

2 **SHB 1047** - S COMM AMD
3 By Committee on Law & Justice

4 ADOPTED 4/7/95

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 9.94A.140 and 1994 c 271 s 601 are each amended to
8 read as follows:

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

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

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. In addition, restitution may be ordered to pay for
12 an injury, loss, or damage if the offender pleads guilty to a lesser
13 offense or fewer offenses and agrees with the prosecutor's
14 recommendation that the offender be required to pay restitution to a
15 victim of an offense or offenses which are not prosecuted pursuant to
16 a plea agreement.

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

25 (4) This section does not limit civil remedies or defenses
26 available to the victim or defendant. The court shall identify in the
27 judgment and sentence the victim or victims entitled to restitution and
28 what amount is due each victim. The state or victim may enforce the
29 court-ordered restitution in the same manner as a judgment in a civil
30 action. Restitution collected through civil enforcement must be paid
31 through the registry of the court and must be distributed
32 proportionately according to each victim's loss when there is more than
33 one victim.

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

36 (1) When restitution is ordered, the court shall determine the
37 amount of restitution due at the sentencing hearing or within ((sixty))
38 one hundred eighty days. The court may continue the hearing beyond the

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

34 (2) Restitution shall be ordered whenever the offender is convicted
35 of an offense which results in injury to any person or damage to or
36 loss of property unless extraordinary circumstances exist which make
37 restitution inappropriate in the court's judgment and the court sets
38 forth such circumstances in the record. In addition, restitution shall
39 be ordered to pay for an injury, loss, or damage if the offender pleads

1 guilty to a lesser offense or fewer offenses and agrees with the
2 prosecutor's recommendation that the offender be required to pay
3 restitution to a victim of an offense or offenses which are not
4 prosecuted pursuant to a plea agreement.

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

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

22 (5) This section shall apply to offenses committed after July 1,
23 1985.

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

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

1 ordered by the court.

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

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

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

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

1 sentence, whichever period is longer. Independent of the department,
2 the party or entity to whom the legal financial obligation is owed
3 shall have the authority to utilize any other remedies available to the
4 party or entity to collect the legal financial obligation.

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

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

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

32 (8) After the judgment and sentence or payment order is entered,
33 the department shall for any period of supervision be authorized to
34 collect the legal financial obligation from the offender. Any amount
35 collected by the department shall be remitted daily to the county clerk
36 for the purposes of disbursements. The department is authorized to
37 accept credit cards as payment for a legal financial obligation, and
38 any costs incurred related to accepting credit card payments shall be
39 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 **Sec. 4.** RCW 6.17.020 and 1994 c 189 s 1 are each amended to read
14 as follows:

15 (1) Except as provided in subsections (2) (~~and~~), (3), and (4) of
16 this section, the party in whose favor a judgment of a court of record
17 of this state or a district court of this state has been or may be
18 rendered, or the assignee, may have an execution issued for the
19 collection or enforcement of the judgment at any time within ten years
20 from entry of the judgment.

21 (2) After July 23, 1989, a party who obtains a judgment or order of
22 a court of record of any state, or an administrative order entered as
23 defined in RCW 74.20A.020(6) for accrued child support, may have an
24 execution issued upon that judgment or order at any time within ten
25 years of the eighteenth birthday of the youngest child named in the
26 order for whom support is ordered.

27 (3) After June 9, 1994, a party in whose favor a judgment has been
28 rendered pursuant to subsection (1) or (4) of this section may, within
29 ninety days before the expiration of the original ten-year period,
30 apply to the court that rendered the judgment for an order granting an
31 additional ten years during which an execution may be issued. The
32 petitioner shall pay to the court a filing fee equal to the filing fee
33 for filing the first or initial paper in a civil action in the court.
34 When application is made to the court to grant an additional ten years,
35 the application shall be accompanied by a current and updated judgment
36 summary as outlined in RCW 4.64.030. The filing fee required under
37 this subsection shall be included in the judgment summary and shall be
38 a recoverable cost.

1 (4) A party who obtains a judgment or order for restitution or
2 other court-ordered legal financial obligations pursuant to a criminal
3 judgment and sentence may execute the judgment or order any time within
4 ten years subsequent to the entry of the judgment and sentence or ten
5 years following the offender's release from total confinement as
6 provided in chapter 9.94A RCW.

7 NEW SECTION. Sec. 5. Sections 1 and 2 of this act shall apply
8 retroactively to allow courts to set restitution in cases sentenced
9 prior to the effective date of this act if:

10 (1) The court failed to set restitution within sixty days of
11 sentencing as required by RCW 9.94A.140 prior to the effective date of
12 this act;

13 (2) The defendant was sentenced no more than three hundred sixty-
14 five days before the effective date of this act; and

15 (3) The defendant is not unfairly prejudiced by the delay.

16 In those cases, the court may set restitution within one hundred
17 eighty days of the effective date of this act or at a later hearing set
18 by the court for good cause."

19 **SHB 1047** - S COMM AMD
20 By Committee on Law & Justice

21 ADOPTED 4/7/95

22 On page 1, line 1 of the title, after "restitution;" strike the
23 remainder of the title and insert "amending RCW 9.94A.140, 9.94A.142,
24 9.94A.145, and 6.17.020; and creating a new section."

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