

HOUSE BILL REPORT

SHB 1047

As Passed House:

February 3, 1995

Title: An act relating to restitution.

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

Sponsors: By 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: 1/18/95, 1/24/95 [DPS].

Floor Activity:

Passed House: 2/3/95.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Sheahan; Smith and Veloria.

Staff: Pat Shelledy (786-7149).

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 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 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.

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

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill will assist victims in collecting restitution. The 60-day time limit needs to be extended so that failure to meet the limit does not present an absolute bar to ordering restitution. However, the court should not have an unlimited amount of time to set restitution, in part, because that can extend the time period under which the offender remains under supervision with resulting costs to the state to supervise the offender. If a victim obtains restitution through civil enforcement, the court clerk needs to know about it so the clerk can keep accurate records of the offender's compliance with payment of various legal financial obligations, and can appropriately disburse offender payments among recipients.

Testimony Against: None.

Testified: Debbie Wilke, Washington Association of County Clerks (pro with suggestions); Tom McBride, Washington Association of Prosecuting Attorneys (pro with suggestions); Mike Patrick, Washington State Council of Police Officers (pro); Larry Erickson, Chief of Sheriffs (pro); Dave Savage, Department of Corrections (pro with concerns); Martha Harden, Superior Court Judges Association (pro); and Deborah Ruggles, Washington Coalition of Sexual Assault Programs (pro).