

---

HOUSE BILL 1668

---

State of Washington

68th Legislature

2023 Regular Session

By Representatives Donaghy, Low, Reeves, Ramel, Chambers, Bronoske, Eslick, Chapman, Macri, Schmidt, Kloba, Robertson, Hutchins, Davis, and Ryu

Read first time 01/30/23. Referred to Committee on Community Safety, Justice, & Reentry.

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 determine  
23 that the offender is not required to pay, or may relieve the offender  
24 of the requirement to pay, full or partial restitution and accrued  
25 interest on restitution where the entity to whom restitution is owed  
26 is an insurer or state agency, except for restitution owed to the  
27 department of labor and industries under chapter 7.68 RCW, if the  
28 court finds that the offender does not have the current or likely  
29 future ability to pay. A person does not have the current ability to  
30 pay if the person is indigent as defined in RCW 10.01.160(3). For the  
31 purposes of this subsection, the terms "insurer" and "state agency"  
32 have the same meanings as provided in RCW 9.94A.750(3).

33 (4) For the purposes of this section, for an offense committed  
34 prior to July 1, 2000, the offender shall remain under the court's  
35 jurisdiction for a term of 10 years following the offender's release  
36 from total confinement or 10 years subsequent to the entry of the  
37 judgment and sentence, whichever period ends later. Prior to the  
38 expiration of the initial 10-year period, the superior court may  
39 extend jurisdiction under the criminal judgment an additional 10  
40 years for payment of restitution. For an offense committed on or

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

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

35 (6) Restitution for the crime of rape of a child in the first,  
36 second, or third degree, in which the victim becomes pregnant, shall  
37 include: (a) All of the victim's medical expenses that are associated  
38 with the rape and resulting pregnancy; and (b) child support for any  
39 child born as a result of the rape if child support is ordered  
40 pursuant to a civil superior court or administrative order for

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

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

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

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

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

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

35 (iv) The child's or children's physical and legal custody  
36 arrangements; and

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

39 (c)(i) If the surviving parent or guardian of the child or  
40 children brings a civil action against the person convicted as

1 provided under (a) of this subsection prior to any restitution order  
2 under this section and the surviving parent or guardian obtains a  
3 judgment in the civil suit, no restitution shall be ordered under  
4 this section.

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

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

21 ~~((8))~~ (9) In addition to any sentence that may be imposed, an  
22 offender who has been found guilty of an offense involving fraud or  
23 other deceptive practice or an organization which has been found  
24 guilty of any such offense may be ordered by the sentencing court to  
25 give notice of the conviction to the class of persons or to the  
26 sector of the public affected by the conviction or financially  
27 interested in the subject matter of the offense by mail, by  
28 advertising in designated areas or through designated media, or by  
29 other appropriate means.

30 ~~((9))~~ (10) This section does not limit civil remedies or  
31 defenses available to the victim, survivors of the victim, or  
32 offender including support enforcement remedies for support ordered  
33 under subsection (6) of this section for a child born as a result of  
34 a rape of a child victim. The court shall identify in the judgment  
35 and sentence the victim or victims entitled to restitution and what  
36 amount is due each victim. The state or victim may enforce the court-  
37 ordered restitution in the same manner as a judgment in a civil  
38 action. Restitution collected through civil enforcement must be paid  
39 through the registry of the court and must be distributed

1 proportionately according to each victim's loss when there is more  
2 than one victim.

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

--- END ---