

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1672

H. P. 1279

House of Representatives, April 2, 1975

On Motion of Mr. Gauthier of Sanford, referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Perkins of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Relating to Public Compensation to the Victims of Crime.

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

Sec. 1. 17 MRSA c. 133 is enacted to read:

CHAPTER 133

CRIMINAL VICTIM REIMBURSEMENT BOARD

§ 4201. Policy

The Legislature recognizes that many innocent persons suffer physical injury or death as a result of criminal acts against them. Such persons or their dependents may thereby incur unreimbursable expenses as a direct result of such criminal acts, suffer occupational disability or become temporarily dependent on public assistance. Because of this, the Legislature finds that there is a need for public financial assistance to such victims of crime. Accordingly, it is the Legislature's intent that aid, care and support be provided by the State, as a matter of grace, for such victims of crime.

§ 4202. Definitions

As used in this chapter unless the context otherwise indicates, the following words shall have the following meanings.

1. Board. "Board" shall mean the Criminal Victim Reimbursement Board.

2. Claimant. "Claimant" shall mean a person filing a claim pursuant to this chapter.

3. **Crime.** "Crime" shall mean an act committed in the State of Maine which would, if committed by a mentally competent criminally responsible adult, who has no legal exemption or defense, constitute a crime as defined in and proscribed by Maine statutes; provided, however, that no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purposes of this chapter, unless the injuries were intentionally inflicted through the use of the vehicle.

4. **Family.** "Family", when used with reference to a person, shall mean any person related to such person within the 3rd degree of consanguinity or affinity, any person maintaining a sexual relationship with such person or any person residing in the same household with such person.

5. **Victim.** "Victim" shall mean a person who suffers personal physical injury as a direct result of a crime.

§ 4203. Criminal Victim Reimbursement Board

There is established an independent board to be known as the "Criminal Victim Reimbursement Board." Such board shall consist of 3 members, no more than 2 of whom shall be of the same political party, to be appointed by the Governor with the advice and consent of the Council. At least one member of the board shall be an attorney admitted to practice in the State of Maine for not less than 2 years and one member of the board shall be a medical or osteopathic physician licensed to practice in the State of Maine. The Governor shall designate one member of the board as chairman.

The term of office of each member of the board shall be 3 years, except that of the members first appointed one shall serve for a term of 3 years, one for a term of 2 years and one for a term of one year. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term of office shall be appointed for the unexpired term only, and members appointed to the board shall be ineligible to succeed themselves more than once. Members of the board shall be allowed their actual and necessary expenses incurred in the performance of official duties at the same rate as state employees, and shall receive a per diem compensation set by the Governor and Council for time actually spent in carrying out the responsibilities of the board.

§ 4204. Powers and duties

The board shall have the following powers and duties.

1. **Office.** To establish and maintain a principal office and such other offices within the State as it may deem necessary.

2. **Employment.** To employ a secretary and such clerks and assistants as are necessary, and to prescribe their duties and fix their compensation subject to the Personnel Law.

3. **Rules and regulations.** To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this chapter.

4. Assistance and data. To request assistance and data from the state police, from county or municipal police departments and agencies from any other state or municipal department or agency or public authority; and the same are hereby authorized to provide such assistance and data as will enable the board to carry out its functions and duties.

5. Claims. To hear and determine all claims for awards filed with the board pursuant to this chapter and to reinvestigate or reopen cases as the board deems necessary.

6. Medical examination. To direct medical examination of victims.

7. Procedure. To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue subpoenas requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subdivision may be delegated by the board to any member thereof. A subpoena issued under this subsection shall be regulated by the Maine Rules of Civil Procedure.

8. Affidavits and depositions. To take or cause to be taken affidavits or depositions within or without the State.

9. Report. To render each year to the Governor and to the Legislature a written report of its activities.

§ 4205. Eligibility for reimbursement

1. Persons eligible. Except as provided in subsection 2, the following persons shall be eligible for reimbursement awards pursuant to this chapter:

A. A victim of a crime;

B. A surviving spouse, parent or child of a victim of a crime who died as a direct result of such crime; and

C. Any other person dependent for his principal support upon a victim of a crime who died as a direct result of such crime.

2. Persons ineligible. A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person or a member of the family of such persons shall not be eligible to receive an award with respect to such claim.

§ 4206. Minimum allowable claim

No award shall be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of \$100 or has lost at least 2 continuous weeks' earnings or support. Out-of-pocket loss shall mean unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a direct result of the injury upon which such claim is based.

§ 4207. Filing of claims

A claim may be filed by any person eligible to receive an award, as provided in sections 4205 and 4206. In a case in which the person eligible to file a claim is a minor, the claim may be filed on his behalf by his parent or legal guardian. In a case in which the person entitled to file a claim is mentally incompetent, the claim may be filed on his behalf by his parent, legal guardian or other individual authorized to administer his estate.

A claim must be filed by or on behalf of the claimant not later than 90 days after the occurrence of the crime upon which such claim is based, or not later than 90 days after the death of the victim; provided, however, that upon good cause shown, the board may extend the time for filing for a period not exceeding one year after such occurrence.

Claims shall be filed in the office of the secretary of the board in person or by mail. The secretary of the board shall accept for filing all claims, submitted by or on behalf of persons eligible to receive an award under this chapter, which allege the jurisdictional requirements set forth in this chapter and which meet the requirements as to form in the rules and regulations of the board.

In addition, in order to be eligible for a reimbursement hearing under this chapter, the claimant shall, before such a hearing on his claim, submit reports from all physicians or surgeons who have treated or examined the victim in relation to the injury for which compensation is claimed at the time of or subsequent to the victim's injury or death. If, in the opinion of the board, an additional report on the previous medical history of the victim, an additional report on the examination of the injured victim, or an additional report on the cause of death of the victim by an impartial medical expert would be of material aid to its determination, the board shall order such report or examination.

§ 4208. Hearings

Upon the filing of a claim and the submission of required records under the provisions of this chapter, the board shall fix a time and place for a hearing and shall give notice to the claimant.

For the purpose of carrying out the provisions of this chapter, the board may hold hearings, sit and act at the times and places, and take testimony that it considers advisable. The board may administer oaths or affirmations to witnesses. The board has full powers of subpoena and compulsion of attendance of witnesses and production of documents, but no subpoena shall be issued except under the signature of a member of the board. Application to a court for aid in enforcing the subpoena may be made in the name of the board only by a board member. Subpoenas may be served by any person designated by the board.

The claimant and any other person having a substantial interest in a proceeding may appear and be heard, produce evidence and cross-examine witnesses in person or by his attorney. In admitting evidence, the board shall not be bound by the rules of evidence, but may hear all persons who in its judgment may have relevant testimony to give, and may receive in

evidence any statement, document, information or other matter that may, in the opinion of the board, contribute to the successful completion of its duties under this chapter.

Proceedings may be conducted and awards made under this chapter whether or not a person is prosecuted or convicted of an offense arising out of the act which caused the injury or death involved in the claim. Upon application made by an appropriate prosecuting authority, however, the board may suspend proceedings under this chapter for a period it considers appropriate on the ground that a prosecution for an offense arising out of the act which caused the injury or death involved in the claim has been commenced or is imminent.

If a person has been convicted of an offense with respect to an act on which a claim under this chapter is based, proof of that conviction shall be taken as conclusive evidence that the offense has been committed, unless an appeal or a proceeding with regard to it is pending.

Orders and decisions of the board shall be final.

§ 4209. Awards

Upon the consideration of evidence presented at a hearing, the board may, with the concurrence of a majority of the members thereof, order the payment of compensation to any claimant found deserving of such an award under the provisions of this chapter. In acting upon the evidence presented, the board shall make no award unless it finds that a crime was committed, such crime directly resulted in personal physical injury to, or death of, the victim, and police records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police records show that such report was made more than 48 hours after the occurrence of such crime, unless the board, for good cause shown, finds the delay to have been justified.

Any award made pursuant to this chapter shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from such injury.

Any award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this chapter, be in an amount equal to the actual loss sustained; provided, however, that no such award shall exceed \$100 for each week of lost earnings or support, and provided further that the aggregate award for such loss shall not exceed \$15,000. If there are 2 or more persons entitled to an award as a result of the death of a person which is the direct result of a crime, the award shall be apportioned by the board among the claimants.

In determining the amount of an award, the board shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the board shall reduce the amount of the award or reject the claim altogether, in accordance with such determination; provided, how-

ever, that the board may disregard for this purpose the responsibility of the victim for his own injury where the record shows that such responsibility was attributable to efforts by the victim 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.

§ 4210. Manner of payment

The award shall be paid in a lump sum, except that in the case of the death or protracted disability, the award shall provide for periodic payments to compensate for loss of earnings or support. No award made pursuant to this chapter shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim.

Where a person entitled to receive an award is a minor or an incompetent, the award may be paid to a relative, guardian or attorney of such person on behalf of and for the benefit of such person. In such case, the payee shall be required to file a periodic accounting of the award with the board and to take such other action as the board shall determine is necessary and appropriate for the benefit of such minor or incompetent.

§ 4211. Emergency compensation

If it appears to the board at any time prior to taking final action on a claim, that the claim is one for which compensation is probable, and that undue hardship will result to the claimant if immediate payment is not made, the board may make an emergency award of compensation to the claimant pending a final decision in the case:

1. Amount. The amount of the emergency compensation may not exceed \$500;
2. Deduction. The amount of the emergency compensation shall be deducted from the final compensation made to the applicant;
3. Excess. The excess of the amount of the emergency compensation over the final amount shall be repaid by the applicant to the board.

§ 4212. Recovery from collateral source

The board shall deduct from any award made under this chapter any payments received from the offender, or from a person on behalf of the offender, or from the United States, a state or any of its subdivisions or agencies, or a private source or emergency awards under section 4211 for injury or death compensable under this chapter.

If compensation is awarded under this chapter and the person receiving it also receives a collateral sum as described above which has not been deducted from it, he shall refund to the board the lesser of the sums or the amount of compensation paid to him under this chapter.

§ 4213. Subrogation

Acceptance of an award made pursuant to this chapter shall subrogate the State, to the extent of such award, to any right or right of action accruing

to the claimant or the victim to recover payments on account of losses resulting from the crime with respect to which the award is made.

§ 4214. False claim

A person who knowingly makes a false claim under this chapter is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$500 or by imprisonment for not more than one year, or by both, and shall forfeit any benefit received and shall repay the board for payment of compensation made under this chapter.

§ 4215. Survival and abatement

The rights to compensation created under this chapter are personal and do not survive the death of a victim or dependent entitled to them, except that if the death occurs after an application for compensation has been filed with the board, the proceeding does not abate, but may be continued by the legal representative of the decedent's estate.

§ 4216. Attorney fees

The board may also, as part of any final order entered under this chapter, determine and allow reasonable attorney fees, which shall not exceed 15% of the amount awarded as compensation under section 4209, to be paid in addition to the amount of such compensation, to the attorney representing the applicant, and it shall be unlawful for any such attorney to ask for, contract for or receive any larger sum than the amount so allowed.

§ 4217. Confidentiality of records

The record of a proceeding before the board shall be a public record; provided, however, that any record or report obtained by the board, the confidentiality of which is protected by any other law or regulation, shall remain confidential subject to such law or regulation.

Sec. 2. Appropriation. There is appropriated from the General Fund to the Criminal Victim Reimbursement Board the sum of \$168,600 to carry out the purposes of this Act. The breakdown shall be as follows:

	1975-76	1976-77
CRIMINAL VICTIM REIMBURSEMENT BOARD		
Personal Services	(2) \$16,000	(2) \$18,400
All Other	67,100	67,100
	\$83,100	\$85,500

STATEMENT OF FACT

The victim of crime is often the forgotten person in the criminal justice process.

For some offenses, the Task Force on Corrections has recommended greater use by the courts of existing authority to enforce specific restitution to the victims of crime.

For other offenses, however, this is impractical, and an equitable system of public reimbursement to crime victims is necessary to assure that such victims are not forced to shoulder alone the often catastrophic after-effects of criminal action against them.

Several states have already established successful programs of public reimbursement of the out-of-pocket expenses of the victims of crime, and this legislation is patterned after existing programs in the states of New York, New Jersey and Alaska.

This legislation is a product of recommendation #30 of the report of the Governor's Task Force on Corrections, and is supported by the legislative program of the democratic caucus.