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**SUBSTITUTE SENATE BILL 6220**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Dhingra, Das, Darneille, Hasegawa, and Kuderer)

AN ACT Relating to restitution; amending RCW 9.94A.750 and 9.94A.753; and creating a new section.

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

**Sec.**  RCW 9.94A.750 and 2018 c 123 s 1 are each amended to read as follows:

This section applies to offenses committed on or before July 1, 1985.

(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court shall not issue any order that postpones the commencement of restitution payments until after the offender is released from total confinement. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. An offender's inability to make restitution payments while in total confinement may not be the basis for a violation of his or her sentence unless his or her inability to make payments resulted from a refusal to accept an employment offer to a class I or class II job or a termination for cause from such a job.

(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances.

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the offense.

(4) For the purposes of this section, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period is longer. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during either the initial ten-year period or subsequent ten-year period if the criminal judgment is extended, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confinement in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

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

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

(8) This section does not limit civil remedies or defenses available to the victim or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim.

(9) At any time, the court may determine that the offender is not required to pay, or may relieve the offender of the requirement to pay, full or partial restitution to any insurance provider authorized under Title 48 RCW if the offender reasonably satisfies the court that he or she does not have the means to make full or partial restitution to the insurance provider.

**Sec.**  RCW 9.94A.753 and 2018 c 123 s 2 are each amended to read as follows:

This section applies to offenses committed after July 1, 1985.

(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days except as provided in subsection (7) of this section. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court shall not issue any order that postpones the commencement of restitution payments until after the offender is released from total confinement. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. An offender's inability to make restitution payments while in total confinement may not be the basis for a violation of his or her sentence unless his or her inability to make payments resulted from a refusal to accept an employment offer to a class I or class II job or a termination for cause from such a job.

(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances.

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime.

(4) For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. For an offense committed on or after July 1, 2000, the offender shall remain under the court's jurisdiction until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The portion of the sentence concerning restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confinement in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support obligations under the superior court or administrative order for the period provided in RCW 4.16.020 or a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(7) Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

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

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

(10) If a person has caused a victim to lose money or property through the filing of a vehicle report of sale in which the designated buyer had no knowledge of the vehicle transfer or the fraudulent filing of the report of sale, upon conviction or when the offender pleads guilty and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim, the court may order the defendant to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain or victim's loss from the filing of the vehicle report of sale in which the designated buyer had no knowledge of the vehicle transfer or the fraudulent filing of the report of sale. Such an amount may be used to provide restitution to the victim at the order of the court. It is the duty of the prosecuting attorney to investigate the alternative of restitution, and to recommend it to the court, when the prosecuting attorney believes that restitution is appropriate and feasible. If the court orders restitution, the court must make a finding as to the amount of the victim's loss due to the filing of the report of sale in which the designated buyer had no knowledge of the vehicle transfer or the fraudulent filing of the report of sale, and if the record does not contain sufficient evidence to support such finding, the court may conduct a hearing upon the issue. For purposes of this section, "loss" refers to the amount of money or the value of property or services lost.

(11) At any time, the court may determine that the offender is not required to pay, or may relieve the offender of the requirement to pay, full or partial restitution to any insurance provider authorized under Title 48 RCW if the offender reasonably satisfies the court that he or she does not have the means to make full or partial restitution to the insurance provider.

NEW SECTION. **Sec.**  This act applies retroactively to all causes of action commenced either prior to or after the effective date of this section, regardless of when the cause of action arose.

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