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**SUBSTITUTE SENATE BILL 5209**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by Senators Regala, Holmquist, Kohl-Welles, Brandland, Kauffman, Stevens, Hargrove, McAuliffe, and Kline; by request of Attorney General)

READ FIRST TIME 02/12/09.

1           AN ACT Relating to the availability of crime victims' compensation  
2 funds for witnesses in civil commitment proceedings; and amending RCW  
3 7.68.060 and 7.68.070.

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

5           **Sec. 1.** RCW 7.68.060 and 2001 c 153 s 1 are each amended to read  
6 as follows:

7           (1) For the purposes of applying for benefits under this chapter,  
8 the rights, privileges, responsibilities, duties, limitations and  
9 procedures contained in RCW 51.28.020, 51.28.030, 51.28.040 and  
10 51.28.060 shall apply: PROVIDED, That except for applications received  
11 pursuant to subsection (4) of this section, no compensation of any kind  
12 shall be available under this chapter if:

13           (a) An application for benefits is not received by the department  
14 within two years after the date the criminal act was reported to a  
15 local police department or sheriff's office or the date the rights of  
16 dependents or beneficiaries accrued, unless the director has determined  
17 that "good cause" exists to expand the time permitted to receive the  
18 application. "Good cause" shall be determined by the department on a  
19 case-by-case basis and may extend the period of time in which an

1 application can be received for up to five years after the date the  
2 criminal act was reported to a local police department or sheriff's  
3 office or the date the rights of dependents or beneficiaries accrued;  
4 or

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

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

14 (3) Because victims of childhood criminal acts may repress  
15 conscious memory of such criminal acts far beyond the age of eighteen,  
16 the rights of adult victims of childhood criminal acts shall accrue at  
17 the time the victim discovers or reasonably should have discovered the  
18 elements of the crime. In making determinations as to reasonable time  
19 limits, the department shall give greatest weight to the needs of the  
20 victim.

21 (4) A right to benefits under this chapter for mental health  
22 counseling is available to any victim of a person against whom the  
23 state initiates proceedings under chapter 71.09 RCW. The right to this  
24 benefit is available without regard to the victim's residency or the  
25 state where the crime occurred. The right created under this  
26 subsection shall accrue when the victim is notified of proceedings  
27 under chapter 71.09 RCW or the victim is interviewed, deposed, or  
28 testifies as a witness in connection with the proceedings. An  
29 application for benefits under this subsection must be received by the  
30 department within two years after the date the victim's right accrued  
31 unless the director determines that good cause exists to expand the  
32 time to receive the application. The director shall determine "good  
33 cause" on a case-by-case basis and may extend the period of time in  
34 which an application can be received for up to five years after the  
35 date the right of the victim accrued. Benefits under this subsection  
36 shall be limited to compensation for costs or losses incurred on or  
37 after the date the victim's right accrues for a claim allowed under  
38 this subsection.

1       **Sec. 2.** RCW 7.68.070 and 2002 c 54 s 1 are each amended to read as  
2 follows:

3       The right to benefits under this chapter and the amount thereof  
4 will be governed insofar as is applicable by the provisions contained  
5 in chapter 51.32 RCW except as provided in this section:

6       (1) The provisions contained in RCW 51.32.015, 51.32.030,  
7 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 are not  
8 applicable to this chapter.

9       (2) Each victim injured as a result of a criminal act, including  
10 criminal acts committed between July 1, 1981, and January 1, 1983, or  
11 the victim's family or dependents in case of death of the victim, are  
12 entitled to benefits in accordance with this chapter, subject to the  
13 limitations under RCW 7.68.015. The rights, duties, responsibilities,  
14 limitations, and procedures applicable to a worker as contained in RCW  
15 51.32.010 are applicable to this chapter.

16       (3) The limitations contained in RCW 51.32.020 are applicable to  
17 claims under this chapter. In addition thereto, no person or spouse,  
18 child, or dependent of such person is entitled to benefits under this  
19 chapter when the injury for which benefits are sought, was:

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

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

25       (c) Sustained while the victim was confined in any county or city  
26 jail, federal jail or prison or in any other federal institution, or  
27 any state correctional institution maintained and operated by the  
28 department of social and health services or the department of  
29 corrections, prior to release from lawful custody; or confined or  
30 living in any other institution maintained and operated by the  
31 department of social and health services or the department of  
32 corrections.

33       (4) The benefits established upon the death of a worker and  
34 contained in RCW 51.32.050 shall be the benefits obtainable under this  
35 chapter and provisions relating to payment contained in that section  
36 shall equally apply under this chapter: PROVIDED, That benefits for  
37 burial expenses shall not exceed the amount paid by the department in  
38 case of the death of a worker as provided in chapter 51.32 RCW in any

1 claim: PROVIDED FURTHER, That if the criminal act results in the death  
2 of a victim who was not gainfully employed at the time of the criminal  
3 act, and who was not so employed for at least three consecutive months  
4 of the twelve months immediately preceding the criminal act;

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

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

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

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

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

31 (5) The benefits established in RCW 51.32.060 for permanent total  
32 disability proximately caused by the criminal act shall be the benefits  
33 obtainable under this chapter, and provisions relating to payment  
34 contained in that section apply under this chapter: PROVIDED, That if  
35 a victim becomes permanently and totally disabled as a proximate result  
36 of the criminal act and was not gainfully employed at the time of the  
37 criminal act, the victim shall receive monthly during the period of the

1 disability the following percentages, where applicable, of the average  
2 monthly wage determined as of the date of the criminal act pursuant to  
3 RCW 51.08.018:

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

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

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

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

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

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

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

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

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

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

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

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

28 (6) The benefits established in RCW 51.32.080 for permanent partial  
29 disability shall be the benefits obtainable under this chapter, and  
30 provisions relating to payment contained in that section equally apply  
31 under this chapter.

32 (7) The benefits established in RCW 51.32.090 for temporary total  
33 disability shall be the benefits obtainable under this chapter, and  
34 provisions relating to payment contained in that section apply under  
35 this chapter: PROVIDED, That no person is eligible for temporary total  
36 disability benefits under this chapter if such person was not gainfully  
37 employed at the time of the criminal act, and was not so employed for

1 at least three consecutive months of the twelve months immediately  
2 preceding the criminal act.

3 (8) The benefits established in RCW 51.32.095 for continuation of  
4 benefits during vocational rehabilitation shall be benefits obtainable  
5 under this chapter, and provisions relating to payment contained in  
6 that section apply under this chapter: PROVIDED, That benefits shall  
7 not exceed five thousand dollars for any single injury.

8 (9) The provisions for lump sum payment of benefits upon death or  
9 permanent total disability as contained in RCW 51.32.130 apply under  
10 this chapter.

11 (10) The provisions relating to payment of benefits to, for or on  
12 behalf of workers contained in RCW 51.32.040, 51.32.055, 51.32.100,  
13 51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160, and  
14 51.32.210 are applicable to payment of benefits to, for or on behalf of  
15 victims under this chapter.

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

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

29 (13) Except for medical benefits authorized under RCW 7.68.080, no  
30 more than thirty thousand dollars shall be granted as a result of a  
31 single injury or death, except that benefits granted as the result of  
32 total permanent disability or death shall not exceed forty thousand  
33 dollars.

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

37 (15) Any person who is responsible for the victim's injuries, or

1 who would otherwise be unjustly enriched as a result of the victim's  
2 injuries, shall not be a beneficiary under this chapter.

3 (16) Crime victims' compensation is not available to pay for  
4 services covered under chapter 74.09 RCW or Title XIX of the federal  
5 social security act, except to the extent that the costs for such  
6 services exceed service limits established by the department of social  
7 and health services or, during the 1993-95 fiscal biennium, to the  
8 extent necessary to provide matching funds for federal medicaid  
9 reimbursement.

10 (17) In addition to other benefits provided under this chapter,  
11 immediate family members of a homicide victim may receive appropriate  
12 counseling to assist in dealing with the immediate, near-term  
13 consequences of the related effects of the homicide. Fees for  
14 counseling shall be determined by the department in accordance with RCW  
15 51.04.030, subject to the limitations of RCW 7.68.080. Payment of  
16 counseling benefits under this section may not be provided to the  
17 perpetrator of the homicide. The benefits under this subsection may be  
18 provided only with respect to homicides committed on or after July 1,  
19 1992.

20 (18) A dependent mother, father, stepmother, or stepfather, as  
21 defined in RCW 51.08.050, who is a survivor of her or his child's  
22 homicide, who has been requested by a law enforcement agency or a  
23 prosecutor to assist in the judicial proceedings related to the death  
24 of the victim, and who is not domiciled in Washington state at the time  
25 of the request, may receive a lump-sum payment upon arrival in this  
26 state. Total benefits under this subsection may not exceed seven  
27 thousand five hundred dollars. If more than one dependent parent is  
28 eligible for this benefit, the lump-sum payment of seven thousand five  
29 hundred dollars shall be divided equally among the dependent parents.

30 (19) A person who qualifies for benefits under RCW 7.68.060(4) may  
31 receive appropriate mental health counseling to address distress  
32 arising from participation in the civil commitment proceedings. Fees  
33 for counseling shall be determined by the department in accordance with  
34 RCW 51.04.030, subject to the limitations of RCW 7.68.080.

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