

NEW SECTION. Sec. 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 23, 1983.

Passed the House April 21, 1983.

Approved by the Governor May 17, 1983, with the exception of section 1(2)(c) which is vetoed.

Filed in Office of Secretary of State May 17, 1983.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 1(2)(c), Senate Bill No. 3857, entitled:

"AN ACT Relating to emission control inspections for used cars."

Section 1(2)(c) is identical to section 3 of Substitute Senate Bill No. 3497, which I have signed into law. In addition, there is some question as to whether that provision in this bill is beyond the scope of its title. With the exception of section 1(2)(c), which is vetoed, Senate Bill No. 3857 is approved."

CHAPTER 239

[Engrossed Substitute Senate Bill No. 3022]

COMPENSATION OF CRIME VICTIMS—REVISIONS

AN ACT Relating to compensation of crime victims; amending section 10, chapter 302, Laws of 1977 ex. sess. as amended by section 1, chapter 8, Laws of 1982 1st ex. sess. and RCW 7.68.035; amending section 7, chapter 122, Laws of 1973 1st ex. sess. as last amended by section 2, chapter 8, Laws of 1982 1st ex. sess. and RCW 7.68.070; amending section 8, chapter 122, Laws of 1973 1st ex. sess. as last amended by section 27, chapter 6, Laws of 1981 1st ex. sess. and RCW 7.68.080; and amending section 2, chapter 122, Laws of 1973 1st ex. sess. as last amended by section 2, chapter 156, Laws of 1980 and RCW 7.68.020.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 10, chapter 302, Laws of 1977 ex. sess. as amended by section 1, chapter 8, Laws of 1982 1st ex. sess. and RCW 7.68.035 are each amended to read as follows:

(1) Whenever any person is found guilty in any court of competent jurisdiction of having committed a crime, except as provided in subsection (2) of this section, there shall be imposed by the court upon such convicted person a penalty assessment (~~(of fifty dollars for a felony or gross misdemeanor and twenty-five dollars for a misdemeanor)~~). The assessment shall be in addition to any other penalty or fine imposed by law and shall be fifty dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor and twenty-five dollars for any case

or cause of action that includes convictions of only one or more misdemeanors.

(2) The assessment imposed by subsection (1) of this section shall not apply to motor vehicle crimes defined in Title 46 RCW except those defined in the following sections: RCW 46.61.520, section 2, chapter ... (SB No. 3106), Laws of 1983, 46.61.024, 46.52.090, 46.70.140, 46.65.090, 46.61-.502, 46.61.504, 46.52.100, 46.20.410, 46.52.020, 46.10.130, 46.09.130, 46-.61.525, 46.61.685, 46.61.530, 46.61.500, 46.61.015, 46.52.010, 46.44.180, 46.10.090(2), and 46.09.120(2).

(3) Whenever any person accused of having committed a ~~((criminal act))~~ crime posts bail pursuant to the provisions of chapter 10.19 RCW~~((;))~~ and such bail is forfeited, there shall be deducted from the proceeds of such forfeited bail a penalty assessment, in addition to any other penalty or fine imposed by law, equal to the assessment which would be applicable under subsection (1) of this section if the person had been convicted of the ~~((criminal act))~~ crime.

(4) ~~((Notwithstanding any other provision of law;))~~ Except as provided in subsection (5) of this section, such penalty assessments shall be paid by the clerk of the court to the city or county treasurer, as the case may be, who shall monthly transmit eighty percent of such penalty assessments to the state treasurer. The state treasurer shall deposit such assessments in an account within the state general fund to be known as the crime victims compensation account, hereby created, and all moneys placed in the account shall be used exclusively for the administration of this chapter, after appropriation by statute. Except as provided in subsection (5) of this section, the remaining twenty percent of such assessments shall be provided to the county prosecuting attorney to be used exclusively for comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes. A program shall be considered "comprehensive" only after approval of the department upon application by the county prosecuting attorney. The department shall approve as comprehensive only programs which:

(a) Provide comprehensive services to victims and witnesses of all types of crime with particular emphasis on serious crimes against persons and property. It is the intent of the legislature to make funds available only to programs which do not restrict services to victims or witnesses of a particular type or types of crime and that such funds supplement, not supplant, existing local funding levels;

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

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

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

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

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

(5) Upon submission to the department of a letter of intent to adopt a comprehensive program by a prosecuting attorney, the city or county treasurer, as the case may be, may transmit monthly eighty percent of such penalty assessments to the state treasurer and provide the remaining twenty percent of such assessments to the county prosecuting attorney to be used exclusively for a comprehensive program for victims and witnesses, and the prosecuting attorney may retain such twenty percent until such time as the county prosecuting attorney has obtained approval of a program from the department. Approval of the comprehensive plan by the department must be obtained within one year of the date of the letter of intent to adopt a comprehensive program. The county prosecuting attorney shall not make any expenditures from the twenty percent penalty assessments until approval of a comprehensive plan by the department. If a county prosecuting attorney has failed to obtain approval of a program from the department under subsection (4) of this section or failed to obtain approval of a comprehensive program within one year after submission of a letter of intent under this section, the city or county treasurer, as the case may be, shall monthly transmit one hundred percent of such penalty assessments and shall transmit all previously retained penalty assessments and interest, if any, to the state treasurer for deposit in the crime victims compensation account within the state general fund.

(6) County prosecuting attorneys are responsible to make every reasonable effort to insure that the penalty assessments of this chapter are imposed and collected.

(7) Penalty assessments under this section shall also be imposed in juvenile offense dispositions under Title 13 RCW. Upon motion of a party and a showing of good cause, the court may modify the penalty assessment in the disposition of juvenile offenses under Title 13 RCW.

Sec. 2. Section 7, chapter 122, Laws of 1973 1st ex. sess. as last amended by section 2, chapter 8, Laws of 1982 1st ex. sess. and RCW 7.68.070 are each amended to read as follows:

The right to benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in chapter 51-.32 RCW as now or hereafter amended 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 as now or hereafter amended 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 ~~((the effective date of this 1982 act))~~ January 1, 1983, or his family or dependents in case of death of the victim, are entitled to benefits in accordance with this chapter, and the rights, duties, responsibilities, limitations, and procedures applicable to a workman as contained in RCW 51.32.010 as now or hereafter amended are applicable to this chapter.

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

(a) The result of consent, provocation, or incitement by the victim;

(b) The result of an act or acts committed by a person living in the same household with the victim;

(c) The result of an act or acts committed by a person who is at the time of the criminal act the spouse, child, parent, or sibling of the victim by the half or whole blood, adoption, or marriage, or the parent of the spouse of or sibling of the spouse of the victim by the half or whole blood, adoption, or marriage, or the son-in-law or daughter-in-law of the victim, unless in the director's sole discretion it is determined that:

(i) The parties to the marriage which establishes the relationship between the person committing the criminal act and the victim described above are estranged and living apart, and

(ii) The interests of justice require otherwise in the particular case;

(d) The result of the victim assisting, attempting, or committing a criminal act; or

(e) 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.

(4) The benefits established upon the death of a workman and contained in RCW 51.32.050 as now or hereafter amended shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter: PROVIDED, That benefits for burial expenses shall not exceed five hundred dollars in any claim: PROVIDED FURTHER, That ((in the event)) 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 him or where such spouse has legal custody of all of his children, shall be limited to burial expenses (~~((not to exceed five hundred dollars))~~) 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 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 (~~((shall))~~) may be paid or payable under these circumstances.

(5) The benefits established in RCW 51.32.060 as now or hereafter amended 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 (~~((shall))~~) apply under this chapter: PROVIDED, That (~~((in the event))~~) 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, (~~((such))~~) the victim shall receive monthly during the period of (~~((such))~~) 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 as now or hereafter amended:

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) The benefits established in RCW 51.32.090 as now or hereafter amended for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section ~~((shall))~~ apply under this chapter: PROVIDED, That no person ~~((shall be))~~ 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 as now or hereafter amended for continuation of benefits during vocational rehabilitation shall be benefits obtainable under this chapter, and provisions relating to payment contained in that section ~~((shall))~~ apply under this chapter: PROVIDED, 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 as now or hereafter amended ~~((shall))~~ apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of workmen 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 as

now or hereafter amended (~~(shall be)~~) 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 (~~(shall be)~~) 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) Except for benefits authorized under RCW 7.68.080, no more than fifteen thousand dollars may be granted as a result of any single injury or death.

(13) Notwithstanding the provisions of Title 51 RCW, no (~~(victim shall be)~~) claim resulting from a single injury or death is eligible for benefits for the first two hundred dollars worth of loss suffered: PROVIDED, That this subsection (~~(shall)~~) does not apply to costs covered by RCW 7.68.170 or to other medical costs incurred by the victim of a sexual assault.

(14) Notwithstanding other provisions of this chapter and Title 51 RCW, benefits payable for any one injury or death for loss of earnings, those benefits payable pursuant to subsection (7) of this section, or for loss of future earnings, those benefits payable pursuant to subsection (5) of this section, or for loss of support, those benefits payable pursuant to subsection (4) of this section, shall be limited to ten thousand dollars.

Sec. 3. Section 8, chapter 122, Laws of 1973 1st ex. sess. as last amended by section 27, chapter 6, Laws of 1981 1st ex. sess. and RCW 7.68.080 are each amended to read as follows:

The provisions of chapter 51.36 RCW as now or hereafter amended (~~(shall)~~) govern the provision of medical aid under this chapter to victims injured as a result of a criminal act, including criminal acts committed (~~(prior to)~~) between July 1, 1981, and January 1, 1983, except that:

(1) The provisions contained in RCW 51.36.030 and 51.36.040 as now or hereafter amended (~~(shall)~~) 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 (~~(shall)~~) do not apply: PROVIDED, That when the injury to any victim is so serious as to require his 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.

Sec. 4. Section 2, chapter 122, Laws of 1973 1st ex. sess. as last amended by section 2, chapter 156, Laws of 1980 and RCW 7.68.020 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) "Criminal act" means an act committed or attempted in this state which is punishable as a felony or gross misdemeanor under the laws of this

state: PROVIDED: That 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 ((or)); (b) the operation thereof was part of the commission of another non-vehicular criminal act as defined in this section (:); or (c) the death or injury was the result of operation of a motor vehicle and a conviction of vehicular homicide under RCW 46.61.520 or vehicular assault under section 2, chapter ... (SB No. 3106), Laws of 1983, has been obtained: PROVIDED, FURTHER: (a) That 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 subsections (c) and (d) above; (b) that 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; (c) that 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 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 "workman" 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) "Gainfully employed" means engaging on a regular and continuous basis in a lawful activity from which a person derives a livelihood.

(6) "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.

(7) "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.

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