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**SUBSTITUTE HOUSE BILL 1047**

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**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; 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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