  
19 any such offense may be ordered by the sentencing court to give notice  
20 of the conviction to the class of persons or to the sector of the  
21 public affected by the conviction or financially interested in the  
22 subject matter of the offense by mail, by advertising in designated  
23 areas or through designated media, or by other appropriate means.

24 ~~((4))~~ (5) This section does not limit civil remedies or defenses  
25 available to the victim or defendant including support enforcement  
26 remedies for support ordered under subsection (3) of this section for  
27 a child born as a result of a rape of a child victim. The court shall  
28 identify in the judgment and sentence the victim or victims entitled to  
29 restitution and what amount is due each victim. The state or victim  
30 may enforce the court-ordered restitution in the same manner as a  
31 judgment in a civil action. Restitution collected through civil  
32 enforcement must be paid through the registry of the court and must be  
33 distributed proportionately according to each victim's loss when there  
34 is more than one victim.

35 **Sec. 2.** RCW 9.94A.142 and 1995 c 231 s 2 and 1995 c 33 s 4 are  
36 each reenacted and amended to read as follows:

37 (1) When restitution is ordered, the court shall determine the  
38 amount of restitution due at the sentencing hearing or within one

1 hundred eighty days except as provided in subsection (~~(3)~~) (4) of  
2 this section. The court may continue the hearing beyond the one  
3 hundred eighty days for good cause. The court shall then set a minimum  
4 monthly payment that the offender is required to make towards the  
5 restitution that is ordered. The court should take into consideration  
6 the total amount of the restitution owed, the offender's present, past,  
7 and future ability to pay, as well as any assets that the offender may  
8 have. During the period of supervision, the community corrections  
9 officer may examine the offender to determine if there has been a  
10 change in circumstances that warrants an amendment of the monthly  
11 payment schedule. The community corrections officer may recommend a  
12 change to the schedule of payment and shall inform the court of the  
13 recommended change and the reasons for the change. The sentencing  
14 court may then reset the monthly minimum payments based on the report  
15 from the community corrections officer of the change in circumstances.  
16 Except as provided in subsection (3) of this section, restitution  
17 ordered by a court pursuant to a criminal conviction shall be based on  
18 easily ascertainable damages for injury to or loss of property, actual  
19 expenses incurred for treatment for injury to persons, and lost wages  
20 resulting from injury. Restitution shall not include reimbursement for  
21 damages for mental anguish, pain and suffering, or other intangible  
22 losses, but may include the costs of counseling reasonably related to  
23 the offense. The amount of restitution shall not exceed double the  
24 amount of the offender's gain or the victim's loss from the commission  
25 of the crime. For the purposes of this section, the offender shall  
26 remain under the court's jurisdiction for a maximum term of ten years  
27 following the offender's release from total confinement or ten years  
28 subsequent to the entry of the judgment and sentence, whichever period  
29 is longer. The portion of the sentence concerning restitution may be  
30 modified as to amount, terms and conditions during the ten-year period,  
31 regardless of the expiration of the offender's term of community  
32 supervision and regardless of the statutory maximum for the crime. The  
33 court may not reduce the total amount of restitution ordered because  
34 the offender may lack the ability to pay the total amount. The  
35 offender's compliance with the restitution shall be supervised by the  
36 department of corrections.

37 (2) Restitution shall be ordered whenever the offender is convicted  
38 of an offense which results in injury to any person or damage to or  
39 loss of property or as provided in subsection (3) of this section

1 unless extraordinary circumstances exist which make restitution  
2 inappropriate in the court's judgment and the court sets forth such  
3 circumstances in the record. In addition, restitution shall be ordered  
4 to pay for an injury, loss, or damage if the offender pleads guilty to  
5 a lesser offense or fewer offenses and agrees with the prosecutor's  
6 recommendation that the offender be required to pay restitution to a  
7 victim of an offense or offenses which are not prosecuted pursuant to  
8 a plea agreement.

9       (3) Restitution for the crime of rape of a child in the first,  
10 second, or third degree, in which the victim becomes pregnant, shall  
11 include: (a) All of the victim's medical expenses that are associated  
12 with the rape and resulting pregnancy; and (b) child support for any  
13 child born as a result of the rape if child support is ordered pursuant  
14 to a civil superior court or administrative order for support for that  
15 child. The clerk must forward any restitution payments made on behalf  
16 of the victim's child to the Washington state child support registry  
17 under chapter 26.23 RCW. Identifying information about the victim and  
18 child shall not be included in the order. The defendant shall receive  
19 a credit against any obligation owing under the administrative or  
20 superior court order for support of the victim's child. For the  
21 purposes of this subsection, the offender shall remain under the  
22 court's jurisdiction until the defendant has satisfied support  
23 obligations under the superior court or administrative order but not  
24 longer than a maximum term of twenty-five years following the  
25 offender's release from total confinement or twenty-five years  
26 subsequent to the entry of the judgment and sentence, whichever period  
27 is longer. The court may not reduce the total amount of restitution  
28 ordered because the offender may lack the ability to pay the total  
29 amount. The department shall supervise the offender's compliance with  
30 the restitution ordered under this subsection.

31       (4) Regardless of the provisions of subsections (1) ~~((and))~~, (2),  
32 and (3) of this section, the court shall order restitution in all cases  
33 where the victim is entitled to benefits under the crime victims'  
34 compensation act, chapter 7.68 RCW. If the court does not order  
35 restitution and the victim of the crime has been determined to be  
36 entitled to benefits under the crime victims' compensation act, the  
37 department of labor and industries, as administrator of the crime  
38 victims' compensation program, may petition the court within one year  
39 of entry of the judgment and sentence for entry of a restitution order.

1 Upon receipt of a petition from the department of labor and industries,  
2 the court shall hold a restitution hearing and shall enter a  
3 restitution order.

4 ~~((+4))~~ (5) In addition to any sentence that may be imposed, a  
5 defendant who has been found guilty of an offense involving fraud or  
6 other deceptive practice or an organization which has been found guilty  
7 of any such offense may be ordered by the sentencing court to give  
8 notice of the conviction to the class of persons or to the sector of  
9 the public affected by the conviction or financially interested in the  
10 subject matter of the offense by mail, by advertising in designated  
11 areas or through designated media, or by other appropriate means.

12 ~~((+5))~~ (6) This section does not limit civil remedies or defenses  
13 available to the victim, survivors of the victim, or defendant  
14 including support enforcement remedies for support ordered under  
15 subsection (3) of this section for a child born as a result of a rape  
16 of a child victim. The court shall identify in the judgment and  
17 sentence the victim or victims entitled to restitution and what amount  
18 is due each victim. The state or victim may enforce the court-ordered  
19 restitution in the same manner as a judgment in a civil action.  
20 Restitution collected through civil enforcement must be paid through  
21 the registry of the court and must be distributed proportionately  
22 according to each victim's loss when there is more than one victim.

23 ~~((+6))~~ (7) This section shall apply to offenses committed after  
24 July 1, 1985.

25 **Sec. 3.** RCW 9.94A.145 and 1995 c 231 s 3 are each amended to read  
26 as follows:

27 (1) Whenever a person is convicted of a felony, the court may order  
28 the payment of a legal financial obligation as part of the sentence.  
29 The court must on either the judgment and sentence or on a subsequent  
30 order to pay, designate the total amount of a legal financial  
31 obligation and segregate this amount among the separate assessments  
32 made for restitution, costs, fines, and other assessments required by  
33 law. On the same order, the court is also to set a sum that the  
34 offender is required to pay on a monthly basis towards satisfying the  
35 legal financial obligation. If the court fails to set the offender  
36 monthly payment amount, the department shall set the amount. Upon  
37 receipt of an offender's monthly payment, after restitution is  
38 satisfied, the county clerk shall distribute the payment proportionally

1 among all other fines, costs, and assessments imposed, unless otherwise  
2 ordered by the court.

3 (2) If the court determines that the offender, at the time of  
4 sentencing, has the means to pay for the cost of incarceration, the  
5 court may require the offender to pay for the cost of incarceration at  
6 a rate of fifty dollars per day of incarceration. Payment of other  
7 court-ordered financial obligations, including all legal financial  
8 obligations and costs of supervision shall take precedence over the  
9 payment of the cost of incarceration ordered by the court. All funds  
10 recovered from offenders for the cost of incarceration in the county  
11 jail shall be remitted to the county and the costs of incarceration in  
12 a prison shall be remitted to the department of corrections.

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 immediately issued. 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 may serve a  
27 notice on the offender stating such requirements and authorizations.  
28 Service shall be by personal service or any form of mail requiring a  
29 return receipt.

30 (4) All legal financial obligations that are ordered as a result of  
31 a conviction for a felony, may also be enforced in the same manner as  
32 a judgment in a civil action by the party or entity to whom the legal  
33 financial obligation is owed. Restitution collected through civil  
34 enforcement must be paid through the registry of the court and must be  
35 distributed proportionately according to each victim's loss when there  
36 is more than one victim. The judgment and sentence shall identify the  
37 party or entity to whom restitution is owed so that the state, party,  
38 or entity may enforce the judgment. ~~((These))~~ If restitution is  
39 ordered pursuant to RCW 9.94A.140(3) or 9.94A.142(3) to a victim of

1 rape of a child and the victim's child born from the rape, the  
2 Washington state child support registry shall be identified as the  
3 party to whom payments must be made. Restitution obligations arising  
4 from the rape of a child in the first, second, or third degree that  
5 result in the pregnancy of the victim may be enforced for the time  
6 periods provided under RCW 9.94A.140(3) and 9.94A.142(3). All other  
7 legal financial obligations may be enforced at any time during the ten-  
8 year period following the offender's release from total confinement or  
9 within ten years of entry of the judgment and sentence, whichever  
10 period is longer. Independent of the department, the party or entity  
11 to whom the legal financial obligation is owed shall have the authority  
12 to utilize any other remedies available to the party or entity to  
13 collect the legal financial obligation.

14 (5) In order to assist the court in setting a monthly sum that the  
15 offender must pay during the period of supervision, the offender is  
16 required to report to the department for purposes of preparing a  
17 recommendation to the court. When reporting, the offender is required,  
18 under oath, to truthfully and honestly respond to all questions  
19 concerning present, past, and future earning capabilities and the  
20 location and nature of all property or financial assets. The offender  
21 is further required to bring any and all documents as requested by the  
22 department.

23 (6) After completing the investigation, the department shall make  
24 a report to the court on the amount of the monthly payment that the  
25 offender should be required to make towards a satisfied legal financial  
26 obligation.

27 (7) During the period of supervision, the department may make a  
28 recommendation to the court that the offender's monthly payment  
29 schedule be modified so as to reflect a change in financial  
30 circumstances. If the department sets the monthly payment amount, the  
31 department may modify the monthly payment amount without the matter  
32 being returned to the court. Also, during the period of supervision,  
33 the offender may be required at the request of the department to report  
34 to the department for the purposes of reviewing the appropriateness of  
35 the collection schedule for the legal financial obligation. During  
36 this reporting, the offender is required under oath to truthfully and  
37 honestly respond to all questions concerning earning capabilities and  
38 the location and nature of all property or financial assets. Also, the

1 offender is required to bring any and all documents as requested by the  
2 department in order to prepare the collection schedule.

3 (8) After the judgment and sentence or payment order is entered,  
4 the department shall for any period of supervision be authorized to  
5 collect the legal financial obligation from the offender. Any amount  
6 collected by the department shall be remitted daily to the county clerk  
7 for the purposes of disbursements. The department is authorized to  
8 accept credit cards as payment for a legal financial obligation, and  
9 any costs incurred related to accepting credit card payments shall be  
10 the responsibility of the offender.

11 (9) The department or any obligee of the legal financial obligation  
12 may seek a mandatory wage assignment for the purposes of obtaining  
13 satisfaction for the legal financial obligation pursuant to RCW  
14 9.94A.2001.

15 (10) The requirement that the offender pay a monthly sum towards a  
16 legal financial obligation constitutes a condition or requirement of a  
17 sentence and the offender is subject to the penalties as provided in  
18 RCW 9.94A.200 for noncompliance.

19 (11) The county clerk shall provide the department with  
20 individualized monthly billings for each offender with an unsatisfied  
21 legal financial obligation and shall provide the department with notice  
22 of payments by such offenders no less frequently than weekly.

23 **Sec. 4.** RCW 9.94A.390 and 1996 c 248 s 2 and 1996 c 121 s 1 are  
24 each reenacted and amended to read as follows:

25 If the sentencing court finds that an exceptional sentence outside  
26 the standard range should be imposed in accordance with RCW  
27 9.94A.120(2), the sentence is subject to review only as provided for in  
28 RCW 9.94A.210(4).

29 The following are illustrative factors which the court may consider  
30 in the exercise of its discretion to impose an exceptional sentence.  
31 The following are illustrative only and are not intended to be  
32 exclusive reasons for exceptional sentences.

33 (1) Mitigating Circumstances

34 (a) To a significant degree, the victim was an initiator, willing  
35 participant, aggressor, or provoker of the incident.

36 (b) Before detection, the defendant compensated, or made a good  
37 faith effort to compensate, the victim of the criminal conduct for any  
38 damage or injury sustained.

1 (c) The defendant committed the crime under duress, coercion,  
2 threat, or compulsion insufficient to constitute a complete defense but  
3 which significantly affected his or her conduct.

4 (d) The defendant, with no apparent predisposition to do so, was  
5 induced by others to participate in the crime.

6 (e) The defendant's capacity to appreciate the wrongfulness of his  
7 or her conduct or to conform his or her conduct to the requirements of  
8 the law, was significantly impaired (voluntary use of drugs or alcohol  
9 is excluded).

10 (f) The offense was principally accomplished by another person and  
11 the defendant manifested extreme caution or sincere concern for the  
12 safety or well-being of the victim.

13 (g) The operation of the multiple offense policy of RCW 9.94A.400  
14 results in a presumptive sentence that is clearly excessive in light of  
15 the purpose of this chapter, as expressed in RCW 9.94A.010.

16 (h) The defendant or the defendant's children suffered a continuing  
17 pattern of physical or sexual abuse by the victim of the offense and  
18 the offense is a response to that abuse.

19 (2) Aggravating Circumstances

20 (a) The defendant's conduct during the commission of the current  
21 offense manifested deliberate cruelty to the victim.

22 (b) The defendant knew or should have known that the victim of the  
23 current offense was particularly vulnerable or incapable of resistance  
24 due to extreme youth, advanced age, disability, or ill health.

25 (c) The current offense was a violent offense, and the defendant  
26 knew that the victim of the current offense was pregnant.

27 (d) The current offense was a major economic offense or series of  
28 offenses, so identified by a consideration of any of the following  
29 factors:

30 (i) The current offense involved multiple victims or multiple  
31 incidents per victim;

32 (ii) The current offense involved attempted or actual monetary loss  
33 substantially greater than typical for the offense;

34 (iii) The current offense involved a high degree of sophistication  
35 or planning or occurred over a lengthy period of time; or

36 (iv) The defendant used his or her position of trust, confidence,  
37 or fiduciary responsibility to facilitate the commission of the current  
38 offense.

1 (e) The current offense was a major violation of the Uniform  
2 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to  
3 trafficking in controlled substances, which was more onerous than the  
4 typical offense of its statutory definition: The presence of ANY of  
5 the following may identify a current offense as a major VUCSA:

6 (i) The current offense involved at least three separate  
7 transactions in which controlled substances were sold, transferred, or  
8 possessed with intent to do so;

9 (ii) The current offense involved an attempted or actual sale or  
10 transfer of controlled substances in quantities substantially larger  
11 than for personal use;

12 (iii) The current offense involved the manufacture of controlled  
13 substances for use by other parties;

14 (iv) The circumstances of the current offense reveal the offender  
15 to have occupied a high position in the drug distribution hierarchy;

16 (v) The current offense involved a high degree of sophistication or  
17 planning or occurred over a lengthy period of time or involved a broad  
18 geographic area of disbursement; or

19 (vi) The offender used his or her position or status to facilitate  
20 the commission of the current offense, including positions of trust,  
21 confidence or fiduciary responsibility (e.g., pharmacist, physician, or  
22 other medical professional).

23 (f) The current offense included a finding of sexual motivation  
24 pursuant to RCW 9.94A.127.

25 (g) The offense was part of an ongoing pattern of sexual abuse of  
26 the same victim under the age of eighteen years manifested by multiple  
27 incidents over a prolonged period of time.

28 (h) The current offense involved domestic violence, as defined in  
29 RCW 10.99.020 and one or more of the following was present:

30 (i) The offense was part of an ongoing pattern of psychological,  
31 physical, or sexual abuse of the victim manifested by multiple  
32 incidents over a prolonged period of time;

33 (ii) The offense occurred within sight or sound of the victim's or  
34 the offender's minor children under the age of eighteen years; or

35 (iii) The offender's conduct during the commission of the current  
36 offense manifested deliberate cruelty or intimidation of the victim.

37 (i) The operation of the multiple offense policy of RCW 9.94A.400  
38 results in a presumptive sentence that is clearly too lenient in light  
39 of the purpose of this chapter, as expressed in RCW 9.94A.010.

1 (j) The defendant's prior unscored misdemeanor or prior unscored  
2 foreign criminal history results in a presumptive sentence that is  
3 clearly too lenient in light of the purpose of this chapter as  
4 expressed in RCW 9.94A.010.

5 (k) The offense resulted in the pregnancy of a child victim of  
6 rape.

--- END ---