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SENATE BILL 5169

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State of Washington

58th Legislature

2003 Regular Session

By Senator Hargrove

Read first time 01/17/2003. Referred to Committee on Children & Family Services & Corrections.

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.

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

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

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

37 (5) Restitution may be ordered whenever the offender is convicted  
38 of an offense which results in injury to any person or damage to or

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

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

29 (7) 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 notice  
33 of the conviction to the class of persons or to the sector of the  
34 public affected by the conviction or financially interested in the  
35 subject matter of the offense by mail, by advertising in designated  
36 areas or through designated media, or by other appropriate means.

37 (8) This section does not limit civil remedies or defenses  
38 available to the victim or offender including support enforcement

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

10 **Sec. 2.** RCW 9.94A.753 and 2000 c 226 s 3 and 2000 c 28 s 33 are  
11 each reenacted and amended to read as follows:

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

13 (1) When restitution is ordered, the court shall determine the  
14 amount of restitution due at the sentencing hearing or within one  
15 hundred eighty days except as provided in subsection (7) of this  
16 section. The court may continue the hearing beyond the one hundred  
17 eighty days for good cause. The court shall then set a minimum monthly  
18 payment that the offender is required to make towards the restitution  
19 that is ordered. The court shall not issue any order that postpones  
20 the commencement of restitution payments until after the offender is  
21 released from total confinement. The court should take into  
22 consideration the total amount of the restitution owed, the offender's  
23 present, past, and future ability to pay, as well as any assets that  
24 the offender may have.

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

33 (3) Except as provided in subsection (6) of this section,  
34 restitution ordered by a court pursuant to a criminal conviction shall  
35 be based on easily ascertainable damages for injury to or loss of  
36 property, actual expenses incurred for treatment for injury to persons,  
37 and lost wages resulting from injury. Restitution shall not include

1 reimbursement for damages for mental anguish, pain and suffering, or  
2 other intangible losses, but may include the costs of counseling  
3 reasonably related to the offense. The amount of restitution shall not  
4 exceed double the amount of the offender's gain or the victim's loss  
5 from the commission of the crime.

6 (4) For the purposes of this section, for an offense committed  
7 prior to July 1, 2000, the offender shall remain under the court's  
8 jurisdiction for a term of ten years following the offender's release  
9 from total confinement or ten years subsequent to the entry of the  
10 judgment and sentence, whichever period ends later. Prior to the  
11 expiration of the initial ten-year period, the superior court may  
12 extend jurisdiction under the criminal judgment an additional ten years  
13 for payment of restitution. For an offense committed on or after July  
14 1, 2000, the offender shall remain under the court's jurisdiction until  
15 the obligation is completely satisfied, regardless of the statutory  
16 maximum for the crime. The portion of the sentence concerning  
17 restitution may be modified as to amount, terms, and conditions during  
18 any period of time the offender remains under the court's jurisdiction,  
19 regardless of the expiration of the offender's term of community  
20 supervision and regardless of the statutory maximum sentence for the  
21 crime. The court may not reduce the total amount of restitution  
22 ordered because the offender may lack the ability to pay the total  
23 amount. The offender's compliance with the restitution shall be  
24 supervised by the department for ten years following the entry of the  
25 judgment and sentence or ten years following the offender's release  
26 from total confinement. The department is not responsible for  
27 supervision of the offender during any subsequent period of time the  
28 offender remains under the court's jurisdiction.

29 (5) Restitution shall be ordered whenever the offender is convicted  
30 of an offense which results in injury to any person or damage to or  
31 loss of property or as provided in subsection (6) of this section  
32 unless extraordinary circumstances exist which make restitution  
33 inappropriate in the court's judgment and the court sets forth such  
34 circumstances in the record. In addition, restitution shall be ordered  
35 to pay for an injury, loss, or damage if the offender pleads guilty to  
36 a lesser offense or fewer offenses and agrees with the prosecutor's  
37 recommendation that the offender be required to pay restitution to a

1 victim of an offense or offenses which are not prosecuted pursuant to  
2 a plea agreement.

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

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

36 (8) In addition to any sentence that may be imposed, an offender  
37 who has been found guilty of an offense involving fraud or other  
38 deceptive practice or an organization which has been found guilty of

1 any such offense may be ordered by the sentencing court to give notice  
2 of the conviction to the class of persons or to the sector of the  
3 public affected by the conviction or financially interested in the  
4 subject matter of the offense by mail, by advertising in designated  
5 areas or through designated media, or by other appropriate means.

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

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