

# SENATE BILL REPORT

## SHB 1047

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As Reported By Senate Committee On:  
Law & Justice, March 27, 1995

**Title:** An act relating to restitution.

**Brief Description:** Clarifying the process for defendants to pay restitution to their victims.

**Sponsors:** House Committee on Law & Justice (originally sponsored by Representatives Sheahan, Sherstad, Benton, Dyer, Schoesler, Johnson, Thompson, Beeksma, Radcliff, Crouse, Carrell, Robertson, Blanton, Lambert, Fuhrman, L. Thomas, Huff, Mielke, McMahan and Casada).

**Brief History:**

**Committee Activity:** Law & Justice: 3/20/95, 3/27/95 [DPA].

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass as amended.

Signed by Senators Smith, Chair; Hargrove, Haugen, Johnson, Long, McCaslin, Roach and Schow.

**Staff:** Martin Lovinger (786-7443)

**Background:** When an offender is convicted of a felony under the Sentencing Reform Act, the court must order the offender to pay restitution to the crime victim and, in certain cases, the victim's survivors. The court must determine the amount of restitution at sentencing or within 60 days.

Restitution must be based on easily ascertainable damages for injury or loss of property, actual expenses incurred for treatment for personal injury, and lost wages resulting from injury. Restitution does not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include counseling costs reasonably related to the offense. The amount of restitution may not exceed double the offender's gain or the victim's loss.

When the court orders restitution, the court or the department sets a minimum monthly payment. Factors to consider in setting the payment include the total amount of restitution due, the offender's past, present, and future ability to pay, and the offender's assets. The monthly payment may be adjusted if a change in the offender's circumstances warrants the change.

For purposes of paying restitution, the offender remains under the court's jurisdiction for a maximum of 10 years following the offender's release from total confinement or 10 years subsequent to the entry of the judgment and sentence, whichever period is longer, regardless

of the crime's statutory maximum. The statute of limitations for enforcement of civil judgments is 10 years from entry of judgment except in limited circumstances.

Restitution to victims must be paid prior to any other payments of court ordered legal financial obligations. The Department of Corrections collects restitution and other legal financial obligations.

Restitution that is ordered pursuant to a criminal conviction is not an award of civil damages. Restitution ordered pursuant to a criminal conviction does not limit the civil remedies available to the victim or the victim's survivors. Restitution may be enforced in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed.

**Summary of Amended Bill:** The period of time in which a court must set restitution is extended from 60 to 180 days. The court may continue the hearing for good cause.

The extended period for setting restitution applies retroactively if: (1) the court fails to set restitution within the 60-day deadline; (2) the defendant is sentenced to no more than 365 days prior to the effective date of this act (which is approximately July 24, 1995); and (3) the defendant is not unfairly prejudiced by the delay. In those cases, courts may set restitution within 180 days of the effective date of this act or at a later hearing for good cause.

The court may not reduce the total amount of restitution ordered because the offender might not have the ability to pay the total amount.

The court must identify the victim or victims entitled to restitution. The state or victim may continue to enforce the restitution order in the same manner as a civil judgment, but restitution collected through civil enforcement must be paid through the court registry, and must be distributed proportionately according to each victim's loss when there is more than one victim.

The statute of limitations concerning enforcement of judgments is amended to correspond to the supervision time period for collection of legal financial obligations.

**Amended Bill Compared to Substitute Bill:** The amended bill applies the extension of time to set restitution retroactively under certain circumstances, and requires that restitution obtained through civil enforcement be distributed proportionately according to each victim's loss when there is more than one victim.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Extending the time to 180 days for establishing the restitution amount will prevent cases falling through the cracks. This bill does not greatly alter current procedure, but will allow courts to use civil enforcement procedures to collect restitution. The

retroactivity provision will allow courts to handle a few cases where the courts inadvertently missed scheduling a restitution hearing within 60 days.

**Testimony Against:** None.

**Testified:** Representative Sheahan, prime sponsor (pro); Tom McBride, WA Assn. of Prosecuting Attorneys, WA Assn. of County Clerks (pro).