

2 2SHB 2219 - H AMD 148 WITHDRAWN 2-9-96

3 By Representatives Dickerson, Mason, and others

4

5 On page 16, after line 24, insert the following:

6 "Sec. 5. RCW 9.94A.140 and 1995 c 231 s 1 are each amended to read  
7 as follows:

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

1 conditions during the ten-year period, regardless of the expiration of  
2 the offender's term of community supervision and regardless of the  
3 statutory maximum for the crime. The court may not reduce the total  
4 amount of restitution ordered because the offender may lack the ability  
5 to pay the total amount. The offender's compliance with the  
6 restitution shall be supervised by the department of corrections.

7 (2) Restitution may be ordered whenever the offender is convicted  
8 of an offense which results in injury to any person or damage to or  
9 loss of property. In addition, restitution may be ordered to pay for  
10 an injury, loss, or damage if the offender pleads guilty to a lesser  
11 offense or fewer offenses and agrees with the prosecutor's  
12 recommendation that the offender be required to pay restitution to a  
13 victim of an offense or offenses which are not prosecuted pursuant to  
14 a plea agreement.

15 (3) Restitution for the crime of rape of a child in the first,  
16 second, or third degree, in which the victim becomes pregnant, shall  
17 include: (a) All of the victim's medical expenses that are associated  
18 with the rape and resulting pregnancy; and (b) child support for any  
19 child born as a result of the rape as calculated according to the  
20 standards contained in chapter 26.19 RCW and which are based upon the  
21 defendant's actual income or the income imputed pursuant to the United  
22 States bureau of the census approximate median net monthly income  
23 table, whichever is greater. Any payments made on behalf of the  
24 victim's child shall be forwarded to the Washington state child support  
25 registry under chapter 26.23 RCW. The defendant shall receive a credit  
26 against any obligation owing pursuant to an administrative or superior  
27 court order for support of the victim's child that resulted from the  
28 rape for child support paid under this subsection. For the purposes of  
29 this subsection, the offender shall remain under the court's  
30 jurisdiction for a maximum term of twenty-five years following the  
31 offender's release from total confinement or twenty-five years  
32 subsequent to the entry of the judgment and sentence, whichever period  
33 is longer. The portion of the sentence concerning restitution may be  
34 modified as to amount, terms, and conditions during the twenty-five  
35 year period, regardless of the expiration of the offender's term of  
36 community supervision and regardless of the statutory maximum for the  
37 crime. The court may not reduce the total amount of restitution  
38 ordered because the offender may lack the ability to pay the total  
39 amount. The offender's compliance with the restitution shall be

1 supervised by the department of corrections. This subsection does not  
2 prohibit the victim or the department of social and health services  
3 from enforcing an administrative or superior court order for support of  
4 the victim's child that resulted from the rape under any other  
5 available avenue of support enforcement.

6 (4) In addition to any sentence that may be imposed, a defendant  
7 who has been found guilty of an offense involving fraud or other  
8 deceptive practice or an organization which has been found guilty of  
9 any such offense may be ordered by the sentencing court to give notice  
10 of the conviction to the class of persons or to the sector of the  
11 public affected by the conviction or financially interested in the  
12 subject matter of the offense by mail, by advertising in designated  
13 areas or through designated media, or by other appropriate means.

14 ((+4)) (5) This section does not limit civil remedies or defenses  
15 available to the victim or defendant. The court shall identify in the  
16 judgment and sentence the victim or victims entitled to restitution and  
17 what amount is due each victim. The state or victim may enforce the  
18 court-ordered restitution in the same manner as a judgment in a civil  
19 action. Restitution collected through civil enforcement must be paid  
20 through the registry of the court and must be distributed  
21 proportionately according to each victim's loss when there is more than  
22 one victim.

23 **Sec. 6.** RCW 9.94A.142 and 1995 c 231 s 2 and 1995 c 33 s 4 are  
24 each reenacted and amended to read as follows:

25 (1) When restitution is ordered, the court shall determine the  
26 amount of restitution due at the sentencing hearing or within one  
27 hundred eighty days except as provided in subsection ((+3)) (4) of  
28 this section. The court may continue the hearing beyond the one  
29 hundred eighty days for good cause. The court shall then set a minimum  
30 monthly payment that the offender is required to make towards the  
31 restitution that is ordered. The court should take into consideration  
32 the total amount of the restitution owed, the offender's present, past,  
33 and future ability to pay, as well as any assets that the offender may  
34 have. During the period of supervision, the community corrections  
35 officer may examine the offender to determine if there has been a  
36 change in circumstances that warrants an amendment of the monthly  
37 payment schedule. The community corrections officer may recommend a  
38 change to the schedule of payment and shall inform the court of the

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

24 (2) Restitution shall be ordered whenever the offender is convicted  
25 of an offense which results in injury to any person or damage to or  
26 loss of property unless extraordinary circumstances exist which make  
27 restitution inappropriate in the court's judgment and the court sets  
28 forth such circumstances in the record. In addition, restitution shall  
29 be ordered to pay for an injury, loss, or damage if the offender pleads  
30 guilty to a lesser offense or fewer offenses and agrees with the  
31 prosecutor's recommendation that the offender be required to pay  
32 restitution to a victim of an offense or offenses which are not  
33 prosecuted pursuant to a plea agreement.

34 (3) Restitution for the crime of rape of a child in the first,  
35 second, or third degree, in which the victim becomes pregnant, shall  
36 include: (a) All of the victim's medical expenses that are associated  
37 with the rape and resulting pregnancy; and (b) child support for any  
38 child born as a result of the rape as calculated according to the  
39 standards contained in chapter 26.19 RCW and which are based upon the

1 defendant's actual income or the income imputed pursuant to the United  
2 States bureau of the census approximate median net monthly income  
3 table, whichever is greater. Any payments made on behalf of the  
4 victim's child shall be forwarded to the Washington state child support  
5 registry under chapter 26.23 RCW. The defendant shall receive a credit  
6 against any obligation owing pursuant to an administrative or superior  
7 court order for support of the victim's child that resulted from the  
8 rape for child support paid under this subsection. For the purposes of  
9 this subsection, the offender shall remain under the court's  
10 jurisdiction for a maximum term of twenty-five years following the  
11 offender's release from total confinement or twenty-five years  
12 subsequent to the entry of the judgment and sentence, whichever period  
13 is longer. The portion of the sentence concerning restitution may be  
14 modified as to amount, terms, and conditions during the twenty-five  
15 year period, regardless of the expiration of the offender's term of  
16 community supervision and regardless of the statutory maximum for the  
17 crime. The court may not reduce the total amount of restitution  
18 ordered because the offender may lack the ability to pay the total  
19 amount. The offender's compliance with the restitution shall be  
20 supervised by the department of corrections. This subsection does not  
21 prohibit the victim or the department of social and health services  
22 from enforcing an administrative or superior court order for support of  
23 the victim's child that resulted from the rape under any other  
24 available avenue of support enforcement.

25 (4) Regardless of the provisions of subsections (1) ~~((and))~~, (2),  
26 and (3) of this section, the court shall order restitution in all cases  
27 where the victim is entitled to benefits under the crime victims'  
28 compensation act, chapter 7.68 RCW. If the court does not order  
29 restitution and the victim of the crime has been determined to be  
30 entitled to benefits under the crime victims' compensation act, the  
31 department of labor and industries, as administrator of the crime  
32 victims' compensation program, may petition the court within one year  
33 of entry of the judgment and sentence for entry of a restitution order.  
34 Upon receipt of a petition from the department of labor and industries,  
35 the court shall hold a restitution hearing and shall enter a  
36 restitution order.

37 ~~((+4))~~ (5) In addition to any sentence that may be imposed, a  
38 defendant who has been found guilty of an offense involving fraud or  
39 other deceptive practice or an organization which has been found guilty

1 of any such offense may be ordered by the sentencing court to give  
2 notice of the conviction to the class of persons or to the sector of  
3 the public affected by the conviction or financially interested in the  
4 subject matter of the offense by mail, by advertising in designated  
5 areas or through designated media, or by other appropriate means.

6 ~~((+5))~~ (6) This section does not limit civil remedies or defenses  
7 available to the victim, survivors of the victim, or defendant. The  
8 court shall identify in the judgment and sentence the victim or victims  
9 entitled to restitution and what amount is due each victim. The state  
10 or victim may enforce the court-ordered restitution in the same manner  
11 as a judgment in a civil action. Restitution collected through civil  
12 enforcement must be paid through the registry of the court and must be  
13 distributed proportionately according to each victim's loss when there  
14 is more than one victim.

15 ~~((+6))~~ (7) This section shall apply to offenses committed after  
16 July 1, 1985.

17 **Sec. 7.** RCW 9.94A.145 and 1995 c 231 s 3 are each amended to read  
18 as follows:

19 (1) Whenever a person is convicted of a felony, the court may order  
20 the payment of a legal financial obligation as part of the sentence.  
21 The court must on either the judgment and sentence or on a subsequent  
22 order to pay, designate the total amount of a legal financial  
23 obligation and segregate this amount among the separate assessments  
24 made for restitution, costs, fines, and other assessments required by  
25 law. On the same order, the court is also to set a sum that the  
26 offender is required to pay on a monthly basis towards satisfying the  
27 legal financial obligation. If the court fails to set the offender  
28 monthly payment amount, the department shall set the amount. Upon  
29 receipt of an offender's monthly payment, after restitution is  
30 satisfied, the county clerk shall distribute the payment proportionally  
31 among all other fines, costs, and assessments imposed, unless otherwise  
32 ordered by the court.

33 (2) If the court determines that the offender, at the time of  
34 sentencing, has the means to pay for the cost of incarceration, the  
35 court may require the offender to pay for the cost of incarceration at  
36 a rate of fifty dollars per day of incarceration. Payment of other  
37 court-ordered financial obligations, including all legal financial  
38 obligations and costs of supervision shall take precedence over the

1 payment of the cost of incarceration ordered by the court. All funds  
2 recovered from offenders for the cost of incarceration in the county  
3 jail shall be remitted to the county and the costs of incarceration in  
4 a prison shall be remitted to the department of corrections.

5 (3) The court may add to the judgment and sentence or subsequent  
6 order to pay a statement that a notice of payroll deduction is to be  
7 immediately issued. If the court chooses not to order the immediate  
8 issuance of a notice of payroll deduction at sentencing, the court  
9 shall add to the judgment and sentence or subsequent order to pay a  
10 statement that a notice of payroll deduction may be issued or other  
11 income-withholding action may be taken, without further notice to the  
12 offender if a monthly court-ordered legal financial obligation payment  
13 is not paid when due, and an amount equal to or greater than the amount  
14 payable for one month is owed.

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

22 (4) All legal financial obligations that are ordered as a result of  
23 a conviction for a felony, may also be enforced in the same manner as  
24 a judgment in a civil action by the party or entity to whom the legal  
25 financial obligation is owed. Restitution collected through civil  
26 enforcement must be paid through the registry of the court and must be  
27 distributed proportionately according to each victim's loss when there  
28 is more than one victim. The judgment and sentence shall identify the  
29 party or entity to whom restitution is owed so that the state, party,  
30 or entity may enforce the judgment. ~~((These))~~ Restitution obligations  
31 arising from the rape of a child in the first, second, or third degree  
32 that result in the pregnancy of the victim may be enforced at any time  
33 during the twenty-five year period following the offender's release  
34 from total confinement or within twenty-five years of entry of the  
35 judgment and sentence, whichever is longer. All other legal financial  
36 obligations may be enforced at any time during the ten-year period  
37 following the offender's release from total confinement or within ten  
38 years of entry of the judgment and sentence, whichever period is  
39 longer. Independent of the department, the party or entity to whom the

1 legal financial obligation is owed shall have the authority to utilize  
2 any other remedies available to the party or entity to collect the  
3 legal financial obligation.

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

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

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

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



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

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

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

13 Renumber the remaining sections consecutively and correct the title  
14 and any internal references accordingly.

15 On page 29, after line 8, insert the following:

16 "(j) The offense resulted in the pregnancy of a child victim of  
17 rape."

--- END ---