CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5691

Chapter 346, Laws of 2011
(partial veto)

62nd Legislature
2011 Regular Session

CRIME VICTIMS' COMPENSATION

EFFECTIVE DATE: 07/01/11

Passed by the Senate April 21, 2011
YEAS 47   NAYS 0

BRAD OWEN
President of the Senate

Passed by the House April 7, 2011
YEAS 92   NAYS 0

FRANK CHOPP
Speaker of the House of Representatives

Approved May 12, 2011, 2:39 p.m., with
the exception of Sections 402, 503, 804,
and 805 which are vetoed.

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SUBSTITUTE SENATE BILL 5691 as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN
Secretary

FILED
May 13, 2011

CHRISTINE GREGOIRE
Governor of the State of Washington

SECRETARY OF STATE
State of Washington
AN ACT Relating to crime victims' compensation; amending RCW 7.68.020, 7.68.030, 7.68.075, 7.68.060, 7.68.070, 7.68.080, 7.68.085, 7.68.085, 7.68.125, 7.68.130, and 7.68.050; reenacting and amending RCW 7.68.070; adding new sections to chapter 7.68 RCW; creating new sections; repealing RCW 7.68.100; prescribing penalties; providing effective dates; providing an expiration date; and declaring an emergency.

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

NEW SECTION. Sec. 1. It is the intent of the legislature that eligible victims of crime who suffer bodily injury or death as a result of violent crime receive benefits under the crime victims' compensation program. To ensure benefits are provided, within funds available, to the largest number of eligible victims, it is imperative to streamline and provide flexibility in the administration of the program. Therefore, the legislature intends to simplify the administration of the benefits and services provided to victims of crime by separating the administration of the benefits and services provided to crime victims from the workers' compensation program under Title 51 RCW.
These changes are intended to clarify that the limited funding available to help victims of crimes will be managed to help the largest number of crime victims as possible.

I. DEFINITIONS

Sec. 101. RCW 7.68.020 and 2006 c 268 s 1 are each amended to read as follows:

The following words and phrases as used in this chapter have the meanings set forth in this section unless the context otherwise requires.

(1) "Department" means the department of labor and industries.

(2) "Accredited school" means a school or course of instruction which is:

   (a) Approved by the state superintendent of public instruction, the state board of education, or the state board for community and technical colleges; or

   (b) Regulated or licensed as to course content by any agency of the state or under any occupational licensing act of the state, or recognized by the apprenticeship council under an agreement registered with the apprenticeship council pursuant to chapter 49.04 RCW.

(2) "Average monthly wage" means the average annual wage as determined under RCW 50.04.355 as now or hereafter amended divided by twelve.

(3) "Beneficiary" means a husband, wife, registered domestic partner, or child of a victim in whom shall vest a right to receive payment under this chapter, except that a husband or wife of an injured victim, living separate and apart in a state of abandonment, regardless of the party responsible therefor, for more than one year at the time of the injury or subsequently, shall not be a beneficiary. A spouse who has lived separate and apart from the other spouse for the period of two years and who has not, during that time, received or attempted by process of law to collect funds for maintenance, shall be deemed living in a state of abandonment.

(4) "Child" means every natural born child, posthumous child, stepchild, child legally adopted prior to the injury, child born after the injury where conception occurred prior to the injury, and dependent child in the legal custody and control of the victim, all while under
the age of eighteen years, or under the age of twenty-three years while permanently enrolled as a full-time student in an accredited school, and over the age of eighteen years if the child is a dependent as a result of a physical, mental, or sensory handicap.

(5) "Criminal act" means an act committed or attempted in this state which is: (a) Punishable as a federal offense that is comparable to a felony or gross misdemeanor in this state; (b) punishable as a felony or gross misdemeanor under the laws of this state; (c) an act committed outside the state of Washington against a resident of the state of Washington which would be compensable had it occurred inside this state and the crime occurred in a state which does not have a crime victims' compensation program, for which the victim is eligible as set forth in the Washington compensation law; or (d) ((an act of terrorism as defined in 18 U.S.C. Sec. 2331, as it exists on May 2, 1997, committed outside of the United States against a resident of the state of Washington, except as follows)) trafficking as defined in RCW 9A.40.100. A "criminal act" does not include the following:

(i) The operation of a motor vehicle, motorcycle, train, boat, or aircraft in violation of law ((does not constitute a "criminal act")) unless:

(A) The injury or death was intentionally inflicted;

(B) The operation thereof was part of the commission of another nonvehicular criminal act as defined in this section;

(C) The death or injury was the result of the operation of a motor vehicle after July 24, 1983, and a preponderance of the evidence establishes that the death was the result of vehicular homicide under RCW 46.61.520, or a conviction of vehicular assault under RCW 46.61.522, has been obtained((: PROVIDED, That)). In cases where a probable criminal defendant has died in perpetration of vehicular assault or, in cases where the perpetrator of the vehicular assault is unascertainable because he or she left the scene of the accident in violation of RCW 46.52.020 or, because of physical or mental infirmity or disability the perpetrator is incapable of standing trial for vehicular assault, the department may, by a preponderance of the evidence, establish that a vehicular assault had been committed and authorize benefits;

(D) The injury or death was caused by a driver in violation of RCW 46.61.502; or
(E) The injury or death was caused by a driver in violation of RCW 46.61.655(7)(a), failure to secure a load in the first degree;

(ii) Neither an acquittal in a criminal prosecution nor the absence of any such prosecution is admissible in any claim or proceeding under this chapter as evidence of the noncriminal character of the acts giving rise to such claim or proceeding, except as provided for in (d)(i)(C) of this subsection;

(iii) Evidence of a criminal conviction arising from acts which are the basis for a claim or proceeding under this chapter is admissible in such claim or proceeding for the limited purpose of proving the criminal character of the acts; and

(iv) Acts which, but for the insanity or mental irresponsibility of the perpetrator, would constitute criminal conduct are deemed to be criminal conduct within the meaning of this chapter.

((3) "Victim" means a person who suffers bodily injury or death as a proximate result of a criminal act of another person, the victim's own good faith and reasonable effort to prevent a criminal act, or his or her good faith effort to apprehend a person reasonably suspected of engaging in a criminal act. For the purposes of receiving benefits pursuant to this chapter, "victim" is interchangeable with "employee" or "worker" as defined in chapter 51.08 RCW as now or hereafter amended.

(4) "Child," "accredited school," "dependent," "beneficiary," "average monthly wage," "director," "injury," "invalid," "permanent partial disability," and "permanent total disability" have the meanings assigned to them in chapter 51.08 RCW as now or hereafter amended.

(5+) (6) "Department" means the department of labor and industries.

(7) "Financial support for lost wages" means a partial replacement of lost wages due to a temporary or permanent total disability.

(8) "Gainfully employed" means engaging on a regular and continuous basis in a lawful activity from which a person derives a livelihood.

((6+)) (9) "Injury" means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom.

(10) "Invalid" means one who is physically or mentally incapacitated from earning wages.
(11) "Permanent total disability" means loss of both legs, or arms, or one leg and one arm, total loss of eyesight, paralysis, or other condition permanently incapacitating the victim from performing any work at any gainful occupation.

(12) "Private insurance" means any source of recompense provided by contract available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter.

((47)) (13) "Public insurance" means any source of recompense provided by statute, state or federal, available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter.

(14) "Temporary total disability" means any condition that temporarily incapacitates a victim from performing any type of gainful employment as certified by the victim's attending physician.

(15) "Victim" means a person who suffers bodily injury or death as a proximate result of a criminal act of another person, the victim's own good faith and reasonable effort to prevent a criminal act, or his or her good faith effort to apprehend a person reasonably suspected of engaging in a criminal act. For the purposes of receiving benefits pursuant to this chapter, "victim" is interchangeable with "employee" or "worker" as defined in chapter 51.08 RCW as now or hereafter amended.

II. GENERAL PROVISIONS

NEW SECTION. Sec. 201. On all claims under this chapter, claimants' written or electronic notices, orders, or warrants must be forwarded directly to the claimant until such time as there has been entered an order on the claim appealable to the department. Claimants' written or electronic notices, orders, or warrants may be forwarded to the claimant in care of a representative before an order has been entered if the claimant sets forth in writing the name and address of the representative to whom the claimant desires this information to be forwarded.

NEW SECTION. Sec. 202. The department may, at any time, on
receipt of written or electronic authorization, transmit amounts payable to a claimant or to the account of such person in a bank or other financial institution regulated by state or federal authority.

NEW SECTION. Sec. 203. (1) Except as provided in RCW 43.20B.720, 72.09.111, 74.20A.260, and 51.32.380, no money paid or payable under this chapter shall, before the issuance and delivery of the check or warrant, or disbursement of electronic funds or electronic payment, be assigned, charged, or taken in execution, attached, garnished, or pass or be paid to any other person by operation of law, any form of voluntary assignment, or power of attorney. Any such assignment or charge is void unless the transfer is to a financial institution at the request of a victim or other beneficiary and made in accordance with section 204 of this act.

(2)(a) If any victim suffers an injury and dies from it before he or she receives payment of any monthly installment covering financial support for lost wages for any period of time before his or her death, the amount of the monthly payment shall be paid to the surviving spouse or the child or children if there is no surviving spouse. If there is no surviving spouse and no child or children, the amount of the monthly payment shall be paid by the department and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015.

(b) Any application for compensation under this subsection (2) shall be filed with the department within one year of the date of death. The department may satisfy its responsibilities under this subsection (2) by sending any payment due in the name of the decedent and to the last known address of the decedent.

(3) Any victim or beneficiary receiving benefits under this chapter who is subsequently confined in, or who subsequently becomes eligible for benefits under this chapter while confined in, any institution under conviction and sentence shall have all payments of the compensation canceled during the period of confinement. After discharge from the institution, payment of benefits due afterward shall be paid if the victim or beneficiary would, except for the provisions of this subsection (3), otherwise be eligible for them.
NEW SECTION. Sec. 204. Any victim or other recipient of benefits under this chapter may elect to have any payments due transferred to such person's account in a financial institution for either: (1) Credit to the recipient's account in such financial institution; or (2) immediate transfer therefrom to the recipient's account in any other financial institution. A single warrant may be drawn in favor of such financial institution, for the total amount due the recipients involved, and written directions provided to such financial institution of the amount to be credited to the account of a recipient or to be transferred to an account in another financial institution for such recipient. The issuance and delivery by the disbursing officer of a warrant in accordance with the procedure set forth in this section and proper endorsement thereof by the financial institution shall have the same legal effect as payment directly to the recipient.

For the purposes of this section "financial institution" shall have the meaning given in RCW 41.04.240 as now or hereafter amended.

NEW SECTION. Sec. 205. (1) The department may require that the victim present himself or herself for a special medical examination by a physician or physicians selected by the department, and the department may require that the victim present himself or herself for a personal interview. The costs of the examination or interview, including payment of any reasonable travel expenses, shall be paid by the department as part of the victim's total claim under RCW 7.68.070(1).

(2) The director may establish a medical bureau within the department to perform medical examinations under this section.

(3) Where a dispute arises from the handling of any claim before the condition of the injured victim becomes fixed, the victim may request the department to resolve the dispute or the director may initiate an inquiry on his or her own motion. In these cases, the department shall proceed as provided in this section and an order shall issue in accordance with RCW 51.52.050.

Sec. 206. RCW 7.68.030 and 2009 c 479 s 7 are each amended to read as follows:

(1) It shall be the duty of the director to establish and administer a program of benefits to innocent victims of criminal acts
within the terms and limitations of this chapter. (In so doing, the
director shall, in accordance with chapter 34.05 RCW, adopt rules and
regulations necessary to the administration of this chapter, and the
provisions contained in chapter 51.04 RCW, including but not limited to
RCW 51.04.020, 51.04.030, 51.04.040, 51.04.050 and 51.04.100 as now or
hereafter amended, shall apply where appropriate in keeping with the
intent of this chapter.) The director may apply for and, subject to
appropriation, expend federal funds under Public Law 98-473 and any
other federal program providing financial assistance to state crime
victim compensation programs. The federal funds shall be deposited in
the state general fund and may be expended only for purposes authorized
by applicable federal law.

(2) The director shall:
(a) Establish and adopt rules governing the administration of this
chapter in accordance with chapter 34.05 RCW;
(b) Regulate the proof of accident and extent thereof, the proof of
death, and the proof of relationship and the extent of dependency;
(c) Supervise the medical, surgical, and hospital treatment to the
intent that it may be in all cases efficient and up to the recognized
standard of modern surgery;
(d) Issue proper receipts for moneys received and certificates for
benefits accrued or accruing;
(e) Designate a medical director who is licensed under chapter
18.57 or 18.71 RCW;
(f) Supervise the providing of prompt and efficient care and
treatment, including care provided by physician assistants governed by
the provisions of chapters 18.57A and 18.71A RCW, acting under a
supervising physician, including chiropractic care, and including care
provided by licensed advanced registered nurse practitioners, to
victims at the least cost consistent with promptness and efficiency,
without discrimination or favoritism, and with as great uniformity as
the various and diverse surrounding circumstances and locations of
industries will permit and to that end shall, from time to time,
establish and adopt and supervise the administration of printed forms,
electronic communications, rules, regulations, and practices for the
furnishing of such care and treatment. The medical coverage decisions
of the department do not constitute a "rule" as used in RCW
34.05.010(16), nor are such decisions subject to the rule-making
provisions of chapter 34.05 RCW except that criteria for establishing medical coverage decisions shall be adopted by rule. The department may recommend to a victim particular health care services and providers where specialized treatment is indicated or where cost-effective payment levels or rates are obtained by the department, and the department may enter into contracts for goods and services including, but not limited to, durable medical equipment so long as statewide access to quality service is maintained for injured victims;

(g) In consultation with interested persons, establish and, in his or her discretion, periodically change as may be necessary, and make available a fee schedule of the maximum charges to be made by any physician, surgeon, chiropractor, hospital, druggist, licensed advanced registered nurse practitioner, and physician assistants as defined in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to victims. The department shall coordinate with other state purchasers of health care services to establish as much consistency and uniformity in billing and coding practices as possible, taking into account the unique requirements and differences between programs. No service covered under this title, including services provided to victims, whether aliens or other victims, who are not residing in the United States at the time of receiving the services, shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action" as used in RCW 34.05.010(3), nor does such a fee schedule constitute a "rule" as used in RCW 34.05.010(16);

(h) Make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured victims, shall approve and pay those which conform to the adopted rules, regulations, established fee schedules, and practices of the director and may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules, regulations, or the established fee schedules and rules and regulations adopted under it.

(3) The director and his or her authorized assistants:

(a) Have power to issue subpoenas to enforce the attendance and testimony of witnesses and the production and examination of books,
papers, photographs, tapes, and records before the department in connection with any claim made to the department or any billing submitted to the department. The superior court has the power to enforce any such subpoena by proper proceedings;

(b)(i) May apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must (A) state that an order is sought pursuant to this subsection; (B) adequately specify the records, documents, or testimony; and (C) declare under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the department's authority.

(ii) Where the application under this subsection (3)(b) is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the records or testimony.

(iii) The director and his or her authorized assistants may seek approval and a court may issue an order under this subsection without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation.

(4) In all hearings, actions, or proceedings before the department, any physician or licensed advanced registered nurse practitioner having theretofore examined or treated the claimant may be required to testify fully regarding such examination or treatment, and shall not be exempt from so testifying by reason of the relation of the physician or licensed advanced registered nurse practitioner to the patient.

Sec. 207. RCW 7.68.075 and 1977 ex.s. c 302 s 6 are each amended to read as follows:

((Notwithstanding the provisions of any of the sections, as now or hereafter amended, of Title 51 RCW which are made applicable to)) Under this chapter, the marital status of all victims shall be deemed to be fixed as of the date of the criminal act. All references to the child or children living or conceived of the victim in this chapter shall be
deemed to refer to such child or children as of the date of the
criminal act unless the context clearly indicates the contrary.

Payments for or on account of any such child or children shall
cease when such child is no longer a "child" ((as defined in RCW
51.08.030, as now or hereafter amended)) or on the death of any such
child whichever occurs first.

Payments to the victim or surviving spouse for or on account of any
such child or children shall be made only when the victim or surviving
spouse has legal custody of any such child or children. Where the
victim or surviving spouse does not have such legal custody any
payments for or on account of any such child or children shall be made
to the person having legal custody of such child or children and the
amount of payments shall be subtracted from the payments which would
have been due the victim or surviving spouse had legal custody not been
transferred to another person. It shall be the duty of any person or
persons receiving payments because of legal custody of any child to
immediately notify the department of any change in such legal custody.

III. APPLICATION FOR BENEFITS

Sec. 301. RCW 7.68.060 and 2001 c 153 s 1 are each amended to read
as follows:

(1) Except for ((the purposes of applying for benefits under this
chapter, the rights, privileges, responsibilities, duties, limitations
and procedures contained in RCW 51.28.020, 51.28.030, 51.28.040 and
51.28.060 shall apply: PROVIDED, That except for)) applications
received pursuant to subsection (((4)) (6)) of this section, no
compensation of any kind shall be available under this chapter if:

(a) An application for benefits is not received by the department
within two years after the date the criminal act was reported to a
local police department or sheriff's office or the date the rights of
((dependents or)) beneficiaries accrued, unless the director has
determined that "good cause" exists to expand the time permitted to
receive the application. "Good cause" shall be determined by the
department on a case-by-case basis and may extend the period of time in
which an application can be received for up to five years after the
date the criminal act was reported to a local police department or
(b) The criminal act is not reported by the victim or someone on his or her behalf to a local police department or sheriff's office within twelve months of its occurrence or, if it could not reasonably have been reported within that period, within twelve months of the time when a report could reasonably have been made. In making determinations as to reasonable time limits, the department shall give greatest weight to the needs of the victims.

(2) (This section shall apply only to criminal acts reported after December 31, 1985.

(3)) No person or spouse, child, or dependent of such person is eligible for benefits under this chapter when the injury for which benefits are sought, was:

(a) The result of consent, provocation, or incitement by the victim, unless an injury resulting from a criminal act caused the death of the victim;

(b) Sustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony; or

(c) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(3) No person or spouse, child, or dependent of such person is eligible for benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator of the criminal act which gave rise to the claim.

(4) A victim is not eligible for benefits under this chapter if he or she:

(a) Has been convicted of a felony offense within five years preceding the criminal act for which they are applying where the felony
offense is a violent offense under RCW 9.94A.030 or a crime against persons under RCW 9.94A.411, or is convicted of such a felony offense after the criminal act for which they are applying; and

(b) Has not completely satisfied all legal financial obligations owed.

(5) Because victims of childhood criminal acts may repress conscious memory of such criminal acts far beyond the age of eighteen, the rights of adult victims of childhood criminal acts shall accrue at the time the victim discovers or reasonably should have discovered the elements of the crime. In making determinations as to reasonable time limits, the department shall give greatest weight to the needs of the victim.

((4) A right to)) (6)(a) Benefits under this chapter ((is)) are available to any victim of a person against whom the state initiates proceedings under chapter 71.09 RCW. The right created under this subsection shall accrue when the victim is notified of proceedings under chapter 71.09 RCW or the victim is interviewed, deposed, or testifies as a witness in connection with the proceedings. An application for benefits under this subsection must be received by the department within two years after the date the victim's right accrued unless the director determines that good cause exists to expand the time to receive the application. The director shall determine "good cause" on a case-by-case basis and may extend the period of time in which an application can be received for up to five years after the date the right of the victim accrued. Benefits under this subsection shall be limited to compensation for costs or losses incurred on or after the date the victim's right accrues for a claim allowed under this subsection.

(b) A person identified as the "minor" in the charge of commercial sexual abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102 is considered a victim of a criminal act for the purpose of the right to benefits under this chapter even if the person is also charged with prostitution under RCW 9A.88.030.

NEW SECTION. Sec. 302. (1)(a) Where a victim is eligible for compensation under this chapter he or she shall file with the
department his or her application for such, together with the
certificate of the physician or licensed advanced registered nurse
practitioner who attended him or her. An application form developed by
the department shall include a notice specifying the victim's right to
receive health services from a physician or licensed advanced
registered nurse practitioner utilizing his or her private or public
insurance or if no insurance, of the victim's choice under section 507
of this act.

(b) The physician or licensed advanced registered nurse
practitioner who attended the injured victim shall inform the injured
victim of his or her rights under this chapter and lend all necessary
assistance in making this application for compensation and such proof
of other matters as required by the rules of the department without
charge to the victim.

(2) If the application required by this section is filed on behalf
of the victim by the physician who attended the victim, the physician
may transmit the application to the department electronically.

NEW SECTION. Sec. 303. Where death results from injury the
parties eligible for compensation under this chapter, or someone in
their behalf, shall make application for the same to the department,
which application must be accompanied with proof of death and proof of
relationship showing the parties to be eligible for compensation under
this chapter, certificates of attending physician or licensed advanced
registered nurse practitioner, if any, and such proof as required by
the rules of the department.

NEW SECTION. Sec. 304. If change of circumstances warrants an
increase or rearrangement of compensation, like application shall be
made therefor. Where the application has been granted, compensation
and other benefits if in order shall be allowed for periods of time up
to sixty days prior to the receipt of such application.

NEW SECTION. Sec. 305. If injury or death results to a victim
from the deliberate intention of the victim himself or herself to
produce such injury or death, or while the victim is engaged in the
attempt to commit, or the commission of, a felony, neither the victim
nor the widow, widower, child, or dependent of the victim shall receive any payment under this chapter.

If injury or death results to a victim from the deliberate intention of a beneficiary of that victim to produce the injury or death, or if injury or death results to a victim as a consequence of a beneficiary of that victim engaging in the attempt to commit, or the commission of, a felony, the beneficiary shall not receive any payment under this chapter.

An invalid child, while being supported and cared for in a state institution, shall not receive compensation under this chapter.

No payment shall be made to or for a natural child of a deceased victim and, at the same time, as the stepchild of a deceased victim.

NEW SECTION. Sec. 306. Except as otherwise provided by treaty or this chapter, whenever compensation is payable to a beneficiary who is an alien not residing in the United States, the department shall pay the compensation to which a resident beneficiary is eligible under this chapter. But if a nonresident alien beneficiary is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefit of such law in as favorable a degree as herein extended to nonresident aliens, he or she shall receive no compensation. No payment shall be made to any beneficiary residing in any country with which the United States does not maintain diplomatic relations when such payment is due.

NEW SECTION. Sec. 307. Physicians or licensed advanced registered nurse practitioners examining or attending injured victims under this chapter shall comply with rules and regulations adopted by the director, and shall make such reports as may be requested by the department upon the condition or treatment of any such victim, or upon any other matters concerning such victims in their care. Except under RCW 49.17.210 and 49.17.250, all medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any victim whose injury is the basis of a claim under this chapter shall be made available at any stage of the proceedings to the claimant's representative and the
department upon request, and no person shall incur any legal liability by reason of releasing such information.

IV. BENEFITS

Sec. 401. RCW 7.68.070 and 2010 c 289 s 6 and 2010 c 122 s 1 are each reenacted and amended to read as follows:

The ((right to)) eligibility for benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in this chapter ((51.32 RCW except as provided in this section, provided that no more than fifty thousand dollars shall be paid per claim:)).

(1) ((The provisions contained in RCW 51.32.015, 51.32.030, 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 are not applicable to this chapter.))

(2)) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, or the victim's family or ((dependents)) beneficiary in case of death of the victim, are ((entitled to)) eligible for benefits in accordance with this chapter, subject to the limitations under RCW 7.68.015. ((The rights, duties, responsibilities, limitations, and procedures applicable to a worker as contained in RCW 51.32.010 are applicable to this chapter.))

(3)(a) The limitations contained in RCW 51.32.020 are applicable to claims under this chapter. In addition, no person or spouse, child, or dependent of such person is entitled to benefits under this chapter when the injury for which benefits are sought, was:

(i) The result of consent, provocation, or incitement by the victim, unless an injury resulting from a criminal act caused the death of the victim;

(ii) Sustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony, or

(iii) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or...
living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(b) A person identified as the "minor" in the charge of commercial sexual abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102 is considered a victim of a criminal act for the purpose of the right to benefits under this chapter even if the person is also charged with prostitution under RCW 9A.88.030.

(4) The benefits established upon the death of a worker and contained in RCW 51.32.050 shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter, except that:

(a) No more than fifty thousand dollars shall be paid in total per claim, of which nonmedical benefits shall not exceed forty thousand dollars of the entire claim. Benefits may include a combination of burial expenses, financial support for lost wages, and medical expenses.

(a) Benefits payable for temporary total disability that results in financial support for lost wages shall not exceed fifteen thousand dollars.

(b) Benefits payable for a permanent total disability or fatality that results in financial support for lost wages shall not exceed forty thousand dollars. After at least twelve monthly payments have been paid, the department shall have the sole discretion to make a final lump sum payment of the balance remaining.

(c) Benefits for disposition of remains or burial expenses shall not exceed five thousand seven hundred fifty dollars per claim.

(2) If the victim was not gainfully employed at the time of the criminal act, no financial support for lost wages will be paid to the victim or any beneficiaries.

(3) No victim or beneficiary shall receive compensation for or during the day on which the injury was received.

(4) If a victim's employer continues to pay the victim's wages that he or she was earning at the time of the crime, the victim shall not receive any financial support for lost wages.
When the director determines that a temporary total disability results in a loss of wages, the victim shall receive monthly subject to subsection (1) of this section, during the period of disability, sixty percent of the victim's monthly wage but no more than one hundred percent of the state's average monthly wage as defined in RCW 7.68.020. The minimum monthly payment shall be no less than five hundred dollars. Monthly wages shall be based upon employer wage statements, employment security records, or documents reported to and certified by the internal revenue service. Monthly wages must be determined using the actual documented monthly wage or averaging the total wages earned for up to twelve successive calendar months preceding the injury. In cases where the victim's wages and hours are fixed, they shall be determined by multiplying the daily wage the victim was receiving at the time of the injury:

(a) By five, if the victim was normally employed one day a week;
(b) By nine, if the victim was normally employed two days a week;
(c) By thirteen, if the victim was normally employed three days a week;
(d) By eighteen, if the victim was normally employed four days a week;
(e) By twenty-two, if the victim was normally employed five days a week;
(f) By twenty-six, if the victim was normally employed six days a week; or
(g) By thirty, if the victim was normally employed seven days a week.

When the director determines that a permanent total disability or death results in a loss of wages, the victim or eligible spouse shall receive the monthly payments established in this subsection, not to exceed forty thousand dollars or the limits established in this chapter.

If the director determines that the victim is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.

In the case of death, if there is no eligible spouse, benefits shall be paid to the child or children of the deceased victim. If there is no spouse or children, no payments shall be made under this section. If the spouse remarries before this benefit is paid in full,
benefits shall be paid to the victim's child or children and the spouse shall not receive further payment. If there is no child or children no further payments will be made.

(9) The benefits for disposition of remains or burial expenses shall not exceed five thousand seven hundred fifty dollars per claim(7) and

((b) An application for benefits relating to payment for burial expenses, pursuant to this subsection, must be received within twelve months of the date upon which the death of the victim is officially recognized as a homicide. If there is a delay in the recovery of remains or the release of remains for burial, application for benefits must be received within twelve months of the date of the release of the remains for burial) to receive reimbursement for expenses related to the disposition of remains or burial, the department must receive an itemized statement from a provider of services within twelve months of the date upon which the death of the victim is officially recognized as a homicide. If there is a delay in the recovery of remains or the release of remains for disposition or burial, an itemized statement from a provider of services must be received within twelve months of the date of the release of the remains.

((5) The benefits established in RCW 51.32.060 for permanent total disability proximately caused by the criminal act shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter, except that if a victim becomes permanently and totally disabled as a proximate result of the criminal act, the victim shall receive monthly during the period of the disability the following percentages, where applicable, of the average monthly wage determined as of the date of the criminal act pursuant to RCW 51.08.018:

(a) If married at the time of the criminal act, twenty-nine percent of the average monthly wage.

(b) If married with one child at the time of the criminal act, thirty-four percent of the average monthly wage.

(c) If married with two children at the time of the criminal act, thirty-eight percent of the average monthly wage.

(d) If married with three children at the time of the criminal act, forty-one percent of the average monthly wage.
(e) If married with four children at the time of the criminal act, forty-four percent of the average monthly wage.

(f) If married with five or more children at the time of the criminal act, forty-seven percent of the average monthly wage.

(g) If unmarried at the time of the criminal act, twenty-five percent of the average monthly wage.

(h) If unmarried with one child at the time of the criminal act, thirty percent of the average monthly wage.

(i) If unmarried with two children at the time of the criminal act, thirty-four percent of the average monthly wage.

(j) If unmarried with three children at the time of the criminal act, thirty-seven percent of the average monthly wage.

(k) If unmarried with four children at the time of the criminal act, forty percent of the average monthly wage.

(l) If unmarried with five or more children at the time of the criminal act, forty-three percent of the average monthly wage.

(6) The benefits established in RCW 51.32.080 for permanent partial disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section equally apply under this chapter, but shall not exceed seven thousand dollars per claim.

(7) The benefits established in RCW 51.32.090 for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter, except that no person is eligible for temporary total disability benefits under this chapter if such person was not gainfully employed at the time of the criminal act.

(8) The benefits established in RCW 51.32.095 for continuation of benefits during vocational rehabilitation shall be benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter, except that benefits shall not exceed five thousand dollars for any single injury.

(9) The provisions for lump sum payment of benefits upon death or permanent total disability as contained in RCW 51.32.130 apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of workers contained in RCW 51.32.040, 51.32.055, 51.32.100,
51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160, and 51.32.210 are applicable to payment of benefits to, for or on behalf of victims under this chapter.

(11) No person or spouse, child, or dependent of such person is entitled to benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator(s) of the criminal act which gave rise to the claim.

(12) In addition to other benefits provided under this chapter, victims of sexual assault are entitled to receive appropriate counseling. Fees for such counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Counseling services may include, if determined appropriate by the department, counseling of members of the victim's immediate family, other than the perpetrator of the assault.

(13) Notwithstanding other provisions of this chapter and Title 51 RCW, benefits payable for total temporary disability under subsection (7) of this section, shall be limited to fifteen thousand dollars.

(14)) (10) Any person who is responsible for the victim's injuries, or who would otherwise be unjustly enriched as a result of the victim's injuries, shall not be a beneficiary under this chapter.

((15)) (11) Crime victims' compensation is not available to pay for services covered under chapter 74.09 RCW or Title XIX of the federal social security act((, except to the extent that the costs for such services exceed service limits established by the department of social and health services or, during the 1993-95 fiscal biennium, to the extent necessary to provide matching funds for federal medicaid reimbursement)).

((16) In addition to other benefits provided under this chapter, immediate family members of a homicide victim may receive appropriate counseling to assist in dealing with the immediate, near-term consequences of the related effects of the homicide. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Payment of counseling benefits under this section may not be provided to the perpetrator of the homicide. The benefits under this subsection may be
provided only with respect to homicides committed on or after July 1, 1992.

(17) A dependent mother, father, stepmother, or stepfather, as defined in RCW 51.08.050, who is a survivor of her or his child's homicide, who has been requested by a law enforcement agency or a prosecutor to assist in the judicial proceedings related to the death of the victim, and who is not domiciled in Washington state at the time of the request, may receive a lump-sum payment upon arrival in this state. Total benefits under this subsection may not exceed seven thousand five hundred dollars. If more than one dependent parent is eligible for this benefit, the lump-sum payment of seven thousand five hundred dollars shall be divided equally among the dependent parents.

(18) A victim whose crime occurred in another state who qualifies for benefits under RCW 7.68.060 may receive appropriate mental health counseling to address distress arising from participation in the civil commitment proceedings. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080.

(19) A victim is not eligible for benefits under this act if such victim:

(a) Has been convicted of a felony offense within five years preceding the criminal act for which they are applying where the felony offense is a violent offense under RCW 9.94A.030 or a crime against persons under RCW 9.94A.411, or is convicted of such a felony offense after applying; and

(b) Has not completely satisfied all legal financial obligations owed prior to applying for benefits.)

(13) If the provisions of this title relative to compensation for injuries to or death of victims become invalid because of any adjudication, or are repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this title by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death.

(14) The benefits established in RCW 51.32.080 for permanent partial disability will not be provided to any crime victim or for any claim submitted on or after July 1, 2011.
Sec. 402. RCW 7.68.070 and 2010 c 289 s 6 are each amended to read as follows:

The (right to) eligibility for benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in this chapter (51.32 RCW except as provided in this section:)

(1) The provisions contained in RCW 51.32.015, 51.32.030, 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 are not applicable to this chapter.

(2) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, or the victim's family or beneficiary in case of death of the victim, are entitled to benefits in accordance with this chapter, subject to the limitations under RCW 7.68.015. (The rights, duties, responsibilities, limitations, and procedures applicable to a worker as contained in RCW 51.32.010 are applicable to this chapter.

(3)(a) The limitations contained in RCW 51.32.020 are applicable to claims under this chapter. In addition, no person or spouse, child, or dependent of such person is entitled to benefits under this chapter when the injury for which benefits are sought, was:

(i) The result of consent, provocation, or incitement by the victim, unless an injury resulting from a criminal act caused the death of the victim;

(ii) Sustained while the crime victim was engaged in the attempt to commit, the commission of, a felony; or

(iii) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(b) A person identified as the "minor" in the charge of commercial sexual abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102 is considered a
victim of a criminal act for the purpose of the right to benefits under this chapter even if the person is also charged with prostitution under RCW 9A.88.030.

(4) The benefits established upon the death of a worker and contained in RCW 51.32.050 shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter. Benefits for burial expenses shall not exceed the amount paid by the department in case of the death of a worker as provided in chapter 51.32 RCW in any claim. If the criminal act results in the death of a victim who was not gainfully employed at the time of the criminal act, and who was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act:

(a) Benefits payable to an eligible surviving spouse, where there are no children of the victim at the time of the criminal act who have survived the victim or where such spouse has legal custody of all of his or her children, shall be limited to burial expenses and a lump sum payment of seven thousand five hundred dollars without reference to number of children, if any;

(b) Where any such spouse has legal custody of one or more but not all of such children, then such burial expenses shall be paid, and such spouse shall receive a lump sum payment of three thousand seven hundred fifty dollars and any such child or children not in the legal custody of such spouse shall receive a lump sum payment of three thousand seven hundred fifty dollars to be divided equally among such child or children;

(c) If any such spouse does not have legal custody of any of the children, the burial expenses shall be paid and the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars and any such child or children not in the legal custody of the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars to be divided equally among the child or children;

(d) If no such spouse survives, then such burial expenses shall be paid, and each surviving child of the victim at the time of the criminal act shall receive a lump sum payment of three thousand seven hundred fifty dollars up to a total of two such children and where there are more than two such children the sum of seven thousand five hundred dollars shall be divided equally among such children.
No other benefits may be paid or payable under these circumstances.

(5) The benefits established in RCW 51.32.060 for permanent total disability proximately caused by the criminal act shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That if a victim becomes permanently and totally disabled as a proximate result of the criminal act and was not gainfully employed at the time of the criminal act, the victim shall receive monthly during the period of the disability the following percentages, where applicable, of the average monthly wage determined as of the date of the criminal act pursuant to RCW 51.08.018:

(a) If married at the time of the criminal act, twenty-nine percent of the average monthly wage.

(b) If married with one child at the time of the criminal act, thirty-four percent of the average monthly wage.

(c) If married with two children at the time of the criminal act, thirty-eight percent of the average monthly wage.

(d) If married with three children at the time of the criminal act, forty-one percent of the average monthly wage.

(e) If married with four children at the time of the criminal act, forty-four percent of the average monthly wage.

(f) If married with five or more children at the time of the criminal act, forty-seven percent of the average monthly wage.

(g) If unmarried at the time of the criminal act, twenty-five percent of the average monthly wage.

(h) If unmarried with one child at the time of the criminal act, thirty percent of the average monthly wage.

(i) If unmarried with two children at the time of the criminal act, thirty-four percent of the average monthly wage.

(j) If unmarried with three children at the time of the criminal act, thirty-seven percent of the average monthly wage.

(k) If unmarried with four children at the time of the criminal act, forty percent of the average monthly wage.

(l) If unmarried with five or more children at the time of the criminal act, forty-three percent of the average monthly wage.

(6) The benefits established in RCW 51.32.080 for permanent partial disability shall be the benefits obtainable under this chapter, and
provisions relating to payment contained in that section equally apply under this chapter.

(7) The benefits established in RCW 51.32.090 for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter. No person is eligible for temporary total disability benefits under this chapter if such person was not gainfully employed at the time of the criminal act, and was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act.

(8) The benefits established in RCW 51.32.095 for continuation of benefits during vocational rehabilitation shall be benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter. Benefits shall not exceed five thousand dollars for any single injury.

(9) The provisions for lump sum payment of benefits upon death or permanent total disability as contained in RCW 51.32.130 apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of workers contained in RCW 51.32.040, 51.32.055, 51.32.100, 51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160, and 51.32.210 are applicable to payment of benefits to, for or on behalf of victims under this chapter.

(11) No person or spouse, child, or dependent of such person is entitled to benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator(s) of the criminal act which gave rise to the claim.

(12) In addition to other benefits provided under this chapter, victims of sexual assault are entitled to receive appropriate counseling. Fees for such counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Counseling services may include, if determined appropriate by the department, counseling of members of the victim's immediate family, other than the perpetrator of the assault.

(13) Except for medical benefits authorized under RCW 7.68.080, no more than thirty thousand dollars shall be granted as a result of a
single injury or death, except that benefits granted as the result of total permanent disability or death shall not exceed forty thousand dollars.

(14) Notwithstanding other provisions of this chapter and Title 51 RCW, benefits payable for total temporary disability under subsection (7) of this section, shall be limited to fifteen thousand dollars. Of the entire amount paid in total per claim, nonmedical benefits shall not exceed forty thousand dollars of the entire claim. Benefits may include a combination of burial expenses, financial support for lost wages, and medical expenses.

(a) Benefits payable for temporary total disability that results in financial support for lost wages shall not exceed fifteen thousand dollars.

(b) Benefits payable for a permanent total disability or fatality that results in financial support for lost wages shall not exceed forty thousand dollars. After at least twelve monthly payments have been paid, the department shall have the sole discretion to make a final lump sum payment of the balance remaining.

(c) Benefits for disposition of remains or burial expenses shall not exceed seven thousand seven hundred dollars per claim.

(2) If the victim was not gainfully employed at the time of the criminal act, no financial support for lost wages will be paid to the victim or any beneficiaries.

(3) No victim or beneficiary shall receive compensation for or during the day on which the injury was received.

(4) If a victim's employer continues to pay the victim wages that he or she was earning at the time of the crime, the victim shall not receive any financial support for lost wages.

(5) When the director determines that a temporary total disability results in a loss of wages, the victim shall receive monthly subject to subsection (1) of this section, during the period of disability, sixty percent of the victim's monthly wage but no more than one hundred percent of the state's average monthly wage as defined in RCW 7.68.020. The minimum monthly payment shall be no less than five hundred dollars. Monthly wages shall be based upon employer wage statements, employment security records, or documents reported to and certified by the internal revenue service. Monthly wages must be determined using the actual documented monthly wage or averaging the total wages earned for
up to twelve successive calendar months preceding the injury. In cases where the victim's wages and hours are fixed, they shall be determined by multiplying the daily wage the victim was receiving at the time of the injury:

(a) By five, if the victim was normally employed one day a week;
(b) By nine, if the victim was normally employed two days a week;
(c) By thirteen, if the victim was normally employed three days a week;
(d) By eighteen, if the victim was normally employed four days a week;
(e) By twenty-two, if the victim was normally employed five days a week;
(f) By twenty-six, if the victim was normally employed six days a week; or
(g) By thirty, if the victim was normally employed seven days a week.

(6) When the director determines that a permanent total disability or death results in a loss of wages the victim or eligible spouse shall receive the monthly payments established in this subsection, not to exceed forty thousand dollars or the limits established in this chapter.

(7) If the director determines that the victim is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.

(8) In the case of death, if there is no eligible spouse, benefits shall be paid to the child or children of the deceased victim. If there is no spouse or children, no payments shall be made under this section. If the spouse remarries before this benefit is paid in full benefits shall be paid to the victim's child or children and the spouse shall not receive further payment. If there is no child or children no further payments will be made.

(9) To receive reimbursement for expenses related to the disposition of remains or burial, the department must receive an itemized statement from a provider of services within twelve months of the date upon which the death of the victim is officially recognized as a homicide. If there is a delay in the recovery of remains or the release of remains for disposition or burial, an itemized statement
from a provider of services must be received within twelve months of
the date of the release of the remains.

((15)) (10) Any person who is responsible for the victim's injuries, or who would otherwise be unjustly enriched as a result of the victim's injuries, shall not be a beneficiary under this chapter.

((16)) (11) Crime victims' compensation is not available to pay for services covered under chapter 74.09 RCW or Title XIX of the federal social security act(, except to the extent that the costs for such services exceed service limits established by the department of social and health services or, during the 1993-95 fiscal biennium, to the extent necessary to provide matching funds for federal medicaid reimbursement).

((17) In addition to other benefits provided under this chapter, immediate family members of a homicide victim may receive appropriate counseling to assist in dealing with the immediate, near-term consequences of the related effects of the homicide. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Payment of counseling benefits under this section may not be provided to the perpetrator of the homicide. The benefits under this subsection may be provided only with respect to homicides committed on or after July 1, 1992.

(18) A dependent mother, father, stepmother, or stepfather, as defined in RCW 51.08.050, who is a survivor of her or his child's homicide, who has been requested by a law enforcement agency or a prosecutor to assist in the judicial proceedings related to the death of the victim, and who is not domiciled in Washington state at the time of the request, may receive a lump-sum payment upon arrival in this state. Total benefits under this subsection may not exceed seven thousand five hundred dollars. If more than one dependent parent is eligible for this benefit, the lump-sum payment of seven thousand five hundred dollars shall be divided equally among the dependent parents.

(19)) (12) A victim whose crime occurred in another state who qualifies for benefits under RCW 7.68.060((4)) (6) may receive appropriate mental health counseling to address distress arising from participation in the civil commitment proceedings. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080.
(13) If the provisions of this title relative to compensation for injuries to or death of victims become invalid because of any adjudication, or are repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this title by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death.

(14) Beginning July 1, 2015, applying only prospectively to criminal acts occurring on or after July 1, 2015, the benefits established in RCW 51.32.080 for permanent partial disability shall be obtainable under this chapter, and provisions relating to payment contained in that section shall equally apply under this chapter, but shall not exceed seven thousand dollars per claim.

(15) Beginning July 1, 2015, applying only prospectively to criminal acts occurring on or after July 1, 2015, the department may make payments for home or vehicle modifications solely according to the following terms and limitations:

(a) Whenever in the sole discretion of the director it is reasonable and necessary to provide residence modifications necessary to meet the needs and requirements of the victim who has sustained catastrophic injury, the department may be ordered to pay an amount not to exceed the state's average annual wage for one year as determined under RCW 50.04.355, as now existing or hereafter amended, toward the cost of such modifications or construction. Such payment shall only be made for the construction or modification of a residence in which the injured victim resides. Only one residence of any victim may be modified or constructed under this subsection, although the director may order more than one payment for any one home, up to the maximum amount permitted under RCW 7.68.070.

(b) Whenever in the sole discretion of the director it is reasonable and necessary to modify a motor vehicle owned by a victim who has become an amputee or becomes paralyzed because of a criminal act, the director may order up to fifty percent of the state's average annual wage for one year, as determined under RCW 50.04.355, to be paid by the department toward the costs thereof.

(c) In the sole discretion of the director after his or her review,
the amount paid under this subsection may be increased by no more than four thousand dollars by written order of the director.

*Sec. 402 was vetoed. See message at end of chapter.*

NEW SECTION. Sec. 403. (1) Benefits for permanent total disability shall be determined under the director's supervision, only after the injured victim's condition becomes fixed.

(2) All determinations of permanent total disabilities shall be made by the department. The victim may make a request or the inquiry may be initiated by the director. Determinations shall be required in every instance where permanent total disability is likely to be present.

(3) A request for determination of permanent total disability shall be examined by the department, and the department shall issue an order in accordance with RCW 51.52.050.

NEW SECTION. Sec. 404. (1) If aggravation, diminution, or termination of disability takes place, the director may, upon the application of the beneficiary, made within seven years from the date the first closing order becomes final, or at any time upon his or her own motion, readjust the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment. The director may, upon application of the victim made at any time, provide proper and necessary medical and surgical services as authorized under section 507 of this act.

(2) "Closing order" as used in this section means an order based on factors which include medical recommendation, advice, examination, or the maximum benefit has been met.

NEW SECTION. Sec. 405. (1) For persons receiving compensation for temporary total disability pursuant to the provisions of this chapter, such compensation shall be reduced by an amount equal to the benefits payable under the federal old-age, survivors, and disability insurance act as now or hereafter amended not to exceed the amount of the reduction established pursuant to 42 U.S.C. Sec. 424a. However, such reduction shall not apply when the combined compensation provided pursuant to this chapter and the federal old-age, survivors, and disability insurance act is less than the total benefits to which the federal reduction would apply, pursuant to 42 U.S.C. 424a.
person described in this section refuses to authorize the release of information concerning the amount of benefits payable under said federal act. The department's estimate of said amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

(2) Any reduction under subsection (1) of this section shall be effective the month following the month in which the department is notified by the federal social security administration that the person is receiving disability benefits under the federal old-age, survivors, and disability insurance act. In the event of an overpayment of benefits, the department may not recover more than the overpayments for the six months immediately preceding the date on which the department notifies the victim that an overpayment has occurred. Upon determining that there has been an overpayment, the department shall immediately notify the person who received the overpayment that he or she shall be required to make repayment pursuant to this section and section 702 of this act.

(3) Recovery of any overpayment must be taken from future temporary or permanent total disability benefits or permanent partial disability benefits provided by this chapter. In the case of temporary or permanent total disability benefits, the recovery shall not exceed twenty-five percent of the monthly amount due from the department or one-sixth of the total overpayment, whichever is the lesser.

(4) No reduction may be made unless the victim receives notice of the reduction prior to the month in which the reduction is made.

(5) In no event shall the reduction reduce total benefits to less than the greater amount the victim may be eligible under this chapter or the federal old-age, survivors, and disability insurance act.

(6) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any overpayment where the recovery would be against equity and good conscience.

(7) Subsection (1) of this section applies to:

(a) Victims under the age of sixty-two whose effective entitlement to total disability compensation begins before January 2, 1983;
(b) Victims under the age of sixty-five whose effective entitlement to total disability compensation begins after January 1, 1983; and
(c) Victims who will become sixty-five years of age on or after June 10, 2004.

(8)(a) If the federal social security administration makes a retroactive reduction in the federal social security disability benefit entitlement of a victim for periods of temporary total, temporary partial, or total permanent disability for which the department also reduced the victim's benefit amounts under this section, the department shall make adjustments in the calculation of benefits and pay the additional benefits to the victim as appropriate. However, the department shall not make changes in the calculation or pay additional benefits unless the victim submits a written request, along with documentation satisfactory to the director of an overpayment assessment by the social security administration, to the department.

(b) Additional benefits paid under this subsection:
(i) Are paid without interest and without regard to whether the victim's claim under this chapter is closed; and
(ii) Do not affect the status or the date of the claim's closure.
(c) This subsection does not apply to requests on claims for which a determination on the request has been made and is not subject to further appeal.

NEW SECTION. Sec. 406. Victims otherwise eligible for compensation under this chapter may also claim compensation for loss of or damage to the victim's personal clothing or footwear incurred in the course of emergency medical treatment for injuries.

NEW SECTION. Sec. 407. A beneficiary shall at all times furnish the department with proof satisfactory to the director of the nature, amount, and extent of the contribution made by the deceased victim.

V. MEDICAL BENEFITS

Sec. 501. RCW 7.68.080 and 1990 c 3 s 503 are each amended to read as follows:
((The provisions of chapter 51.36 RCW as now or hereafter amended

p. 33 SSB 5691.SL
govern the provision of medical aid under this chapter to victims injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, except that:

(1) The provisions contained in RCW 51.36.030, 51.36.040, and 51.36.080 as now or hereafter amended do not apply to this chapter;

(2) The specific provisions of RCW 51.36.020 as now or hereafter amended relating to supplying emergency transportation do not apply:

PROVIDED, That:

(a)) (1) When the injury to any victim is so serious as to require the victim's being taken from the place of injury to a place of treatment, reasonable transportation costs to the nearest place of proper treatment shall be reimbursed ((from the fund established pursuant to RCW 7.68.090; and)) by the department as part of the victim's total claim under RCW 7.68.070(1).

((b)) (2) In the case of alleged rape or molestation of a child, the reasonable costs of a ((colposcope)) colposcopy examination shall be reimbursed ((from the fund pursuant to RCW 7.68.090)) by the department. Costs for a colposcopy examination given under this subsection shall not be included as part of the victim's total claim under RCW 7.68.070(1).

(3) The director shall adopt rules for fees and charges for hospital, clinic, ((and)) medical ((charges along with all related fees under this chapter shall conform to regulations promulgated by the director)), and other health care services, including fees and costs for durable medical equipment, eye glasses, hearing aids, and other medically necessary devices for crime victims under this chapter. The director shall set these service levels and fees at a level no lower than those established by the department of social and health services under Title 74 RCW. In establishing fees for medical and other health care services, the director shall consider the director's duty to purchase health care in a prudent, cost-effective manner. The director shall establish rules adopted in accordance with chapter 34.05 RCW. Nothing in this chapter may be construed to require the payment of interest on any billing, fee, or charge.

(4) Whenever the director deems it necessary in order to resolve any medical issue, a victim shall submit to examination by a physician or physicians selected by the director, with the rendition of a report to the person ordering the examination. The department shall provide
the physician performing an examination with all relevant medical records from the victim's claim file. The director, in his or her discretion, may charge the cost of such examination or examinations to the crime victims' compensation fund. If the examination is paid for by the victim, then the cost of said examination shall be reimbursed to the victim for reasonable costs connected with the examination as part of the victim's total claim under RCW 7.68.070(1).

(5) Victims of sexual assault are eligible to receive appropriate counseling. Fees for such counseling shall be determined by the department. Counseling services may include, if determined appropriate by the department, counseling of members of the victim's immediate family, other than the perpetrator of the assault.

(6) Immediate family members of a homicide victim may receive appropriate counseling to assist in dealing with the immediate, near-term consequences of the related effects of the homicide. Up to twelve counseling sessions may be received for one year after the crime victim's claim has been allowed. Fees for counseling shall be determined by the department in accordance with and subject to this section. Payment of counseling benefits under this section may not be provided to the perpetrator of the homicide. The benefits under this subsection may be provided only with respect to homicides committed on or after July 1, 1992.

(7) Pursuant to RCW 7.68.070(12), a victim of a sex offense that occurred outside of Washington may be eligible to receive mental health counseling related to participation in proceedings to civilly commit a perpetrator.

(8) The crime victims' compensation program shall consider payment of benefits solely for the effects of the criminal act.

(9) The legislature finds and declares it to be in the public interest of the state of Washington that a proper regulatory and inspection program be instituted in connection with the provision of any services provided to crime victims pursuant to this chapter. In order to effectively accomplish such purpose and to assure that the victim receives such services as are paid for by the state of Washington, the acceptance by the victim of such services, and the request by a provider of services for reimbursement for providing such services, shall authorize the director of the department or the director's authorized representative to inspect and audit all records.
in connection with the provision of such services. In the conduct of such audits or investigations, the director or the director's authorized representatives may:

(a) Examine all records, or portions thereof, including patient records, for which services were rendered by a health care provider and reimbursed by the department, notwithstanding the provisions of any other statute which may make or purport to make such records privileged or confidential, except that no original patient records shall be removed from the premises of the health care provider, and that the disclosure of any records or information obtained under authority of this section by the department is prohibited and constitutes a violation of RCW 42.52.050, unless such disclosure is directly connected to the official duties of the department. The disclosure of patient information as required under this section shall not subject any physician, licensed advanced registered nurse practitioner, or other health care provider to any liability for breach of any confidential relationships between the provider and the patient. The director or the director's authorized representative shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation, or proceedings;

(b) Approve or deny applications to participate as a provider of services furnished to crime victims pursuant to this title;

(c) Terminate or suspend eligibility to participate as a provider of services furnished to victims pursuant to this title; and

(d) Pursue collection of unpaid overpayments and/or penalties plus interest _ accrued _ from _ health _ care _ providers _ pursuant _ to _ RCW 51.32.240(6).

(10) When contracting for health care services and equipment, the department, upon request of a contractor, shall keep confidential financial and valuable trade information, which shall be exempt from public inspection and copying under chapter 42.56 RCW.

Sec. 502. RCW 7.68.085 and 2010 c 122 s 2 are each amended to read as follows:

(1) This section has no force or effect from April 1, 2010, until July 1, 2015.

(2) The director of labor and industries shall institute a cap on medical benefits of one hundred fifty thousand dollars per injury or
death. ((Payment for medical services in excess of the cap shall be made available to any innocent victim under the same conditions as other medical services and if the medical services are:

(a) Necessary for a previously accepted condition;

(b) Necessary to protect the victim's life or prevent deterioration of the victim's previously accepted condition; and

(c) Not available from an alternative source.))

For the purposes of this section, an individual will not be required to use his or her assets other than funds recovered as a result of a civil action or criminal restitution, for medical expenses or pain and suffering, in order to qualify for an alternative source of payment.

The director shall, in cooperation with the department of social and health services, establish by October 1, 1989, a process to aid crime victims in identifying and applying for appropriate alternative benefit programs, if any, administered by the department of social and health services.

*Sec. 503. RCW 7.68.085 and 2009 c 479 s 9 are each amended to read as follows:

(1) The director of labor and industries shall institute a cap on medical benefits of one hundred fifty thousand dollars per injury or death. ((Payment for medical services in excess of the cap shall be made available to any innocent victim under the same conditions as other medical services and if the medical services are:

(1) Necessary for a previously accepted condition;

(2) Necessary to protect the victim's life or prevent deterioration of the victim's previously accepted condition; and

(3) Not available from an alternative source.))

For the purposes of this section, an individual will not be required to use his or her assets other than funds recovered as a result of a civil action or criminal restitution, for medical expenses or pain and suffering, in order to qualify for an alternative source of payment.

The director shall, in cooperation with the department of social and health services, establish by October 1, 1989, a process to aid crime victims in identifying and applying for appropriate alternative benefit programs, if any, administered by the department of social and health services.
benefit programs, if any, administered by the department of social and health services.

(2) This section applies prospectively only to criminal acts that occur on or after July 1, 2015.

*Sec. 503 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 504. Health care professionals providing treatment or services to crime victims shall maintain all proper credentials and educational standards as required by law, and be registered with the department of health. The crime victims' compensation program does not pay for experimental or controversial treatment. Treatment shall be evidence-based and curative.

NEW SECTION. Sec. 505. The department shall examine the credentials of persons conducting special medical examinations and shall monitor the quality and objectivity of examinations and reports. The department shall adopt rules to ensure that examinations are performed only by qualified persons meeting department standards.

NEW SECTION. Sec. 506. (1) Any victim eligible to receive any benefits or claiming such under this title shall, if requested by the department submit himself or herself for medical examination, at a time and from time to time, at a place reasonably convenient for the victim as may be provided by the rules of the department. An injured victim, whether an alien or other injured victim, who is not residing in the United States at the time that a medical examination is requested may be required to submit to an examination at any location in the United States determined by the department.

(2) If the victim refuses to submit to medical examination, or obstructs the same, or, if any injured victim shall persist in unsanitary or injurious practices which tend to imperil or retard his or her recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to his or her recovery does not cooperate in reasonable efforts at such rehabilitation, the department may suspend any further action on any claim of such victim so long as such refusal, obstruction, noncooperation, or practice continues and thus, the department may reduce, suspend, or deny any compensation for such period. The department may not suspend any further action on any claim of a victim or reduce, suspend, or deny any compensation if a
1 victim has good cause for refusing to submit to or to obstruct any
2 examination, evaluation, treatment, or practice requested by the
3 department or required under this section.
4
5 (3) If the victim necessarily incurs traveling expenses in
6 attending the examination pursuant to the request of the department,
7 such traveling expenses shall be repaid to him or her upon proper
8 voucher and audit.
9
10 (4) If the medical examination required by this section causes the
11 victim to be absent from his or her work without pay, the victim shall
12 be paid compensation in an amount equal to his or her usual wages for
13 the time lost from work while attending the medical examination when
14 the victim is insured by the department.

15 NEW SECTION. Sec. 507. Upon the occurrence of any injury to a
16 victim eligible for compensation under the provisions of this chapter,
17 he or she shall receive proper and necessary medical and surgical
18 services using his or her private or public insurance or if no
19 insurance, using a provider of his or her own choice. In all accepted
20 claims, treatment shall be limited in point of duration as follows:
21
22 (1) No treatment shall be provided once the victim has received the
23 maximum compensation under this chapter.
24
25 (2) In case of temporary disability, treatment shall not extend
26 beyond the time when monthly allowances to him or her shall cease.
27 After any injured victim has returned to his or her work, his or her
28 medical and surgical treatment may be continued if, and so long as,
29 such continuation is determined by the director to be necessary to his
30 or her recovery, and as long as the victim has not received the maximum
31 compensation under this chapter.

32 NEW SECTION. Sec. 508. Any medical provider who fails, neglects,
33 or refuses to file a report with the director, as required by this
34 chapter, within five days of the date of treatment, showing the
35 condition of the injured victim at the time of treatment, a description
36 of the treatment given, and an estimate of the probable duration of the
37 injury, or who fails or refuses to render all necessary assistance to
38 the injured victim, as required by this chapter, shall be subject to a
39 civil penalty determined by the director but not to exceed two hundred
fifty dollars. The amount shall be paid into the crime victims' compensation account.

VI. APPEALS

NEW SECTION. Sec. 601. (1)(a) If the victim or beneficiary in a claim prevails in an appeal by any party to the department or the court, the department shall comply with the department or court's order with respect to the payment of compensation within the later of the following time periods:

(i) Sixty days after the compensation order has become final and is not subject to review or appeal; or

(ii) If the order has become final and is not subject to review or appeal and the department has, within the period specified in (a)(i) of this subsection, requested the filing by the victim or beneficiary of documents necessary to make payment of compensation, sixty days after all requested documents are filed with the department.

The department may extend the sixty-day time period for an additional thirty days for good cause.

(b) If the department fails to comply with (a) of this subsection, any person eligible for compensation under the order may institute proceedings for injunctive or other appropriate relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for Thurston county.

(2) In a proceeding under this section, the court shall enforce obedience to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders and may award a penalty of up to one thousand dollars to the person eligible for compensation under the order.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this chapter.

VII. ERRONEOUS PAYMENT DUE TO ERROR OR PAYMENT DUE TO MISREPRESENTATION
Sec. 701. RCW 7.68.125 and 1995 c 33 s 2 are each amended to read as follows:

(1)(a) Whenever any payment under this chapter is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by fraud, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient under this chapter. The department must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed that any claim therefor has been waived. The department may exercise its discretion to waive, in whole or in part, the amount of any such timely claim.

(2) Whenever any payment under this chapter has been made pursuant to an adjudication by the department, board, or any court and timely appeal therefrom has been made and the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient under this chapter. The department may exercise its discretion to waive, in whole or in part, the amount thereof.

(3) Whenever any payment under this chapter has been induced by fraud the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient under this chapter and the amount of the penalty shall be placed in the fund or funds established pursuant to RCW 7.68.090.

(4) If the department issues an order contending a debt due and owing under this section, the order is subject to chapter 51.52 RCW. If the order becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount stated in the order plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately enter the warrant in the execution docket. The amount of the warrant as docketed becomes a lien upon all real and personal property of the person against whom the warrant is issued, the same as a judgment in a civil case. The warrant shall then be subject to execution, garnishment, and other procedures.
for the collection of judgments. The filing fee must be added to the amount of the warrant. The department shall mail a conformed copy of the warrant to the person named within seven working days of filing with the clerk.

(5)(a) The director, or the director's designee, may issue to any person or organization an order to withhold and deliver property of any kind—[if—]—if there is reason to believe that the person or organization possesses property that is due, owing, or belonging to any person against whom a final order of debt due and owing has been entered. For purposes of this subsection, "person or organization" includes any individual, firm, association, corporation, political subdivision of the state, or agency of the state.

(b) The order to withhold and deliver must be served in the manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested. Any person or organization upon whom service has been made shall answer the order within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein.

(c) If there is in the possession of the person or organization served with the order any property that might be subject to the claim of the department, the person or organization must immediately withhold such property and deliver the property to the director or the director's authorized representative immediately upon demand.

(d) If the person or organization served the order fails to timely answer the order, the court may render judgment by default against the person or organization for the full amount claimed by the director in the order plus costs.

(e) If an order to withhold and deliver is served upon an employer and the property found to be subject to the notice is wages, the employer may assert in the answer all exemptions to which the wage earner might be entitled as provided by RCW 6.27.150. If benefits under this chapter is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by willful misrepresentation, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the crime victims'
compensation program. The department must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived.

(b) Except as provided in subsections (3) and (4) of this section, the department may only assess an overpayment of benefits because of adjudicator error when the order upon which the overpayment is based is not yet final as provided in RCW 51.52.050 and 51.52.060. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(c) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(2) Whenever the department fails to pay benefits because of clerical error, mistake of identity, or innocent misrepresentation, all not induced by recipient willful misrepresentation, the recipient may request an adjustment of benefits to be paid from the crime victims' compensation programs subject to the following:

(a) The recipient must request an adjustment in benefits within one year from the date of the incorrect payment or it will be deemed any claim therefore has been waived.

(b) The recipient may not seek an adjustment of benefits because of adjudicator error. Adjustments due to adjudicator error are addressed by the filing of a written request for reconsideration with the department or an appeal with the department within ninety days from the date the order is communicated as provided in RCW 51.52.050. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(3) Whenever any payment of benefits under this chapter has been made pursuant to an adjudication by the department or by order of any court and timely appeal therefrom has been made where the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim.

(a) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05
RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(b) The department shall first attempt recovery of overpayments for health services from any entity that provided health insurance to the victim to the extent that the health insurance entity would have provided health insurance benefits.

(4)(a) Whenever any payment of benefits under this chapter has been induced by willful misrepresentation the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the crime victims’ compensation program against whom the willful misrepresentation was committed and the amount of such penalty shall be placed in the crime victims’ compensation fund. Such repayment or recoupment must be demanded or ordered within three years of the discovery of the willful misrepresentation.

(b) For purposes of this subsection (4), it is willful misrepresentation for a person to obtain payments or other benefits under this chapter in an amount greater than that to which the person otherwise would be entitled. Willful misrepresentation includes:

(i) Willful false statement; or

(ii) Willful misrepresentation, omission, or concealment of any material fact.

(c) For purposes of this subsection (4), “willful” means a conscious or deliberate false statement, misrepresentation, omission, or concealment of a material fact with the specific intent of obtaining, continuing, or increasing benefits under this chapter.

(d) For purposes of this subsection (4), failure to disclose a work-type activity must be willful in order for a misrepresentation to have occurred.

(e) For purposes of this subsection (4), a material fact is one which would result in additional, increased, or continued benefits, including but not limited to facts about physical restrictions, or work-type activities which either result in wages or income or would be reasonably expected to do so. Wages or income include the receipt of any goods or services. For a work-type activity to be reasonably expected to result in wages or income, a pattern of repeated activity
must exist. For those activities that would reasonably be expected to result in wages or produce income, but for which actual wage or income information cannot be reasonably determined, the department shall impute wages.

(5) The victim, beneficiary, or other person affected thereby shall have the right to contest an order assessing an overpayment pursuant to this section in the same manner and to the same extent as provided under RCW 51.52.050 and 51.52.060. In the event such an order becomes final under chapter 51.52 RCW and notwithstanding the provisions of subsections (1) through (4) of this section, the director or director's designee may file with the clerk in any county within the state a warrant in the amount of the sum representing the unpaid overpayment and/or penalty plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the victim, beneficiary, or other person mentioned in the warrant, the amount of the unpaid overpayment and/or penalty plus interest accrued, and the date the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the victim, beneficiary, or other person against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the victim, beneficiary, or other person within three days of filing with the clerk.

The director or director's designee may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice to withhold and deliver property of any kind if there is reason to believe that there
is in the possession of such person, firm, corporation, municipal
corporation, political subdivision of the state, public corporation, or
agency of the state, property that is due, owing, or belonging to any
victim, beneficiary, or other person upon whom a warrant has been
served for payments due the department. The notice and order to
withhold and deliver shall be served by certified mail accompanied by
an affidavit of service by mailing or served by the sheriff of the
county, or by the sheriff's deputy, or by any authorized representative
of the director or director's designee, or by electronic means or other
methods authorized by law. Any person, firm, corporation, municipal
corporation, political subdivision of the state, public corporation, or
agency of the state upon whom service has been made shall answer the
notice within twenty days exclusive of the day of service, under oath
and in writing, and shall make true answers to the matters inquired or
in the notice and order to withhold and deliver. In the event there is
in the possession of the party named and served with such notice and
order, any property that may be subject to the claim of the department,
such property shall be delivered forthwith to the director or the
director's authorized representative upon demand. If the party served
and named in the notice and order fails to answer the notice and order
within the time prescribed in this section, the court may, after the
time to answer such order has expired, render judgment by default
against the party named in the notice for the full amount, plus costs,
claimed by the director or the director's designee in the notice. In
the event that a notice to withhold and deliver is served upon an
employer and the property found to be subject thereto is wages, the
employer may assert in the answer all exemptions provided for by
chapter 6.27 RCW to which the wage earner may be entitled.

This subsection shall only apply to orders assessing an overpayment
which are issued on or after July 28, 1991. This subsection shall
apply retroactively to all orders assessing an overpayment resulting
from willful misrepresentation, civil or criminal.

(6) Orders assessing an overpayment which are issued on or after
July 28, 1991, shall include a conspicuous notice of the collection
methods available to the department.

NEW SECTION. Sec. 702. Notwithstanding any other provisions of
law, any overpayments previously recovered under the provisions of
section 405 of this act as now or hereafter amended shall be limited to six months' overpayments. Where greater recovery has already been made, the director, in his or her discretion, may make restitution in those cases where an extraordinary hardship has been created.

Sec. 703. RCW 7.68.130 and 1995 c 33 s 3 are each amended to read as follows:

(1) Benefits payable pursuant to this chapter shall be reduced by the amount of any other public or private insurance available, less a proportionate share of reasonable attorneys' fees and costs, if any, incurred by the victim in obtaining recovery from the insurer. Calculation of a proportionate share of attorneys' fees and costs shall be made under the formula established in RCW ((51.24.060)) 7.68.050 (9) through (14). The department or the victim may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees.

(2) Benefits payable after 1980 to victims injured or killed before 1980 shall be reduced by any other public or private insurance including but not limited to social security.

(3) Payment by the department under this chapter shall be secondary to other insurance benefits, notwithstanding the provision of any contract or coverage to the contrary. In the case of private life insurance proceeds, the first forty thousand dollars of the proceeds shall not be considered for purposes of any reduction in benefits.

(4) If the department determines that a victim is likely to be eligible for other public insurance or support services, the department may require the applicant to apply for such services before awarding benefits under RCW 7.68.070. If the department determines that a victim shall apply for such services and the victim refuses or does not apply for those services, the department may deny any further benefits under this chapter. The department may require an applicant to provide a copy of their determination of eligibility before providing benefits under this chapter.

(5) Before payment of benefits will be considered victims shall use their private insurance coverage.

(6) For the purposes of this section, the collection methods available under RCW 7.68.125((4))) (5) apply.
Sec. 704. RCW 7.68.050 and 1998 c 91 s 1 are each amended to read as follows:

(1) No right of action at law for damages incurred as a consequence of a criminal act shall be lost as a consequence of being entitled to benefits under the provisions of this chapter. The victim or his beneficiary may elect to seek damages from the person or persons liable for the claimed injury or death, and such victim or beneficiary is entitled to the full compensation and benefits provided by this chapter regardless of any election or recovery made pursuant to this section.

(2) For the purposes of this section, the rights, privileges, responsibilities, duties, limitations, and procedures contained in ((RCW 51.24.050 through 51.24.110)) subsections (3) through (25) of this section apply.

(3) ((If the recovery involved is against the state, the lien of the department includes the interest on the benefits paid by the department to or on behalf of such person under this chapter computed at the rate of eight percent per annum from the date of payment.)) (a) If a third person is or may become liable to pay damages on account of a victim's injury for which benefits and compensation are provided under this chapter, the injured victim or beneficiary may elect to seek damages from the third person.

   (b) In every action brought under this section, the plaintiff shall give notice to the department when the action is filed. The department may file a notice of statutory interest in recovery. When such notice has been filed by the department, the parties shall thereafter serve copies of all notices, motions, pleadings, and other process on the department. The department may then intervene as a party in the action to protect its statutory interest in recovery.

   (c) For the purposes of this subsection, "injury" includes any physical or mental condition, disease, ailment, or loss, including death, for which compensation and benefits are paid or payable under this chapter.

   (d) For the purposes of this chapter, "recovery" includes all damages and insurance benefits, including life insurance, paid in connection with the victim's injuries or death.

(4) An election not to proceed against the third person operates as an assignment of the cause of action to the department, which may
prosecute or compromise the action in its discretion in the name of the
victim, beneficiary, or legal representative.

(5) If an injury to a victim results in the victim's death, the
department to which the cause of action has been assigned may petition
a court for the appointment of a special personal representative for
the limited purpose of maintaining an action under this chapter and
chapter 4.20 RCW.

(6) If a beneficiary is a minor child, an election not to proceed
against a third person on such beneficiary's cause of action may be
exercised by the beneficiary's legal custodian or guardian.

(7) Any recovery made by the department shall be distributed as
follows:

(a) The department shall be paid the expenses incurred in making
the recovery including reasonable costs of legal services;

(b) The victim or beneficiary shall be paid twenty-five percent of
the balance of the recovery made, which shall not be subject to
subsection (8) of this section, except that in the event of a
compromise and settlement by the parties, the victim or beneficiary may
agree to a sum less than twenty-five percent;

(c) The department shall be paid the amount paid to or on behalf of
the victim or beneficiary by the department; and

(d) The victim or beneficiary shall be paid any remaining balance.

(8) Thereafter no payment shall be made to or on behalf of a victim
or beneficiary by the department for such injury until any further
amount payable shall equal any such remaining balance. Thereafter,
such benefits shall be paid by the department to or on behalf of the
victim or beneficiary as though no recovery had been made from a third
person.

(9) If the victim or beneficiary elects to seek damages from the
third person, any recovery made shall be distributed as follows:

(a) The costs and reasonable attorneys' fees shall be paid
proportionately by the victim or beneficiary and the department. The
department may require court approval of costs and attorneys' fees or
may petition a court for determination of the reasonableness of costs
and attorneys' fees;

(b) The victim or beneficiary shall be paid twenty-five percent of
the balance of the award, except that in the event of a compromise and
settlement by the parties, the victim or beneficiary may agree to a sum
less than twenty-five percent;

(c) The department shall be paid the balance of the recovery made,
but only to the extent necessary to reimburse the department for the
amount paid;

(i) The department shall bear its proportionate share of the costs
and reasonable attorneys' fees incurred by the victim or beneficiary to
the extent of the benefits paid under this title. The department's
proportionate share shall not exceed one hundred percent of the costs
and reasonable attorneys' fees;

(ii) The department's proportionate share of the costs and
reasonable attorneys' fees shall be determined by dividing the gross
recovery amount into the benefits paid amount and multiplying this
percentage times the costs and reasonable attorneys' fees incurred by
the victim or beneficiary;

(iii) The department's reimbursement share shall be determined by
subtracting their proportionate share of the costs and reasonable
attorneys' fees from the benefits paid amount;

(d) Any remaining balance shall be paid to the victim or
beneficiary; and

(e) Thereafter no payment shall be made to or on behalf of a victim
or beneficiary by the department for such injury until the amount of
any further amount payable shall equal any such remaining balance minus
the department's proportionate share of the costs and reasonable
attorneys' fees in regards to the remaining balance. This
proportionate share shall be determined by dividing the gross recovery
amount into the remaining balance amount and multiplying this
percentage times the costs and reasonable attorneys' fees incurred by
the victim or beneficiary. Thereafter, such benefits shall be paid by
the department to or on behalf of the victim or beneficiary as though
no recovery had been made from a third person.

(10) The recovery made shall be subject to a lien by the department
for its share under this section. Notwithstanding RCW 48.18.410, a
recovery made from life insurance shall be subject to a lien by the
department.

(11) The department has sole discretion to compromise the amount of
its lien. In deciding whether or to what extent to compromise its
lien, the department shall consider at least the following:
(a) The likelihood of collection of the award or settlement as may be affected by insurance coverage, solvency, or other factors relating to the third person;

(b) Factual and legal issues of liability as between the victim or beneficiary and the third person. Such issues include but are not limited to possible contributory negligence and novel theories of liability; and

(c) Problems of proof faced in obtaining the award or settlement.

(12) It shall be the duty of the person to whom any recovery is paid before distribution under this section to advise the department of the fact and amount of such recovery, the costs and reasonable attorneys' fees associated with the recovery, and to distribute the recovery in compliance with this section.

(13) The distribution of any recovery made by award or settlement of the third party action shall be confirmed by department order, served by electronic, registered or certified mail, and shall be subject to chapter 51.52 RCW. In the event the order of distribution becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the sum representing the unpaid lien plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such victim or beneficiary mentioned in the warrant, the amount of the unpaid lien plus interest accrued and the date when the warrant was filed. The amount of such warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the victim or beneficiary against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added
to the amount of the warrant. A copy of such warrant shall be mailed
to the victim or beneficiary within three days of filing with the
clerk.

(14) The director, or the director's designee, may issue to any
person, firm, corporation, municipal corporation, political subdivision
of the state, public corporation, or agency of the state, a notice and
order to withhold and deliver property of any kind if he or she has
reason to believe that there is in the possession of such person, firm,
corporation, municipal corporation, political subdivision of the state,
public corporation, or agency of the state, property which is due,
owing, or belonging to any victim or beneficiary upon whom a warrant
has been served by the department for payments due to the crime
victims' compensation program. The notice and order to withhold and
deliver shall be served by the sheriff of the county or by the
sheriff's deputy; by certified mail, return receipt requested; or by
any authorized representatives of the director. Any person, firm,
corporation, municipal corporation, political subdivision of the state,
public corporation, or agency of the state upon whom service has been
made shall answer the notice within twenty days exclusive of the day of
service, under oath and in writing, and shall make true answers to the
matters inquired of in the notice and order to withhold and deliver.
In the event there is in the possession of the party named and served
with such notice and order, any property which may be subject to the
claim of the department, such property shall be delivered forthwith to
the director or the director's authorized representative upon demand.
If the party served and named in the notice and order fails to answer
the notice and order within the time prescribed in this section, the
court may, after the time to answer such order has expired, render
judgment by default against the party named in the notice for the full
amount claimed by the director in the notice together with costs. In
the event that a notice to withhold and deliver is served upon an
employer and the property found to be subject thereto is wages, the
employer may assert in the answer to all exemptions provided for by
chapter 6.27 RCW to which the wage earner may be entitled.

(15) The department may require the victim or beneficiary to
exercise the right of election under this chapter by serving a written
demand by electronic mail, registered mail, certified mail, or personal
service on the victim or beneficiary.
(16) Unless an election is made within sixty days of the receipt of the demand, and unless an action is instituted or settled within the time granted by the department, the victim or beneficiary is deemed to have assigned the action to the department. The department shall allow the victim or beneficiary at least ninety days from the election to institute or settle the action. When a beneficiary is a minor child the demand shall be served upon the legal custodian or guardian of such beneficiary.

(17) If an action which has been filed is not diligently prosecuted, the department may petition the court in which the action is pending for an order assigning the cause of action to the department. Upon a sufficient showing of a lack of diligent prosecution the court in its discretion may issue the order.

(18) If the department has taken an assignment of the third party cause of action under subsection (16) of this section, the victim or beneficiary may, at the discretion of the department, exercise a right of reelection and assume the cause of action subject to reimbursement of litigation expenses incurred by the department.

(19) If the victim or beneficiary elects to seek damages from the third person, notice of the election must be given to the department. The notice shall be by registered mail, certified mail, or personal service. If an action is filed by the victim or beneficiary, a copy of the complaint must be sent by registered mail to the department.

(20) A return showing service of the notice on the department shall be filed with the court but shall not be part of the record except as necessary to give notice to the defendant of the lien imposed by subsection (10) of this section.

(21) Any compromise or settlement of the third party cause of action by the victim or beneficiary which results in less than the entitlement under this title is void unless made with the written approval of the department. For the purposes of this chapter, "entitlement" means benefits and compensation paid and estimated by the department to be paid in the future.

(22) If a compromise or settlement is void because of subsection (21) of this section, the department may petition the court in which the action was filed for an order assigning the cause of action to the department. If an action has not been filed, the department may proceed as provided in chapter 7.24 RCW.
(23) The fact that the victim or beneficiary is entitled to compensation under this title shall not be pleaded or admissible in evidence in any third-party action under this chapter. Any challenge of the right to bring such action shall be made by supplemental pleadings only and shall be decided by the court as a matter of law.

(24) Actions against third persons that are assigned by the claimant to the department, voluntarily or by operation of law in accordance with this chapter, may be prosecuted by special assistant attorneys general.

(25) The attorney general shall select special assistant attorneys general from a list compiled by the department and the Washington state bar association. The attorney general, in conjunction with the department and the Washington state bar association, shall adopt rules and regulations outlining the criteria and the procedure by which private attorneys may have their names placed on the list of attorneys available for appointment as special assistant attorneys general to litigate third-party actions under subsection (24) of this section.

(26) The 1980 amendments to this section apply only to injuries which occur on or after April 1, 1980.

VIII. MISCELLANEOUS

NEW SECTION. Sec. 801. RCW 7.68.100 (Physicians' reporting) and 1973 1st ex.s. c 122 s 10 are each repealed.

NEW SECTION. Sec. 802. This act applies retroactively for claims of victims of criminal acts that occurred on or after July 1, 1981, in which a closing order has not been issued or become final and binding as of July 1, 2011, except that victims receiving time loss or loss of support on or before July 1, 2011, may continue to receive time loss at the rate established prior to July 1, 2011. Aggravation applications filed by crime victims who had claims prior to July 1, 2011, will be adjudicated under the laws in effect on or after the effective date of this section. This act does not affect the retroactive application of chapter 122, Laws of 2010.

NEW SECTION. Sec. 803. Sections 201 through 205, 302 through 307,
403 through 407, 504 through 508, 601, and 702 of this act are each added to chapter 7.68 RCW.

*NEW SECTION.  Sec. 804. Sections 401 and 502 of this act expire July 1, 2015.
*Sec. 804 was vetoed. See message at end of chapter.

*NEW SECTION.  Sec. 805. Sections 402 and 503 of this act take effect July 1, 2015.
*Sec. 805 was vetoed. See message at end of chapter.

NEW SECTION.  Sec. 806. Except for sections 402 and 503 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011.

Passed by the Senate April 21, 2011.
Passed by the House April 7, 2011.
Approved by the Governor May 12, 2011, with the exception of certain items that were vetoed.
Filed in Office of Secretary of State May 13, 2011.

Note: Governor's explanation of partial veto is as follows:
"I am returning herewith, without my approval as to Sections 402, 503, 804 and 805, Substitute Senate Bill 5691 entitled:

"AN ACT Relating to crime victims' compensation."

With this bill, the Legislature has taken important steps to ensure the sustainability of our Crime Victims' Compensation program. Administrative efficiencies, coupled with painful but necessary benefit reductions, will allow the program to maintain its viability for the foreseeable future. However, only temporarily reducing these benefits will only temporarily strengthen the Crime Victims' Compensation program. An increase in crime victims' benefits is a discussion that should occur if and when state revenues improve, but not before that time.

For these reasons, I have vetoed Sections 402, 503, 804 and 805 of Substitute Senate Bill 5691.

With the exception of Sections 402, 503, 804 and 805, Substitute Senate Bill 5691 is approved."