
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-0033.3/21 3rd draft

ATTY/TYPIST: JO:eab

BRIEF DESCRIPTION: Concerning restitution.

1 AN ACT Relating to restitution; amending RCW 9.94A.750 and
2 9.94A.753; and creating new sections.

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

4 **Sec. 1.** RCW 9.94A.750 and 2018 c 123 s 1 are each amended to
5 read 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
9 amount of restitution due at the sentencing hearing or within one
10 hundred eighty days. The court may continue the hearing beyond the
11 one hundred eighty days for good cause. The court shall then set a
12 minimum monthly payment that the offender is required to make towards
13 the restitution that is ordered. The court shall not issue any order
14 that postpones the commencement of restitution payments until after
15 the offender is released from total confinement. The court should
16 take into consideration the total amount of the restitution owed, the
17 offender's present, past, and future ability to pay, as well as any
18 assets that the offender may have. An offender's inability to make
19 restitution payments while in total confinement may not be the basis
20 for a violation of his or her sentence unless his or her inability to
21 make payments resulted from a refusal to accept an employment offer

1 to a class I or class II job or a termination for cause from such a
2 job.

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

12 (3) Except as provided in subsection (6) of this section,
13 restitution ordered by a court pursuant to a criminal conviction
14 shall be based on easily ascertainable damages for injury to or loss
15 of property, actual expenses incurred for treatment for injury to
16 persons, and lost wages resulting from injury. Restitution shall not
17 include reimbursement for damages for mental anguish, pain and
18 suffering, or other intangible losses, but may include the costs of
19 counseling reasonably related to the offense. The amount of
20 restitution shall not exceed double the amount of the offender's gain
21 or the victim's loss 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
28 additional ten years for payment of restitution. The portion of the
29 sentence concerning restitution may be modified as to amount, terms
30 and conditions during either the initial ten-year period or
31 subsequent ten-year period if the criminal judgment is extended,
32 regardless of the expiration of the offender's term of community
33 supervision and regardless of the statutory maximum sentence for the
34 crime. The court may not reduce the total amount of restitution
35 ordered because the offender may lack the ability to pay the total
36 amount. The offender's compliance with the restitution shall be
37 supervised by the department only during any period which the
38 department is authorized to supervise the offender in the community
39 under RCW 9.94A.728, 9.94A.501, or in which the offender is in
40 confinement in a state correctional institution or a correctional

1 facility pursuant to a transfer agreement with the department, and
2 the department shall supervise the offender's compliance during any
3 such period. The department is responsible for supervision of the
4 offender only during confinement and authorized supervision and not
5 during any subsequent period in which the offender remains under the
6 court's jurisdiction. The county clerk is authorized to collect
7 unpaid restitution at any time the offender remains under the
8 jurisdiction of the court for purposes of his or her legal financial
9 obligations.

10 (5) Restitution may be ordered whenever the offender is convicted
11 of an offense which results in injury to any person or damage to or
12 loss of property or as provided in subsection (6) of this section. In
13 addition, restitution may be ordered to pay for an injury, loss, or
14 damage if the offender pleads guilty to a lesser offense or fewer
15 offenses and agrees with the prosecutor's recommendation that the
16 offender be required to pay restitution to a victim of an offense or
17 offenses which are not prosecuted pursuant to a plea agreement.

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

1 (7) In addition to any sentence that may be imposed, an offender
2 who has been found guilty of an offense involving fraud or other
3 deceptive practice or an organization which has been found guilty of
4 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
7 the subject matter of the offense by mail, by advertising in
8 designated areas or through designated media, or by other appropriate
9 means.

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

21 (9) At any time, the court may determine that the offender is not
22 required to pay, or may relieve the offender of the requirement to
23 pay, full or partial restitution to any insurer if the offender
24 reasonably satisfies the court that he or she does not have the means
25 to make full or partial restitution to the insurer. For the purposes
26 of this section, "insurer" means any insurer as defined and
27 authorized under Title 48 RCW, and any business, corporation,
28 governmental body, municipal corporation, or any other organization
29 of more than fifty employees or members who are self-insured, or any
30 other organization formed for the purposes of jointly self-insuring
31 or self-funding.

32 **Sec. 2.** RCW 9.94A.753 and 2018 c 123 s 2 are each amended to
33 read as follows:

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

35 (1) When restitution is ordered, the court shall determine the
36 amount of restitution due at the sentencing hearing or within one
37 hundred eighty days except as provided in subsection (7) of this
38 section. The court may continue the hearing beyond the one hundred
39 eighty days for good cause. The court shall then set a minimum

1 monthly payment that the offender is required to make towards the
2 restitution that is ordered. The court shall not issue any order that
3 postpones the commencement of restitution payments until after the
4 offender is released from total confinement. The court should take
5 into consideration the total amount of the restitution owed, the
6 offender's present, past, and future ability to pay, as well as any
7 assets that the offender may have. An offender's inability to make
8 restitution payments while in total confinement may not be the basis
9 for a violation of his or her sentence unless his or her inability to
10 make payments resulted from a refusal to accept an employment offer
11 to a class I or class II job or a termination for cause from such a
12 job.

13 (2) During the period of supervision, the community corrections
14 officer may examine the offender to determine if there has been a
15 change in circumstances that warrants an amendment of the monthly
16 payment schedule. The community corrections officer may recommend a
17 change to the schedule of payment and shall inform the court of the
18 recommended change and the reasons for the change. The sentencing
19 court may then reset the monthly minimum payments based on the report
20 from the community corrections officer of the change in
21 circumstances.

22 (3) Except as provided in subsection (6) of this section,
23 restitution ordered by a court pursuant to a criminal conviction
24 shall be based on easily ascertainable damages for injury to or loss
25 of property, actual expenses incurred for treatment for injury to
26 persons, and lost wages resulting from injury. Restitution shall not
27 include reimbursement for damages for mental anguish, pain and
28 suffering, or other intangible losses, but may include the costs of
29 counseling reasonably related to the offense. The amount of
30 restitution shall not exceed double the amount of the offender's gain
31 or the victim's loss from the commission of the crime.

32 (4) For the purposes of this section, for an offense committed
33 prior to July 1, 2000, the offender shall remain under the court's
34 jurisdiction for a term of ten years following the offender's release
35 from total confinement or ten years subsequent to the entry of the
36 judgment and sentence, whichever period ends later. Prior to the
37 expiration of the initial ten-year period, the superior court may
38 extend jurisdiction under the criminal judgment an additional ten
39 years for payment of restitution. For an offense committed on or
40 after July 1, 2000, the offender shall remain under the court's

1 jurisdiction until the obligation is completely satisfied, regardless
2 of the statutory maximum for the crime. The portion of the sentence
3 concerning restitution may be modified as to amount, terms, and
4 conditions during any period of time the offender remains under the
5 court's jurisdiction, regardless of the expiration of the offender's
6 term of community supervision and regardless of the statutory maximum
7 sentence for the crime. The court may not reduce the total amount of
8 restitution ordered because the offender may lack the ability to pay
9 the total amount. The offender's compliance with the restitution
10 shall be supervised by the department only during any period which
11 the department is authorized to supervise the offender in the
12 community under RCW 9.94A.728, 9.94A.501, or in which the offender is
13 in confinement in a state correctional institution or a correctional
14 facility pursuant to a transfer agreement with the department, and
15 the department shall supervise the offender's compliance during any
16 such period. The department is responsible for supervision of the
17 offender only during confinement and authorized supervision and not
18 during any subsequent period in which the offender remains under the
19 court's jurisdiction. The county clerk is authorized to collect
20 unpaid restitution at any time the offender remains under the
21 jurisdiction of the court for purposes of his or her legal financial
22 obligations.

23 (5) Restitution shall be ordered whenever the offender is
24 convicted of an offense which results in injury to any person or
25 damage to or loss of property or as provided in subsection (6) of
26 this section 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
29 shall be ordered to pay for an injury, loss, or damage if the
30 offender pleads guilty to a lesser offense or fewer offenses and
31 agrees with the prosecutor's recommendation that the offender be
32 required to pay restitution to a victim of an offense or offenses
33 which are not prosecuted pursuant to a plea agreement.

34 (6) 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 if child support is ordered
39 pursuant to a civil superior court or administrative order for
40 support for that child. The clerk must forward any restitution

1 payments made on behalf of the victim's child to the Washington state
2 child support registry under chapter 26.23 RCW. Identifying
3 information about the victim and child shall not be included in the
4 order. The offender shall receive a credit against any obligation
5 owing under the administrative or superior court order for support of
6 the victim's child. For the purposes of this subsection, the offender
7 shall remain under the court's jurisdiction until the offender has
8 satisfied support obligations under the superior court or
9 administrative order for the period provided in RCW 4.16.020 or a
10 maximum term of twenty-five years following the offender's release
11 from total confinement or twenty-five years subsequent to the entry
12 of the judgment and sentence, whichever period is longer. The court
13 may not reduce the total amount of restitution ordered because the
14 offender may lack the ability to pay the total amount. The department
15 shall supervise the offender's compliance with the restitution
16 ordered under this subsection.

17 (7) Regardless of the provisions of subsections (1) through (6)
18 of this section, the court shall order restitution in all cases where
19 the victim is entitled to benefits under the crime victims'
20 compensation act, chapter 7.68 RCW. If the court does not order
21 restitution and the victim of the crime has been determined to be
22 entitled to benefits under the crime victims' compensation act, the
23 department of labor and industries, as administrator of the crime
24 victims' compensation program, may petition the court within one year
25 of entry of the judgment and sentence for entry of a restitution
26 order. Upon receipt of a petition from the department of labor and
27 industries, the court shall hold a restitution hearing and shall
28 enter a restitution order.

29 (8) In addition to any sentence that may be imposed, an offender
30 who has been found guilty of an offense involving fraud or other
31 deceptive practice or an organization which has been found guilty of
32 any such offense may be ordered by the sentencing court to give
33 notice of the conviction to the class of persons or to the sector of
34 the public affected by the conviction or financially interested in
35 the subject matter of the offense by mail, by advertising in
36 designated areas or through designated media, or by other appropriate
37 means.

38 (9) This section does not limit civil remedies or defenses
39 available to the victim, survivors of the victim, or offender
40 including support enforcement remedies for support ordered under

1 subsection (6) of this section for a child born as a result of a rape
2 of a child victim. The court shall identify in the judgment and
3 sentence the victim or victims entitled to restitution and what
4 amount is due each victim. The state or victim may enforce the court-
5 ordered restitution in the same manner as a judgment in a civil
6 action. Restitution collected through civil enforcement must be paid
7 through the registry of the court and must be distributed
8 proportionately according to each victim's loss when there is more
9 than one victim.

10 (10) If a person has caused a victim to lose money or property
11 through the filing of a vehicle report of sale in which the
12 designated buyer had no knowledge of the vehicle transfer or the
13 fraudulent filing of the report of sale, upon conviction or when the
14 offender pleads guilty and agrees with the prosecutor's
15 recommendation that the offender be required to pay restitution to a
16 victim, the court may order the defendant to pay an amount, fixed by
17 the court, not to exceed double the amount of the defendant's gain or
18 victim's loss from the filing of the vehicle report of sale in which
19 the designated buyer had no knowledge of the vehicle transfer or the
20 fraudulent filing of the report of sale. Such an amount may be used
21 to provide restitution to the victim at the order of the court. It is
22 the duty of the prosecuting attorney to investigate the alternative
23 of restitution, and to recommend it to the court, when the
24 prosecuting attorney believes that restitution is appropriate and
25 feasible. If the court orders restitution, the court must make a
26 finding as to the amount of the victim's loss due to the filing of
27 the report of sale in which the designated buyer had no knowledge of
28 the vehicle transfer or the fraudulent filing of the report of sale,
29 and if the record does not contain sufficient evidence to support
30 such finding, the court may conduct a hearing upon the issue. For
31 purposes of this section, "loss" refers to the amount of money or the
32 value of property or services lost.

33 (11) At any time, the court may determine that the offender is
34 not required to pay, or may relieve the offender of the requirement
35 to pay, full or partial restitution to any insurer if the offender
36 reasonably satisfies the court that he or she does not have the means
37 to make full or partial restitution to the insurer. For the purposes
38 of this section, "insurer" means any insurer as defined and
39 authorized under Title 48 RCW, and any business, corporation,
40 governmental body, municipal corporation, or any other organization

1 of more than fifty employees or members who are self-insured, or any
2 other organization formed for the purposes of jointly self-insuring
3 or self-funding.

4 NEW SECTION. **Sec. 3.** Interest may not exceed six percent to be
5 applied or charged on any court fees or fines.

6 NEW SECTION. **Sec. 4.** This act applies retroactively to all
7 causes of action commenced either prior to or after the effective
8 date of this section, regardless of when the cause of action arose.

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