

If a hospital ceases operations, it shall make immediate arrangements, as approved by the department, for preservation of its records.

The board shall by regulation define the type of records and the information required to be included in the medical records to be retained and preserved under this section; which records may be retained in photographic form pursuant to chapter 5.46 RCW.

NEW SECTION. Sec. 2. There is added to chapter 18.51 RCW a new section to read as follows:

Unless specified otherwise by the board, a nursing home shall retain and preserve all records which relate directly to the care and treatment of a patient for a period of no less than ten years following the most recent discharge of the patient; except the records of minors, which shall be retained and preserved for a period of no less than three years following attainment of the age of eighteen years, or ten years following such discharge, whichever is longer.

If a nursing home ceases operations, it shall make immediate arrangements, as approved by the department, for preservation of its records.

The board shall by regulation define the type of records and the information required to be included in the records to be retained and preserved under this section; which records may be retained in photographic form pursuant to chapter 5.46 RCW.

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CHAPTER 176

[Engrossed Senate Bill No. 2070]

CRIME VICTIMS COMPENSATION

AN ACT Relating to crime victims compensation; amending section 2, chapter 122, Laws of 1973 1st ex. sess. and RCW 7.68.020; amending section 6, chapter 122, Laws of 1973 1st ex. sess. and RCW 7.68.060; amending section 7, chapter 122, Laws of 1973 1st ex. sess. and RCW 7.68.070; amending section 8, chapter 122, Laws of 1973 1st ex. sess. and RCW 7.68.080; amending section 11, chapter 122, Laws of 1973 1st ex. sess. and RCW 7.68.110; amending section 14, chapter 122, Laws of 1973 1st ex. sess. and RCW 7.68.140; adding new sections to chapter 122, Laws of 1973 1st ex. sess. and to chapter 7.68 RCW; and declaring an emergency.

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

Section 1. Section 1. Section 2, chapter 122, Laws of 1973 1st ex. sess. and RCW 7.68.020 are each amended to read as follows:

The following words and phrases as used in this chapter shall have the following meanings 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 the injury or death was intentionally inflicted or the operation thereof was part of the commission of another criminal act as defined in this section: PROVIDED FURTHER: (a) That

neither an acquittal in a criminal prosecution nor the absence of any such prosecution shall be 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; (b) that evidence of a criminal conviction arising from acts which are the basis for a claim or proceeding under this chapter shall be 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 shall be deemed to be criminal conduct within the meaning of this chapter.

(3) "Victim" means a resident of the state 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" shall be 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" shall 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) "Resident", for the purpose of eligibility for benefits under this chapter, means a person who has been in this state for thirty days or has clearly signified an intent to remain in this state for at least thirty days.

Sec. 2. Section 6, chapter 122, Laws of 1973 1st ex. sess. and RCW 7.68.060 are each amended to read as follows:

For the purposes of applying for benefits under this chapter, the rights, privileges, responsibilities, duties, limitations and procedures contained in RCW 51.28.020, 51.28.030, 51.28.040 and 51.28.060 as now or hereafter amended shall apply: PROVIDED, That no compensation of any kind shall be available under this chapter if:

(1) An application for benefits is not received by the department within one hundred eighty days after the date of ((injury)) the criminal act or one hundred twenty days after the date of death of the victim, or the rights of dependents or beneficiaries accrued, if such is the case, or

(2) The criminal act is not reported by the victim or someone on his behalf to a local police department or sheriff's office within seventy-two hours of its occurrence or, if it could not reasonably have been reported within that period, within seventy-two hours of the time when a report could reasonably have been made.

Sec. 3. Section 7, chapter 122, Laws of 1973 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 (~~51.32.005;~~) 51.32.015, 51.32.030, 51.32.070, 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, 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 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 (~~(-was)~~);

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

(c) The result of an act or acts committed by a person who is (~~(a)~~) 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, (~~(when the person injured sustained his injury as a)~~) or the parent of the spouse of or sibling of the spouse of the victim by the half or whole blood, adoption, or marriage;

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

(e) Sustained while the victim was (~~(resident)~~) 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, 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.

(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 in the event (~~(of)~~) the criminal act results in the death of a victim who was not gainfully employed at the time of (~~(death)~~) the criminal act, and who was not so employed for at least three consecutive months of the twelve months immediately preceding (~~(injury);~~) 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 as provided in RCW 51.32.050 as now or hereafter amended 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 no such spouse survives, then such burial expenses shall be paid, and each ~~((eligible))~~ surviving child of the victim at the time of the criminal act shall receive a lump sum payment of ~~((two))~~ three thousand ~~((five))~~ 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 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 a victim ~~((who is))~~ becomes permanently and totally disabled as a proximate result of the criminal act and was not gainfully employed at the time of ~~((his injury, "wages", for the purpose of calculation of benefits, where required, shall be deemed to be))~~ the criminal act, such victim shall receive monthly during the period of such 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 average monthly wage.

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

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

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

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

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

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

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

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

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

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

(l) If unmarried with five or more children at the time of the criminal act, forty-three percent of such 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 eligible for temporary total disability benefits under this chapter ~~((unless))~~ if such person was not gainfully employed at the time of ((his injury)) 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.

(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 applicable to payment of benefits to, for or on behalf of victims under this chapter.

Sec. 4. Section 8, chapter 122, Laws of 1973 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 except that:

(1) The provisions contained in RCW 51.36.030 and 51.36.040 as now or hereafter amended shall 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 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. 5. Section 11, chapter 122, Laws of 1973 1st ex. sess. and RCW 7.68.110 are each amended to read as follows:

The provisions contained in chapter 51.52 RCW as now or hereafter amended relating to appeals shall govern appeals under this chapter: PROVIDED, That no provision contained in chapter 51.52 RCW concerning employers as parties to any settlement, appeal or other action shall apply to this chapter: PROVIDED FURTHER, That appeals taken from a decision of the board of industrial insurance appeals under this chapter shall be governed by the provisions relating to judicial review of administrative decisions contained in RCW 34.04.130 and 34.04.140 as now or hereafter amended.

Sec. 6. Section 14, chapter 122, Laws of 1973 1st ex. sess. and RCW 7.68.140 are each amended to read as follows:

Information contained in the claim files and records of victims, under the provisions of this chapter, shall be deemed confidential and shall not be open to public inspection (~~((other than))~~): PROVIDED, That, except as limited by state or federal statutes or regulations, such information may be provided to public employees in the performance of their official duties(~~(, but)~~): PROVIDED FURTHER, That except as otherwise limited by state or federal statutes or regulations a representative of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant: PROVIDED FURTHER, That physicians treating or examining victims claiming benefits under this chapter or physicians giving medical advice to the department regarding any claim may, at the discretion of the department and as not otherwise limited by state or federal statutes or regulations, inspect the claim files and records of such victims, and other persons may, when rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this chapter, inspect the claim files and records of such victims at the discretion of the department and as not otherwise limited by state or federal statutes or regulations.

NEW SECTION. Sec. 7. There is added to chapter 122, Laws of 1973 1st ex. sess. and to chapter 7.68 RCW a new section to read as follows:

Notwithstanding any other provision of law, all law enforcement, criminal justice, or other governmental agencies, or hospital; any physician or other practitioner of the healing arts; or any other organization or person having possession or control of any investigative or other information pertaining to any alleged criminal act or victim concerning which a claim for benefits has been filed under this chapter, shall, upon request, make available to and allow the reproduction of any such information by the section of the department administering this chapter or other public employees in their performance of their official duties under this chapter.

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

NEW SECTION. Sec. 8. There is added to chapter 122, Laws of 1973 1st ex. sess. and to chapter 7.68 RCW a new section to read as follows:

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

(2) Whenever any payment under this chapter has been made pursuant to an adjudication by the department, board, or any court and timely appeal therefrom

has been made and the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient under this chapter: PROVIDED, That the department may exercise its discretion to waive, in whole or in part, the amount thereof.

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

NEW SECTION. Sec. 9. There is added to chapter 122, Laws of 1973 1st ex. sess. and to chapter 7.68 RCW a new section to read as follows:

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

Payments for or on account of any such child or children shall cease when such child is no longer a "child" as defined in RCW 51.32.005, as now or hereafter amended, or on the death of any such child whichever occurs first.

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

NEW SECTION. Sec. 10. There is added to chapter 122, Laws of 1973 1st ex. sess. and to chapter 7.68 RCW a new section to read as follows:

The rights, privileges, responsibilities, duties, limitations and procedures contained in this chapter shall apply to those claims filed pursuant to RCW 7.68.160. In respect to such claims, the department shall proceed in the same manner and with the same authority as provided in this chapter with respect to those claims filed pursuant to RCW 7.68.060 as now or hereafter amended.

NEW SECTION. Sec. 11. This amendatory 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.

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