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**SENATE BILL 5841**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Senator Lovick

Prefiled 12/13/23.

1 AN ACT Relating to requiring individuals convicted of offenses  
2 related to driving under the influence to pay financial support to  
3 minor children and dependents when the offense results in the death  
4 or disability of a parent; and amending RCW 9.94A.753.

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

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

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

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

1 sentence unless his or her inability to make payments resulted from a  
2 refusal to accept an employment offer to a class I or class II job or  
3 a termination for cause from such a job.

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

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

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

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

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

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

37 (6) Restitution for the crime of rape of a child in the first,  
38 second, or third degree, in which the victim becomes pregnant, shall  
39 include: (a) All of the victim's medical expenses that are associated  
40 with the rape and resulting pregnancy; and (b) child support for any

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

20 (7) Restitution for the crime of driving under the influence,  
21 vehicular homicide while under the influence of intoxicating liquor  
22 or any drug, or vehicular assault while under the influence of  
23 intoxicating liquor or any drug, which causes the death or permanent  
24 disability of a parent or guardian of a minor child, the sentencing  
25 court may order the defendant to pay restitution in the form of  
26 financial support for each child or dependent of the victim in an  
27 amount calculated to provide financial support for each child or  
28 dependent until the child or dependent reaches 18 years of age. In  
29 determining an amount that is reasonable and necessary for the  
30 financial support of the victim's child or dependent, the court shall  
31 consider all relevant factors, including the financial needs and  
32 resources of the child or dependent, the financial needs and  
33 resources of the surviving parent or guardian of the child or  
34 dependent, the standard of living to which the child or dependent is  
35 accustomed, and the reasonable child care expenses of the surviving  
36 parent or guardian. The court shall order that payments made to  
37 financially support the child or dependent be made to the clerk of  
38 court for remittance to the child or dependent's surviving parent or  
39 guardian. The amount of the restitution ordered under this subsection  
40 shall be offset by amounts paid to the victim by the defendant or

1 defendant's insurance as the result of any civil judgment or  
2 settlement addressing lost wages or impairment of future earnings.

3 (8) Regardless of the provisions of subsections (1) through  
4 ~~((6))~~ (7) of this section, the court shall order restitution in all  
5 cases where the victim is entitled to benefits under the crime  
6 victims' compensation act, chapter 7.68 RCW. If the court does not  
7 order restitution and the victim of the crime has been determined to  
8 be entitled to benefits under the crime victims' compensation act,  
9 the department of labor and industries, as administrator of the crime  
10 victims' compensation program, may petition the court within one year  
11 of entry of the judgment and sentence for entry of a restitution  
12 order. Upon receipt of a petition from the department of labor and  
13 industries, the court shall hold a restitution hearing and shall  
14 enter a restitution order.

15 ~~((8))~~ (9) In addition to any sentence that may be imposed, an  
16 offender who has been found guilty of an offense involving fraud or  
17 other deceptive practice or an organization which has been found  
18 guilty of any such offense may be ordered by the sentencing court to  
19 give notice of the conviction to the class of persons or to the  
20 sector of the public affected by the conviction or financially  
21 interested in the subject matter of the offense by mail, by  
22 advertising in designated areas or through designated media, or by  
23 other appropriate means.

24 ~~((9))~~ (10) This section does not limit civil remedies or  
25 defenses available to the victim, survivors of the victim, or  
26 offender including support enforcement remedies for support ordered  
27 under subsection (6) of this section for a child born as a result of  
28 a rape of a child victim. The court shall identify in the judgment  
29 and sentence the victim or victims entitled to restitution and what  
30 amount is due each victim. The state or victim may enforce the court-  
31 ordered restitution in the same manner as a judgment in a civil  
32 action. Restitution collected through civil enforcement must be paid  
33 through the registry of the court and must be distributed  
34 proportionately according to each victim's loss when there is more  
35 than one victim.

36 ~~((10))~~ (11) If a person has caused a victim to lose money or  
37 property through the filing of a vehicle report of sale in which the  
38 designated buyer had no knowledge of the vehicle transfer or the  
39 fraudulent filing of the report of sale, upon conviction or when the  
40 offender pleads guilty and agrees with the prosecutor's

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

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