

2 **2SHB 2219 - H AMD 189 ADOPTED 2-9-96**

3 By Representative Dickerson

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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 Except as provided in subsection (3) of this section, restitution
25 ordered by a court pursuant to a criminal conviction shall be based on
26 easily ascertainable damages for injury to or loss of property, actual
27 expenses incurred for treatment for injury to persons, and lost wages
28 resulting from injury. Restitution shall not include reimbursement for
29 damages for mental anguish, pain and suffering, or other intangible
30 losses, but may include the costs of counseling reasonably related to
31 the offense. The amount of restitution shall not exceed double the
32 amount of the offender's gain or the victim's loss from the commission
33 of the crime. For the purposes of this section, the offender shall
34 remain under the court's jurisdiction for a maximum term of ten years
35 following the offender's release from total confinement or ten years
36 subsequent to the entry of the judgment and sentence, whichever period

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

9 (2) Restitution may be ordered whenever the offender is convicted
10 of an offense which results in injury to any person or damage to or
11 loss of property or as provided in subsection (3) of this section. In
12 addition, restitution may be ordered to pay for an injury, loss, or
13 damage if the offender pleads guilty to a lesser offense or fewer
14 offenses and agrees with the prosecutor's recommendation that the
15 offender be required to pay restitution to a victim of an offense or
16 offenses which are not prosecuted pursuant to a plea agreement.

17 (3) Restitution for the crime of rape of a child in the first,
18 second, or third degree, in which the victim becomes pregnant, shall
19 include: (a) All of the victim's medical expenses that are associated
20 with the rape and resulting pregnancy; and (b) child support for any
21 child born as a result of the rape if child support is ordered pursuant
22 to a civil superior court or administrative order for support for that
23 child. The clerk must forward any restitution payments made on behalf
24 of the victim's child to the Washington state child support registry
25 under chapter 26.23 RCW. Identifying information about the victim and
26 child shall not be included in the order. The defendant shall receive
27 a credit against any obligation owing under the administrative or
28 superior court order for support of the victim's child. For the
29 purposes of this subsection, the offender shall remain under the
30 court's jurisdiction until the defendant has satisfied support
31 obligations under the superior court or administrative order but not
32 longer than a maximum term of twenty-five years following the
33 offender's release from total confinement or twenty-five years
34 subsequent to the entry of the judgment and sentence, whichever period
35 is longer. The sentencing court may not modify the superior court or
36 administrative support order but may modify the portion of the sentence
37 that establishes the overall restitution payment obligation as to
38 amount, terms, and conditions during the twenty-five year period,
39 regardless of the expiration of the offender's term of community

1 supervision and regardless of the statutory maximum for the crime. The
2 court may not reduce the total amount of restitution ordered because
3 the offender may lack the ability to pay the total amount. The
4 department shall supervise the offender's compliance with the
5 restitution ordered under this subsection.

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 including support enforcement
16 remedies for support ordered under subsection (3) of this section for
17 a child born as a result of a rape of a child victim. The court shall
18 identify in the judgment and sentence the victim or victims entitled to
19 restitution and what amount is due each victim. The state or victim
20 may enforce the court-ordered restitution in the same manner as a
21 judgment in a civil action. Restitution collected through civil
22 enforcement must be paid through the registry of the court and must be
23 distributed proportionately according to each victim's loss when there
24 is more than one victim.

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

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

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

27 (2) Restitution shall be ordered whenever the offender is convicted
28 of an offense which results in injury to any person or damage to or
29 loss of property or as provided in subsection (3) of this section
30 unless extraordinary circumstances exist which make restitution
31 inappropriate in the court's judgment and the court sets forth such
32 circumstances in the record. In addition, restitution shall be ordered
33 to pay for an injury, loss, or damage if the offender pleads guilty to
34 a lesser offense or fewer offenses and agrees with the prosecutor's
35 recommendation that the offender be required to pay restitution to a
36 victim of an offense or offenses which are not prosecuted pursuant to
37 a plea agreement.

38 (3) Restitution for the crime of rape of a child in the first,
39 second, or third degree, in which the victim becomes pregnant, shall

1 include: (a) All of the victim's medical expenses that are associated
2 with the rape and resulting pregnancy; and (b) child support for any
3 child born as a result of the rape if child support is ordered pursuant
4 to a civil superior court or administrative order for support for that
5 child. The clerk must forward any restitution payments made on behalf
6 of the victim's child to the Washington state child support registry
7 under chapter 26.23 RCW. Identifying information about the victim and
8 child shall not be included in the order. The defendant shall receive
9 a credit against any obligation owing under the administrative or
10 superior court order for support of the victim's child. For the
11 purposes of this subsection, the offender shall remain under the
12 court's jurisdiction until the defendant has satisfied support
13 obligations under the superior court or administrative order but not
14 longer than a maximum term of twenty-five years following the
15 offender's release from total confinement or twenty-five years
16 subsequent to the entry of the judgment and sentence, whichever period
17 is longer. The sentencing court may not modify the superior court or
18 administrative support order but may modify the portion of the sentence
19 that establishes the overall restitution payment obligation as to
20 amount, terms, and conditions during the twenty-five year period,
21 regardless of the expiration of the offender's term of community
22 supervision and regardless of the statutory maximum for the crime. The
23 court may not reduce the total amount of restitution ordered because
24 the offender may lack the ability to pay the total amount. The
25 department shall supervise the offender's compliance with the
26 restitution ordered under this subsection.

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

1 (~~(4)~~) (5) In addition to any sentence that may be imposed, a
2 defendant who has been found guilty of an offense involving fraud or
3 other deceptive practice or an organization which has been found guilty
4 of any such offense may be ordered by the sentencing court to give
5 notice of the conviction to the class of persons or to the sector of
6 the public affected by the conviction or financially interested in the
7 subject matter of the offense by mail, by advertising in designated
8 areas or through designated media, or by other appropriate means.

9 (~~(5)~~) (6) This section does not limit civil remedies or defenses
10 available to the victim, survivors of the victim, or defendant
11 including support enforcement remedies for support ordered under
12 subsection (3) of this section for a child born as a result of a rape
13 of a child victim. The court shall identify in the judgment and
14 sentence the victim or victims entitled to restitution and what amount
15 is due each victim. The state or victim may enforce the court-ordered
16 restitution in the same manner as a judgment in a civil action.
17 Restitution collected through civil enforcement must be paid through
18 the registry of the court and must be distributed proportionately
19 according to each victim's loss when there is more than one victim.

20 (~~(6)~~) (7) This section shall apply to offenses committed after
21 July 1, 1985.

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

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

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

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

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

28 (4) All legal financial obligations that are ordered as a result of
29 a conviction for a felony, may also be enforced in the same manner as
30 a judgment in a civil action by the party or entity to whom the legal
31 financial obligation is owed. Restitution collected through civil
32 enforcement must be paid through the registry of the court and must be
33 distributed proportionately according to each victim's loss when there
34 is more than one victim. The judgment and sentence shall identify the
35 party or entity to whom restitution is owed so that the state, party,
36 or entity may enforce the judgment. ~~((These))~~ If restitution is
37 ordered pursuant to RCW 9.94A.140(3) or 9.94A.142(3) to a victim of
38 rape of a child and the victim's child born from the rape, the
39 Washington state child support registry shall be identified as the

1 party to whom payments must be made. Restitution obligations arising
2 from the rape of a child in the first, second, or third degree that
3 result in the pregnancy of the victim may be enforced for the time
4 periods provided under RCW 9.94A.140(3) and 9.94A.142(3). All other
5 legal financial obligations may be enforced at any time during the ten-
6 year period following the offender's release from total confinement or
7 within ten years of entry of the judgment and sentence, whichever
8 period is longer. Independent of the department, the party or entity
9 to whom the legal financial obligation is owed shall have the authority
10 to utilize any other remedies available to the party or entity to
11 collect the legal financial obligation.

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

21 (6) After completing the investigation, the department shall make
22 a report to the court on the amount of the monthly payment that the
23 offender should be required to make towards a satisfied legal financial
24 obligation.

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

1 (8) After the judgment and sentence or payment order is entered,
2 the department shall for any period of supervision be authorized to
3 collect the legal financial obligation from the offender. Any amount
4 collected by the department shall be remitted daily to the county clerk
5 for the purposes of disbursements. The department is authorized to
6 accept credit cards as payment for a legal financial obligation, and
7 any costs incurred related to accepting credit card payments shall be
8 the responsibility of the offender.

9 (9) The department or any obligee of the legal financial obligation
10 may seek a mandatory wage assignment for the purposes of obtaining
11 satisfaction for the legal financial obligation pursuant to RCW
12 9.94A.2001.

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

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

21 Renumber the remaining sections consecutively and correct the title
22 and any internal references accordingly.

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

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

26 EFFECT: If a child victim of rape of a child in the first, second,
27 or third degree becomes pregnant as a result of the rape, the court may
28 impose an exceptional sentence.

29 As part of restitution for the crime that results in a pregnancy,
30 the court must order the defendant to pay the victim's medical expenses
31 resulting from the pregnancy. If a child support order is entered in
32 a civil court or an administrative hearing, that order will be enforced
33 under the criminal sentence (as well as through other civil means) for
34 the period in which support is due under the order not to exceed a
35 maximum of 25 years under the criminal sentence.

36 Payments will be made to the support registry. Identifying
37 information about the victim and child may not be included in the
38 judgment.

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