

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1058

65th Legislature
2018 Regular Session

Passed by the House January 24, 2018
Yeas 96 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 2, 2018
Yeas 47 Nays 1

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1058** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 1058

Passed Legislature - 2018 Regular Session

State of Washington

65th Legislature

2017 Regular Session

By Representative MacEwen

Prefiled 01/04/17. Read first time 01/09/17. Referred to Committee on Public Safety.

1 AN ACT Relating to court-ordered restitution; and amending RCW
2 9.94A.750 and 9.94A.753.

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

4 **Sec. 1.** RCW 9.94A.750 and 2003 c 379 s 15 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 **Sec. 2.** RCW 9.94A.753 and 2016 c 86 s 5 are each amended to read
22 as follows:

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

24 (1) When restitution is ordered, the court shall determine the
25 amount of restitution due at the sentencing hearing or within one
26 hundred eighty days except as provided in subsection (7) of this
27 section. The court may continue the hearing beyond the one hundred
28 eighty days for good cause. The court shall then set a minimum
29 monthly payment that the offender is required to make towards the
30 restitution that is ordered. The court shall not issue any order that
31 postpones the commencement of restitution payments until after the
32 offender is released from total confinement. The court should take
33 into consideration the total amount of the restitution owed, the
34 offender's present, past, and future ability to pay, as well as any
35 assets that the offender may have. An offender's inability to make
36 restitution payments while in total confinement may not be the basis
37 for a violation of his or her sentence unless his or her inability to
38 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 crime.

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

1 the department is authorized to supervise the offender in the
2 community under RCW 9.94A.728, 9.94A.501, or in which the offender is
3 in confinement in a state correctional institution or a correctional
4 facility pursuant to a transfer agreement with the department, and
5 the department shall supervise the offender's compliance during any
6 such period. The department is responsible for supervision of the
7 offender only during confinement and authorized supervision and not
8 during any subsequent period in which the offender remains under the
9 court's jurisdiction. The county clerk is authorized to collect
10 unpaid restitution at any time the offender remains under the
11 jurisdiction of the court for purposes of his or her legal financial
12 obligations.

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

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

1 from total confinement or twenty-five years subsequent to the entry
2 of the judgment and sentence, whichever period is longer. The court
3 may not reduce the total amount of restitution ordered because the
4 offender may lack the ability to pay the total amount. The department
5 shall supervise the offender's compliance with the restitution
6 ordered under this subsection.

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

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

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

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

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