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HOUSE BILL 2771

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State of Washington

61st Legislature

2010 Regular Session

**By** Representative O'Brien; by request of Department of Labor & Industries and Department of Social and Health Services

Read first time 01/13/10. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to transferring responsibility for administering  
2 the crime victims' compensation program from the department of labor  
3 and industries to the department of social and health services;  
4 amending RCW 7.68.015, 7.68.020, 7.68.030, 7.68.035, 7.68.085,  
5 7.68.145, 9.95.210, 72.09.095, and 74.08A.010; adding a new section to  
6 chapter 7.68 RCW; and providing an effective date.

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

8 **Sec. 1.** RCW 7.68.015 and 1989 1st ex.s. c 5 s 1 are each amended  
9 to read as follows:

10 The department of (~~labor and industries~~) social and health  
11 services shall operate the crime victims' compensation program within  
12 the appropriations and the conditions and limitations on the  
13 appropriations provided for this program.

14 **Sec. 2.** RCW 7.68.020 and 2006 c 268 s 1 are each amended to read  
15 as follows:

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

1 (1) "Department" means the department of (~~labor and industries~~)  
2 social and health services for the purposes of applying Title 51 RCW as  
3 provided in this chapter.

4 (2) "Criminal act" means an act committed or attempted in this  
5 state which is: (a) Punishable as a federal offense that is comparable  
6 to a felony or gross misdemeanor in this state; (b) punishable as a  
7 felony or gross misdemeanor under the laws of this state; (c) an act  
8 committed outside the state of Washington against a resident of the  
9 state of Washington which would be compensable had it occurred inside  
10 this state and the crime occurred in a state which does not have a  
11 crime victims compensation program, for which the victim is eligible as  
12 set forth in the Washington compensation law; or (d) an act of  
13 terrorism as defined in 18 U.S.C. Sec. 2331, as it exists on May 2,  
14 1997, committed outside of the United States against a resident of the  
15 state of Washington, except as follows:

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

19 (A) The injury or death was intentionally inflicted;

20 (B) The operation thereof was part of the commission of another  
21 non-vehicular criminal act as defined in this section;

22 (C) The death or injury was the result of the operation of a motor  
23 vehicle after July 24, 1983, and a preponderance of the evidence  
24 establishes that the death was the result of vehicular homicide under  
25 RCW 46.61.520, or a conviction of vehicular assault under RCW  
26 46.61.522, has been obtained: PROVIDED, That in cases where a probable  
27 criminal defendant has died in perpetration of vehicular assault or, in  
28 cases where the perpetrator of the vehicular assault is unascertainable  
29 because he or she left the scene of the accident in violation of RCW  
30 46.52.020 or, because of physical or mental infirmity or disability the  
31 perpetrator is incapable of standing trial for vehicular assault, the  
32 department may, by a preponderance of the evidence, establish that a  
33 vehicular assault had been committed and authorize benefits;

34 (D) The injury or death was caused by a driver in violation of RCW  
35 46.61.502; or

36 (E) The injury or death was caused by a driver in violation of RCW  
37 46.61.655(7)(a), failure to secure a load in the first degree;

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

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

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

13 (3) "Director" means the secretary of the department of social and  
14 health services for the purposes of applying Title 51 RCW as provided  
15 in this chapter.

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

24 ((+4)) (5) "Child," "accredited school," "dependent,"  
25 "beneficiary," "average monthly wage," (~~"director,"~~) "injury,"  
26 "invalid," "permanent partial disability," and "permanent total  
27 disability" have the meanings assigned to them in chapter 51.08 RCW as  
28 now or hereafter amended.

29 ((+5)) (6) "Gainfully employed" means engaging on a regular and  
30 continuous basis in a lawful activity from which a person derives a  
31 livelihood.

32 ((+6)) (7) "Private insurance" means any source of recompense  
33 provided by contract available as a result of the claimed injury or  
34 death at the time of such injury or death, or which becomes available  
35 any time thereafter.

36 ((+7)) (8) "Public insurance" means any source of recompense  
37 provided by statute, state or federal, available as a result of the

1 claimed injury or death at the time of such injury or death, or which  
2 becomes available any time thereafter.

3 **Sec. 3.** RCW 7.68.030 and 2009 c 479 s 7 are each amended to read  
4 as follows:

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

19 The department shall use the applicable crime victims' rules  
20 adopted by the department of labor and industries, until such time as  
21 the department adopts its own rules.

22 **Sec. 4.** RCW 7.68.035 and 2009 c 479 s 8 are each amended to read  
23 as follows:

24 (1)(a) When any person is found guilty in any superior court of  
25 having committed a crime, except as provided in subsection (2) of this  
26 section, there shall be imposed by the court upon such convicted person  
27 a penalty assessment. The assessment shall be in addition to any other  
28 penalty or fine imposed by law and shall be five hundred dollars for  
29 each case or cause of action that includes one or more convictions of  
30 a felony or gross misdemeanor and two hundred fifty dollars for any  
31 case or cause of action that includes convictions of only one or more  
32 misdemeanors.

33 (b) When any juvenile is adjudicated of any offense in any juvenile  
34 offense disposition under Title 13 RCW, except as provided in  
35 subsection (2) of this section, there shall be imposed upon the  
36 juvenile offender a penalty assessment. The assessment shall be in

1 addition to any other penalty or fine imposed by law and shall be one  
2 hundred dollars for each case or cause of action that includes one or  
3 more adjudications for a felony or gross misdemeanor and seventy-five  
4 dollars for each case or cause of action that includes adjudications of  
5 only one or more misdemeanors.

6 (2) The assessment imposed by subsection (1) of this section shall  
7 not apply to motor vehicle crimes defined in Title 46 RCW except those  
8 defined in the following sections: RCW 46.61.520, 46.61.522,  
9 46.61.024, 46.52.090, 46.70.140, 46.61.502, 46.61.504, 46.52.101,  
10 46.20.410, 46.52.020, 46.10.130, 46.09.130, 46.61.5249, 46.61.525,  
11 46.61.685, 46.61.530, 46.61.500, 46.61.015, 46.52.010, 46.44.180,  
12 46.10.090(2), and 46.09.120(2).

13 (3) When any person accused of having committed a crime posts bail  
14 in superior court pursuant to the provisions of chapter 10.19 RCW and  
15 such bail is forfeited, there shall be deducted from the proceeds of  
16 such forfeited bail a penalty assessment, in addition to any other  
17 penalty or fine imposed by law, equal to the assessment which would be  
18 applicable under subsection (1) of this section if the person had been  
19 convicted of the crime.

20 (4) Such penalty assessments shall be paid by the clerk of the  
21 superior court to the county treasurer who shall monthly transmit the  
22 money as provided in RCW 10.82.070. Each county shall deposit fifty  
23 percent of the money it receives per case or cause of action under  
24 subsection (1) of this section and retains under RCW 10.82.070, not  
25 less than one and seventy-five one-hundredths percent of the remaining  
26 money it retains under RCW 10.82.070 and the money it retains under  
27 chapter 3.62 RCW, and all money it receives under subsection (7) of  
28 this section into a fund maintained exclusively for the support of  
29 comprehensive programs to encourage and facilitate testimony by the  
30 victims of crimes and witnesses to crimes. A program shall be  
31 considered "comprehensive" only after approval of the department upon  
32 application by the county prosecuting attorney. The department shall  
33 approve as comprehensive only programs which:

34 (a) Provide comprehensive services to victims and witnesses of all  
35 types of crime with particular emphasis on serious crimes against  
36 persons and property. It is the intent of the legislature to make  
37 funds available only to programs which do not restrict services to

1 victims or witnesses of a particular type or types of crime and that  
2 such funds supplement, not supplant, existing local funding levels;

3 (b) Are administered by the county prosecuting attorney either  
4 directly through the prosecuting attorney's office or by contract  
5 between the county and agencies providing services to victims of crime;

6 (c) Make a reasonable effort to inform the known victim or his  
7 surviving dependents of the existence of this chapter and the procedure  
8 for making application for benefits;

9 (d) Assist victims in the restitution and adjudication process; and

10 (e) Assist victims of violent crimes in the preparation and  
11 presentation of their claims to the department (~~(of labor and~~  
12 ~~industries)~~) under this chapter.

13 Before a program in any county west of the Cascade mountains is  
14 submitted to the department for approval, it shall be submitted for  
15 review and comment to each city within the county with a population of  
16 more than one hundred fifty thousand. The department will consider if  
17 the county's proposed comprehensive plan meets the needs of crime  
18 victims in cases adjudicated in municipal, district or superior courts  
19 and of crime victims located within the city and county.

20 (5) Upon submission to the department of a letter of intent to  
21 adopt a comprehensive program, the prosecuting attorney shall retain  
22 the money deposited by the county under subsection (4) of this section  
23 until such time as the county prosecuting attorney has obtained  
24 approval of a program from the department. Approval of the  
25 comprehensive plan by the department must be obtained within one year  
26 of the date of the letter of intent to adopt a comprehensive program.  
27 The county prosecuting attorney shall not make any expenditures from  
28 the money deposited under subsection (4) of this section until approval  
29 of a comprehensive plan by the department. If a county prosecuting  
30 attorney has failed to obtain approval of a program from the department  
31 under subsection (4) of this section or failed to obtain approval of a  
32 comprehensive program within one year after submission of a letter of  
33 intent under this section, the county treasurer shall monthly transmit  
34 one hundred percent of the money deposited by the county under  
35 subsection (4) of this section to the state treasurer for deposit in  
36 the state general fund.

37 (6) County prosecuting attorneys are responsible to make every

1 reasonable effort to insure that the penalty assessments of this  
2 chapter are imposed and collected.

3 (7) Every city and town shall transmit monthly one and seventy-five  
4 one-hundredths percent of all money, other than money received for  
5 parking infractions, retained under RCW 3.50.100 and 35.20.220 to the  
6 county treasurer for deposit as provided in subsection (4) of this  
7 section.

8 **Sec. 5.** RCW 7.68.085 and 2009 c 479 s 9 are each amended to read  
9 as follows:

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

- 15 (1) Necessary for a previously accepted condition;  
16 (2) Necessary to protect the victim's life or prevent deterioration  
17 of the victim's previously accepted condition; and  
18 (3) Not available from an alternative source.

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

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

29 **Sec. 6.** RCW 7.68.145 and 1975 1st ex.s. c 176 s 7 are each amended  
30 to read as follows:

31 Notwithstanding any other provision of law, all law enforcement,  
32 criminal justice, or other governmental agencies, or hospital; any  
33 physician or other practitioner of the healing arts; or any other  
34 organization or person having possession or control of any  
35 investigative or other information pertaining to any alleged criminal  
36 act or victim concerning which a claim for benefits has been filed

1 under this chapter, shall, upon request, make available to and allow  
2 the reproduction of any such information by the section of the  
3 department administering this chapter or other public employees in  
4 their performance of their official duties under this chapter.

5 No person or organization, public or private, shall incur any legal  
6 liability by reason of releasing any such information to the director  
7 (~~(of labor and industries)~~) or the section of the department which  
8 administers this chapter or other public employees in the performance  
9 of their official duties under this chapter.

10 **Sec. 7.** RCW 9.95.210 and 2005 c 362 s 4 are each amended to read  
11 as follows:

12 (1) In granting probation, the superior court may suspend the  
13 imposition or the execution of the sentence and may direct that the  
14 suspension may continue upon such conditions and for such time as it  
15 shall designate, not exceeding the maximum term of sentence or two  
16 years, whichever is longer.

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



1 a condition of release from custody or as a condition of probation; (e)  
2 to contribute to a county or interlocal drug fund; and (f) to make  
3 restitution to a public agency for the costs of an emergency response  
4 under RCW 38.52.430, and may require bonds for the faithful observance  
5 of any and all conditions imposed in the probation.

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

18 (4) In granting probation, the superior court may order the  
19 probationer to report to the secretary of corrections or such officer  
20 as the secretary may designate and as a condition of the probation to  
21 follow the instructions of the secretary. If the county legislative  
22 authority has elected to assume responsibility for the supervision of  
23 superior court misdemeanor probationers within its jurisdiction, the  
24 superior court misdemeanor probationer shall report to a probation  
25 officer employed or contracted for by the county. In cases where a  
26 superior court misdemeanor probationer is sentenced in one county, but  
27 resides within another county, there must be provisions for the  
28 probationer to report to the agency having supervision responsibility  
29 for the probationer's county of residence.

30 (5) If the probationer has been ordered to make restitution and the  
31 superior court has ordered supervision, the officer supervising the  
32 probationer shall make a reasonable effort to ascertain whether  
33 restitution has been made. If the superior court has ordered  
34 supervision and restitution has not been made as ordered, the officer  
35 shall inform the prosecutor of that violation of the terms of probation  
36 not less than three months prior to the termination of the probation  
37 period. The secretary of corrections will promulgate rules and  
38 regulations for the conduct of the person during the term of probation.

1 For defendants found guilty in district court, like functions as the  
2 secretary performs in regard to probation may be performed by probation  
3 officers employed for that purpose by the county legislative authority  
4 of the county wherein the court is located.

5 (6) The provisions of RCW 9.94A.501 apply to sentences imposed  
6 under this section.

7 **Sec. 8.** RCW 72.09.095 and 1995 c 234 s 2 are each amended to read  
8 as follows:

9 Each year the department shall transfer twenty-five percent of the  
10 total annual revenues and receipts received in each institutional  
11 betterment fund subaccount to the department of (~~labor and~~  
12 ~~industries~~) social and health services for the purpose of providing  
13 direct benefits to crime victims through the crime victims'  
14 compensation program as outlined in chapter 7.68 RCW. This transfer  
15 takes priority over any expenditure of betterment funds and shall be  
16 reflected on the monthly financial statements of each institution's  
17 betterment fund subaccount.

18 Any funds so transferred to the department of (~~labor and~~  
19 ~~industries~~) social and health services shall be in addition to the  
20 crime victims' compensation amount provided in an omnibus appropriation  
21 bill. It is the intent of the legislature that the funds forecasted or  
22 transferred pursuant to this section shall not reduce the funding  
23 levels provided by appropriation.

24 **Sec. 9.** RCW 74.08A.010 and 2004 c 54 s 4 are each amended to read  
25 as follows:

26 (1) A family that includes an adult who has received temporary  
27 assistance for needy families for sixty months after July 27, 1997,  
28 shall be ineligible for further temporary assistance for needy families  
29 assistance.

30 (2) For the purposes of applying the rules of this section, the  
31 department shall count any month in which an adult family member  
32 received a temporary assistance for needy families cash assistance  
33 grant unless the assistance was provided when the family member was a  
34 minor child and not the head of the household or married to the head of  
35 the household.

1 (3) The department shall refer recipients who require specialized  
2 assistance to appropriate department programs, crime victims' programs  
3 through the department of (~~community, trade, and economic~~  
4 ~~development~~) commerce, or the crime victims' compensation program of  
5 the department of (~~labor and industries~~) social and health services.

6 (4) The department may exempt a recipient and the recipient's  
7 family from the application of subsection (1) of this section by reason  
8 of hardship or if the recipient meets the family violence options of  
9 section 402(A)(7) of Title IVA of the federal social security act as  
10 amended by P.L. 104-193. The number of recipients and their families  
11 exempted from subsection (1) of this section for a fiscal year shall  
12 not exceed twenty percent of the average monthly number of recipients  
13 and their families to which assistance is provided under the temporary  
14 assistance for needy families program.

15 (5) The department shall not exempt a recipient and his or her  
16 family from the application of subsection (1) of this section until  
17 after the recipient has received fifty-two months of assistance under  
18 this chapter.

19 (6) Beginning on October 31, 2005, the department shall provide  
20 transitional food stamp assistance for a period of five months to a  
21 household that ceases to receive temporary assistance for needy  
22 families assistance and is not in sanction status. If necessary, the  
23 department shall extend the household's food stamp certification until  
24 the end of the transition period.

25 NEW SECTION. **Sec. 10.** A new section is added to chapter 7.68 RCW  
26 to read as follows:

27 (1) All powers, duties, and functions of the department of labor  
28 and industries pertaining to the crime victims' compensation program  
29 are transferred to the department. All references to the director of  
30 the department of labor and industries in the Revised Code of  
31 Washington in context of the functions transferred in this section mean  
32 the secretary of the department of social and health services. All  
33 references to the supervisor of industrial insurance in the Revised  
34 Code of Washington in the context of the functions transferred in this  
35 section mean the head of the crime victims' compensation program within  
36 the department of social and health services.

37 (2)(a) All:

1 (i) Reports, documents, surveys, books, records, files, papers, or  
2 written material in the possession of the department of labor and  
3 industries pertaining to the powers, functions, and duties transferred  
4 in subsection (1) of this section shall be delivered to the custody of  
5 the department;

6 (ii) Cabinets, furniture, office equipment, motor vehicles, and  
7 other tangible property employed by the department of labor and  
8 industries in carrying out the powers, functions, and duties  
9 transferred shall be made available to the department;

10 (iii) Funds, credits, or other assets held in connection with the  
11 powers, functions, and duties transferred shall be assigned to the  
12 department.

13 (b) Any appropriations made to the department of labor and  
14 industries for carrying out the powers, functions, and duties  
15 transferred shall, on the effective date of this section, be  
16 transferred and credited to the department to carry out the  
17 responsibilities of the crime victims' compensation program.

18 (c) When a question arises as to the transfer of any funds, books,  
19 documents, records, papers, files, equipment, or other tangible  
20 property used or held in the exercise of the powers and the performance  
21 of the duties and functions transferred, the director of the office of  
22 financial management shall make a determination as to the proper  
23 allocation and shall certify the same to the state agencies concerned.

24 (3) All rules and all pending business before the department of  
25 labor and industries pertaining to the powers, functions, and duties  
26 transferred in subsection (1) of this section shall be continued and  
27 acted upon by the department. All existing contracts and obligations  
28 shall remain in full force and shall be performed by the department.

29 (4) The transfer by this section of the powers, duties, and  
30 functions of the department of labor and industries shall not affect  
31 the validity of any act performed before the effective date of this  
32 section.

33 (5) If apportionments of budgeted funds are required because of the  
34 transfers directed by this section, the director of the office of  
35 financial management shall certify the apportionments to the agencies  
36 affected, the state auditor, and the state treasurer. Each of these  
37 shall make the appropriate transfer and adjustments in funds and

1 appropriation accounts and equipment records in accordance with the  
2 certification.

3 NEW SECTION. **Sec. 11.** This act takes effect July 1, 2010.

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