
HOUSE BILL 2888

State of Washington

57th Legislature

2002 Regular Session

By Representatives Cairnes and O'Brien

Read first time 02/01/2002. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to the availability of funds from convicted
2 criminals for compensating victims of crime; amending RCW 7.68.320;
3 adding new sections to chapter 7.68 RCW; adding a new section to
4 chapter 72.09 RCW; adding a new section to chapter 4.56 RCW; adding a
5 new section to chapter 4.96 RCW; adding a new section to chapter 35.31
6 RCW; adding a new section to chapter 36.33 RCW; repealing RCW 7.68.200,
7 7.68.210, 7.68.220, 7.68.230, 7.68.240, 7.68.250, 7.68.260, 7.68.270,
8 and 7.68.280; and prescribing penalties.

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

10 NEW SECTION. **Sec. 1.** The definitions in this section apply
11 throughout sections 2 through 7 of this act unless the context clearly
12 requires otherwise.

13 (1) "Convicted" means a verdict or finding of guilty, an agreement
14 to a plea of guilty, or a verdict or finding of not guilty by reason of
15 insanity.

16 (2) "Crime" means (a) any felony defined in the laws of the state;
17 or (b) an out-of-state or federal offense that under the laws of this
18 state would be a felony and: (i) The crime victim was a resident of
19 this state at the time of the commission of the offense; or (ii) the

1 act or acts constituting the offense occurred in whole or in part in
2 this state.

3 (3) "Crime victim" means a person who sustains emotional,
4 psychological, physical, or financial injury to person or property as
5 the result of a crime, or the representative of such person.

6 (4) "Earned income" means compensation paid or payable for personal
7 services, whether denominated as wages, salary, commission, bonuses, or
8 otherwise.

9 (5) "Funds of a convicted person" means all funds and property
10 received from any source by or on behalf of a person convicted of a
11 crime, or received by the representative of the person, excluding child
12 support and earned income, if the person has been convicted of a crime
13 and the person:

14 (a) Is serving a sentence of total or partial confinement with the
15 department of corrections, a local correctional facility, or a federal
16 correctional facility;

17 (b) Is subject to supervision by the state, a local jurisdiction,
18 or the federal government under an order of community custody,
19 postrelease supervision, home detention, probation or parole, deferred
20 prosecution or disposition, or any other form of supervision for the
21 conviction of a crime that does not involve confinement in a
22 correctional facility; or

23 (c) Has completed the requirements of any sentence and is no longer
24 under the supervision of the state, a local jurisdiction, or the
25 federal government, or has been discharged from a sentence by a court,
26 and if within three years of completion of the requirements of the
27 sentence or discharge of the offender, the offender received any funds
28 or property as a result of any interest, right, cause of action, or
29 claim of any kind that the offender obtained or that accrued prior to
30 the expiration of the offender's sentence or discharge.

31 (6) "Profits from a crime" means any tangible or intangible
32 property that is, directly or indirectly, obtained through or generated
33 from the commission of a crime, as a result of having committed the
34 crime, or from the sale, conversion, or exchange of proceeds of a
35 crime.

36 (7) "Representative" means one who represents or stands in the
37 place of another person, including but not limited to an agent, an
38 assignee, an attorney, a guardian, a partner, an administrator, an
39 executor, or an heir of another person, or a parent of a minor.

1 NEW SECTION. **Sec. 2.** (1) Every person, firm, corporation,
2 partnership, limited liability company, association, or other legal
3 entity, or representative of such person, firm, corporation,
4 partnership, limited liability company, association, or entity, that
5 knowingly contracts for, pays, or agrees to pay: Profits from a crime
6 to a person charged with or convicted of that crime, or to that
7 person's representative; or any funds of a convicted person where the
8 value, combined value, or aggregate value of the payment or payments of
9 such funds exceeds or will exceed ten thousand dollars, shall provide
10 written notice to the department of the payment or obligation to pay as
11 soon as practicable after discovering that the payment or intended
12 payment constitutes profits from a crime or funds of a convicted
13 person.

14 (2) A superintendent of a correctional facility, or any other
15 officer or employee of a correctional facility, who receives or will
16 receive funds of a convicted person on behalf of an inmate of the
17 facility where the value, combined value, or aggregate value of the
18 funds exceeds or will exceed ten thousand dollars shall report the
19 receipt of the funds to the department.

20 (3) The state, any agency or subdivision of the state, or any local
21 jurisdiction that makes a payment or is obligated to pay funds of a
22 convicted person where the value, combined value, or aggregate value of
23 such funds exceeds or will exceed ten thousand dollars shall provide
24 written notice of the payment or obligation to pay to the department.

25 (4) A convicted person, or the convicted person's representative,
26 who receives or will receive funds of a convicted person where the
27 value, combined value, or aggregate value of such funds exceeds or will
28 exceed ten thousand dollars shall provide written notice of the receipt
29 or right to receive payment of the funds to the department.

30 NEW SECTION. **Sec. 3.** Whenever the department receives a notice of
31 a contract, an agreement to pay, or payment of profits from a crime or
32 funds of a convicted person under section 2 of this act, or when the
33 department receives notice of a seizure and forfeiture of profits
34 proceeding under RCW 7.68.320, the department shall notify all known
35 crime victims of the crime from which the profits derive or of the
36 crime for which the convicted person was convicted of the existence of
37 the profits or funds at the crime victim's last known address. In
38 addition, the department shall publish a legal notice in newspapers of

1 general circulation in the county where the crime was committed and in
2 counties contiguous to such county advising any crime victims of the
3 existence of the profits or funds.

4 NEW SECTION. **Sec. 4.** (1) Notwithstanding any provision of the law
5 with respect to the timely bringing of an action, a crime victim has
6 the right to bring a civil action in a court of competent jurisdiction
7 to recover money damages from a person convicted of a crime of which
8 the crime victim is a victim, or the convicted person's representative,
9 within five years of the crime victim's discovery of any profits from
10 a crime or funds of a convicted person. A judgment obtained pursuant
11 to this section is not subject to execution or enforcement against the
12 first one thousand dollars deposited in an inmate account to the credit
13 of the inmate. In addition, if the civil action involves funds of a
14 convicted person and the funds were recovered by the convicted person
15 under a judgment obtained in a civil action, a judgment pursuant to
16 this section is not subject to execution or enforcement against the
17 first ten percent of any compensatory damages awarded in the action.

18 (2) A crime victim who files suit under the provisions of
19 subsection (1) of this section shall provide written notice of the
20 commencement of the action to the department by delivering a copy of
21 the summons and complaint to the department. The crime victim may also
22 give such notice to the department prior to filing the action so as to
23 allow the department time to apply for any appropriate provisional
24 remedies which are otherwise authorized to be invoked prior to the
25 commencement of an action.

26 NEW SECTION. **Sec. 5.** (1) Upon receipt of a copy of a summons and
27 complaint, or upon receipt of notice from the crime victim prior to
28 filing the action as provided in section 4 of this act, the department
29 shall immediately take such actions as are necessary to: (a) Notify
30 all other known crime victims of the alleged existence of profits from
31 a crime or funds of a convicted person by certified mail, return
32 receipt requested, if the victims' names and addresses are known by the
33 department; (b) publish, at least once every six months for five years
34 from the date it receives notice by a victim, a legal notice in
35 newspapers of general circulation in the county where the crime was
36 committed and in counties contiguous to such county advising any crime
37 victims of the existence of profits from a crime or funds of a

1 convicted person. For crimes committed in a county located within a
2 city having a population of one million or more, the notice must be
3 published in newspapers having general circulation in such city. The
4 department may, in its discretion, provide for such additional notice
5 as it deems necessary; and (c) avoid the wasting of the assets
6 identified in the complaint as the newly discovered profits from a
7 crime or as funds of a convicted person, in any manner consistent with
8 subsection (2) of this section.

9 (2) The department, acting on behalf of the plaintiff and all other
10 victims, has the right to apply for any and all provisional remedies
11 that are also otherwise available to the plaintiff, including the
12 provisional remedies of attachment, injunction, or receivership. On a
13 motion for a provisional remedy, the moving party shall state whether
14 any other provisional remedy has previously been sought in the same
15 action against the same defendant. The court may require the moving
16 party to elect between those remedies to which it would otherwise be
17 entitled.

18 NEW SECTION. **Sec. 6.** (1) Whenever it appears that a person or
19 entity has knowingly and willfully failed to give notice in violation
20 of section 2 of this act, other than the state, a subdivision of the
21 state, or a person who is a superintendent or other officer or employee
22 of a correctional facility required to give notice, the department is
23 authorized to serve a notice of hearing upon the person or entity by
24 personal service or by registered or certified mail. The notice must
25 contain the time, place, and purpose of the hearing. In addition, the
26 notice must be accompanied by a petition alleging facts of an
27 evidentiary character that support or tend to support that the person
28 or entity, who must be named in the notice as a respondent, knowingly
29 and willfully failed to give notice in violation of section 2 of this
30 act. Service of the notice and petition must take place at least
31 fifteen days prior to the date of the hearing.

32 (2) The director of the department, or any person designated by the
33 director, shall preside over the hearing. The presiding officer shall
34 administer oaths and may issue subpoenas. The presiding officer is not
35 bound by the rules of evidence or civil procedure, but his or her
36 determination must be based on a preponderance of the evidence. At the
37 hearing, the burden of proof is on the department, which shall be
38 represented by the counsel to the department or another person

1 designated by the department. The department shall produce witnesses
2 and present evidence in support of the alleged violation, which may
3 include relevant hearsay evidence. The respondent, who may appear
4 personally at the hearing, has the right of counsel and may cross-
5 examine witnesses and produce evidence and witnesses in his or her
6 behalf, which may include relevant hearsay evidence. The issue of
7 whether the person who received an alleged payment or obligation to pay
8 committed the underlying crime shall not be relitigated at the hearing.
9 If the alleged violation is the failure to give notice of a payment
10 amount involving two or more payments the combined value or aggregate
11 value of which exceeds ten thousand dollars, no violation shall be
12 found unless it is shown that such payments were intentionally
13 structured to conceal their character as funds of a convicted person,
14 as defined in section 1 of this act.

15 (3) At the conclusion of the hearing, if the presiding officer is
16 not satisfied that there is a preponderance of the evidence in support
17 of a violation, the officer shall dismiss the petition. If the
18 presiding officer is satisfied that there is a preponderance of the
19 evidence that the respondent committed one or more violations, the
20 officer shall so find. Upon such a finding, the presiding officer
21 shall prepare a written statement, to be made available to the
22 respondent and respondent's counsel, indicating the evidence relied on
23 and the reasons for finding the violation.

24 (4) The department shall adopt administrative rules governing the
25 procedures to be followed with respect to hearings, including rules for
26 the administrative appeal of a decision made under this section, in
27 accordance with the requirements of this section and chapter 34.05 RCW.

28 (5) Whenever it is found that a respondent knowingly and willfully
29 failed to give notice in violation of section 2 of this act, the
30 department shall impose an assessment of up to the amount of the
31 payment or obligation to pay and a civil penalty of up to one thousand
32 dollars or ten percent of the payment or obligation to pay, whichever
33 is greater. If a respondent fails to pay the assessment and civil
34 penalty imposed pursuant to this subsection, the assessment and civil
35 penalty may be recovered from the respondent by an action brought by
36 the attorney general, upon the request of the department, in any court
37 of competent jurisdiction. The department shall deposit the assessment
38 in an escrow account pending the expiration of the five-year statute of
39 limitations authorized by section 4 of this act to preserve such funds

1 to satisfy a civil judgment in favor of a person who is a crime victim
2 of a crime committed by the convicted person to whom such failure to
3 give notice relates. The department shall pay the civil penalty to the
4 state treasurer, who shall deposit the money as provided in RCW
5 43.08.250 and the money shall be used to compensate victims of crimes
6 through the crime victims' compensation fund.

7 (6) The department shall notify any crime victim or crime victims,
8 who may have a claim against the convicted person, of the existence of
9 any moneys deposited into an escrow account by the department. The
10 notice shall instruct the crime victims that they may have a right to
11 commence a civil action against the convicted person, as well as any
12 other information deemed necessary by the department.

13 (7) Upon a crime victim's presentation to the department of a civil
14 judgment against the convicted person for damages incurred as a result
15 of the crime, the department shall satisfy up to one hundred percent of
16 that judgment, including costs, with the escrowed fund obtained
17 pursuant to this section, but in no event shall the amount of all
18 judgments and costs satisfied from such escrowed funds exceed the
19 amount in escrow. If more than one crime victim indicates to the
20 department that they intend to commence or have commenced a civil
21 action against the convicted person, the department shall delay
22 satisfying any judgment or costs until the claims of all crime victims
23 are reduced to judgment. If the aggregate of all judgments or costs
24 obtained by crime victims exceeds the amount of escrowed funds, the
25 amount used to partially satisfy each judgment shall be reduced to a
26 pro rata share.

27 (8) After expiration of the five-year statute of limitations period
28 established under section 4 of this act, the department shall review
29 all judgments that have been satisfied from such escrowed funds. In
30 the event no claim was filed or judgment obtained prior to the
31 expiration of the five-year statute of limitations, the department
32 shall distribute the escrowed fund as follows: Fifty percent to the
33 state treasurer, who shall deposit the money as provided in RCW
34 43.08.250 and the money shall be used to compensate victims of crimes
35 through the crime victims' compensation fund; and fifty percent to the
36 respondent. In the event a claim or claims are pending at the
37 expiration of the statute of limitations, such funds shall remain
38 escrowed until the final determination of all such claims to allow the

1 department to satisfy any judgment which may be obtained by the crime
2 victim.

3 NEW SECTION. **Sec. 7.** The department shall develop a brochure to
4 be made available to crime victims that contains a summary of the
5 provisions of this act, the potential availability of a civil cause of
6 action for damages against the convicted person, how the crime victim
7 can obtain information about the status of any funds of a convicted
8 person or profits from a crime, and any other information the
9 department determines would aid individuals in obtaining compensation
10 for damages suffered by the crime victim as a result of the crime. The
11 department shall provide this brochure to the clerk of each superior
12 court to be made available by the court to crime victims.

13 NEW SECTION. **Sec. 8.** A new section is added to chapter 72.09 RCW
14 to read as follows:

15 Whenever the department receives funds of a convicted person, as
16 defined in section 1 of this act, on behalf of an inmate that amount to
17 a value, combined value, or aggregate value exceeding ten thousand
18 dollars, or when the total value of unencumbered funds in an inmate's
19 institutional account exceeds ten thousand dollars, the department
20 shall provide written notice to the department of labor and industries,
21 as required in section 2 of this act, of the availability of the funds.
22 The department shall provide written notice to all inmates who may be
23 subject to a requirement to report to the department of labor and
24 industries any funds of a convicted person of the requirements of this
25 act, the procedure for reporting, and potential penalties for failure
26 to comply.

27 NEW SECTION. **Sec. 9.** A new section is added to chapter 4.56 RCW
28 to read as follows:

29 In a case where damages are awarded to an inmate serving a sentence
30 of imprisonment with the department of corrections or to a prisoner
31 confined at a local correctional facility, the court shall give prompt
32 written notice to the department of labor and industries of the inmates
33 or prisoner's right to the judgment for damages.

34 NEW SECTION. **Sec. 10.** A new section is added to chapter 4.96 RCW
35 to read as follows:

1 In a case where payment arising out of a claim or judgment is to be
2 made to an inmate serving a sentence with the department of corrections
3 or to a prisoner confined at a local correctional facility, the office
4 of risk management shall give written notice of the obligation to pay
5 the claim or judgment, if required by section 2 of this act, to the
6 department of labor and industries.

7 NEW SECTION. **Sec. 11.** A new section is added to chapter 35.31 RCW
8 to read as follows:

9 In a case where payment for any reason is to be made to an inmate
10 serving a sentence with the department of corrections or to a prisoner
11 confined at a local correctional facility, the clerk or other financial
12 officer shall give written notice of the obligation to pay, if required
13 by section 2 of this act, to the department of labor and industries.

14 NEW SECTION. **Sec. 12.** A new section is added to chapter 36.33 RCW
15 to read as follows:

16 In a case where payment for any reason is to be made to an inmate
17 serving a sentence with the department of corrections or to a prisoner
18 confined at a local correctional facility, the county treasurer or
19 other financial officer shall give written notice of the obligation to
20 pay, if required by section 2 of this act, to the department of labor
21 and industries.

22 **Sec. 13.** RCW 7.68.320 and 1993 c 288 s 5 are each amended to read
23 as follows:

24 (1) Any property subject to seizure and forfeiture under RCW
25 7.68.310 may be seized by the prosecuting attorney of the county in
26 which the convicted person was convicted upon process issued by any
27 superior court having jurisdiction over the property. The prosecuting
28 attorney shall provide notice of the seizure and forfeiture proceeding
29 to the department of labor and industries for the purposes of notifying
30 crime victims.

31 (2) Proceedings for forfeiture are commenced by a seizure. Seizure
32 of real property shall include the filing of a lis pendens by the
33 seizing agency. Real property seized under this section shall not be
34 transferred or otherwise conveyed until ninety days after seizure or
35 until a judgment of forfeiture is entered, whichever is later, except
36 that such real property seized may be transferred or conveyed to any

1 person or entity who acquires title by foreclosure or deed in lieu of
2 foreclosure of a security interest.

3 (3) The prosecuting attorney who seized the property shall cause
4 notice to be served within fifteen days following the seizure on the
5 owner of the property seized and the person in charge thereof and any
6 person having any known right or interest therein, including any
7 community property interest, of the seizure and intended forfeiture of
8 the seized property. Service of notice of seizure of real property
9 shall be made according to the rules of civil procedure. However, the
10 state may not obtain a default judgment with respect to real property
11 against a party who is served by substituted service absent an
12 affidavit stating that a good faith effort has been made to ascertain
13 if the defaulted party is incarcerated within the state, and that there
14 is no present basis to believe that the party is incarcerated within
15 the state. The notice of seizure in other cases may be served by any
16 method authorized by law or court rule including but not limited to
17 service by certified mail with return receipt requested. Service by
18 mail shall be deemed complete upon mailing within the fifteen-day
19 period following the seizure. Notice of seizure in the case of
20 property subject to a security interest that has been perfected by
21 filing a financing statement in accordance with chapter 62A.9A RCW, or
22 a certificate of title, shall be made by service upon the secured party
23 or the secured party's assignee at the address shown on the financing
24 statement or the certificate of title.

25 (4) If no person notifies the seizing prosecuting attorney in
26 writing of the person's claim of ownership or right to possession of
27 the property within forty-five days for personal property or ninety
28 days for real property, the property seized shall be deemed forfeited.

29 (5) If any person notifies the seizing prosecuting attorney in
30 writing of the person's claim of ownership or right to possession of
31 the property within forty-five days for personal property or ninety
32 days for real property, the person or persons shall be afforded a
33 reasonable opportunity to be heard as to the claim or right. The
34 prosecuting attorney shall file the case into a court of competent
35 jurisdiction. In a court hearing between two or more claimants to the
36 article or articles involved, the prevailing party shall be entitled to
37 a judgment for costs and reasonable attorneys' fees. In cases
38 involving personal property, the burden of producing evidence shall be
39 by a preponderance and upon the person claiming to be the lawful owner

1 or the person claiming to have the lawful right to possession of the
2 property. In cases involving real property, the burden of producing
3 evidence shall be by a preponderance and upon the prosecuting attorney.
4 The seizing prosecuting attorney shall promptly return the property to
5 the claimant upon a determination by the prosecuting attorney or court
6 that the claimant is the present lawful owner or is lawfully entitled
7 to possession of the property.

8 (6) Upon the entry of an order of forfeiture of real property, the
9 court shall forward a copy of the order to the county auditor of the
10 county in which the property is located and to the department of labor
11 and industries for the purpose of notifying crime victims. Orders for
12 the forfeiture of real property shall be entered by the superior court,
13 subject to court rules.

14 (7) A forfeiture action under this section may be brought at any
15 time from the date of conviction until the expiration of the statutory
16 maximum period of incarceration that could have been imposed for the
17 crime involved.

18 (8) A forfeiture of property encumbered by a bona fide security
19 interest is subject to the interest of the secured party if at the time
20 the security interest was created, the secured party did not know that
21 the property was subject to seizure and forfeiture.

22 NEW SECTION. **Sec. 14.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 15.** Sections 1 through 7 of this act are each
27 added to chapter 7.68 RCW.

28 NEW SECTION. **Sec. 16.** The following acts or parts of acts are
29 each repealed:

30 (1) RCW 7.68.200 (Payment for reenactments of crimes--Contracts--
31 Deposits--Damages) and 1979 ex.s. c 219 s 13;

32 (2) RCW 7.68.210 (Payment may be directed based on contract) and
33 1979 ex.s. c 219 s 12;

34 (3) RCW 7.68.220 (Notice published of moneys in escrow) and 1979
35 ex.s. c 219 s 14;

1 (4) RCW 7.68.230 (Payment to accused if charges dismissed,
2 acquitted) and 1979 ex.s. c 219 s 15;
3 (5) RCW 7.68.240 (Payment if no actions pending) and 1988 c 155 s
4 4 & 1979 ex.s. c 219 s 16;
5 (6) RCW 7.68.250 (Persons not guilty for mental reasons deemed
6 convicted) and 1979 ex.s. c 219 s 17;
7 (7) RCW 7.68.260 (Time for filing action begins when escrow account
8 established) and 1979 ex.s. c 219 s 18;
9 (8) RCW 7.68.270 (Escrow moneys may be used for legal
10 representation) and 1979 ex.s. c 219 s 19; and
11 (9) RCW 7.68.280 (Actions to avoid law null and void) and 1979
12 ex.s. c 219 s 20.

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