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HOUSE BILL 1047

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By Representatives Sheahan, Sherstad, Benton, Dyer, Schoesler, Johnson, Thompson, Beeksma, Radcliff, Crouse, Carrell, Robertson, Blanton, Lambert, Fuhrman, L. Thomas, Huff, Mielke, McMahan and Casada

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1 AN ACT Relating to restitution; amending RCW 9.94A.140, 9.94A.142,  
2 9.94A.145, and 4.16.020; 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 days))~~  
8 at a hearing set by the court. The court shall order the defendant to  
9 pay the full amount of restitution due. The court shall then set a  
10 minimum monthly payment that the offender is required to make towards  
11 the restitution that is ordered. The court should take into  
12 consideration the total amount of the restitution owed, the offender's  
13 present, past, and future ability to pay, as well as any assets that  
14 the offender may have. During the period of supervision, the community  
15 corrections officer may examine the offender to determine if there has  
16 been a change in circumstances that warrants an amendment of the  
17 monthly payment schedule. The community corrections officer may  
18 recommend a change to the schedule of payment and shall inform the  
19 court of the recommended change and the reasons for the change. The

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

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

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

37 (4) This section does not limit civil remedies or defenses  
38 available to the victim or defendant. The court shall identify in the  
39 judgment and sentence the victim or victims entitled to restitution and

1 what amount is due each victim. The named victims may enforce the  
2 court-ordered restitution in the same manner as a judgment in a civil  
3 action.

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

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

1 statutory maximum for the crime. The offender's compliance with the  
2 restitution shall be supervised by the department.

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

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

21 (4) This section does not limit civil remedies or defenses  
22 available to the victim, survivors of the victim, or defendant. The  
23 court shall identify in the judgment and sentence the victim or victims  
24 entitled to restitution and what amount is due each victim. The named  
25 victims may enforce the court-ordered restitution in the same manner as  
26 a judgment in a civil action.

27 (5) This section shall apply to offenses committed after July 1,  
28 1985.

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

31 (1) Whenever a person is convicted of a felony, the court may order  
32 the payment of a legal financial obligation as part of the sentence.  
33 The court must on either the judgment and sentence or on a subsequent  
34 order to pay, designate the total amount of a legal financial  
35 obligation and segregate this amount among the separate assessments  
36 made for restitution, costs, fines, and other assessments required by  
37 law. On the same order, the court is also to set a sum that the  
38 offender is required to pay on a monthly basis towards satisfying the

1 legal financial obligation. If the court fails to set the offender  
2 monthly payment amount, the department shall set the amount. Upon  
3 receipt of an offender's monthly payment, after restitution is  
4 satisfied, the county clerk shall distribute the payment proportionally  
5 among all other fines, costs, and assessments imposed, unless otherwise  
6 ordered by the court.

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

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

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

34 (4) All legal financial obligations that are ordered as a result of  
35 a conviction for a felony, may also be enforced in the same manner as  
36 a judgment in a civil action by the party or entity to whom the legal  
37 financial obligation is owed. The judgment and sentence shall identify  
38 the victim or victims to whom restitution is owed so that the victims  
39 may enforce the judgment. These obligations may be enforced at any

1 time during the ten-year period following the offender's release from  
2 total confinement or within ten years of entry of the judgment and  
3 sentence, whichever period is longer. Independent of the department,  
4 the party or entity to whom the legal financial obligation is owed  
5 shall have the authority to utilize any other remedies available to the  
6 party or entity to collect the legal financial obligation.

7 (5) In order to assist the court in setting a monthly sum that the  
8 offender must pay during the period of supervision, the offender is  
9 required to report to the department for purposes of preparing a  
10 recommendation to the court. When reporting, the offender is required,  
11 under oath, to truthfully and honestly respond to all questions  
12 concerning present, past, and future earning capabilities and the  
13 location and nature of all property or financial assets. The offender  
14 is further required to bring any and all documents as requested by the  
15 department.

16 (6) After completing the investigation, the department shall make  
17 a report to the court on the amount of the monthly payment that the  
18 offender should be required to make towards a satisfied legal financial  
19 obligation.

20 (7) During the period of supervision, the department may make a  
21 recommendation to the court that the offender's monthly payment  
22 schedule be modified so as to reflect a change in financial  
23 circumstances. If the department sets the monthly payment amount, the  
24 department may modify the monthly payment amount without the matter  
25 being returned to the court. Also, during the period of supervision,  
26 the offender may be required at the request of the department to report  
27 to the department for the purposes of reviewing the appropriateness of  
28 the collection schedule for the legal financial obligation. During  
29 this reporting, the offender is required under oath to truthfully and  
30 honestly respond to all questions concerning earning capabilities and  
31 the location and nature of all property or financial assets. Also, the  
32 offender is required to bring any and all documents as requested by the  
33 department in order to prepare the collection schedule.

34 (8) After the judgment and sentence or payment order is entered,  
35 the department shall for any period of supervision be authorized to  
36 collect the legal financial obligation from the offender. Any amount  
37 collected by the department shall be remitted daily to the county clerk  
38 for the purposes of disbursements. The department is authorized to  
39 accept credit cards as payment for a legal financial obligation, and

1 any costs incurred related to accepting credit card payments shall be  
2 the responsibility of the offender.

3 (9) The department or any obligee of the legal financial obligation  
4 may seek a mandatory wage assignment for the purposes of obtaining  
5 satisfaction for the legal financial obligation pursuant to RCW  
6 9.94A.2001.

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

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

15 **Sec. 4.** RCW 4.16.020 and 1994 c 189 s 2 are each amended to read  
16 as follows:

17 The period prescribed for the commencement of actions shall be as  
18 follows:

19 Within ten years:

20 (1) For actions for the recovery of real property, or for the  
21 recovery of the possession thereof; and no action shall be maintained  
22 for such recovery unless it appears that the plaintiff, his or her  
23 ancestor, predecessor or grantor was seized or possessed of the  
24 premises in question within ten years before the commencement of the  
25 action.

26 (2) For an action upon a judgment or decree of any court of the  
27 United States, or of any state or territory within the United States,  
28 or of any territory or possession of the United States outside the  
29 boundaries thereof, or of any extraterritorial court of the United  
30 States, unless the ten-year period is extended in accordance with RCW  
31 6.17.020(3).

32 (3) Of the eighteenth birthday of the youngest child named in the  
33 order for whom support is ordered for an action to collect past due  
34 child support that has accrued under an order entered after July 23,  
35 1989, by any of the above-named courts or that has accrued under an  
36 administrative order as defined in RCW 74.20A.020(6), which is issued  
37 after July 23, 1989.

1        (4) For actions upon a judgment and sentence entered in a criminal  
2 case for restitution and other court-ordered legal financial  
3 obligations as defined in RCW 9.94A.030.

4        NEW SECTION.    **Sec. 5.**    This act is intended to be a clarification  
5 of existing law and shall apply retroactively.

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