
SUBSTITUTE HOUSE BILL 1047

State of Washington

54th Legislature

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By House Committee on Law and 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)

Read first time 01/25/95.

1 AN ACT Relating to restitution; and amending RCW 9.94A.140,
2 9.94A.142, 9.94A.145, and 6.17.020.

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

4 **Sec. 1.** RCW 9.94A.140 and 1994 c 271 s 601 are each amended to
5 read as follows:

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

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

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

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

1 (4) This section does not limit civil remedies or defenses
2 available to the victim or defendant. The court shall identify in the
3 judgment and sentence the victim or victims entitled to restitution and
4 what amount is due each victim. The state or victim may enforce the
5 court-ordered restitution in the same manner as a judgment in a civil
6 action. Restitution collected through civil enforcement must be paid
7 through the registry of the court.

8 **Sec. 2.** RCW 9.94A.142 and 1994 c 271 s 602 are each amended to
9 read as follows:

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

1 the sentence concerning restitution may be modified as to amount, terms
2 and conditions during the ten-year period, regardless of the expiration
3 of the offender's term of community supervision and regardless of the
4 statutory maximum for the crime. The court may not reduce the total
5 amount of restitution ordered because the offender may lack the ability
6 to pay the total amount. The offender's compliance with the
7 restitution shall be supervised by the department.

8 (2) Restitution shall be ordered whenever the offender is convicted
9 of an offense which results in injury to any person or damage to or
10 loss of property unless extraordinary circumstances exist which make
11 restitution inappropriate in the court's judgment and the court sets
12 forth such circumstances in the record. In addition, restitution shall
13 be ordered to pay for an injury, loss, or damage if the offender pleads
14 guilty to a lesser offense or fewer offenses and agrees with the
15 prosecutor's recommendation that the offender be required to pay
16 restitution to a victim of an offense or offenses which are not
17 prosecuted pursuant to a plea agreement.

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

26 (4) This section does not limit civil remedies or defenses
27 available to the victim, survivors of the victim, or defendant. The
28 court shall identify in the judgment and sentence the victim or victims
29 entitled to restitution and what amount is due each victim. The state
30 or victim may enforce the court-ordered restitution in the same manner
31 as a judgment in a civil action. Restitution collected through civil
32 enforcement must be paid through the registry of the court.

33 (5) This section shall apply to offenses committed after July 1,
34 1985.

35 **Sec. 3.** RCW 9.94A.145 and 1991 c 93 s 2 are each amended to read
36 as follows:

37 (1) Whenever a person is convicted of a felony, the court may order
38 the payment of a legal financial obligation as part of the sentence.

1 The court must on either the judgment and sentence or on a subsequent
2 order to pay, designate the total amount of a legal financial
3 obligation and segregate this amount among the separate assessments
4 made for restitution, costs, fines, and other assessments required by
5 law. On the same order, the court is also to set a sum that the
6 offender is required to pay on a monthly basis towards satisfying the
7 legal financial obligation. If the court fails to set the offender
8 monthly payment amount, the department shall set the amount. Upon
9 receipt of an offender's monthly payment, after restitution is
10 satisfied, the county clerk shall distribute the payment proportionally
11 among all other fines, costs, and assessments imposed, unless otherwise
12 ordered by the court.

13 (2) If the court determines that the offender, at the time of
14 sentencing, has the means to pay for the cost of incarceration, the
15 court may require the offender to pay for the cost of incarceration at
16 a rate of fifty dollars per day of incarceration. Payment of other
17 court-ordered financial obligations, including all legal financial
18 obligations and costs of supervision shall take precedence over the
19 payment of the cost of incarceration ordered by the court. All funds
20 recovered from offenders for the cost of incarceration in the county
21 jail shall be remitted to the county and the costs of incarceration in
22 a prison shall be remitted to the department of corrections.

23 (3) The court may add to the judgment and sentence or subsequent
24 order to pay a statement that a notice of payroll deduction is to be
25 immediately issued. If the court chooses not to order the immediate
26 issuance of a notice of payroll deduction at sentencing, the court
27 shall add to the judgment and sentence or subsequent order to pay a
28 statement that a notice of payroll deduction may be issued or other
29 income-withholding action may be taken, without further notice to the
30 offender if a monthly court-ordered legal financial obligation payment
31 is not paid when due, and an amount equal to or greater than the amount
32 payable for one month is owed.

33 If a judgment and sentence or subsequent order to pay does not
34 include the statement that a notice of payroll deduction may be issued
35 or other income-withholding action may be taken if a monthly legal
36 financial obligation payment is past due, the department may serve a
37 notice on the offender stating such requirements and authorizations.
38 Service shall be by personal service or any form of mail requiring a
39 return receipt.

1 (4) All legal financial obligations that are ordered as a result of
2 a conviction for a felony, may also be enforced in the same manner as
3 a judgment in a civil action by the party or entity to whom the legal
4 financial obligation is owed. Restitution collected through civil
5 enforcement must be paid through the registry of the court. The
6 judgment and sentence shall identify the party or entity to whom
7 restitution is owed so that the state, party, or entity may enforce the
8 judgment. These obligations may be enforced at any time during the
9 ten-year period following the offender's release from total confinement
10 or within ten years of entry of the judgment and sentence, whichever
11 period is longer. Independent of the department, the party or entity
12 to whom the legal financial obligation is owed shall have the authority
13 to utilize any other remedies available to the party or entity to
14 collect the legal financial obligation.

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

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

28 (7) During the period of supervision, the department may make a
29 recommendation to the court that the offender's monthly payment
30 schedule be modified so as to reflect a change in financial
31 circumstances. If the department sets the monthly payment amount, the
32 department may modify the monthly payment amount without the matter
33 being returned to the court. Also, during the period of supervision,
34 the offender may be required at the request of the department to report
35 to the department for the purposes of reviewing the appropriateness of
36 the collection schedule for the legal financial obligation. During
37 this reporting, the offender is required under oath to truthfully and
38 honestly respond to all questions concerning earning capabilities and
39 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 6.17.020 and 1994 c 189 s 1 are each amended to read
24 as follows:

25 (1) Except as provided in subsections (2) ~~((and))~~, (3), and (4) of
26 this section, the party in whose favor a judgment of a court of record
27 of this state or a district court of this state has been or may be
28 rendered, or the assignee, may have an execution issued for the
29 collection or enforcement of the judgment at any time within ten years
30 from entry of the judgment.

31 (2) After July 23, 1989, a party who obtains a judgment or order of
32 a court of record of any state, or an administrative order entered as
33 defined in RCW 74.20A.020(6) for accrued child support, may have an
34 execution issued upon that judgment or order at any time within ten
35 years of the eighteenth birthday of the youngest child named in the
36 order for whom support is ordered.

37 (3) After June 9, 1994, a party in whose favor a judgment has been
38 rendered pursuant to subsection (1) or (4) of this section may, within

1 ninety days before the expiration of the original ten-year period,
2 apply to the court that rendered the judgment for an order granting an
3 additional ten years during which an execution may be issued. The
4 petitioner shall pay to the court a filing fee equal to the filing fee
5 for filing the first or initial paper in a civil action in the court.
6 When application is made to the court to grant an additional ten years,
7 the application shall be accompanied by a current and updated judgment
8 summary as outlined in RCW 4.64.030. The filing fee required under
9 this subsection shall be included in the judgment summary and shall be
10 a recoverable cost.

11 (4) A party who obtains a judgment or order for restitution or
12 other court-ordered legal financial obligations pursuant to a criminal
13 judgment and sentence may execute the judgment or order any time within
14 ten years subsequent to the entry of the judgment and sentence or ten
15 years following the offender's release from total confinement as
16 provided in chapter 9.94A RCW.

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