

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2358

54th Legislature
1996 Regular Session

Passed by the House March 4, 1996
Yeas 94 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate February 29, 1996
Yeas 46 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2358** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2358

AS AMENDED BY THE SENATE

Passed Legislature - 1996 Regular Session

State of Washington 54th Legislature 1996 Regular Session

By House Committee on Law & Justice (originally sponsored by Representatives Costa, Ballasiotes, Chopp, Conway, Scott, Linville, Radcliff, Chappell, Dickerson, Hatfield, Quall, Murray, Cooke, Patterson, Cody, Keiser, Veloria and Kessler)

Read first time 02/02/96.

1 AN ACT Relating to penalty assessments for support of crime victim
2 and witness programs; amending RCW 7.68.035, 7.68.060, and 7.68.070;
3 creating new sections; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that current funding
6 for county victim-witness advocacy programs is inadequate. Also, the
7 state crime victims compensation program should be enhanced to provide
8 for increased benefits to families of victims who are killed as a
9 result of a criminal act. It is the intent of the legislature to
10 provide increased financial support for the county and state crime
11 victim and witness programs by requiring offenders to pay increased
12 penalty assessments upon conviction of a gross misdemeanor or felony
13 crime. The increased financial support is intended to allow county
14 victim/witness programs to more fully assist victims and witnesses
15 through the criminal justice processes. On the state level, the
16 increased funds will allow the remedial intent of the crime victims
17 compensation program to be more fully served. Specifically, the
18 increased funds from offender penalty assessments will allow more

1 appropriate compensation for families of victims who are killed as a
2 result of a criminal act, including reasonable burial benefits.

3 **Sec. 2.** RCW 7.68.035 and 1991 c 293 s 1 are each amended to read
4 as follows:

5 (1)(a) Whenever any person is found guilty in any superior court of
6 having committed a crime, except as provided in subsection (2) of this
7 section, there shall be imposed by the court upon such convicted person
8 a penalty assessment. The assessment shall be in addition to any other
9 penalty or fine imposed by law and shall be (~~one~~) five hundred
10 dollars for each case or cause of action that includes one or more
11 convictions of a felony or gross misdemeanor and (~~seventy-five~~) two
12 hundred fifty dollars for any case or cause of action that includes
13 convictions of only one or more misdemeanors.

14 (b) Whenever any juvenile is adjudicated of any offense in any
15 juvenile offense disposition under Title 13 RCW, except as provided in
16 subsection (2) of this section, there shall be imposed upon the
17 juvenile offender a penalty assessment. The assessment shall be in
18 addition to any other penalty or fine imposed by law and shall be one
19 hundred dollars for each case or cause of action that includes one or
20 more adjudications for a felony or gross misdemeanor and seventy-five
21 dollars for each case or cause of action that includes adjudications of
22 only one or more misdemeanors.

23 (2) The assessment imposed by subsection (1) of this section shall
24 not apply to motor vehicle crimes defined in Title 46 RCW except those
25 defined in the following sections: RCW 46.61.520, 46.61.522,
26 46.61.024, 46.52.090, 46.70.140, 46.61.502, 46.61.504, 46.52.100,
27 46.20.410, 46.52.020, 46.10.130, 46.09.130, 46.61.525, 46.61.685,
28 46.61.530, 46.61.500, 46.61.015, 46.52.010, 46.44.180, 46.10.090(2),
29 and 46.09.120(2).

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

37 (4) Such penalty assessments shall be paid by the clerk of the
38 superior court to the county treasurer who shall monthly transmit the

1 money as provided in RCW 10.82.070. Each county shall deposit fifty
2 percent of the money it receives per case or cause of action under
3 subsection (1) of this section and retains under RCW 10.82.070, not
4 less than one and seventy-five one-hundredths percent of the remaining
5 money it retains under RCW 10.82.070 and the money it retains under
6 chapter 3.62 RCW, and all money it receives under subsection (~~(+8)~~)
7 (7) of this section into a fund maintained exclusively for the support
8 of comprehensive programs to encourage and facilitate testimony by the
9 victims of crimes and witnesses to crimes. A program shall be
10 considered "comprehensive" only after approval of the department upon
11 application by the county prosecuting attorney. The department shall
12 approve as comprehensive only programs which:

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

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

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

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

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

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

36 (5) Upon submission to the department of a letter of intent to
37 adopt a comprehensive program, the prosecuting attorney shall retain
38 the money deposited by the county under subsection (4) of this section
39 until such time as the county prosecuting attorney has obtained

1 approval of a program from the department. Approval of the
2 comprehensive plan by the department must be obtained within one year
3 of the date of the letter of intent to adopt a comprehensive program.
4 The county prosecuting attorney shall not make any expenditures from
5 the money deposited under subsection (4) of this section until approval
6 of a comprehensive plan by the department. If a county prosecuting
7 attorney has failed to obtain approval of a program from the department
8 under subsection (4) of this section or failed to obtain approval of a
9 comprehensive program within one year after submission of a letter of
10 intent under this section, the county treasurer shall monthly transmit
11 one hundred percent of the money deposited by the county under
12 subsection (4) of this section to the state treasurer for deposit in
13 the public safety and education account established under RCW
14 43.08.250.

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

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

22 ~~(8))~~ Every city and town shall transmit monthly one and seventy-
23 five one-hundredths percent of all money, other than money received for
24 parking infractions, retained under RCW 3.46.120, 3.50.100, and
25 35.20.220 to the county treasurer for deposit as provided in subsection
26 (4) of this section.

27 NEW SECTION. **Sec. 3.** The office of crime victims advocacy shall
28 report to the legislature on December 31, 1999, December 31, 2002, and
29 December 31, 2005, regarding the collection of penalty assessments
30 under this act and the use of collected funds to provide assistance to
31 victims and witnesses of crime.

32 **Sec. 4.** RCW 7.68.060 and 1990 c 3 s 501 are each amended to read
33 as follows:

34 (1) For the purposes of applying for benefits under this chapter,
35 the rights, privileges, responsibilities, duties, limitations and
36 procedures contained in RCW 51.28.020, 51.28.030, 51.28.040 and

1 51.28.060 (~~as now or hereafter amended~~) shall apply: PROVIDED, That
2 no compensation of any kind shall be available under this chapter if:

3 (a) An application for benefits is not received by the department
4 within (~~one year~~) two years after the date the criminal act was
5 reported to a local police department or sheriff's office or the date
6 the rights of dependents or beneficiaries accrued, unless the director
7 has determined that "good cause" exists to expand the time permitted to
8 receive the application. "Good cause" shall be determined by the
9 department on a case-by-case basis and may extend the period of time in
10 which an application can be received for up to five years after the
11 date the criminal act was reported to a local police department or
12 sheriff's office or the date the rights of dependents or beneficiaries
13 accrued; or

14 (b) The criminal act is not reported by the victim or someone on
15 his or her behalf to a local police department or sheriff's office
16 within twelve months of its occurrence or, if it could not reasonably
17 have been reported within that period, within twelve months of the time
18 when a report could reasonably have been made. In making
19 determinations as to reasonable time limits, the department shall give
20 greatest weight to the needs of the victims.

21 (2) This section shall apply only to criminal acts reported after
22 December 31, 1985.

23 (3) Because victims of childhood criminal acts may repress
24 conscious memory of such criminal acts far beyond the age of eighteen,
25 the rights of adult victims of childhood criminal acts shall accrue at
26 the time the victim discovers or reasonably should have discovered the
27 elements of the crime. In making determinations as to reasonable time
28 limits, the department shall give greatest weight to the needs of the
29 victim.

30 **Sec. 5.** RCW 7.68.070 and 1993 sp.s. c 24 s 912 are each amended to
31 read as follows:

32 The right to benefits under this chapter and the amount thereof
33 will be governed insofar as is applicable by the provisions contained
34 in chapter 51.32 RCW (~~as now or hereafter amended~~) except as provided
35 in this section:

36 (1) The provisions contained in RCW 51.32.015, 51.32.030,
37 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 (~~as now or~~
38 ~~hereafter amended~~) are not applicable to this chapter.

1 (2) Each victim injured as a result of a criminal act, including
2 criminal acts committed between July 1, 1981, and January 1, 1983, or
3 the victim's family or dependents in case of death of the victim, are
4 entitled to benefits in accordance with this chapter, subject to the
5 limitations under RCW 7.68.015. The rights, duties, responsibilities,
6 limitations, and procedures applicable to a worker as contained in RCW
7 51.32.010 (~~as now or hereafter amended~~) are applicable to this
8 chapter.

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

14 (a) The result of consent, provocation, or incitement by the
15 victim, unless an injury resulting from a criminal act caused the death
16 of the victim;

17 (b) Sustained while the crime victim was engaged in the attempt to
18 commit, or the commission of, a felony; or

19 (c) Sustained while the victim was confined in any county or city
20 jail, federal jail or prison or in any other federal institution, or
21 any state correctional institution maintained and operated by the
22 department of social and health services or the department of
23 corrections, prior to release from lawful custody; or confined or
24 living in any other institution maintained and operated by the
25 department of social and health services or the department of
26 corrections.

27 (4) The benefits established upon the death of a worker and
28 contained in RCW 51.32.050 (~~as now or hereafter amended~~) shall be the
29 benefits obtainable under this chapter and provisions relating to
30 payment contained in that section shall equally apply under this
31 chapter: PROVIDED, That benefits for burial expenses shall not exceed
32 the (~~maximum cost used by the department of social and health services~~
33 ~~for the funeral and burial of a deceased indigent person under chapter~~
34 ~~74.08 RCW~~) amount paid by the department in case of the death of a
35 worker as provided in chapter 51.32 RCW in any claim: PROVIDED
36 FURTHER, That if the criminal act results in the death of a victim who
37 was not gainfully employed at the time of the criminal act, and who was
38 not so employed for at least three consecutive months of the twelve
39 months immediately preceding the criminal act;

1 (a) Benefits payable to an eligible surviving spouse, where there
2 are no children of the victim at the time of the criminal act who have
3 survived the victim or where such spouse has legal custody of all of
4 his or her children, shall be limited to burial expenses and a lump sum
5 payment of seven thousand five hundred dollars without reference to
6 number of children, if any;

7 (b) Where any such spouse has legal custody of one or more but not
8 all of such children, then such burial expenses shall be paid, and such
9 spouse shall receive a lump sum payment of three thousand seven hundred
10 fifty dollars and any such child or children not in the legal custody
11 of such spouse shall receive a lump sum of three thousand seven hundred
12 fifty dollars to be divided equally among such child or children;

13 (c) If any such spouse does not have legal custody of any of the
14 children, the burial expenses shall be paid and the spouse shall
15 receive a lump sum payment of up to three thousand seven hundred fifty
16 dollars and any such child or children not in the legal custody of the
17 spouse shall receive a lump sum payment of up to three thousand seven
18 hundred fifty dollars to be divided equally among the child or
19 children;

20 (d) If no such spouse survives, then such burial expenses shall be
21 paid, and each surviving child of the victim at the time of the
22 criminal act shall receive a lump sum payment of three thousand seven
23 hundred fifty dollars up to a total of two such children and where
24 there are more than two such children the sum of seven thousand five
25 hundred dollars shall be divided equally among such children.

26 No other benefits may be paid or payable under these circumstances.

27 (5) The benefits established in RCW 51.32.060 (~~as now or hereafter~~
28 ~~amended~~) for permanent total disability proximately caused by the
29 criminal act shall be the benefits obtainable under this chapter, and
30 provisions relating to payment contained in that section apply under
31 this chapter: PROVIDED, That if a victim becomes permanently and
32 totally disabled as a proximate result of the criminal act and was not
33 gainfully employed at the time of the criminal act, the victim shall
34 receive monthly during the period of the disability the following
35 percentages, where applicable, of the average monthly wage determined
36 as of the date of the criminal act pursuant to RCW 51.08.018 (~~as now~~
37 ~~or hereafter amended~~):

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (7) The benefits established in RCW 51.32.090 (~~as now or hereafter~~
28 ~~amended~~) for temporary total disability shall be the benefits
29 obtainable under this chapter, and provisions relating to payment
30 contained in that section apply under this chapter: PROVIDED, That no
31 person is eligible for temporary total disability benefits under this
32 chapter if such person was not gainfully employed at the time of the
33 criminal act, and was not so employed for at least three consecutive
34 months of the twelve months immediately preceding the criminal act.

35 (8) The benefits established in RCW 51.32.095 (~~as now or hereafter~~
36 ~~amended~~) for continuation of benefits during vocational rehabilitation
37 shall be benefits obtainable under this chapter, and provisions
38 relating to payment contained in that section apply under this chapter:

1 PROVIDED, That benefits shall not exceed five thousand dollars for any
2 single injury.

3 (9) The provisions for lump sum payment of benefits upon death or
4 permanent total disability as contained in RCW 51.32.130 (~~as now or~~
5 ~~hereafter amended~~) apply under this chapter.

6 (10) The provisions relating to payment of benefits to, for or on
7 behalf of workers contained in RCW 51.32.040, 51.32.055, 51.32.100,
8 51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160, and
9 51.32.210 (~~as now or hereafter amended~~) are applicable to payment of
10 benefits to, for or on behalf of victims under this chapter.

11 (11) No person or spouse, child, or dependent of such person is
12 entitled to benefits under this chapter where the person making a claim
13 for such benefits has refused to give reasonable cooperation to state
14 or local law enforcement agencies in their efforts to apprehend and
15 convict the perpetrator(s) of the criminal act which gave rise to the
16 claim.

17 (12) In addition to other benefits provided under this chapter,
18 victims of sexual assault are entitled to receive appropriate
19 counseling. Fees for such counseling shall be determined by the
20 department in accordance with RCW 51.04.030, subject to the limitations
21 of RCW 7.68.080. Counseling services may include, if determined
22 appropriate by the department, counseling of members of the victim's
23 immediate family, other than the perpetrator of the assault.

24 (13) Except for medical benefits authorized under RCW 7.68.080, no
25 more than thirty thousand dollars shall be granted as a result of a
26 single injury or death, except that benefits granted as the result of
27 total permanent disability or death shall not exceed forty thousand
28 dollars.

29 (14) Notwithstanding other provisions of this chapter and Title 51
30 RCW, benefits payable for total temporary disability under subsection
31 (7) of this section, shall be limited to fifteen thousand dollars.

32 (15) Any person who is responsible for the victim's injuries, or
33 who would otherwise be unjustly enriched as a result of the victim's
34 injuries, shall not be a beneficiary under this chapter.

35 (16) Crime victims' compensation is not available to pay for
36 services covered under chapter 74.09 RCW or Title XIX of the federal
37 social security act, except to the extent that the costs for such
38 services exceed service limits established by the department of social
39 and health services or, during the 1993-95 fiscal biennium, to the

1 extent necessary to provide matching funds for federal medicaid
2 reimbursement.

3 (17) In addition to other benefits provided under this chapter,
4 immediate family members of a homicide victim may receive appropriate
5 counseling to assist in dealing with the immediate, near-term
6 consequences of the related effects of the homicide. Fees for
7 counseling shall be determined by the department in accordance with RCW
8 51.04.030, subject to the limitations of RCW 7.68.080. Payment of
9 counseling benefits under this section may not be provided to the
10 perpetrator of the homicide. The benefits under this subsection may be
11 provided only with respect to homicides committed on or after July 1,
12 1992.

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