
SUBSTITUTE SENATE BILL 5169

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Children & Family Services & Corrections
(originally sponsored by Senator Hargrove)

READ FIRST TIME 02/12/03.

1 AN ACT Relating to court-ordered restitution; amending RCW
2 9.94A.750; and reenacting and amending RCW 9.94A.753.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9.94A.750 and 2000 c 28 s 32 are each amended to read
5 as follows:

6 This section applies to offenses committed on or before July 1,
7 1985.

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 shall not issue any order that postpones
14 the commencement of restitution payments until after the offender is
15 released from total confinement. The court should take into
16 consideration the total amount of the restitution owed, the offender's
17 present, past, and future ability to pay, as well as any assets that
18 the offender may have. An offender's inability to make restitution
19 payments while in total confinement may not be the basis for a

1 violation of his or her sentence unless his or her inability to make
2 payments resulted from a refusal to accept an employment offer to a
3 class I or class II job or a termination for cause from such a job.

4 (2) During the period of supervision, the community corrections
5 officer may examine the offender to determine if there has been a
6 change in circumstances that warrants an amendment of the monthly
7 payment schedule. The community corrections officer may recommend a
8 change to the schedule of payment and shall inform the court of the
9 recommended change and the reasons for the change. The sentencing
10 court may then reset the monthly minimum payments based on the report
11 from the community corrections officer of the change in circumstances.

12 (3) Except as provided in subsection (6) of this section,
13 restitution ordered by a court pursuant to a criminal conviction shall
14 be based on easily ascertainable damages for injury to or loss of
15 property, actual expenses incurred for treatment for injury to persons,
16 and lost wages resulting from injury. Restitution shall not include
17 reimbursement for damages for mental anguish, pain and suffering, or
18 other intangible losses, but may include the costs of counseling
19 reasonably related to the offense. The amount of restitution shall not
20 exceed double the amount of the offender's gain or the victim's loss
21 from the commission of the offense.

22 (4) For the purposes of this section, the offender shall remain
23 under the court's jurisdiction for a term of ten years following the
24 offender's release from total confinement or ten years subsequent to
25 the entry of the judgment and sentence, whichever period is longer.
26 Prior to the expiration of the initial ten-year period, the superior
27 court may extend jurisdiction under the criminal judgment an additional
28 ten years for payment of restitution. If jurisdiction under the
29 criminal judgment is extended, the department is not responsible for
30 supervision of the offender during the subsequent period. The portion
31 of the sentence concerning restitution may be modified as to amount,
32 terms and conditions during either the initial ten-year period or
33 subsequent ten-year period if the criminal judgment is extended,
34 regardless of the expiration of the offender's term of community
35 supervision and regardless of the statutory maximum sentence for the
36 crime. The court may not reduce the total amount of restitution
37 ordered because the offender may lack the ability to pay the total

1 amount. The offender's compliance with the restitution shall be
2 supervised by the department.

3 (5) Restitution may 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 or as provided in subsection (6) of this section. In
6 addition, restitution may be ordered to pay for an injury, loss, or
7 damage if the offender pleads guilty to a lesser offense or fewer
8 offenses and agrees with the prosecutor's recommendation that the
9 offender be required to pay restitution to a victim of an offense or
10 offenses which are not prosecuted pursuant to a plea agreement.

11 (6) Restitution for the crime of rape of a child in the first,
12 second, or third degree, in which the victim becomes pregnant, shall
13 include: (a) All of the victim's medical expenses that are associated
14 with the rape and resulting pregnancy; and (b) child support for any
15 child born as a result of the rape if child support is ordered pursuant
16 to a proceeding in superior court or administrative order for support
17 for that child. The clerk must forward any restitution payments made
18 on behalf of the victim's child to the Washington state child support
19 registry under chapter 26.23 RCW. Identifying information about the
20 victim and child shall not be included in the order. The offender
21 shall receive a credit against any obligation owing under the
22 administrative or superior court order for support of the victim's
23 child. For the purposes of this subsection, the offender shall remain
24 under the court's jurisdiction until the offender has satisfied support
25 obligations under the superior court or administrative order but not
26 longer than a maximum term of twenty-five years following the
27 offender's release from total confinement or twenty-five years
28 subsequent to the entry of the judgment and sentence, whichever period
29 is longer. The court may not reduce the total amount of restitution
30 ordered because the offender may lack the ability to pay the total
31 amount. The department shall supervise the offender's compliance with
32 the restitution ordered under this subsection.

33 (7) In addition to any sentence that may be imposed, an offender
34 who has been found guilty of an offense involving fraud or other
35 deceptive practice or an organization which has been found guilty of
36 any such offense may be ordered by the sentencing court to give notice
37 of the conviction to the class of persons or to the sector of the

1 public affected by the conviction or financially interested in the
2 subject matter of the offense by mail, by advertising in designated
3 areas or through designated media, or by other appropriate means.

4 (8) This section does not limit civil remedies or defenses
5 available to the victim or offender including support enforcement
6 remedies for support ordered under subsection (6) of this section for
7 a child born as a result of a rape of a child victim. The court shall
8 identify in the judgment and sentence the victim or victims entitled to
9 restitution and what amount is due each victim. The state or victim
10 may enforce the court-ordered restitution in the same manner as a
11 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 **Sec. 2.** RCW 9.94A.753 and 2000 c 226 s 3 and 2000 c 28 s 33 are
16 each reenacted and amended to read as follows:

17 This section applies to offenses committed after July 1, 1985.

18 (1) When restitution is ordered, the court shall determine the
19 amount of restitution due at the sentencing hearing or within one
20 hundred eighty days except as provided in subsection (7) of this
21 section. The court may continue the hearing beyond the one hundred
22 eighty days for good cause. The court shall then set a minimum monthly
23 payment that the offender is required to make towards the restitution
24 that is ordered. The court shall not issue any order that postpones
25 the commencement of restitution payments until after the offender is
26 released from total confinement. The court should take into
27 consideration the total amount of the restitution owed, the offender's
28 present, past, and future ability to pay, as well as any assets that
29 the offender may have. An offender's inability to make restitution
30 payments while in total confinement may not be the basis for a
31 violation of his or her sentence unless his or her inability to make
32 payments resulted from a refusal to accept an employment offer to a
33 class I or class II job or a termination for cause from such a job.

34 (2) 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

1 change to the schedule of payment and shall inform the court of the
2 recommended change and the reasons for the change. The sentencing
3 court may then reset the monthly minimum payments based on the report
4 from the community corrections officer of the change in circumstances.

5 (3) Except as provided in subsection (6) of this section,
6 restitution ordered by a court pursuant to a criminal conviction shall
7 be based on easily ascertainable damages for injury to or loss of
8 property, actual expenses incurred for treatment for injury to persons,
9 and lost wages resulting from injury. Restitution shall not include
10 reimbursement for damages for mental anguish, pain and suffering, or
11 other intangible losses, but may include the costs of counseling
12 reasonably related to the offense. The amount of restitution shall not
13 exceed double the amount of the offender's gain or the victim's loss
14 from the commission of the crime.

15 (4) For the purposes of this section, for an offense committed
16 prior to July 1, 2000, the offender shall remain under the court's
17 jurisdiction for a term of ten years following the offender's release
18 from total confinement or ten years subsequent to the entry of the
19 judgment and sentence, whichever period ends later. Prior to the
20 expiration of the initial ten-year period, the superior court may
21 extend jurisdiction under the criminal judgment an additional ten years
22 for payment of restitution. For an offense committed on or after July
23 1, 2000, the offender shall remain under the court's jurisdiction until
24 the obligation is completely satisfied, regardless of the statutory
25 maximum for the crime. The portion of the sentence concerning
26 restitution may be modified as to amount, terms, and conditions during
27 any period of time the offender remains under the court's jurisdiction,
28 regardless of the expiration of the offender's term of community
29 supervision and regardless of the statutory maximum sentence for the
30 crime. The court may not reduce the total amount of restitution
31 ordered because the offender may lack the ability to pay the total
32 amount. The offender's compliance with the restitution shall be
33 supervised by the department for ten years following the entry of the
34 judgment and sentence or ten years following the offender's release
35 from total confinement. The department is not responsible for
36 supervision of the offender during any subsequent period of time the
37 offender remains under the court's jurisdiction.

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

12 (6) Restitution for the crime of rape of a child in the first,
13 second, or third degree, in which the victim becomes pregnant, shall
14 include: (a) All of the victim's medical expenses that are associated
15 with the rape and resulting pregnancy; and (b) child support for any
16 child born as a result of the rape if child support is ordered pursuant
17 to a civil superior court or administrative order for support for that
18 child. The clerk must forward any restitution payments made on behalf
19 of the victim's child to the Washington state child support registry
20 under chapter 26.23 RCW. Identifying information about the victim and
21 child shall not be included in the order. The offender shall receive
22 a credit against any obligation owing under the administrative or
23 superior court order for support of the victim's child. For the
24 purposes of this subsection, the offender shall remain under the
25 court's jurisdiction until the offender has satisfied support
26 obligations under the superior court or administrative order for the
27 period provided in RCW 4.16.020 or a maximum term of twenty-five years
28 following the offender's release from total confinement or twenty-five
29 years subsequent to the entry of the judgment and sentence, whichever
30 period is longer. The court may not reduce the total amount of
31 restitution ordered because the offender may lack the ability to pay
32 the total amount. The department shall supervise the offender's
33 compliance with the restitution ordered under this subsection.

34 (7) Regardless of the provisions of subsections (1) through (6) of
35 this section, the court shall order restitution in all cases where the
36 victim is entitled to benefits under the crime victims' compensation
37 act, chapter 7.68 RCW. If the court does not order restitution and the
38 victim of the crime has been determined to be entitled to benefits

1 under the crime victims' compensation act, the department of labor and
2 industries, as administrator of the crime victims' compensation
3 program, may petition the court within one year of entry of the
4 judgment and sentence for entry of a restitution order. Upon receipt
5 of a petition from the department of labor and industries, the court
6 shall hold a restitution hearing and shall enter a restitution order.

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

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

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