

# Washington Law Review

---

Volume 62 | Number 2

---

4-1-1987

## Court-Ordered Criminal Restitution in Washington

Scott Peterson

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>

Digital Part of the [Criminal Procedure Commons](#)  
Commons

---

### Network Recommended Citation

Logo  
Scott Peterson, Washington Survey, *Court-Ordered Criminal Restitution in Washington*, 62 Wash. L. Rev. 357 (1987).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol62/iss2/8>

This Washington Survey is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact [cnyberg@uw.edu](mailto:cnyberg@uw.edu).

## COURT-ORDERED CRIMINAL RESTITUTION IN WASHINGTON

Court-ordered restitution is an effective way to reduce the societal costs of crime. When a sentencing court orders a criminal defendant to make restitution to the victim of his or her crime, the victim is compensated, the offender is punished or rehabilitated, and future crime is deterred.<sup>1</sup> The benefit may be even greater when a court orders an offender to make restitution in lieu of incarceration. The offender avoids jail or prison and the public avoids the expense of incarceration.

Although some commentators define restitution to include community service obligations,<sup>2</sup> restitution in Washington generally takes the form of cash payments by the offender to the victim for injuries caused by the crime.<sup>3</sup> Washington statutes empower sentencing courts to order restitution as an alternative to a fine,<sup>4</sup> in addition to any sentence imposed,<sup>5</sup> or as a condition of a suspended sentence, probation, or community supervision.<sup>6</sup> Restitution is mandatory for juvenile offenders in Washington.<sup>7</sup>

The current statutory scheme for restitution in Washington consists of several overlapping statutes dating from 1939.<sup>8</sup> The number of statutes

---

1. See *infra* text accompanying notes 10–19.

2. B. GALAWAY & J. HUDSON, OFFENDER RESTITUTION IN THEORY AND ACTION 1 (1977).

3. The Sentencing Reform Act of 1981, 1981 Wash. Laws ch. 137 (codified at WASH. REV. CODE §§ 9.94A.010–.910 (1985 & Supp. 1986)) [hereinafter Sentencing Reform Act], defines restitution as “the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages.” *Id.* § 9.94A.030(15). The Juvenile Justice Act of 1977, 1977 Wash. Laws ch. 291 (codified at WASH. REV. CODE §§ 13.40.010–.450 (1985 & Supp. 1986)) [hereinafter Juvenile Justice Act], defines restitution as “financial reimbursement by the offender to the victim . . . .” *Id.* § 13.40.020(17).

4. WASH. REV. CODE § 9A.20.030 (1985).

5. *Id.* The Sentencing Reform Act provides that a sentencing court may order restitution as a component of a sentence for any felony. *Id.* § 9.94A.140.

6. Under the Sentencing Reform Act, a court may order restitution for certain felony offenders as a condition of community supervision when the court waives imposition of sentence or as a condition of a suspended sentence. *Id.* § 9.94A.120(5)(f), (7)(a)(v). Restitution may be ordered as a condition of probation coupled with a suspended or deferred sentence for misdemeanors and gross misdemeanors. *Id.* §§ 9.92.060, .95.210.

7. The Juvenile Justice Act provides that the court “shall require the respondent to make restitution” in addition to any other punishment imposed unless the offender does not have or cannot acquire the means to pay or is committed to confinement for a period in excess of fifteen weeks. *Id.* § 13.40.190(1).

8. The first Washington statute authorizing restitution was enacted in 1939. 1939 Wash. Laws ch. 125, § 5-b. It authorized a sentencing court to order “full or partial restitution” as a condition of probation whenever the court deferred the imposition or execution of sentence. The present statute authorizing restitution as a condition of probation, § 9.95.210, was based on the 1939 statute. Since 1939, the legislature has amended § 9.92.060 to authorize restitution as a condition of a suspended sentence, 1949 Wash. Laws ch. 76, § 1, has enacted § 9A.20.030 authorizing restitution as an alternative to a fine, 1975 Wash Laws ch. 260, § 9A.20.030, and has enacted the Juvenile Justice Act

reflects a legislative and popular preference for restitution as a sentencing option in Washington.<sup>9</sup> As the number of statutes authorizing restitution has increased, so have the decisions interpreting those statutes. As a result, restitution has become a complex and often confusing area of criminal sentencing.

This survey is an overview of court-ordered restitution in Washington. It reconciles the case law interpreting the restitution statutes currently in effect in Washington. It compares and contrasts the statutes. Finally, it is an effort to identify areas of the law that need additional judicial or legislative clarification.

## I. THE PURPOSES OF RESTITUTION

Commentators have justified restitution in criminal sentencing on grounds of rehabilitation, deterrence, retribution, and compensation.<sup>10</sup> One commentator has suggested that restitution may improve an offender's self image and sense of control over his or her life.<sup>11</sup> Another concludes that as a group, criminal defendants who are ordered to make restitution are less likely to become repeat offenders.<sup>12</sup>

Washington courts have looked to the purposes of restitution to guide their interpretation of the statutes.<sup>13</sup> They have emphasized the penal and rehabilitative purposes of restitution to distinguish restitution orders from civil damage awards.<sup>14</sup> One Washington court has held that statutes authorizing restitution in addition to incarceration are meant primarily to punish, while statutes authorizing restitution as an alternative to incarceration are meant primarily to rehabilitate.<sup>15</sup>

---

and the Sentencing Reform Act, both of which contain separate restitution provisions.

9. A recent newspaper article suggests that restitution is gaining popularity among trial judges nationwide. *Seattle Times*, Nov. 16, 1986, at A 13, col. 1.

10. See, e.g., C. ABEL & F. MARSH, *PUNISHMENT AND RESTITUTION: A RESTITUTIONARY APPROACH TO CRIME AND THE CRIMINAL* 8-14 (1984).

11. Siegel, *Court Ordered Victim-Restitution: An Overview of Theory and Action*, 5 *NEW ENG. J. PRISON L.* 135, 139 (1979).

12. B. GALAWAY & J. HUDSON, *supra* note 2, at 155.

13. *State v. Eyre*, 39 Wn. App. 141, 144, 692 P.2d 853, 854 (1984) (purposes of restitution as a condition of probation are to aid victims and to punish and rehabilitate offenders); *State v. Smith*, 33 Wn. App. 791, 797, 658 P.2d 1250, 1254 (1983) (purposes of restitution under the Juvenile Justice Act are to reimburse victims and to hold the juvenile accountable for his conduct); *State v. Rogers*, 30 Wn. App. 653, 657, 638 P.2d 89, 91 (1981) (objectives of allowing restitution as an alternative to imprisonment are to provide reparation to victims and prevent future offenses).

14. *State v. Barr*, 99 Wn. 2d 75, 79, 658 P.2d 1247, 1249-50 (1985) (trial judge's order of restitution was not an award of civil damages; primary purpose of restitution as a condition of probation is rehabilitative rather than compensatory); *State v. Martin*, 36 Wn. App. 1, 5, 670 P.2d 1082, 1085 (1983), *rev'd on other grounds*, 102 Wn. 2d 300, 684 P.2d 1290 (1984) (restitution imposed as a part of an offender's sentence is a rehabilitative tool, not an award of civil damages).

15. *State v. Barnett*, 36 Wn. App. 560, 562, 675 P.2d 626, 627 (1984) (restitution as a condition of

Washington courts have also used these purposive distinctions to resolve constitutional challenges to restitution orders. The Washington Supreme Court has held that a defendant's due process right to a jury determination of damages is not violated by a court order to pay restitution because a restitution order is not an award of civil damages.<sup>16</sup> In reaching its decision, the court emphasized the rehabilitative purpose of restitution ordered as a condition of probation.<sup>17</sup> The court also noted that although victim compensation is a valid purpose of restitution, it is a secondary purpose.<sup>18</sup> Another Washington court has relied on the purposes of restitution to reject a defendant's argument that enforcement of a restitution order by incarceration amounts to imprisonment for debt. The court emphasized the purposes of restitution to distinguish between a restitution order and a civil debt, holding that a restitution order is not a debt under the state constitution.<sup>19</sup>

## II. LIMITS ON THE JUDICIAL AUTHORITY TO ORDER RESTITUTION

### A. *The Statutory Scheme*

Washington courts lack inherent authority to order restitution and must look to the statutes for that authority.<sup>20</sup> Washington courts derive the power

---

a suspended sentence, a deferred sentence, or probation is remedial; restitution as an alternative to a fine, however, is penal). The language of the statutes also supports this dichotomy. Sections 9.94A.140 and 9A.20.030 provide for double restitution, while the statutes authorizing restitution as a condition of a suspended or deferred sentence do not. *See* WASH. REV. CODE §§ 9.94A.120, .92.060, .95.210 (1985). One commentator has noted that the rehabilitative value of restitution as an alternative to incarceration lies in part with the offender's ability to "avoid the pains of imprisonment and consequent stigma." Siegel, *supra* note 11, at 135, 140.

*Barnett* deals with §§ 9A.20.030, 9.92.060, and 9.95.210. Under the court's reasoning, however, restitution ordered under the Sentencing Reform Act may be either penal (when ordered as a condition of a determinate sentence) or rehabilitative (when ordered in lieu of incarceration). WASH. REV. CODE §§ 9.94A.120(5)(f), (7)(a)(v), .140(2) (1985). *But see* D. BOERNER, SENTENCING IN WASHINGTON: A LEGAL ANALYSIS OF THE SENTENCING REFORM ACT OF 1981, § 4.8, at 4-14 (1985) (restitution provisions of the Sentencing Reform Act have a strong punitive flavor).

16. *Barr*, 99 Wn. 2d at 79, 658 P.2d at 1249; *see also* cases cited *infra* note 81.

17. *Barr*, 99 Wn. 2d at 79, 658 P.2d at 1249.

18. The court stated that "[t]hrough partial compensation may be a concomitant result of restitution, it is not the primary purpose of such an order." *Id.* The court's decision implies that restitution ordered primarily to compensate the victim rather than for a penal or rehabilitative reason may violate the defendant's due process rights. *Cf.* *State v. Bedker*, 35 Wn. App. 490, 495-96, 667 P.2d 1113, 1116-17 (1983) (trial court's order of restitution met the requirements of the law including the requirement that probation serve as a rehabilitative tool).

19. *State v. Barklind*, 12 Wn. App. 818, 532 P.2d 633 (1975).

20. *State v. Eilts*, 94 Wn. 2d 489, 495, 617 P.2d 993, 997 (1980), *questioned by* *State v. Barr*, 99 Wn 2d 75, 658 P.2d 1247 (1983) (language of the new statute effectively overrules the decision in *Eilts*). In an addendum to the majority opinion in *State v. Mark*, 36 Wn. App. 428, 675 P.2d 1250 (1984), a case that followed the supreme court's reasoning in *Eilts*, Justice Ringold argued that a trial court's

to order restitution from statutes granting authority to set the terms and conditions of sentence.<sup>21</sup> The statutes give courts wide discretion to order criminal defendants to make restitution.<sup>22</sup> In addition to persons,<sup>23</sup> defendants,<sup>24</sup> offenders,<sup>25</sup> and respondents,<sup>26</sup> courts may order corporations and joint stock associations to make restitution under the statutes.<sup>27</sup> If more than one offender is sentenced for the same offense, courts may impose joint and several liability for restitution.<sup>28</sup>

Restitution statutes enacted prior to the Sentencing Reform Act of 1981<sup>29</sup> (Sentencing Reform Act), authorized courts to order restitution as a condition of a suspended sentence for almost any misdemeanor, gross misdemeanor, or felony.<sup>30</sup> The statutes also permitted Washington courts to order restitution for any crime as a condition of probation coupled with a deferred or suspended sentence.<sup>31</sup>

The Sentencing Reform Act supplanted the prior sentencing statutes for felony offenders.<sup>32</sup> It replaced probation with community supervision.<sup>33</sup> It also abolished deferred sentences and, with limited exceptions, suspended sentences.<sup>34</sup> As a result, Washington courts may no longer order restitution

---

authority to sentence is derived from the state constitution and not the legislature. *Id.* at 436-439, 675 P.2d at 1254-56.

21. *State v. Bird*, 95 Wn. 2d 83, 622 P.2d 1262 (1980).

22. WASH. REV. CODE § 9.92.060 (1985) (court may require the convicted person to make monetary payments); § 9A.20.030(1) (court may order the defendant to pay an amount); § 9.94A.140(2) (restitution may be ordered); § 9.95.210 (court may require the defendant to make monetary payments). *But see* § 13.40.190(1) (court shall require the respondent to make restitution). The Washington Supreme Court has limited this discretion, however, by holding that a trial court may order restitution only if it is reasonably related to the defendant's duty to make reparation and to the prevention of future crimes. *Eilts*, 94 Wn. 2d at 493, 617 P.2d at 996.

23. WASH. REV. CODE § 9.92.060 (1985).

24. *Id.* § 9.95.210.

25. *Id.* §§ 9A.20.030, 9.94A.140.

26. *Id.* § 13.40.190.

27. *Id.* § 9A.20.030(2).

28. *See, e.g., id.* § 13.40.190.

29. *Supra* note 3.

30. Section 9.92.060 authorizes restitution as a condition of a suspended sentence for "any crime except murder, burglary in the first degree, arson in the first degree, robbery, carnal knowledge of a female child under the age of ten years, or rape . . . ."

31. WASH. REV. CODE § 9.95.210 (1985). Under a suspended sentence, the sentencing court imposes sentence upon the offender but defers *execution* of the sentence for a period of time during which the offender is placed on probation or community supervision. *Id.* §§ 9.92.060, .94A.120(7)(a). Under a deferred sentence, the sentencing court defers *imposition* of the sentence. The offender is also normally placed on probation. *Id.* §§ 9.95.210, .94A.120(5). If the offender successfully completes probation without violating the conditions of the deferred sentence (one of which may be restitution) the court may dismiss the charges. In addition to abolishing deferred sentences, the Sentencing Reform Act redefined "conviction" to include an adjudication of guilt. *Id.* § 9.94A.030(6).

32. *Id.* § 9.94A.010.

33. *See id.* § 9.94A.120(5)(f), (7)(a)(v).

34. *Id.* §§ 9.94A.130, .94A.120(7)(a)(v). Restitution has historically been a condition of proba-

as a condition of probation coupled with a suspended or deferred sentence for felonies committed after June 30, 1984.<sup>35</sup>

The Sentencing Reform Act permits sentencing courts to order restitution in addition to a sentence within a predetermined sentence range<sup>36</sup> for any felony “whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property.”<sup>37</sup> Because the Sentencing Reform Act abolishes deferred sentences and restricts suspended sentences, courts no longer have the wide discretion that existed under the prior statutes to order restitution as an alternative to incarceration. However, courts may order restitution under the Sentencing Reform Act for most first time felony offenders if the court waives imposition of sentence within the predetermined sentence range.<sup>38</sup> Courts may also order restitution as a condition of a suspended sentence for offenders convicted of certain sexual offenses.<sup>39</sup> Moreover, courts may order restitution without incarceration if the predetermined sentence range permits<sup>40</sup> and when no standard range exists for the crime.<sup>41</sup>

Because the Sentencing Reform Act applies only to felonies,<sup>42</sup> Washington courts may continue to order restitution as a condition of probation coupled with a suspended or deferred sentence for any misdemeanor or gross misdemeanor.<sup>43</sup> Moreover, Washington courts may order restitution in addition to other penalties as an alternative to a fine for any crime.<sup>44</sup>

---

tion. Under the Sentencing Reform Act, restitution is a condition of the sentence itself when the court suspends sentence, *id.* § 9.94A.120(7)(a), but is a condition of community supervision when the court waives imposition of sentence. *Id.* § 9.94A.120(5).

35. The effective date of § 9.94A.130, the provision of the Sentencing Reform Act abolishing deferred and suspended sentences, is July 1, 1984. *Id.* § 9.94A.905. The provision of the Sentencing Reform Act authorizing restitution as a component of a determinate sentence, § 9.94A.140, was signed into law on May 14, 1981. 1981 Wash. Laws ch. 137, § 14.

36. The Sentencing Reform Act provides that a sentencing court must impose sentence within the standard range established for the crime unless compelling circumstances exist. *Id.* § 9.94A.120(1), (2).

37. *Id.* § 9.94A.140(2).

38. The Sentencing Reform Act authorizes restitution for first time offenders other than those committing certain sexual offenses when the court elects to waive imposition of a determinate sentence. Restitution is a condition of community supervision. *Id.* § 9.94A.120(5)(f).

39. A court may order restitution under the Sentencing Reform Act as a condition of a suspended sentence coupled with community supervision for a first time sexual offender unless the offender has been convicted of first or second degree rape. *Id.* § 9.94A.120(7)(a)(v).

40. The standard sentence range under the Sentencing Reform Act is a function of the seriousness of the crime committed and the offender’s “score.” As a result, courts may order restitution in addition to a standard sentence that includes no jail time for less serious offenses under the Sentencing Reform Act. *Id.* §§ 9.94A.310–.330.

41. *Id.* § 9.94A.120(6).

42. *Id.* § 9.94A.010.

43. The Sentencing Reform Act abolished deferred sentences and limited suspended sentences only for felonies. *Id.* § 9.94A.130.

44. *Id.* § 9A.20.030; *see also* State v. Stephan, 35 Wn. App. 889, 897, 671 P.2d 780, 785 (1983) (a

### B. Defining "Victim"

The statutes authorize sentencing courts to order defendants to pay restitution to the "victim"<sup>45</sup> of the crime or to a "person" or "persons"<sup>46</sup> whose injury is related to the crime. The Washington Supreme Court has construed this language to include anyone whose loss resulted from the crime charged and proved, regardless of whether they are named as a victim in the complaint.<sup>47</sup> Washington appellate courts have upheld restitution to state agencies,<sup>48</sup> to the family of the primary victim,<sup>49</sup> or to the primary victim's insurance company<sup>50</sup> under the statutes.

Although the beneficiary of the order need not appear as a victim in the complaint before restitution is proper, the beneficiary must have been injured. Washington courts have struck down restitution orders requiring the defendant to contribute to a private charity<sup>51</sup> or to make child support payments to his own children<sup>52</sup> when the charity and the children were not injured as a result of the crime.

The statutes also require some relationship between the victim's injury and the crime committed. The language of the statutes, however, does not clearly indicate what that relationship must be. Restitution provisions in the Sentencing Reform Act and the Juvenile Justice Act<sup>53</sup> require that the

court may order restitution under § 9A.20.030 for a felony defined outside of Title 9A unless prohibited by the defining statute).

45. WASH. REV. CODE §§ 9A.20.030(1), 9.94A.140(1) (1985).

46. *Id.* §§ 9.92.060, .95.210, 13.40.190.

47. *State v. Barr*, 99 Wn.2d 75, 658 P.2d 1247 (1983). In *Barr*, the court held that restitution to the wife and child of a negligent homicide victim was proper under the statute. The court looked to recent amendments to the statutes to infer legislative intent that the courts should construe the statutes liberally to allow restitution. In doing so, the court departed from its previous decision in *State v. Eilts*, 94 Wn.2d 489, 617 P.2d 993 (1980), in which it held that restitution for victims not named in the complaint exceeds a sentencing court's statutory authority. *Barr*, 99 Wn.2d at 78, 658 P.2d at 1249.

48. *See State Liquor Control Bd. v. State Personnel Bd.*, 88 Wn.2d 368, 374, 561 P.2d 195, 198 (1977) (section 1.16.080 defines "person" to include a state agency); *State v. Forbes*, 43 Wn. App. 793, 800, 719 P.2d 941, 945 (1986) (trial court did not exceed its authority by ordering restitution to state agency for gambling losses of undercover detective); *State v. Jeffries*, 42 Wn. App. 142, 145, 709 P.2d 819, 821 (1985) (trial court did not exceed its authority by ordering restitution to state agency for disability and medical bills paid to victim).

49. *State v. Barr*, 99 Wn.2d 75, 658 P.2d 1247 (1983) (upholding order that defendant pay support to child of victim); *State v. Summers*, 60 Wn.2d 702, 375 P.2d 143 (1962) (upholding order that defendant pay funeral expenses to family of deceased child).

50. *See State v. Barnett*, 36 Wn. App. 560, 562, 675 P.2d 626, 627 (1984) (for purposes of restitution in criminal cases, insurers are damaged when they are required to pay claims as a result of the crime).

51. *State v. Theroff*, 33 Wn. App. 741, 744, 657 P.2d 800, 802 (1983) (order that defendant make restitution to a private charity struck down because the payment was not related to the crime).

52. *State v. Summers*, 60 Wn.2d 702, 707, 375 P.2d 143, 145-46 (1962) (order requiring defendant to make child support payments to his own children struck down where no order to make child support payments existed and children were not victims of the crime).

53. *Supra* note 3.

## Criminal Restitution

victim's loss 'result' from the offense committed.<sup>54</sup> Statutes authorizing restitution as a condition of probation or of a suspended or deferred sentence permit restitution whenever the victim's loss is "by reason of the commission of the crime in question."<sup>55</sup> The statute authorizing restitution as an alternative to a fine permits a sentencing court to order restitution whenever the defendant gains or the victim loses money or property "through the commission of a crime."<sup>56</sup>

Division One of the Washington Court of Appeals has interpreted this language to require that an element of the crime charged and proved *cause* the victim's injury before restitution is proper. Under this causation approach, Division One has struck down restitution ordered for damages caused by a hit and run driver because the injury did not result from defendant's leaving the scene of the accident, the gravamen of the offense.<sup>57</sup> In another decision, Division One reversed a restitution order for injuries caused by a knife-brandishing juvenile because the juvenile injured the victim during an assault occurring just prior to the crime for which the juvenile was convicted.<sup>58</sup>

The causal connection between the crime and the injury may be tenuous under Division One's causation approach without affecting the outcome. Division One has upheld restitution ordered for a defendant convicted of possession of stolen property because the defendant's possession was part of a scheme to dispose of the property that caused the victim's loss, although the trial court did not find that the defendant actually took the property.<sup>59</sup> Division One has also upheld restitution ordered for shoddy work performed by an unlicensed contractor because the victim could have satisfied a civil damage award against the defendant's bond had the defendant been licensed.<sup>60</sup>

---

54. WASH. REV. CODE §§ 9.94A.140(2), 13.40.190 (1985).

55. *Id.* §§ 9.95.210, .92.060.

56. *Id.* § 9A.20.030(1).

57. *State v. Hartwell*, 38 Wn. App. 135, 138-41, 684 P.2d 778, 779-81 (1984). Other states have also refused to allow restitution for the crime of hit and run. *See, e.g., People v. Becker*, 349 Mich. 476, 84 N.W.2d 833 (1957) (restitution order for hit and run struck down to protect defendant's due process rights to a civil determination of damages).

58. *State v. Ashley*, 40 Wn. App. 877, 700 P.2d 1207 (1985). In *Ashley*, the defendant was convicted of second degree assault after he threatened the victim with a knife. The defendant and other juveniles had assaulted the victim earlier that same night, injuring the victim and damaging the victim's property. The juveniles also took the victim's mo-ped. When the victim returned to reclaim his mo-ped, the defendant appeared with the knife. The trial court ordered restitution for the earlier assault, reasoning that restitution was proper because of the close proximity of the two assaults. The appellate court reversed, holding that the victim's injury must have been caused by an element of the assault charged. *Id.* at 878-79, 700 P.2d at 1208 (citing *State v. Mark*, 36 Wn. App. 428, 675 P.2d 1250 (1984)).

59. *State v. Rogers*, 30 Wn. App. 653, 656, 638 P.2d 89, 91 (1981).

60. *State v. Bedker*, 35 Wn. App. 490, 667 P.2d 1113 (1983). In *Bedker*, the defendant was



The Washington Supreme Court has not expressly adopted this strict causal requirement. The court has required only that the defendant stand convicted of a crime before he is ordered to pay restitution,<sup>61</sup> and that restitution be reasonably related either to the defendant's duty to make reparation or to the prevention of future crimes.<sup>62</sup> The court has also held that the restitution statutes should "be interpreted broadly to allow restitution", when it "best serves the rehabilitative goals suggested by commentators."<sup>63</sup>

Other courts have developed different approaches to limit the scope of restitution for uncharged crimes. California courts have limited restitution for uncharged crimes to circumstances in which the defendant's state of mind for the uncharged or unproved crime was the same as for the crime charged and proved.<sup>64</sup> Oregon courts have limited restitution to damages that would have been recoverable in a civil action arising from the same facts constituting the criminal activity.<sup>65</sup>

Another purpose of these limits is to prevent sentencing courts from violating a defendant's due process rights by ordering restitution for uncharged or unproved crimes. Under Washington law, restitution for an injury can only be ordered after a full criminal trial in which the defendant's due process rights are preserved.<sup>66</sup> Sentencing courts ordering restitution for crimes not charged and proved may therefore violate defendant's right to trial.<sup>67</sup>

---

convicted of violating § 18.27.020, which requires contractors to obtain a bond and insurance and to register with the state Department of Licensing. The defendant did the work when she was not bonded, insured, or registered. The trial court characterized the work done as "dangerous" and "extremely poor." *Id.* at 494, 667 P.2d at 1116. In upholding the trial court's order of restitution, Division One of the Washington Court of Appeals looked to the purposes of the contractor registration statute—to protect the public from incompetent and fraudulent contractors—to distinguish the restitution order from an award of civil damages. *Id.* at 494, 667 P.2d at 1116.

61. *In re Gardner*, 94 Wn. 2d 504, 507, 617 P.2d 1001, 1003 (1980).

62. *State v. Eilts*, 94 Wn. 2d 489, 493, 617 P.2d 993, 996 (1980), *questioned by State v. Barr*, 99 Wn. 2d 75, 658 P.2d 1247 (1983).

63. *State v. Barr*, 99 Wn. 2d 75, 79, 658 P.2d 1247, 1249–50 (1983).

64. In *People v. Richards*, 17 Cal. 3d 614, 552 P.2d 97, 131 Cal. Rptr. 537 (1976), the court applied the following test: before a sentencing court may order restitution for uncharged or unproved crimes the sentencing court must find by evidence on the record that the defendant's state of mind for the uncharged or unproved crimes was the same as for the crime or crimes charged and proved. *Id.*, 17 Cal. 3d at 623, 552 P.2d at 103, 131 Cal. Rptr. at 543.

65. *State v. Dillon*, 292 Or. 172, 637 P.2d 602 (1981).

66. *Quick v. Jones*, 754 F.2d 1521, 1523 (9th Cir. 1984).

67. *Id.* at 1523; *State v. Mark*, 36 Wn. App. 428, 433, 675 P.2d 1250, 1253 (1984) (notwithstanding the broad scope of amendment to § 9.95.210, the statute does not authorize restitution beyond the crime in question or to victims of uncharged offenses). However, courts may order restitution for crimes that are not charged or proved pursuant to a plea agreement. See *infra* text accompanying notes 68-73.

## Criminal Restitution

### C. Plea Agreements

Plea agreements provide an exception to the rule that a court may not order restitution for a crime unless the crime is charged and proved. A defendant may agree to make restitution as part of a plea agreement for uncharged or unproved crimes as well as for the crime for which the plea is entered.<sup>68</sup> The prosecutor may offer to charge fewer offenses or a lesser included offense if the defendant agrees to make restitution for offenses not charged.<sup>69</sup>

Before entering a plea of guilty, a defendant must understand all direct consequences of the plea including the possibility of restitution.<sup>70</sup> The court or the prosecutor must therefore advise the defendant prior to the plea of the possibility of restitution for the crime or crimes pleaded to or for uncharged crimes before the court can properly order restitution for those crimes. Washington appellate courts have considered the circumstances surrounding the plea including any written plea agreement and defendant's statements on the record to determine whether defendant entered the agreement knowingly.<sup>71</sup>

The court or the prosecutor must clearly advise the defendant prior to the plea of the possibility of restitution. One court has limited restitution to the two crimes to which the defendant pleaded when he agreed to make restitution for crimes he "recalled" in return for the prosecutor's promise to leave thirty-six of thirty-eight burglary counts uncharged.<sup>72</sup> However, the defendant need not know the amount the prosecutor will request or who will be compensated. Another court has upheld restitution of \$50,000 to 148 victims of one count of securities fraud when the defendant understood only that the prosecutor would recommend restitution for the count charged.<sup>73</sup>

---

68. Identical language follows provisions in each of the statutes authorizing restitution: Restitution for uncharged crimes is proper if "the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement . . ." WASH. REV. CODE §§ 9.92.060, 9A.20.030(1), 9.94A.140(2), 9.95.210, 13.40.190(1) (1985).

69. See *supra* note 68.

70. *State v. Cameron*, 30 Wn. App. 229, 234, 633 P.2d 901, 905 (1981). Restitution is a direct consequence of a guilty plea. *Id.* at 233, 633 P.2d at 905.

71. *State v. Stephan*, 35 Wn. App. 889, 894, 671 P.2d 780, 783 (1983).

72. *In re Gardner*, 94 Wn. 2d 504, 617 P.2d 1001 (1980).

73. The plea agreement stated only that the defendant understood that the prosecutor would recommend restitution in return for charging only one of 24 possible counts of securities fraud. *Stephan*, 35 Wn. App. at 891, 671 P.2d at 782.

### III. LIMITS ON THE AMOUNT AND TERMS OF THE ORDER

#### A. *Determining the Amount*

Once a court has determined that restitution to a victim is proper, it has a duty under the statutes to determine the amount.<sup>74</sup> The court may determine the amount of restitution at the time of sentencing<sup>75</sup> based on the evidence at trial, or it may hold a subsequent restitution hearing if evidence on the record is insufficient to determine the amount.<sup>76</sup> A formal hearing to determine the amount of restitution is not required, however, if there is sufficient evidence on the record to support the amount ordered.<sup>77</sup> Evidence supporting the amount of restitution ordered is sufficient if it affords a reasonable basis for estimating the victim's loss and the sentencing court is not reduced to speculation or conjecture in arriving at the amount.<sup>78</sup> The prosecutor need only prove the amount of restitution at trial or at the restitution hearing by a preponderance of the evidence.<sup>79</sup>

Defendants have challenged the authority of sentencing courts to order restitution on the grounds that determination of the amount by a sentencing court violates the defendant's due process right to a civil determination of damages.<sup>80</sup> Washington courts have consistently rejected these challenges, holding that a criminal defendant has no right to a jury determination of the

---

74. WASH. REV. CODE § 9A.20.030(1) (1985) (court shall make a finding); § 9.94A.140(1) (court shall determine the amount); *see also* State v. Forbes, 43 Wn. App. 793, 719 P.2d 941 (1986). In *Forbes*, Division One of the Washington Court of Appeals held that a trial court could not delegate its responsibility under § 9.94A.140(1) to prescribe the amount of restitution to the Victim's Assistance Unit of the King County prosecutor's office. *Id.* at 800, 719 P.2d at 945. The Juvenile Justice Act, however, requires only that the "court may determine the amount . . . ." WASH. REV. CODE § 13.40.190 (1985).

75. *See, e.g.*, WASH. REV. CODE § 9.94A.140(1) (1985) (court shall determine the amount at a sentencing hearing or within 60 days).

76. *See, e.g., id.* § 9A.20.030(1) (if the record does not contain sufficient evidence, the court may conduct a hearing on the issue).

77. State v. Moreau, 35 Wn. App. 688, 696, 669 P.2d 483, 488 (1983) (amount of restitution ordered under § 9.95.210 without a hearing was proper when there was evidence before the court supporting the amount). *But see* State v. Rogers, 30 Wn. App. 653, 658, 638 P.2d 89, 92 (1981) (when the amount of restitution greatly exceeds the amount proved for conviction, the trial judge must make findings on the record of the amount of loss suffered).

78. State v. Bush, 34 Wn. App. 121, 124, 659 P.2d 1127, 1129 (1983).

79. *See id.* at 124, 659 P.2d at 1129 (adopting the civil measure of damages for determining restitution); D. BOERNER, *supra* note 15, § 4.8, at 4-16. The Sentencing Reform Act provides that facts admitted, acknowledged, or stated in presentence reports and not objected to at the time of sentencing are deemed proved by a preponderance of the evidence at a subsequent evidentiary hearing. WASH. REV. CODE § 9.94A.370 (1985). No statute expressly places the burden of proof on the prosecution. However, § 9A.20.030(1) states that "[i]t shall be the duty of the prosecuting attorney to investigate the alternative of restitution and recommend it to the court . . . ."

80. *See, e.g.*, State v. Barr, 99 Wn. 2d 75, 658 P.2d 1247 (1983); State v. Mark, 36 Wn. App. 428, 675 P.2d 1250 (1984); State v. Bedker, 35 Wn. App. 490, 667 P.2d 1113 (1983).

## Criminal Restitution

amount of restitution.<sup>81</sup> One court has held that if evidence on the record is insufficient, due process entitles a defendant only to a restitution hearing with an opportunity to present testimony, cross-examine witnesses, and other trial protections.<sup>82</sup> The Washington Supreme Court has rejected a similar due process challenge by emphasizing the distinction between restitution orders and civil damage awards.<sup>83</sup>

Courts may order defendants to pay restitution in an amount equal to twice the victim's actual loss when restitution is ordered as an alternative to a fine<sup>84</sup> or in addition to a standard-range sentence under the Sentencing Reform Act.<sup>85</sup> The provisions for double restitution underscore the punitive nature of restitution when it is ordered as a component of a sentence rather than as a condition of a deferred or suspended sentence, probation, or community supervision.<sup>86</sup>

### *B. The Type of Injuries Compensable*

The statutes contain language of varying strength and clarity concerning the type of damages that may be included in the order. The Sentencing Reform Act and the Juvenile Justice Act each restrict restitution to "easily ascertainable damages" for property losses, expenses for treatment of physical injuries, and lost wages.<sup>87</sup> Both statutes exclude recovery for "mental anguish, pain and suffering, or other intangible losses."<sup>88</sup>

---

81. *Barr*, 99 Wn. 2d at 79, 658 P.2d at 1249 (defendant's due process right to a jury determination of damages is not violated by a court order to pay restitution because a restitution order is not an award of civil damages); *Mark*, 36 Wn. App. at 435, 675 P.2d at 1254 (defendant who had an opportunity to present testimony, cross-examine witnesses, and had other protections at a restitution hearing received all the procedural due process due); *Bedker*, 35 Wn. App. at 493-95, 667 P.2d at 1115-16 (a restitution award does not violate a defendant's due process right to a jury determination of damages if it is in fact restitution and not an award of civil damages).

82. *Mark*, 36 Wn. App. at 435, 675 P.2d at 1254. It is unclear whether due process requires strict adherence to the rules of evidence at a restitution hearing. *Cf.* WASH. R. EVID. 1101(c)(3) (evidence rules need not apply to sentencing hearings).

83. *Barr*, 99 Wn. 2d at 79, 658 P.2d at 1249.

84. WASH. REV. CODE § 9A.20.030 (1985).

85. *Id.* § 9.94A.140.

86. *See supra* note 15. It is unclear whether double restitution may or should be ordered under the Sentencing Reform Act when the court waives imposition of or suspends sentence. Section 9.94A.140 appears to authorize double restitution for any sentence. On the other hand, § 9.94A.120, which authorizes restitution as a condition of a suspended sentence or community supervision, does not expressly provide for double restitution. If the purpose of restitution as a condition of a deferred or suspended sentence is to rehabilitate the offender, and if double restitution is punitive, then courts should not impose double restitution under the Sentencing Reform Act when the court elects to waive imposition of or suspend sentence under § 9.94A.120.

87. The Sentencing reform act limits the recoverable injuries to "easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages

The phrase "easily ascertainable damages" has been interpreted to refer to the type of damages and not the burden of proof.<sup>89</sup> Moreover, damages may be "easily ascertainable" although disputed by the defendant.<sup>90</sup> One Washington court has held that the cost of long distance telephone calls and the costs of pursuing a civil remedy are also outside the scope of this language.<sup>91</sup>

Statutes enacted prior to the Sentencing Reform Act authorizing restitution as a condition of probation do not clearly define the type of damages that may be the subject of a restitution order.<sup>92</sup> Restitution orders under these statutes have compensated intangible injuries and losses as well as easily ascertainable damages. Washington appellate courts have upheld restitution ordered as a condition of probation in excess of the fair market value of property lost,<sup>93</sup> for pain and suffering,<sup>94</sup> for funeral expenses,<sup>95</sup> and for loss of consortium to the family of a deceased child<sup>96</sup> under these statutes.

A restitution order does not affect the civil remedies available to the victim or the civil defenses available to the defendant.<sup>97</sup> Victims may recover losses that are not properly compensable as restitution in a collateral civil proceeding subject to any civil defenses the offender may have.

---

resulting from injury." WASH. REV. CODE § 9.94A.140(1) (1985). The Juvenile Justice act is more restrictive, limiting recoverable injuries to "easily ascertainable damages for injury to or loss of property, actual expenses incurred for *medical* treatment for *physical* injury to persons, and lost wages resulting from *physical* injury." *Id.* § 13.40.020(17) (emphasis added). It is arguable that the omission of the word "physical" from the Sentencing Reform Act language permits recovery for psychological injury more severe than mental anguish.

88. *Id.* §§ 9.94A.140(1), 13.40.020(17).

89. *State v. Smith*, 33 Wn. App. 791, 797, 658 P.2d 1250, 1254 (1983).

90. *State v. Bush*, 34 Wn. App. 121, 659 P.2d 1127 (1983).

91. *State v. Morse*, 45 Wn. App. 197, 723 P.2d 1209 (1986).

92. The statutes refer only to the victim's "loss or damage." WASH. REV. CODE §§ 9.92.060, .95.210 (1985). The statute authorizing restitution in lieu of a fine is more specific, authorizing restitution for "the amount of money or the value of property or services gained or lost." *Id.* § 9A.20.030(1).

93. *State v. Smith*, 42 Wn. App. 399, 711 P.2d 372 (1985).

94. *State v. Morgan*, 8 Wn. App. 189, 504 P.2d 1195 (1973).

95. *State v. Summers*, 60 Wn. 2d 702, 375 P.2d 143 (1962).

96. *State v. Gunderson*, 74 Wn. 2d 226, 444 P.2d 156 (1968), *overruled on other grounds*, *State v. Gosby*, 85 Wn. 2d 758, 538 P.2d 680 (1975).

97. WASH. REV. CODE §§ 9.94A.140(4), 13.40.020(17) (1985); *see also* *State v. Barr*, 99 Wn. 2d 75, 79, 658 P.2d 1247, 1250 (1983) (restitution ordered as a condition of probation does not preempt the defendant's rights to a civil determination of damages). Moreover, restitution orders are not dischargeable in bankruptcy. *Kelly v. Robinson*, 107 S. Ct. 353 (1986). Criminal statutes requiring a defendant to satisfy tort judgments may violate the supremacy clause rendering the tort judgments dischargeable in bankruptcy. *See Perez v. Campbell*, 402 U.S. 637 (1971). In *Perez*, the Court invalidated an Arizona statute that suspended a defendant's driver's license until the driver satisfied tort judgments resulting from traffic accidents. The court held that a bankruptcy action stayed enforcement of the statute.

### C. *Setting and Modifying the Terms*

The Sentencing Reform Act and the Juvenile Justice Act grant sentencing courts discretion to fix the terms for payment of restitution orders.<sup>98</sup> The Sentencing Reform Act limits this discretion by requiring the court to specify a reasonable manner and time for the defendant to make restitution.<sup>99</sup> A sentencing court may order the defendant to pay restitution in installments under any of the statutes.<sup>100</sup>

A defendant who is financially unable to comply with a restitution order may ask the court to modify the amount or terms of the order under the statutes. Courts ordering restitution as a condition of probation for a misdemeanor or gross misdemeanor may modify the amount or terms of restitution at any time prior to termination of probation.<sup>101</sup> The Sentencing Reform Act and the Juvenile Justice Act also give the court authority to modify the amount or terms of the order.<sup>102</sup> Under the Sentencing Reform Act and the Juvenile Justice Act, offenders who have not complied with the order and who ask the court to modify the order bear the burden of convincing the court that their failure to pay was not willful and that they are financially unable to pay.<sup>103</sup>

A victim may recover damages from the defendant twice, once under a restitution order and once pursuant to a civil damage award under any of the statutes.<sup>104</sup> A defendant may avoid the risk of double liability by asking the sentencing court to modify its restitution order if the victim has successfully obtained or executed a civil judgment against the defendant for damages resulting from the crime committed.

## IV. COLLECTION AND ENFORCEMENT OF THE ORDER

### A. *The Willfulness Requirement*

If a defendant willfully fails to make restitution, a court may revoke the defendant's probation or impose further punishment.<sup>105</sup> Courts have held that a defendant who willfully refuses to acquire the means to pay may be

---

98. WASH. REV. CODE §§ 9.94A.140(1), 13.40.190 (1985).

99. *Id.* § 9.94A.120(9).

100. *Id.*; *see also id.* § 9.95.210 (court may require monetary payments); § 9.92.070 (court may order payment of fine or costs in installments).

101. *Id.* § 9.95.230.

102. The statutes permit courts to modify the amount or terms of the order if the defendant's failure to comply is not willful. WASH. REV. CODE §§ 9.94A.200(2)(c), 13.40.200(1), (2) (1985 & Supp. 1986).

103. *Id.* §§ 9.94A.200(2)(a), 13.40.200(2).

104. *See supra* note 97.

105. *See infra* text accompanying notes 114–20.

penalized as well.<sup>106</sup> However, the United States Supreme Court has held that imprisonment of an indigent defendant for failure to pay restitution is fundamentally unfair under the fourteenth amendment<sup>107</sup> when the defendant has made a reasonable effort to pay.<sup>108</sup>

Washington courts have interpreted the restitution provisions of the Juvenile Justice Act to give a juvenile defendant a right to a hearing to demonstrate inability to pay.<sup>109</sup> Juvenile courts may order restitution in excess of the respondent's present ability to pay<sup>110</sup> and the burden of showing inability to pay rests with the juvenile.<sup>111</sup>

Washington defendants have argued that judicial enforcement of restitution orders amounts to imprisonment for debt.<sup>112</sup> Division One of the Washington Court of Appeals has rejected one such challenge. In reaching its decision, the court distinguished between civil debts and restitution,

---

106. *Bearden v. Georgia*, 461 U.S. 660 (1983). The *Bearden* Court noted that the state may use imprisonment as a sanction to enforce collection when "a probationer's failure to make sufficient bona fide efforts to seek employment or borrow money in order to pay the fine or restitution . . . reflect[s] an insufficient concern for paying the debt he owes to society for his crime." *Id.* at 668.

In *State v. Barklind*, 87 Wn. 2d 814, 557 P.2d 314 (1976), the court held that a court order requiring the defendant to pay for the cost of court appointed counsel as a condition of probation did not violate the defendant's constitutional right to counsel or subject the defendant to imprisonment for debt. The court reasoned that the defendant's constitutional right to counsel is protected when probation is revoked "[o]nly if defendant willfully fails to make payments having the financial ability to do so or willfully fails to make a good faith reasonable effort to acquire means to make the payment . . ." *Id.* at 820, 557 P.2d at 319 (emphasis added).

The *Barklind* court did not elaborate on whether a defendant may be imprisoned for failure to make a reasonable effort to earn enough to pay restitution or only if a defendant refuses to liquidate existing assets to pay. Neither court analyzed whether a defendant may be imprisoned for failure to earn enough to pay restitution if he is capable of doing so in light of the prohibition against involuntary servitude of the thirteenth amendment of the United States Constitution.

107. *Bearden*, 461 U.S. at 666. The *Bearden* Court did not clearly state whether it decided the case on equal protection or due process grounds.

108. *Id.*; see also *Tate v. Short*, 401 U.S. 395 (1971) (states cannot convert a fine imposed under a felony statute into a jail term solely because the defendant cannot pay); *William v. Illinois*, 399 U.S. 235, 244 (1970) (states may not subject a class of persons to imprisonment beyond the statutory maximum because they are too poor to pay a fine).

The *Bearden* Court also held that the state may imprison a defendant who despite reasonable efforts has failed to pay restitution, but only if alternative punishments are inadequate to meet the state's interests. *Bearden*, 461 U.S. at 672. *But cf.* *State v. Bennett*, 35 Wn. App. 298, 666 P.2d 390 (1983). In *Bennett*, the court granted probation on the condition that defendant receive treatment as a sexual psychopath. The court revoked defendant's probation when the hospital evaluated defendant as untreatable. On appeal, the court held that the trial court could properly revoke defendant's probation even though defendant's failure to comply was not willful since the condition related to defendant's potential for rehabilitation. *Id.* at 301, 666 P.2d at 392.

109. *State v. Fellers*, 37 Wn. App. 613, 620, 683 P.2d 209, 214-15 (1984).

110. *State v. Jeffries*, 42 Wn. App. 142, 146, 709 P.2d 819, 821 (1985); *State v. Bush*, 34 Wn. App. 121, 124, 659 P.2d 1127, 1129 (1983).

111. WASH. REV. CODE § 13.40.200(2) (1985 & Supp. 1986).

112. See, e.g., *State v. Barklind*, 12 Wn. App. 818, 532 P.2d 633 (1975).

## Criminal Restitution

holding that restitution is not “debt” within the meaning of the state constitution.<sup>113</sup>

### B. Sanctions

When a court orders restitution as a condition of probation for a misdemeanor or gross misdemeanor, the court may revoke the defendant’s probation, impose or execute sentence, or otherwise change or modify its order of probation if the defendant willfully fails to comply with the order.<sup>114</sup> If the court has ordered restitution in lieu of a fine without probation, it may use its criminal contempt powers to enforce the order.<sup>115</sup> Courts placing defendants on probation for misdemeanors or gross misdemeanors may retain jurisdiction for up to two years to enforce the order.<sup>116</sup>

Under the Sentencing Reform Act, a court may enforce restitution ordered for a felony conviction by imposing further punishment of up to sixty days imprisonment for each willful violation.<sup>117</sup> The act authorizes the sentencing court to retain jurisdiction over the defendant for a period of up to ten years to enforce the order.<sup>118</sup> The Juvenile Justice Act empowers a sentencing court to enforce restitution by imposing a penalty of up to thirty days confinement<sup>119</sup> and authorizes continuing jurisdiction of up to eighteen months.<sup>120</sup>

The primary responsibility for monitoring the offender’s compliance with the order lies with the offender’s probation officer<sup>121</sup> or the department

---

113. The court held that the proscription of imprisonment for debt described by WASH. CONST. art. 1, § 17 refers to debts arising from express or implied contract. *Barklind*, 12 Wn. App. at 822, 532 P.2d at 636.

114. WASH. REV. CODE § 9.95.230 (1985); *see supra* text accompanying notes 105–08.

115. Section 9.23.010(4) provides that anyone who willfully disobeys an order of the court is guilty of a misdemeanor, punishable by up to 90 days in jail and a \$1,000 fine. Criminal contempt is a separate crime that must be charged by information or complaint, and the defendant is entitled to a jury trial. *State v. Boren*, 42 Wn. 2d 155, 158, 253 P.2d 939, 941 (1953).

116. Section 9.95.210, which authorizes restitution as a condition of probation, limits the probationary period to “the maximum term of sentence or two years, whichever is longer.” The maximum term of imprisonment for gross misdemeanors is one year. WASH. REV. CODE § 9A.20.021(2) (1985). Justice courts may retain jurisdiction over a defendant for two years after sentencing regardless of whether the defendant is placed on probation. *Id.* § 3.50.330. As a practical matter, probation is the most efficient way to monitor a defendant’s compliance with the order.

117. *Id.* § 9.94A.200.

118. *Id.* § 9.94A.140(1).

119. WASH. REV. CODE § 13.40.200 (1985 & Supp. 1986).

120. The act provides that juvenile courts may impose a term of community supervision for collection of restitution of six months for misdemeanors and one year for felonies, with a six-month extension if the juvenile needs additional time to pay. *Id.* §§ 13.40.080(4), .160(3).

121. *Id.* §§ 9.92.060, .95.210.



of corrections.<sup>122</sup> The court may initiate a proceeding to modify its order of judgment and to impose additional penalties on its own motion or on motion of the prosecutor under the Sentencing Reform Act.<sup>123</sup> For misdemeanors and gross misdemeanors, it is the probation officer's duty to notify the prosecutor if the defendant violates the order.<sup>124</sup> The prosecutor may then ask the court to revoke the offenders probation or to impose other sanctions for violation of the order.

## V. CONCLUSION

The statutory scheme for court-ordered restitution in Washington is complex. Washington courts have dealt with this complexity by consistently interpreting the statutes to further the purposes of restitution, to prevent abuse of discretion by sentencing courts, and to protect the rights of defendants.

The statutes grant sentencing courts wide discretion to order restitution but tend to restrict the circumstances and amount in which restitution may be ordered and the manner in which it may be enforced. Washington courts may order restitution whenever the victim's injury is caused by the crime committed and when the purposes of punishment, rehabilitation, or deterrence are furthered as a result. Courts may order restitution in an amount sufficient to compensate the victim for tangible physical injuries and damages caused by the crime. Moreover, courts may enforce restitution orders with incarceration whenever a defendant willfully fails to comply with the order.

Many questions remain unanswered by the statutes and case law. In deciding these questions, Washington courts should continue to focus on the purposes of restitution rather than placing undue emphasis on often cloudy statutory language. Washington appellate courts should uphold restitution orders whenever the purposes of restitution are furthered without violation of the defendant's rights or abuse of the sentencing court's discretion. Courts should also interpret the statutes to promote consistency in the terms and amounts of restitution orders and in the circumstances in which courts may order restitution.

*Scott Peterson*

---

122. *Id.* §§ 9.94A.140(1), .120(11).

123. *Id.* § 9.94A.200(2)(a).

124. *Id.* §§ 9.92.060, .95.210.