

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5400**

54th Legislature  
1995 Regular Session

Passed by the Senate March 13, 1995  
YEAS 46 NAYS 0

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**President of the Senate**

Passed by the House April 4, 1995  
YEAS 97 NAYS 0

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**Speaker of the  
House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5400** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5400**

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Passed Legislature - 1995 Regular Session

**State of Washington                      54th Legislature                      1995 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Smith, C. Anderson, Haugen and Winsley; by request of Department of Labor & Industries)

Read first time 02/17/95.

1            AN ACT Relating to compensation for victims of crimes; and amending  
2 RCW 7.68.120, 7.68.125, 7.68.130, 9.94A.142, 13.40.190, and 9.95.210.

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

4            **Sec. 1.** RCW 7.68.120 and 1973 1st ex.s. c 122 s 12 are each  
5 amended to read as follows:

6            Any person who has committed a criminal act which resulted in  
7 injury compensated under this chapter may be required to make  
8 reimbursement to the department as ~~((hereinafter))~~ provided in this  
9 section.

10            (1) Any payment of benefits to or on behalf of a victim under this  
11 chapter creates a debt due and owing to the department by any person  
12 found to have committed ~~((such))~~ the criminal act in either a civil or  
13 criminal court proceeding in which he or she is a party~~((:—PROVIDED,~~  
14 ~~That where))~~. If there has been a superior or district court order, or  
15 an order of the indeterminate sentence review board ~~((of prison terms~~  
16 ~~and paroles))~~ or the department of social and health services, as  
17 ~~((hereinafter))~~ provided in subsection (4) of this section, the debt  
18 shall be limited to the amount provided for in ~~((said))~~ the order. A  
19 court order shall prevail over any other order. If, in a criminal

1 proceeding, a person has been found to have committed the criminal act  
2 that results in the payment of benefits to a victim and the court in  
3 the criminal proceeding does not enter a restitution order, the  
4 department shall, within one year of imposition of the sentence,  
5 petition the court for entry of a restitution order.

6 (2)(a) The department may issue a notice of debt due and owing to  
7 the person found to have committed the criminal act, and shall serve  
8 the notice on the person in the manner prescribed for the service of a  
9 summons in a civil action or by certified mail. The department shall  
10 file the notice of debt due and owing along with proof of service with  
11 the superior court of the county where the criminal act took place.  
12 The person served the notice shall have thirty days from the date of  
13 service to respond to the notice by requesting a hearing in superior  
14 court.

15 (b) If a person served a notice of debt due and owing fails to  
16 respond within thirty days, the department may seek a default judgment.  
17 Upon entry of a judgment in an action brought pursuant to (a) of this  
18 subsection, the clerk shall enter the order in the execution docket.  
19 The filing fee shall be added to the amount of the debt indicated in  
20 the judgment. The judgment shall become a lien upon all real and  
21 personal property of the person named in the judgment as in other civil  
22 cases. The judgment shall be subject to execution, garnishment, or  
23 other procedures for collection of a judgment.

24 (3)(a) The director, or the director's designee, may issue to any  
25 person or organization an order to withhold and deliver property of any  
26 kind if there is reason to believe that the person or organization  
27 possesses property that is due, owing, or belonging to any person  
28 against whom a judgment for a debt due and owing has been entered under  
29 subsection (2) of this section. For purposes of this subsection,  
30 "person or organization" includes any individual, firm, association,  
31 corporation, political subdivision of the state, or agency of the  
32 state.

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

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

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

10 (e) If an order to withhold and deliver is served upon an employer  
11 and the property found to be subject to the notice is wages, the  
12 employer may assert in the answer all exemptions to which the wage  
13 earner might be entitled as provided by RCW 6.27.150.

14 (4) Upon being placed on work release pursuant to chapter 72.65  
15 RCW, or upon release from custody of a state correctional facility on  
16 parole, any convicted person who owes a debt to the department as a  
17 consequence of a criminal act may have the schedule or amount of  
18 payments therefor set as a condition of work release or parole by the  
19 department of social and health services or indeterminate sentence  
20 review board ((of prison terms and paroles)) respectively, subject to  
21 modification based on change of circumstances. Such action shall be  
22 binding on the department.

23 ~~((+3))~~ (5) Any requirement for payment due and owing the  
24 department by a convicted person under this chapter may be waived,  
25 modified downward or otherwise adjusted by the department in the  
26 interest of justice, the well-being of the victim, and the  
27 rehabilitation of the individual.

28 (6) The department shall not seek payment for a debt due and owing  
29 if such action would deprive the victim of the crime giving rise to the  
30 claim under this chapter of the benefit of any property to which the  
31 victim would be entitled under RCW 26.16.030.

32 **Sec. 2.** RCW 7.68.125 and 1975 1st ex.s. c 176 s 8 are each amended  
33 to read as follows:

34 (1) Whenever any payment under this chapter is made because of  
35 clerical error, mistake of identity, innocent misrepresentation by or  
36 on behalf of the recipient thereof mistakenly acted upon, or any other  
37 circumstance of a similar nature, all not induced by fraud, the  
38 recipient thereof shall repay it and recoupment may be made from any

1 future payments due to the recipient under this chapter(~~(:—PROVIDED,~~  
2 ~~That))~~). The department must make claim for such repayment or recoupment  
3 within one year of the making of any such payment or it will be deemed  
4 that any claim therefor has been waived(~~(:—PROVIDED FURTHER, That))~~).  
5 The department may exercise its discretion to waive, in whole or in  
6 part, the amount of any such timely claim.

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

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

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

37 (5)(a) The director, or the director's designee, may issue to any  
38 person or organization an order to withhold and deliver property of any  
39 kind if there is reason to believe that the person or organization

1 possesses property that is due, owing, or belonging to any person  
2 against whom a final order of debt due and owing has been entered. For  
3 purposes of this subsection, "person or organization" includes any  
4 individual, firm, association, corporation, political subdivision of  
5 the state, or agency of the state.

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

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

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

21 (e) If an order to withhold and deliver is served upon an employer  
22 and the property found to be subject to the notice is wages, the  
23 employer may assert in the answer all exemptions to which the wage  
24 earner might be entitled as provided by RCW 6.27.150.

25 **Sec. 3.** RCW 7.68.130 and 1985 c 443 s 16 are each amended to read  
26 as follows:

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

36 (2) Benefits payable after 1980 to victims injured or killed before  
37 1980 shall be reduced by any other public or private insurance  
38 including but not limited to social security.

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

7       (4) For the purposes of this section, the collection methods  
8 available under RCW 7.68.125(4) apply.

9       **Sec. 4.** RCW 9.94A.142 and 1994 c 271 s 602 are each amended to  
10 read as follows:

11       (1) When restitution is ordered, the court shall determine the  
12 amount of restitution due at the sentencing hearing or within sixty  
13 days except as provided in subsection (3) of this section. The court  
14 shall then set a minimum monthly payment that the offender is required  
15 to make towards the restitution that is ordered. The court should take  
16 into consideration the total amount of the restitution owed, the  
17 offender's present, past, and future ability to pay, as well as any  
18 assets that the offender may have. During the period of supervision,  
19 the community corrections officer may examine the offender to determine  
20 if there has been a change in circumstances that warrants an amendment  
21 of the monthly payment schedule. The community corrections officer may  
22 recommend a change to the schedule of payment and shall inform the  
23 court of the recommended change and the reasons for the change. The  
24 sentencing court may then reset the monthly minimum payments based on  
25 the report from the community corrections officer of the change in  
26 circumstances. Restitution ordered by a court pursuant to a criminal  
27 conviction shall be based on easily ascertainable damages for injury to  
28 or loss of property, actual expenses incurred for treatment for injury  
29 to persons, and lost wages resulting from injury. Restitution shall  
30 not include reimbursement for damages for mental anguish, pain and  
31 suffering, or other intangible losses, but may include the costs of  
32 counseling reasonably related to the offense. The amount of  
33 restitution shall not exceed double the amount of the offender's gain  
34 or the victim's loss from the commission of the crime. For the  
35 purposes of this section, the offender shall remain under the court's  
36 jurisdiction for a maximum term of ten years following the offender's  
37 release from total confinement or ten years subsequent to the entry of  
38 the judgment and sentence, whichever period is longer. The portion of

1 the sentence concerning restitution may be modified as to amount, terms  
2 and conditions during the ten-year period, regardless of the expiration  
3 of the offender's term of community supervision and regardless of the  
4 statutory maximum for the crime. The offender's compliance with the  
5 restitution shall be supervised by the department.

6 (2) Restitution shall be ordered whenever the offender is convicted  
7 of an offense which results in injury to any person or damage to or  
8 loss of property unless extraordinary circumstances exist which make  
9 restitution inappropriate in the court's judgment and the court sets  
10 forth such circumstances in the record. In addition, restitution shall  
11 be ordered to pay for an injury, loss, or damage if the offender pleads  
12 guilty to a lesser offense or fewer offenses and agrees with the  
13 prosecutor's recommendation that the offender be required to pay  
14 restitution to a victim of an offense or offenses which are not  
15 prosecuted pursuant to a plea agreement.

16 (3) Regardless of the provisions of subsections (1) and (2) of this  
17 section, the court shall order restitution in all cases where the  
18 victim is entitled to benefits under the crime victims' compensation  
19 act, chapter 7.68 RCW. If the court does not order restitution and the  
20 victim of the crime has been determined to be entitled to benefits  
21 under the crime victims' compensation act, the department of labor and  
22 industries, as administrator of the crime victims' compensation  
23 program, may petition the court within one year of entry of the  
24 judgment and sentence for entry of a restitution order. Upon receipt  
25 of a petition from the department of labor and industries, the court  
26 shall hold a restitution hearing and shall enter a restitution order.

27 (4) In addition to any sentence that may be imposed, a defendant  
28 who has been found guilty of an offense involving fraud or other  
29 deceptive practice or an organization which has been found guilty of  
30 any such offense may be ordered by the sentencing court to give notice  
31 of the conviction to the class of persons or to the sector of the  
32 public affected by the conviction or financially interested in the  
33 subject matter of the offense by mail, by advertising in designated  
34 areas or through designated media, or by other appropriate means.

35 ~~((4))~~ (5) This section does not limit civil remedies or defenses  
36 available to the victim, survivors of the victim, or defendant.

37 ~~((5))~~ (6) This section shall apply to offenses committed after  
38 July 1, 1985.



1       **Sec. 5.** RCW 13.40.190 and 1994 sp.s. c 7 s 528 are each amended to  
2 read as follows:

3       (1) In its dispositional order, the court shall require the  
4 respondent to make restitution to any persons who have suffered loss or  
5 damage as a result of the offense committed by the respondent. In  
6 addition, restitution may be ordered for loss or damage if the offender  
7 pleads guilty to a lesser offense or fewer offenses and agrees with the  
8 prosecutor's recommendation that the offender be required to pay  
9 restitution to a victim of an offense or offenses which, pursuant to a  
10 plea agreement, are not prosecuted. The payment of restitution shall  
11 be in addition to any punishment which is imposed pursuant to the other  
12 provisions of this chapter. The court may determine the amount, terms,  
13 and conditions of the restitution including a payment plan extending up  
14 to ten years if the court determines that the respondent does not have  
15 the means to make full restitution over a shorter period. Restitution  
16 may include the costs of counseling reasonably related to the offense.  
17 If the respondent participated in the crime with another person or  
18 other persons, all such participants shall be jointly and severally  
19 responsible for the payment of restitution. For the purposes of this  
20 section, the respondent shall remain under the court's jurisdiction for  
21 a maximum term of ten years after the respondent's eighteenth birthday.  
22 The court may not require the respondent to pay full or partial  
23 restitution if the respondent reasonably satisfies the court that he or  
24 she does not have the means to make full or partial restitution and  
25 could not reasonably acquire the means to pay such restitution over a  
26 ten-year period. In cases where an offender has been committed to the  
27 department for a period of confinement exceeding fifteen weeks,  
28 restitution may be waived.

29       (2) Regardless of the provisions of subsection (1) of this section,  
30 the court shall order restitution in all cases where the victim is  
31 entitled to benefits under the crime victims' compensation act, chapter  
32 7.68 RCW. If the court does not order restitution and the victim of  
33 the crime has been determined to be entitled to benefits under the  
34 crime victims' compensation act, the department of labor and  
35 industries, as administrator of the crime victims' compensation  
36 program, may petition the court within one year of entry of the  
37 disposition order for entry of a restitution order. Upon receipt of a  
38 petition from the department of labor and industries, the court shall  
39 hold a restitution hearing and shall enter a restitution order.

1       (3) If an order includes restitution as one of the monetary  
2 assessments, the county clerk shall make disbursements to victims named  
3 in the order. The restitution to victims named in the order shall be  
4 paid prior to any payment for other penalties or monetary assessments.

5       (~~(3)~~) (4) A respondent under obligation to pay restitution may  
6 petition the court for modification of the restitution order.

7       **Sec. 6.** RCW 9.95.210 and 1993 c 251 s 3 are each amended to read  
8 as follows:

9       In granting probation, the court may suspend the imposition or the  
10 execution of the sentence and may direct that the suspension may  
11 continue upon such conditions and for such time as it shall designate,  
12 not exceeding the maximum term of sentence or two years, whichever is  
13 longer.

14       In the order granting probation and as a condition thereof, the  
15 court may in its discretion imprison the defendant in the county jail  
16 for a period not exceeding one year and may fine the defendant any sum  
17 not exceeding the statutory limit for the offense committed, and court  
18 costs. As a condition of probation, the court shall require the  
19 payment of the penalty assessment required by RCW 7.68.035. The court  
20 may also require the defendant to make such monetary payments, on such  
21 terms as it deems appropriate under the circumstances, as are necessary  
22 (1) to comply with any order of the court for the payment of family  
23 support, (2) to make restitution to any person or persons who may have  
24 suffered loss or damage by reason of the commission of the crime in  
25 question or when the offender pleads guilty to a lesser offense or  
26 fewer offenses and agrees with the prosecutor's recommendation that the  
27 offender be required to pay restitution to a victim of an offense or  
28 offenses which are not prosecuted pursuant to a plea agreement, (3) to  
29 pay such fine as may be imposed and court costs, including  
30 reimbursement of the state for costs of extradition if return to this  
31 state by extradition was required, (4) following consideration of the  
32 financial condition of the person subject to possible electronic  
33 monitoring, to pay for the costs of electronic monitoring if that  
34 monitoring was required by the court as a condition of release from  
35 custody or as a condition of probation, (5) to contribute to a county  
36 or interlocal drug fund, and (6) to make restitution to a public agency  
37 for the costs of an emergency response under RCW 38.52.430, and may

1 require bonds for the faithful observance of any and all conditions  
2 imposed in the probation.

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

13 The court shall order the probationer to report to the secretary of  
14 corrections or such officer as the secretary may designate and as a  
15 condition of the probation to follow implicitly the instructions of the  
16 secretary. If the probationer has been ordered to make restitution,  
17 the officer supervising the probationer shall make a reasonable effort  
18 to ascertain whether restitution has been made. If restitution has not  
19 been made as ordered, the officer shall inform the prosecutor of that  
20 violation of the terms of probation not less than three months prior to  
21 the termination of the probation period. The secretary of corrections  
22 will promulgate rules and regulations for the conduct of the person  
23 during the term of probation. For defendants found guilty in district  
24 court, like functions as the secretary performs in regard to probation  
25 may be performed by probation officers employed for that purpose by the  
26 county legislative authority of the county wherein the court is  
27 located.

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