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HOUSE BILL 1383

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By Representatives Sheahan, Dickerson, Ballasiotes, Constantine, Costa, Radcliff, McDonald, Mason, Schoesler, Mitchell, Blalock, L. Thomas, Sheldon, Wensman, Kenney and Kessler

Read first time 01/23/97. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to criminal sentencing; amending RCW 9.94A.140 and  
2 9.94A.145; reenacting and amending RCW 9.94A.142 and 9.94A.390; and  
3 prescribing penalties.

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

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

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

25 (2) Restitution may be ordered whenever the offender is convicted  
26 of an offense which results in injury to any person or damage to or  
27 loss of property or as provided in subsection (3) of this section. In  
28 addition, restitution may be ordered to pay for an injury, loss, or  
29 damage if the offender pleads guilty to a lesser offense or fewer  
30 offenses and agrees with the prosecutor's recommendation that the  
31 offender be required to pay restitution to a victim of an offense or  
32 offenses which are not prosecuted pursuant to a plea agreement.

33 (3) Restitution for the crime of rape of a child in the first,  
34 second, or third degree, in which the victim becomes pregnant, shall  
35 include: (a) All of the victim's medical expenses that are associated  
36 with the rape and resulting pregnancy; and (b) child support for any  
37 child born as a result of the rape if child support is ordered pursuant  
38 to a civil superior court or administrative order for support for that  
39 child. The clerk must forward any restitution payments made on behalf

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

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

30 ((+4)) (5) This section does not limit civil remedies or defenses  
31 available to the victim or defendant including support enforcement  
32 remedies for support ordered under subsection (3) of this section for  
33 a child born as a result of a rape of a child victim. The court shall  
34 identify in the judgment and sentence the victim or victims entitled to  
35 restitution and what amount is due each victim. The state or victim  
36 may enforce the court-ordered restitution in the same manner as a  
37 judgment in a civil action. Restitution collected through civil  
38 enforcement must be paid through the registry of the court and must be

1 distributed proportionately according to each victim's loss when there  
2 is more than one victim.

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

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

1 court may not reduce the total amount of restitution ordered because  
2 the offender may lack the ability to pay the total amount. The  
3 offender's compliance with the restitution shall be supervised by the  
4 department of corrections.

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

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

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

5 (4) Regardless of the provisions of subsections (1) ~~((and))~~, (2),  
6 and (3) of this section, the court shall order restitution in all cases  
7 where the victim is entitled to benefits under the crime victims'  
8 compensation act, chapter 7.68 RCW. If the court does not order  
9 restitution and the victim of the crime has been determined to be  
10 entitled to benefits under the crime victims' compensation act, the  
11 department of labor and industries, as administrator of the crime  
12 victims' compensation program, may petition the court within one year  
13 of entry of the judgment and sentence for entry of a restitution order.  
14 Upon receipt of a petition from the department of labor and industries,  
15 the court shall hold a restitution hearing and shall enter a  
16 restitution order.

17 ~~((+4))~~ (5) In addition to any sentence that may be imposed, a  
18 defendant who has been found guilty of an offense involving fraud or  
19 other deceptive practice or an organization which has been found guilty  
20 of any such offense may be ordered by the sentencing court to give  
21 notice of the conviction to the class of persons or to the sector of  
22 the 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 ~~((+5))~~ (6) This section does not limit civil remedies or defenses  
26 available to the victim, survivors of the victim, or defendant  
27 including support enforcement remedies for support ordered under  
28 subsection (3) of this section for a child born as a result of a rape  
29 of a child victim. The court shall identify in the judgment and  
30 sentence the victim or victims entitled to restitution and what amount  
31 is due each victim. The state or victim may enforce the court-ordered  
32 restitution in the same manner as a judgment in a civil action.  
33 Restitution collected through civil enforcement must be paid through  
34 the registry of the court and must be distributed proportionately  
35 according to each victim's loss when there is more than one victim.

36 ~~((+6))~~ (7) This section shall apply to offenses committed after  
37 July 1, 1985.

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

3       (1) Whenever a person is convicted of a felony, the court may order  
4 the payment of a legal financial obligation as part of the sentence.  
5 The court must on either the judgment and sentence or on a subsequent  
6 order to pay, designate the total amount of a legal financial  
7 obligation and segregate this amount among the separate assessments  
8 made for restitution, costs, fines, and other assessments required by  
9 law. On the same order, the court is also to set a sum that the  
10 offender is required to pay on a monthly basis towards satisfying the  
11 legal financial obligation. If the court fails to set the offender  
12 monthly payment amount, the department shall set the amount. Upon  
13 receipt of an offender's monthly payment, after restitution is  
14 satisfied, the county clerk shall distribute the payment proportionally  
15 among all other fines, costs, and assessments imposed, unless otherwise  
16 ordered by the court.

17       (2) If the court determines that the offender, at the time of  
18 sentencing, has the means to pay for the cost of incarceration, the  
19 court may require the offender to pay for the cost of incarceration at  
20 a rate of fifty dollars per day of incarceration. Payment of other  
21 court-ordered financial obligations, including all legal financial  
22 obligations and costs of supervision shall take precedence over the  
23 payment of the cost of incarceration ordered by the court. All funds  
24 recovered from offenders for the cost of incarceration in the county  
25 jail shall be remitted to the county and the costs of incarceration in  
26 a prison shall be remitted to the department of corrections.

27       (3) The court may add to the judgment and sentence or subsequent  
28 order to pay a statement that a notice of payroll deduction is to be  
29 immediately issued. If the court chooses not to order the immediate  
30 issuance of a notice of payroll deduction at sentencing, the court  
31 shall add to the judgment and sentence or subsequent order to pay a  
32 statement that a notice of payroll deduction may be issued or other  
33 income-withholding action may be taken, without further notice to the  
34 offender if a monthly court-ordered legal financial obligation payment  
35 is not paid when due, and an amount equal to or greater than the amount  
36 payable for one month is owed.

37       If a judgment and sentence or subsequent order to pay does not  
38 include the statement that a notice of payroll deduction may be issued  
39 or other income-withholding action may be taken if a monthly legal

1 financial obligation payment is past due, the department may serve a  
2 notice on the offender stating such requirements and authorizations.  
3 Service shall be by personal service or any form of mail requiring a  
4 return receipt.

5 (4) All legal financial obligations that are ordered as a result of  
6 a conviction for a felony, may also be enforced in the same manner as  
7 a judgment in a civil action by the party or entity to whom the legal  
8 financial obligation is owed. Restitution collected through civil  
9 enforcement must be paid through the registry of the court and must be  
10 distributed proportionately according to each victim's loss when there  
11 is more than one victim. The judgment and sentence shall identify the  
12 party or entity to whom restitution is owed so that the state, party,  
13 or entity may enforce the judgment. ~~((These))~~ If restitution is  
14 ordered pursuant to RCW 9.94A.140(3) or 9.94A.142(3) to a victim of  
15 rape of a child and the victim's child born from the rape, the  
16 Washington state child support registry shall be identified as the  
17 party to whom payments must be made. Restitution obligations arising  
18 from the rape of a child in the first, second, or third degree that  
19 result in the pregnancy of the victim may be enforced for the time  
20 periods provided under RCW 9.94A.140(3) and 9.94A.142(3). All other  
21 legal financial obligations may be enforced at any time during the ten-  
22 year period following the offender's release from total confinement or  
23 within ten years of entry of the judgment and sentence, whichever  
24 period is longer. Independent of the department, the party or entity  
25 to whom the legal financial obligation is owed shall have the authority  
26 to utilize any other remedies available to the party or entity to  
27 collect the legal financial obligation.

28 (5) In order to assist the court in setting a monthly sum that the  
29 offender must pay during the period of supervision, the offender is  
30 required to report to the department for purposes of preparing a  
31 recommendation to the court. When reporting, the offender is required,  
32 under oath, to truthfully and honestly respond to all questions  
33 concerning present, past, and future earning capabilities and the  
34 location and nature of all property or financial assets. The offender  
35 is further required to bring any and all documents as requested by the  
36 department.

37 (6) After completing the investigation, the department shall make  
38 a report to the court on the amount of the monthly payment that the



1 offender should be required to make towards a satisfied legal financial  
2 obligation.

3 (7) During the period of supervision, the department may make a  
4 recommendation to the court that the offender's monthly payment  
5 schedule be modified so as to reflect a change in financial  
6 circumstances. If the department sets the monthly payment amount, the  
7 department may modify the monthly payment amount without the matter  
8 being returned to the court. Also, during the period of supervision,  
9 the offender may be required at the request of the department to report  
10 to the department for the purposes of reviewing the appropriateness of  
11 the collection schedule for the legal financial obligation. During  
12 this reporting, the offender is required under oath to truthfully and  
13 honestly respond to all questions concerning earning capabilities and  
14 the location and nature of all property or financial assets. Also, the  
15 offender is required to bring any and all documents as requested by the  
16 department in order to prepare the collection schedule.

17 (8) After the judgment and sentence or payment order is entered,  
18 the department shall for any period of supervision be authorized to  
19 collect the legal financial obligation from the offender. Any amount  
20 collected by the department shall be remitted daily to the county clerk  
21 for the purposes of disbursements. The department is authorized to  
22 accept credit cards as payment for a legal financial obligation, and  
23 any costs incurred related to accepting credit card payments shall be  
24 the responsibility of the offender.

25 (9) The department or any obligee of the legal financial obligation  
26 may seek a mandatory wage assignment for the purposes of obtaining  
27 satisfaction for the legal financial obligation pursuant to RCW  
28 9.94A.2001.

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

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

37 **Sec. 4.** RCW 9.94A.390 and 1996 c 248 s 2 and 1996 c 121 s 1 are  
38 each reenacted and amended to read as follows:

1 If the sentencing court finds that an exceptional sentence outside  
2 the standard range should be imposed in accordance with RCW  
3 9.94A.120(2), the sentence is subject to review only as provided for in  
4 RCW 9.94A.210(4).

5 The following are illustrative factors which the court may consider  
6 in the exercise of its discretion to impose an exceptional sentence.  
7 The following are illustrative only and are not intended to be  
8 exclusive reasons for exceptional sentences.

9 (1) Mitigating Circumstances

10 (a) To a significant degree, the victim was an initiator, willing  
11 participant, aggressor, or provoker of the incident.

12 (b) Before detection, the defendant compensated, or made a good  
13 faith effort to compensate, the victim of the criminal conduct for any  
14 damage or injury sustained.

15 (c) The defendant committed the crime under duress, coercion,  
16 threat, or compulsion insufficient to constitute a complete defense but  
17 which significantly affected his or her conduct.

18 (d) The defendant, with no apparent predisposition to do so, was  
19 induced by others to participate in the crime.

20 (e) The defendant's capacity to appreciate the wrongfulness of his  
21 or her conduct or to conform his or her conduct to the requirements of  
22 the law, was significantly impaired (voluntary use of drugs or alcohol  
23 is excluded).

24 (f) The offense was principally accomplished by another person and  
25 the defendant manifested extreme caution or sincere concern for the  
26 safety or well-being of the victim.

27 (g) The operation of the multiple offense policy of RCW 9.94A.400  
28 results in a presumptive sentence that is clearly excessive in light of  
29 the purpose of this chapter, as expressed in RCW 9.94A.010.

30 (h) The defendant or the defendant's children suffered a continuing  
31 pattern of physical or sexual abuse by the victim of the offense and  
32 the offense is a response to that abuse.

33 (2) Aggravating Circumstances

34 (a) The defendant's conduct during the commission of the current  
35 offense manifested deliberate cruelty to the victim.

36 (b) The defendant knew or should have known that the victim of the  
37 current offense was particularly vulnerable or incapable of resistance  
38 due to extreme youth, advanced age, disability, or ill health.

1 (c) The current offense was a violent offense, and the defendant  
2 knew that the victim of the current offense was pregnant.

3 (d) The current offense was a major economic offense or series of  
4 offenses, so identified by a consideration of any of the following  
5 factors:

6 (i) The current offense involved multiple victims or multiple  
7 incidents per victim;

8 (ii) The current offense involved attempted or actual monetary loss  
9 substantially greater than typical for the offense;

10 (iii) The current offense involved a high degree of sophistication  
11 or planning or occurred over a lengthy period of time; or

12 (iv) The defendant used his or her position of trust, confidence,  
13 or fiduciary responsibility to facilitate the commission of the current  
14 offense.

15 (e) The current offense was a major violation of the Uniform  
16 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to  
17 trafficking in controlled substances, which was more onerous than the  
18 typical offense of its statutory definition: The presence of ANY of  
19 the following may identify a current offense as a major VUCSA:

20 (i) The current offense involved at least three separate  
21 transactions in which controlled substances were sold, transferred, or  
22 possessed with intent to do so;

23 (ii) The current offense involved an attempted or actual sale or  
24 transfer of controlled substances in quantities substantially larger  
25 than for personal use;

26 (iii) The current offense involved the manufacture of controlled  
27 substances for use by other parties;

28 (iv) The circumstances of the current offense reveal the offender  
29 to have occupied a high position in the drug distribution hierarchy;

30 (v) The current offense involved a high degree of sophistication or  
31 planning or occurred over a lengthy period of time or involved a broad  
32 geographic area of disbursement; or

33 (vi) The offender used his or her position or status to facilitate  
34 the commission of the current offense, including positions of trust,  
35 confidence or fiduciary responsibility (e.g., pharmacist, physician, or  
36 other medical professional).

37 (f) The current offense included a finding of sexual motivation  
38 pursuant to RCW 9.94A.127.

1 (g) The offense was part of an ongoing pattern of sexual abuse of  
2 the same victim under the age of eighteen years manifested by multiple  
3 incidents over a prolonged period of time.

4 (h) The current offense involved domestic violence, as defined in  
5 RCW 10.99.020 and one or more of the following was present:

6 (i) The offense was part of an ongoing pattern of psychological,  
7 physical, or sexual abuse of the victim manifested by multiple  
8 incidents over a prolonged period of time;

9 (ii) The offense occurred within sight or sound of the victim's or  
10 the offender's minor children under the age of eighteen years; or

11 (iii) The offender's conduct during the commission of the current  
12 offense manifested deliberate cruelty or intimidation of the victim.

13 (i) The operation of the multiple offense policy of RCW 9.94A.400  
14 results in a presumptive sentence that is clearly too lenient in light  
15 of the purpose of this chapter, as expressed in RCW 9.94A.010.

16 (j) The defendant's prior unscored misdemeanor or prior unscored  
17 foreign criminal history results in a presumptive sentence that is  
18 clearly too lenient in light of the purpose of this chapter as  
19 expressed in RCW 9.94A.010.

20 (k) The offense resulted in the pregnancy of a child victim of  
21 rape.

--- END ---