

SENATE BILL REPORT

SB 6435

As Reported by Senate Committee On:
Law & Justice, February 6, 2014

Title: An act relating to mandatory restitution for sexual exploitation of children.

Brief Description: Ordering mandatory restitution for sexual exploitation of children.

Revised for 1st Substitute: Concerning victims of sexual exploitation of children.

Sponsors: Senators O'Ban, Kohl-Welles, Bailey, Kline, Angel, Becker and Chase.

Brief History:

Committee Activity: Law & Justice: 2/05/14, 2/06/14 [DPS, DNP].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6435 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pearson and Roach.

Minority Report: Do not pass.

Signed by Senators Kline, Ranking Member; Darneille and Pedersen.

Staff: Kelly Walsh (786-7755)

Background: Under Washington law, a court may order a person convicted of a crime to pay restitution to the victim of the crime. Restitution must be based on easily ascertainable damages for an injury or loss of property, actual expenses incurred for treatment of a person's injury, and lost wages resulting from an injury. While the court is not permitted to order restitution for mental anguish, pain and suffering, or other intangible losses, restitution may include the costs of counseling that is reasonably related to the offense. In the court's discretion, it may order a restitution amount of up to double the amount of the offender's gain or the victim's loss from the commission of the crime. Unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment, the court must order restitution when: (1) an offender is convicted of any offense resulting in an injury to a person or damage to property; (2) the restitution is for medical expenses and child support associated with a conviction for rape; or (3) the victim is entitled to benefits under the Crime Victim's Compensation Act.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under federal law, the court must order restitution for any offense committed under the sexual exploitation of children chapter of the federal code. The order of restitution must direct the defendant to pay the full amount of the victim's losses as determined by the court. Such an order is mandatory. The court is not permitted to decline to issue an order for restitution due to the defendant's economic circumstances or the fact that a victim has received, or is entitled to receive, compensation for the victim's injuries from insurance or any other source. The full amount of the victim losses includes any costs incurred by the victim for:

- medical services related to physical, psychiatric, or psychological care;
- physical or occupational therapy or rehabilitation;
- necessary transportation, temporary housing, and child care expenses;
- lost income;
- attorneys' fees and other legal costs; and
- any other losses suffered by the victim as a proximate result of the offense.

Summary of Bill (Recommended Substitute): When a person is convicted of any criminal offense contained in the chapter on sexual exploitation of children in the state code, the court must order the defendant to pay restitution to the victim for the full amount of the victim's losses. The court is not permitted to decline to issue an order of restitution due to the defendant's economic circumstances or the fact that the victim has received compensation from another source. If the defendant participated in the crime with another person or persons, all such participants are jointly and severally responsible for the payment of restitution. An individual harmed as a result of the commission of the crime qualifies as a victim for purposes of these provisions.

The full amount of the victim's losses includes any costs incurred by the victim for:

- medical services related to physical, psychiatric, or psychological care;
- physical or occupational therapy or rehabilitation;
- necessary transportation, temporary housing, and child care expenses;
- lost income;
- attorneys' fees and other legal costs; and
- any other losses suffered by the victim as a proximate result of the offense.

Any person who violates the chapter on sexual exploitation of children is subject to civil liability and civil action brought by any other person claiming that the violation injured the person's property or person.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Substitute): Any person who violates the chapter on sexual exploitation of children is subject to civil liability and civil action brought by any other person claiming that the violation injured the person's property or person.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: There needs to be a mechanism to hold multiple defendants jointly and severally responsible for payment to the victim of a sexual exploitation crime. The nature of child pornography and child sex trafficking crimes involves multiple defendants participating in different ways, but all causing injury to the victim. These crimes have devastating effects. There are scars that are constantly carried by these victims. They face fear, insecurity, and poverty. Someone ends up paying the price for these crimes. It should not be the victim. It should be the offender. The offender is the person responsible for the damage.

OTHER: All victims should receive restitution and restitution should be mandated for all victims of crimes. There should not be a mandate for one group without mandating for all. There should be a conversation about how this applies to all victims of all crimes.

Persons Testifying: PRO: Senator O’Ban, prime sponsor; Tim Heffer, Darly Abbott, The Justice and Mercy Foundation.

OTHER: Rebecca Johnson, WA Coalition of Sexual Assault Programs.