

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1047

Chapter 231, Laws of 1995

54th Legislature
1995 Regular Session

RESTITUTION--REVISED PROVISIONS

EFFECTIVE DATE: 7/23/95

Passed by the House April 18, 1995
Yeas 91 Nays 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Passed by the Senate April 7, 1995
Yeas 43 Nays 0

JOEL PRITCHARD

President of the Senate

Approved May 5, 1995

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1047** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN

Chief Clerk

FILED

May 5, 1995 - 10:01 a.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1047

AS AMENDED BY THE SENATE

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

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; amending RCW 9.94A.140, 9.94A.142,
2 9.94A.145, and 6.17.020; and creating a new section.

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 and must be distributed
8 proportionately according to each victim's loss when there is more than
9 one victim.

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

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

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

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

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

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

37 (5) This section shall apply to offenses committed after July 1,
38 1985.

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

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

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

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

37 If a judgment and sentence or subsequent order to pay does not
38 include the statement that a notice of payroll deduction may be issued
39 or other income-withholding action may be taken if a monthly legal

1 financial obligation payment is past due, the department may serve a
2 notice on the offender stating such requirements and authorizations.
3 Service shall be by personal service or any form of mail requiring a
4 return receipt.

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

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

29 (6) After completing the investigation, the department shall make
30 a report to the court on the amount of the monthly payment that the
31 offender should be required to make towards a satisfied legal financial
32 obligation.

33 (7) During the period of supervision, the department may make a
34 recommendation to the court that the offender's monthly payment
35 schedule be modified so as to reflect a change in financial
36 circumstances. If the department sets the monthly payment amount, the
37 department may modify the monthly payment amount without the matter
38 being returned to the court. Also, during the period of supervision,
39 the offender may be required at the request of the department to report

1 to the department for the purposes of reviewing the appropriateness of
2 the collection schedule for the legal financial obligation. During
3 this reporting, the offender is required under oath to truthfully and
4 honestly respond to all questions concerning earning capabilities and
5 the location and nature of all property or financial assets. Also, the
6 offender is required to bring any and all documents as requested by the
7 department in order to prepare the collection schedule.

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

16 (9) The department or any obligee of the legal financial obligation
17 may seek a mandatory wage assignment for the purposes of obtaining
18 satisfaction for the legal financial obligation pursuant to RCW
19 9.94A.2001.

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

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

28 **Sec. 4.** RCW 6.17.020 and 1994 c 189 s 1 are each amended to read
29 as follows:

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

36 (2) After July 23, 1989, a party who obtains a judgment or order of
37 a court of record of any state, or an administrative order entered as
38 defined in RCW 74.20A.020(6) for accrued child support, may have an

1 execution issued upon that judgment or order at any time within ten
2 years of the eighteenth birthday of the youngest child named in the
3 order for whom support is ordered.

4 (3) After June 9, 1994, a party in whose favor a judgment has been
5 rendered pursuant to subsection (1) or (4) of this section may, within
6 ninety days before the expiration of the original ten-year period,
7 apply to the court that rendered the judgment for an order granting an
8 additional ten years during which an execution may be issued. The
9 petitioner shall pay to the court a filing fee equal to the filing fee
10 for filing the first or initial paper in a civil action in the court.
11 When application is made to the court to grant an additional ten years,
12 the application shall be accompanied by a current and updated judgment
13 summary as outlined in RCW 4.64.030. The filing fee required under
14 this subsection shall be included in the judgment summary and shall be
15 a recoverable cost.

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

22 NEW SECTION. Sec. 5. Sections 1 and 2 of this act shall apply
23 retroactively to allow courts to set restitution in cases sentenced
24 prior to the effective date of this act if:

25 (1) The court failed to set restitution within sixty days of
26 sentencing as required by RCW 9.94A.140 prior to the effective date of
27 this act;

28 (2) The defendant was sentenced no more than three hundred sixty-
29 five days before the effective date of this act; and

30 (3) The defendant is not unfairly prejudiced by the delay.

31 In those cases, the court may set restitution within one hundred
32 eighty days of the effective date of this act or at a later hearing set
33 by the court for good cause.

Passed the House April 18, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor May 5, 1995.

Filed in Office of Secretary of State May 5, 1995.