
SUBSTITUTE HOUSE BILL 1668

State of Washington

68th Legislature

2023 Regular Session

By House Community Safety, Justice, & Reentry (originally sponsored by Representatives Donaghy, Low, Reeves, Ramel, Chambers, Bronoske, Eslick, Chapman, Macri, Schmidt, Kloba, Robertson, Hutchins, Davis, and Ryu)

READ FIRST TIME 02/17/23.

1 AN ACT Relating to restitution for surviving minor children of
2 deceased victims of vehicular homicide; and amending RCW 9.94A.753.

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

4 **Sec. 1.** RCW 9.94A.753 and 2022 c 260 s 3 are each amended to
5 read as follows:

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

7 (1) When restitution is ordered, the court shall determine the
8 amount of restitution due at the sentencing hearing or within 180
9 days except as provided in subsection (~~(+7+)~~) (8) of this section.
10 The court may continue the hearing beyond the 180 days for good
11 cause. The court shall then set a minimum monthly payment that the
12 offender is required to make towards the restitution that is ordered.
13 The court shall not issue any order that postpones the commencement
14 of restitution payments until after the offender is released from
15 total confinement. The court should take into consideration the total
16 amount of the restitution owed, the offender's present, past, and
17 future ability to pay, as well as any assets that the offender may
18 have. An offender's inability to make restitution payments while in
19 total confinement may not be the basis for a violation of his or her
20 sentence unless his or her inability to make payments resulted from a

1 refusal to accept an employment offer to a class I or class II job or
2 a termination for cause from such a 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)(a) Except as provided in subsections (6) and (7) of this
13 section, restitution ordered by a court pursuant to a criminal
14 conviction shall be based on easily ascertainable damages for injury
15 to or loss of property, actual expenses incurred for treatment for
16 injury to persons, and lost wages resulting from injury. Restitution
17 shall not include reimbursement for damages for mental anguish, pain
18 and suffering, or other intangible losses, but may include the costs
19 of 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 (b) At any time, including at sentencing, (~~the court may~~
23 ~~determine that the offender is not required to pay, or~~) if the court
24 finds that the offender does not have the current or likely future
25 ability to pay the restitution, the court may relieve the offender of
26 the requirement to pay(~~7~~) full or partial restitution and accrued
27 interest on restitution (~~where~~), so long as: (1) the entity to whom
28 restitution is owed is an insurer or state agency, except for
29 restitution owed to the department of labor and industries under
30 chapter 7.68 RCW(~~7 if the court finds that the offender does not~~
31 have the current or likely future ability to pay)); or (2) the
32 restitution is for child maintenance under subsection (7) of this
33 section. A person does not have the current ability to pay if the
34 person is indigent as defined in RCW 10.01.160(3). For the purposes
35 of this subsection, the terms "insurer" and "state agency" have the
36 same meanings as provided in RCW 9.94A.750(3).

37 (4) For the purposes of this section, for an offense committed
38 prior to July 1, 2000, the offender shall remain under the court's
39 jurisdiction for a term of 10 years following the offender's release
40 from total confinement or 10 years subsequent to the entry of the

1 judgment and sentence, whichever period ends later. Prior to the
2 expiration of the initial 10-year period, the superior court may
3 extend jurisdiction under the criminal judgment an additional 10
4 years for payment of restitution. For an offense committed on or
5 after July 1, 2000, the offender shall remain under the court's
6 jurisdiction until the obligation is completely satisfied, regardless
7 of the statutory maximum for the crime. The portion of the sentence
8 concerning restitution may be modified as to amount, terms, and
9 conditions during any period of time the offender remains under the
10 court's jurisdiction, regardless of the expiration of the offender's
11 term of community supervision and regardless of the statutory maximum
12 sentence for the crime. The court may not reduce the total amount of
13 restitution ordered because the offender may lack the ability to pay
14 the total amount. The offender's compliance with the restitution
15 shall be supervised by the department only during any period which
16 the department is authorized to supervise the offender in the
17 community under RCW 9.94A.728, 9.94A.501, or in which the offender is
18 in confinement in a state correctional institution or a correctional
19 facility pursuant to a transfer agreement with the department, and
20 the department shall supervise the offender's compliance during any
21 such period. The department is responsible for supervision of the
22 offender only during confinement and authorized supervision and not
23 during any subsequent period in which the offender remains under the
24 court's jurisdiction. The county clerk is authorized to collect
25 unpaid restitution at any time the offender remains under the
26 jurisdiction of the court for purposes of his or her legal financial
27 obligations.

28 (5) Restitution shall be ordered whenever the offender is
29 convicted of an offense which results in injury to any person or
30 damage to or loss of property or as provided in subsections (6) and
31 (7) of this section unless extraordinary circumstances exist which
32 make restitution inappropriate in the court's judgment and the court
33 sets forth such circumstances in the record. In addition, restitution
34 shall be ordered to pay for an injury, loss, or damage if the
35 offender pleads guilty to a lesser offense or fewer offenses and
36 agrees with the prosecutor's recommendation that the offender be
37 required to pay restitution to a victim of an offense or offenses
38 which are not prosecuted pursuant to a plea agreement.

39 (6) Restitution for the crime of rape of a child in the first,
40 second, or third degree, in which the victim becomes pregnant, shall

1 include: (a) All of the victim's medical expenses that are associated
2 with the rape and resulting pregnancy; and (b) child support for any
3 child born as a result of the rape if child support is ordered
4 pursuant to a civil superior court or administrative order for
5 support for that child. The clerk must forward any restitution
6 payments made on behalf of the victim's child to the Washington state
7 child support registry under chapter 26.23 RCW. Identifying
8 information about the victim and child shall not be included in the
9 order. The offender shall receive a credit against any obligation
10 owing under the administrative or superior court order for support of
11 the victim's child. For the purposes of this subsection, the offender
12 shall remain under the court's jurisdiction until the offender has
13 satisfied support obligations under the superior court or
14 administrative order for the period provided in RCW 4.16.020 or a
15 maximum term of 25 years following the offender's release from total
16 confinement or 25 years subsequent to the entry of the judgment and
17 sentence, whichever period is longer. The court may not reduce the
18 total amount of restitution ordered because the offender may lack the
19 ability to pay the total amount. The department shall supervise the
20 offender's compliance with the restitution ordered under this
21 subsection.

22 (7)(a) If a person is convicted of violating RCW 46.61.520(1)(a)
23 and the deceased victim of the offense was the parent of a minor
24 child, then the court shall order the person to pay restitution in
25 the form of child maintenance to each of the victim's children until
26 the child or children reach 18 years of age and has graduated from
27 high school, or the class of which the child is a member when the
28 child reached 18 years of age has graduated from high school.

29 (b) The court shall order the person convicted as provided under
30 this section to pay restitution in an amount that is reasonable or
31 necessary for the maintenance of the victim's child or children after
32 considering all relevant factors, including:

33 (i) The financial needs and resources of the child or children;

34 (ii) The financial resources and needs of the surviving parent
35 or, if no other parent is alive or capable of caring for the child or
36 children, the guardians of the child or children;

37 (iii) The physical and emotional condition of the child or
38 children and the child's or children's educational needs;

39 (iv) The child's or children's physical and legal custody
40 arrangements; and

1 (v) The reasonable work-related child care expenses of the
2 surviving parent or guardian.

3 (c)(i) If the surviving parent or guardian of the child or
4 children brings a civil action against the person convicted as
5 provided under (a) of this subsection prior to any restitution order
6 under this section and the surviving parent or guardian obtains a
7 judgment in the civil suit, no restitution shall be ordered under
8 this section.

9 (ii) If the court orders restitution under this section and the
10 surviving parent or guardian subsequently brings a civil action and
11 obtains a judgment, the restitution order shall be offset by the
12 amount of the judgment awarded in the civil action.

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

25 ((+8)) (9) In addition to any sentence that may be imposed, an
26 offender who has been found guilty of an offense involving fraud or
27 other deceptive practice or an organization which has been found
28 guilty of any such offense may be ordered by the sentencing court to
29 give notice of the conviction to the class of persons or to the
30 sector of the public affected by the conviction or financially
31 interested in the subject matter of the offense by mail, by
32 advertising in designated areas or through designated media, or by
33 other appropriate means.

34 ((+9)) (10) This section does not limit civil remedies or
35 defenses available to the victim, survivors of the victim, or
36 offender including support enforcement remedies for support ordered
37 under subsection (6) of this section for a child born as a result of
38 a rape of a child victim. The court shall identify in the judgment
39 and sentence the victim or victims entitled to restitution and what
40 amount is due each victim. The state or victim may enforce the court-

1 ordered restitution in the same manner as a judgment in a civil
2 action. Restitution collected through civil enforcement must be paid
3 through the registry of the court and must be distributed
4 proportionately according to each victim's loss when there is more
5 than one victim.

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

--- END ---