

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

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Legislative Document

No. 1368

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H. P. 1088

House of Representatives, March 24, 1975

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Connolly of Portland.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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AN ACT to Provide Compensation for Victims of Violent Crimes.

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Be it enacted by the People of the State of Maine, as follows:

17 MRSA c. 133 is enacted to read:

CHAPTER 133

COMPENSATION OF VICTIMS  
OF VIOLENT CRIMES

§ 4101. Definitions

The following words as used in this chapter shall have the following meanings unless the context requires otherwise:

1. **Crime.** "Crime" means an act committed in this State which, if committed by a mentally competent, criminally responsible adult, who had no legal exemption or defense, would constitute a crime, provided that such act involves the application of force or violence or the threat of force or violence by the offender upon the victim, and provided that no act involving the operation of a motor vehicle which results in injury to another shall constitute a crime for the purpose of this chapter unless such injury was intentionally inflicted through the use of a motor vehicle;

2. **Dependent.** "Dependent" means the mother, father, spouse, spouse's mother, spouse's father, child, grandchild, adopted child, illegitimate child, niece or nephew, who is wholly or partially dependent for support upon and living with the victim at the time of his injury or death due to a crime alleged in a claim pursuant to this chapter;

3. Family. "Family" means the spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted children of parent or spouse's parents of the offender;

4. Offender. "Offender" means a person who commits a crime;

5. Victim. "Victim" means a person who suffers personal injury or death as a direct result of a crime.

#### § 4102. Jurisdiction; disqualification of judge; failure of claimant to prosecute

The Superior Court shall, pursuant to this chapter, have jurisdiction to determine and award compensation to victims of crimes.

Such claims shall be brought in the Superior Court within the county in which the claimant lives. A justice who has heard a criminal case in which the crime alleged was the basis of such claim shall not sit in determination of such claim. A justice who has heard such a claim shall not sit in a criminal case arising from a crime alleged in such claim. Failure to prosecute, or to prosecute successfully an offender in a criminal case, shall not in any way prejudice the claim of an eligible claimant unless such failure is due to the provocation of the offender by the victim.

#### § 4103. Eligibility for compensation

Except as hereinafter provided, the following persons shall be eligible for compensation pursuant to this chapter:

1. A victim of a crime; and
2. In the case of the death of the victim as a direct result of the crime, a dependent of the victim.

An offender or an accomplice of an offender, a member of the family of the offender, a person living with the offender or a person maintaining sexual relations with the offender shall in no case be eligible to receive compensation with respect to a crime committed by the offender.

#### § 4104. Filing and proof of claims

A claim for compensation may be filed by a person eligible for compensation or if he is a minor or is incompetent by his parent or guardian.

A claim shall be filed not later than one year after the occurrence of the crime upon which it is based, or not later than 90 days after the death of the victim, whichever is earlier, provided that, upon good cause, the court may either before or after the expiration of said filing period extend the time for filing such claim.

Each claim shall be filed in the office of the clerk of the Superior Court in person or by mail, and shall be accompanied by an entry fee of \$5. Said clerk shall immediately notify the Attorney General of the claim. Such notification shall be in writing, with copies of such material as is included in the claim or in support thereof. The Attorney General shall investigate such claim prior to the opening of formal court proceedings. Said clerk shall notify the claim-

ant and the Attorney General of the date and time of any hearing on such claim.

The Attorney General shall present any information he may have in support of or in opposition to the claim. The claimant may present evidence and testimony on his own behalf or may retain counsel. The court may, as part of any order entered under this chapter, determine and allow reasonable attorney's fees, which shall not exceed 15% of the amount awarded as compensation under this chapter, which fee shall be paid out of, but not in addition to, the amount of compensation awarded. No attorney for the claimant shall ask for, contract for or receive any larger sum than the amount so allowed.

The person filing a claim shall, prior to any hearing thereon, submit reports, if available, from all hospitals, physicians or surgeons who treated or examined the victim for the injury for which compensation is sought. If, in the opinion of the court, an examination of the injured victim and a report thereon, or a report on the cause of death of the victim, would be of material aid, the court may appoint a duly qualified impartial physician to make such examination and report.

#### § 4105. Compensation; restrictions

No compensation shall be paid unless the claimant has incurred an out-of-pocket loss of at least \$100 or has lost 2 continuous weeks of earnings or support. Out-of-pocket loss shall mean unreimbursed or unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based. One hundred dollars shall be deducted from any award granted under this chapter.

No compensation shall be paid unless the court finds that a crime was committed, that such crime directly resulted in personal physical injury to, or the death of the victim, and that police records show that such crime was promptly reported to the proper authorities. In no case may compensation be paid if the police records show that such report was made more than 48 hours after the occurrence of such crime, unless the court finds said report to the police to have been delayed for good cause.

Any compensation paid under this chapter shall be in an amount not exceeding out-of-pocket loss, together with loss of earnings or support resulting from such injury.

Any compensation for loss of earnings or support shall be in an amount equal to the actual loss sustained; provided, that no award under this chapter shall exceed \$10,000. If 2 or more persons are entitled to compensation as a result of a death of a person which is the direct result of a crime, the compensation shall be apportioned by the court among the claimants in proportion to their loss.

#### § 4106. Determination of amount of compensation; decisions

For the purpose of determining the amount of compensation payable pursuant to this chapter, the Chief Justice shall, insofar as practicable, formulate standards for the uniform application of this chapter. The court shall take

into consideration the provisions of this chapter, the rates and amounts of compensation payable for injuries and death under other laws of this State and of the United States, excluding pain and suffering, and the availability of funds appropriated for the purpose of this chapter. All decisions of the court on claims heard under this chapter shall be in writing, setting forth the name of the claimant, the amount of compensation and the reasons for the decision. The clerk of the court shall immediately notify the claimant in writing of the decision and shall forward to the Treasurer of State a certified copy of the decision. The Treasurer of State without further authorization shall, subject to appropriation, pay the claimant the amount determined by the court.

Any compensation paid pursuant to this chapter shall be reduced by the amount of any payments received or to be received as a result of the injury from or on behalf of the offender, under insurance programs or from public funds.

In determining the amount of compensation payable, the court shall determine whether because of his conduct the victim contributed to the infliction of his injury; and the court shall reduce the amount of the compensation or deny the claim altogether, in accordance with such determination; provided that the court may disregard the responsibility of the victim for his own injury where such responsibility was attributable to efforts by the victim to aid a victim, or to prevent a crime or an attempted crime from occurring in his presence or to apprehend a person who had committed a crime in his presence or had in fact committed a felony.

#### § 4107. Subrogation

Acceptance of any compensation under this chapter shall subrogate the State, to the extent of such compensation paid, to any right or right of action accruing to the claimant or to the victim to recover payments on account of losses resulting from the crime with respect to which the compensation has been paid. The Attorney General may enforce the subrogation and he shall bring suit to recover from any person to whom compensation is paid, to the extent of the compensation actually paid under this chapter, any amount received by the claimant from any source exceeding the actual loss to the victim.

#### STATEMENT OF FACT

The purpose of this bill is to provide a method of compensation for victims of violent crimes.