

SSB 5169 - S AMD 686
By Senator Hargrove

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9.94A.750 and 2003 c 379 s 15 are each amended to
4 read as follows:

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

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 shall not issue any order that postpones
13 the commencement of restitution payments until after the offender is
14 released from total confinement. The court should take into
15 consideration the total amount of the restitution owed, the offender's
16 present, past, and future ability to pay, as well as any assets that
17 the offender may have. An offender's inability to make restitution
18 payments while in total confinement may not be the basis for a
19 violation of his or her sentence unless his or her inability to make
20 payments resulted from a refusal to accept an employment offer to a
21 class I or class II job or a termination for cause from such a job.

22 (2) During the period of supervision, the community corrections
23 officer may examine the offender to determine if there has been a
24 change in circumstances that warrants an amendment of the monthly
25 payment schedule. The community corrections officer may recommend a
26 change to the schedule of payment and shall inform the court of the
27 recommended change and the reasons for the change. The sentencing
28 court may then reset the monthly minimum payments based on the report
29 from the community corrections officer of the change in circumstances.

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

11 (4) For the purposes of this section, the offender shall remain
12 under the court's jurisdiction for a term of ten years following the
13 offender's release from total confinement or ten years subsequent to
14 the entry of the judgment and sentence, whichever period is longer.
15 Prior to the expiration of the initial ten-year period, the superior
16 court may extend jurisdiction under the criminal judgment an additional
17 ten years for payment of restitution. The portion of the sentence
18 concerning restitution may be modified as to amount, terms and
19 conditions during either the initial ten-year period or subsequent ten-
20 year period if the criminal judgment is extended, regardless of the
21 expiration of the offender's term of community supervision and
22 regardless of the statutory maximum sentence for the crime. The court
23 may not reduce the total amount of restitution ordered because the
24 offender may lack the ability to pay the total amount. The offender's
25 compliance with the restitution shall be supervised by the department
26 only during any period which the department is authorized to supervise
27 the offender in the community under RCW 9.94A.728, 9.94A.501, or in
28 which the offender is in confinement in a state correctional
29 institution or a correctional facility pursuant to a transfer agreement
30 with the department, and the department shall supervise the offender's
31 compliance during any such period. The department is responsible for
32 supervision of the offender only during confinement and authorized
33 supervision and not during any subsequent period in which the offender
34 remains under the court's jurisdiction. The county clerk is authorized
35 to collect unpaid restitution at any time the offender remains under
36 the jurisdiction of the court for purposes of his or her legal
37 financial obligations.

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

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

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

1 subject matter of the offense by mail, by advertising in designated
2 areas or through designated media, or by other appropriate means.

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

14 **Sec. 2.** RCW 9.94A.753 and 2003 c 379 s 16 are each amended to read
15 as follows:

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

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

33 (2) During the period of supervision, the community corrections
34 officer may examine the offender to determine if there has been a
35 change in circumstances that warrants an amendment of the monthly
36 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 only during any period which the
34 department is authorized to supervise the offender in the community
35 under RCW 9.94A.728, 9.94A.501, or in which the offender is in
36 confinement in a state correctional institution or a correctional
37 facility pursuant to a transfer agreement with the department, and the

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

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

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

1 restitution ordered because the offender may lack the ability to pay
2 the total amount. The department shall supervise the offender's
3 compliance with the restitution ordered under this subsection.

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

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

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

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1 On page 1, line 1 of the title, after "restitution;" strike the
2 remainder of the title and insert "and amending RCW 9.94A.750 and
3 9.94A.753."

EFFECT: Sections 1 and 2 are updated to reflect 2003 amendments
to underlying code language.

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