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HOUSE BILL 2405

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By Representatives Goodman, Rodne, Hurst, Kelley, Pearson, Van De Wege, Fitzgibbon, Ormsby, Hasegawa, Pollet, Miloscia, and Blake

Read first time 01/13/12. Referred to Committee on Judiciary.

1 AN ACT Relating to ordering offenders convicted of vehicular  
2 homicide due to alcohol or drugs to pay child support for the victims'  
3 minor children; and amending RCW 9.94A.753.

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

5 **Sec. 1.** RCW 9.94A.753 and 2003 c 379 s 16 are each amended to read  
6 as follows:

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

8 (1) When restitution is ordered, the court shall determine the  
9 amount of restitution due at the sentencing hearing or within one  
10 hundred eighty days except as provided in subsection (7) of this  
11 section. The court may continue the hearing beyond the one hundred  
12 eighty days for good cause. The court shall then set a minimum monthly  
13 payment that the offender is required to make towards the restitution  
14 that is ordered. The court should take into consideration the total  
15 amount of the restitution owed, the offender's present, past, and  
16 future ability to pay, as well as any assets that the offender may  
17 have.

18 (2) During the period of supervision, the community corrections  
19 officer may examine the offender to determine if there has been a

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

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

17 (4) For the purposes of this section, for an offense committed  
18 prior to July 1, 2000, the offender shall remain under the court's  
19 jurisdiction for a term of ten years following the offender's release  
20 from total confinement or ten years subsequent to the entry of the  
21 judgment and sentence, whichever period ends later. Prior to the  
22 expiration of the initial ten-year period, the superior court may  
23 extend jurisdiction under the criminal judgment an additional ten years  
24 for payment of restitution. For an offense committed on or after July  
25 1, 2000, the offender shall remain under the court's jurisdiction until  
26 the obligation is completely satisfied, regardless of the statutory  
27 maximum for the crime. The portion of the sentence concerning  
28 restitution may be modified as to amount, terms, and conditions during  
29 any period of time the offender remains under the court's jurisdiction,  
30 regardless of the expiration of the offender's term of community  
31 supervision and regardless of the statutory maximum sentence for the  
32 crime. The court may not reduce the total amount of restitution  
33 ordered because the offender may lack the ability to pay the total  
34 amount. The offender's compliance with the restitution shall be  
35 supervised by the department only during any period which the  
36 department is authorized to supervise the offender in the community  
37 under RCW 9.94A.728, 9.94A.501, or in which the offender is in  
38 confinement in a state correctional institution or a correctional

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

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

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

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

5 (b) Restitution for the crime of vehicular homicide while under the  
6 influence of intoxicating liquor or any drug, as defined in RCW  
7 46.61.520, may include payments to help support the minor children of  
8 the victim of the vehicular homicide. The court may order restitution  
9 under this subsection irrespective of any court order or administrative  
10 order of support for the minor children entered under Title 26 RCW.  
11 The court may use the child support schedule in chapter 26.19 RCW and  
12 child support worksheets for guidance in determining the appropriate  
13 amounts, but the court is not limited by the provisions in RCW  
14 26.19.065. For the purposes of this section, "minor children" means  
15 children under the age of eighteen at the time restitution is ordered.

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

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

35 (9) This section does not limit civil remedies or defenses  
36 available to the victim, survivors of the victim, or offender including  
37 support enforcement remedies for support ordered under subsection (6)  
38 of this section for a child born as a result of a rape of a child

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

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