

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5400

Chapter 33, Laws of 1995

54th Legislature
1995 Regular Session

Victims of crimes--Compensation

EFFECTIVE DATE: 7/23/95

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

JOEL PRITCHARD

President of the Senate

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

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved April 13, 1995

MIKE LOWRY

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.

MARTY BROWN

Secretary

FILED

April 13, 1995 - 11:21 a.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5400

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.

Passed the Senate March 13, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 13, 1995.

Filed in Office of Secretary of State April 13, 1995.

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