

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

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Legislative Document

No. 1787

H. P. 1401

House of Representatives, April 7, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Carter of Winslow.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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**AN ACT to Establish the Uniform Crime Victims Reparations Act.**

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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**

**UNIFORM CRIME VICTIMS REPARATIONS ACT**

§ 4201. Title

This Act may be cited as the Uniform Crime Victims Reparations Act.

§ 4202. Definitions

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

1. Board. "Board" means the Crime Victims Reparations Board created under section 4204.

2. Claimant. "Claimant" means any of the following claiming reparations under this chapter: A victim, dependent of a deceased victim, a 3rd person other than a collateral source, or an authorized person acting on behalf of any of them.

3. Collateral source. "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under this chapter which the victim or claimant has received, or which is readily available to him, from:

A. The offender;

B. The Government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of 2 or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this chapter;

C. Social security, medicare and medicaid;

D. State required temporary nonoccupational disability insurance;

E. Workmen's compensation;

F. Wage continuation programs of any employer;

G. Proceeds of a contract of insurance payable to the victim for loss which he sustained because of the criminally injurious conduct; or

H. A contract providing prepaid hospital and other health care services or benefits for disability.

4. **Criminally injurious conduct.** "Criminally injurious conduct" means conduct that occurs or is attempted in this State, poses a substantial threat of personal injury or death and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this State. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance or use of a motor vehicle except when intended to cause personal injury or death.

5. **Dependent.** "Dependent" means a natural person wholly or partially dependent upon the victim for care or support and includes a child of the victim born after his death.

6. **Economic loss.** "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. However, economic detriment is loss although caused by pain and suffering or physical impairment.

A. "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training and other remedial treatment and care. The term includes a total charge not in excess of \$500 for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semi-private accommodations, unless other accommodations are medically required.

B. "Work loss" means loss of income from work the injured person would have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him or by income he would have earned in available ap-

propriate substitute work he was capable of performing but unreasonably failed to undertake.

C. "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

D. "Dependent's economic loss" means loss after decedent's death of contributions of things of economic value to his dependents, not including services they would have received from the decedent if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death.

E. "Dependent's replacement services loss" means loss reasonably incurred by dependents after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death and not subtracted in calculating dependent's economic loss.

7. Noneconomic detriment. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment and other non-pecuniary damage.

8. Victim. "Victim" means a person who suffers personal injury or death as a result of criminally injurious conduct, the good faith effort of any person to prevent criminally injurious conduct, or the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.

#### § 4203. Award of reparations

The board shall award reparations for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for reparations have been met.

#### § 4204. Crime Victims Reparations Board

1. Creation. A Crime Victims Reparations Board is created in the Executive Branch, consisting of 3 members appointed by the Governor with the advice and consent of the Executive Council. At least one member shall be a person admitted to the bar of this State.

2. Term of office; vacancies. The term of office of each member shall be 6 years and until his successor is appointed and qualified, except that of the members first appointed one each shall be appointed to serve for terms of 2, 4 and 6 years. A person appointed to fill a vacancy shall be appointed for the remainder of the unexpired term.

3. Chairman. The Governor shall designate a member who is admitted to the bar of this State to serve as chairman at the pleasure of the Governor.

4. Per diem and expenses. Members shall serve part time and receive \$50 per diem and be reimbursed for actual expenditures incurred in performance of their duties in the same manner as state officials generally.

**§ 4205. Powers and duties of the board**

In addition to the powers and duties specified elsewhere in this chapter, the board has the powers and duties specified in this section.

1. Office; employees. The duty to establish and maintain a principal office and other necessary offices within this State, appoint employees and agents as necessary and prescribe their duties and compensation.

2. Organization; operation. The duty to adopt by rule a description of the organization of the board stating the general method and course of operation of the board.

3. Adoption of rules. The duty to adopt rules to implement this chapter, including rules for the allowance of attorney's fees for representation of claimants; and to adopt rules providing for discovery proceedings, including medical examination consistent with sections 4210 and 4211. Rules shall be statements of general applicability which implement, interpret or prescribe policy, or describe the procedure or practice requirements of the board.

4. Applications. The duty to prescribe forms for applications for reparations.

5. Hearings; determination; investigations. The duty to hear and determine all matters relating to claims for reparations and the power to re-investigate or reopen claims without regard to statutes of limitations or periods of prescription.

6. Request certain data. The power to request from district attorneys and law enforcement officers investigations and data to enable the board to determine whether, and the extent to which, a claimant qualifies for reparations. A statute providing confidentiality for a claimant's or victim's juvenile court records does not apply to proceedings under this chapter.

7. Procedural powers. The duty, if it would contribute to the function of the board, to subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings and receive relevant, non-privileged evidence.

8. Judicial notice. The power to take notice of judicially cognizable facts and general, technical and scientific facts within their specialized knowledge.

9. Matter open for public inspection. The duty to make available for public inspection all board decisions and opinions, rules, written statements of policy and interpretations formulated, adopted or used by the board in discharging its functions.

10. Publicizing. The duty to publicize widely the availability of reparations and information regarding the filing of claims therefor.

**§ 4206. Application for reparations; awards; limitations on awards**

1. Application in writing. An applicant for an award of reparations shall apply in writing in a form that conforms substantially to that prescribed by the board.

2. **Limitation on claim.** Reparations may not be awarded unless the claim is filed with the board within one year after the injury or death upon which the claim is based.

3. **Unjust benefits.** Reparations may not be awarded to a claimant who is the offender or an accomplice of the offender, nor to any claimant if the award would unjustly benefit the offender or accomplice. Unless the board determines that the interests of justice otherwise require in a particular case, reparations may not be awarded to the spouse of, or a person living in the same household with, the offender or his accomplice or to the parent, child, brother or sister of the offender or his accomplice.

4. **Report to law enforcement official required.** Reparations may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the board finds there was good cause for the failure to report within that time.

5. **Claimant or victim to cooperate with law enforcement agencies.** The board, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny, reconsider or reduce an award of reparations.

6. **Recoupment of loss; contributory misconduct.** Reparations otherwise payable to a claimant shall be reduced or denied:

A. To the extent the economic loss upon which the claim is based is recouped from other persons, including collateral sources; and

B. To the extent the board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom he claims.

7. **Financial stress requirement.**

A. Reparations may be awarded only if the board finds that unless the claimant is awarded reparations he will suffer financial stress as the result of economic loss otherwise reparable. A claimant suffers financial stress only if he cannot maintain his customary level of health, safety and education for himself and his dependents without undue financial hardship. In making its finding the board shall consider all relevant factors, including:

- (1) The number of claimant's dependents;
- (2) The usual living expenses of the claimant and his family;
- (3) The special needs of the claimant and his dependents;
- (4) The claimant's income and potential earning capacity; and
- (5) The claimant's resources.

B. Reparations may not be awarded if the claimant's economic loss does not exceed 10% of his net financial resources. A claimant's net financial resources do not include the present value of future earnings and shall be determined by the board by deducting from his total financial resources:

- (1) One year's earnings;
- (2) The claimant's equity, up to \$30,000, in his home;
- (3) One motor vehicle; and
- (4) Any other property exempt from execution under Title 36.

**C. Notwithstanding paragraph B:**

(1) The board may award reparations to a claimant who possesses net financial resources in excess of those allowable under paragraph B if, considering the claimant's age, life expectancy, physical or mental condition, and expectancy of income including future earning power, it finds that the claimant's financial resources will become exhausted during his lifetime; or

(2) The board may reject the claim finally, or reject the claim and reserve to the claimant the right to reopen his claim, if it appears that the exhaustion of claimant's financial resources is probable, in which event the board may reopen pursuant to an application to reopen if it finds that the resources available to the claimant from the time of denial of an award were prudently expended for personal or family needs.

8. **Weekly limit on reparations.** Reparations for work loss, replacement services loss, dependent's economic loss and dependent's replacement services loss may not exceed the amount by which the victim's income is reduced below \$200 per week.

9. **Aggregate limit on reparations.** Reparations payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed \$5,000 in the aggregate.

**§ 4207. Notice to Attorney General; function of Attorney General**

Promptly upon receipt of an application for reparations, the board shall forward a copy of the application and all supporting papers to the Attorney General, who in appropriate cases may investigate the claim, appear in hearings on the claim and present evidence in opposition to or support of an award.

**§ 4208. Informal disposition; contested case**

Unless precluded by law, informal disposition may be made of a claim by stipulation, agreed settlement, consent order or default. A claim not so disposed of is a contested case.

**§ 4209. Contested cases; notice; hearing; records**

1. **Hearing in contested case.** In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

2. **Contents of hearing notice.** The notice of hearing shall include:

**A. A statement of the time, place and nature of the hearing;**

**B. A statement of the legal authority and jurisdiction under which the hearing is to be held;**

C. A reference to the particular sections of the statutes and rules involved; and

D. A short and plain statement of the matters asserted. To the extent that the board is unable to state the matters at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite statement shall be furnished.

3. Procedural rights of interested persons. Every interested person shall be afforded an opportunity to appear and be heard and to offer evidence and argument on any issue relevant to his interest and examine witnesses and offer evidence in reply to any matter of an evidentiary nature in the record relevant to his interest.

4. Record. A record of the proceedings shall be made and shall include:

A. The application and supporting documents;

B. All pleadings, motions and intermediate rulings;

C. Evidence offered, received or considered;

D. A statement of matters officially noticed;

E. All staff memoranda or data submitted to the board in connection with its consideration of the case; and

F. Offers of proof, objections and rulings.

5. Transcription of oral proceedings. Oral proceedings or any part thereof shall be transcribed on request of any party, who shall pay transcription costs unless otherwise ordered by the board.

6. Determinations of board in writing. Determinations of the board shall be made in writing, supported by findings of fact and conclusions of law based exclusively on the record and mailed promptly to all parties.

#### § 4210. Evidence of physical condition

1. Privileges. There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical, mental or emotional condition of the claimant or victim in a proceeding under this chapter in which that condition is an element.

2. Examination of condition of claimant or victim. If the mental, physical or emotional condition of a victim or claimant is material to a claim, the board may order the victim or claimant to submit to a mental or physical examination by a physician or psychologist and may order an autopsy of a deceased victim. The order may be made for good cause shown upon notice to the person to be examined and to all persons who have appeared. The order shall specify the time, place, manner, conditions and scope of the examination or autopsy and the person by whom it is to be made, and shall require the person to file with the board a detailed written report of the examination or autopsy. The report shall set out his findings, including re-



sults of all tests made, diagnoses, prognoses and other conclusions and reports of earlier examinations of the same conditions.

3. Copy of report of examination. On request of the person examined, the board shall furnish him a copy of the report. If the victim is deceased, the board, on request, shall furnish the claimant a copy of the report.

4. Supplements to application. The board may require the claimant to supplement the application with any reasonably available medical or psychological reports relating to the injury for which reparations are claimed.

#### § 4211. Enforcement of board's orders

If a person refuses to comply with an order under this chapter or asserts a privilege, except privileges arising from the attorney-client relationship, to withhold or suppress evidence relevant to a claim, the board may make any just order including denial of the claim, but may not find the person in contempt. If necessary to carry out any of its powers and duties, the board may petition the Superior Court for an appropriate order, but the court may not find a person in contempt for refusal to submit to a medical or physical examination.

#### § 4212. Award and payment of reparations

1. Conviction not necessary. An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction, or certiorari is pending, or a rehearing or new trial has been ordered.

2. Suspension of proceedings. The board may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but may make a tentative award under section 4216.

#### § 4213. Attorney's fees

As part of an order, the board shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the State to the attorney representing the claimant. Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous. Awards of attorney's fees shall be in addition to awards of reparations and may be made whether or not reparations are awarded. It is unlawful for an attorney to contract for or receive any larger sum than the amount allowed.

#### § 4214. Subrogation; actions; allocation of expenses

1. Subrogation. If reparations are awarded, the State is subrogated to all the claimant's rights to receive or recover benefits or advantages, for economic loss for which and to the extent only that reparations are awarded, from a source which is or, if readily available to the victim or claimant would be, a collateral source.

2. Action by claimant to recover damages. As a prerequisite to bringing an action to recover damages related to criminally injurious conduct for

which reparations are claimed or awarded, the claimant shall give the board prior written notice of the proposed action. After receiving the notice, the board shall promptly join in the action as a party plaintiff to recover reparations awarded, require the claimant to bring the action in his individual name, as a trustee in behalf of the State, to recover reparations awarded, or reserve its rights and do neither in the proposed action. If, as requested by the board, the claimant brings the action as trustee and recovers reparations awarded by the board, he may deduct from the reparations recovered in behalf of the State the reasonable expenses, including attorney's fees, allocable by the court for that recovery.

3. Allocation of expenses. If a judgment or verdict indicates separately economic loss and noneconomic detriment, payments on the judgment shall be allocated between them in proportion to the amounts indicated. In an action in a court of this State arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for non-economic detriment, punitive damages and economic loss.

#### § 4215. Manner of payment; nonassignability and exemptions

1. Lump sum or installments. The board may provide for the payment of an award in a lump sum or in installments. The part of an award equal to the amount of economic loss accrued to the date of the award shall be paid in a lump sum. An award for allowable expense that would accrue after the award is made may not be paid in a lump sum. Except as provided in subsection 2, the part of an award that may not be paid in a lump sum shall be paid in installments.

2. Commutation of future economic loss. At the instance of the claimant, the board may commute future economic loss, other than allowable expense, to a lump sum but only upon a finding by the board that:

A. The award in a lump sum will promote the interests of the claimant; or

B. The present value of all future economic loss other than allowable expense, does not exceed \$1,000.

3. Award for future economic loss payable in installments. An award for future economic loss payable in installments may be made only for a period as to which the board can reasonably determine future economic loss. The board may reconsider and modify an award for future economic loss payable in installments, upon its finding that a material and substantial change of circumstances has occurred.

4. Execution, attachment or garnishment of award. An award is not subject to execution, attachment, garnishment or other process, except that an award for allowable expense is not exempt from a claim of a creditor to the extent that he provided products, services or accommodations the cost of which are included in the award.

5. Assignment of right to reparations. An assignment or agreement to assign a right to reparations for loss accruing in the future is unenforce-

able, except an assignment of a right to reparation for work loss to secure payment of alimony, maintenance or child support; or an assignment of a right to reparations for allowable expense to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

§ 4216. Tentative awards

If the board determines that the claimant will suffer financial hardship unless a tentative award is made and it appears likely that a final award will be made, an amount may be paid to the claimant, to be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

§ 4217. Reconsideration and review of board decisions

1. Reconsideration. The board, on its own motion or on request of the claimant, may reconsider a decision making or denying an award or determining its amount. The board shall reconsider at least annually every award being paid in installments. An order on reconsideration of an award shall not require refund of amounts previously paid unless the award was obtained by fraud.

2. Finality not affected for judicial review. The right of reconsideration does not affect the finality of a board decision for the purpose of judicial review.

3. Appeal. A final decision of the board is subject to judicial review on appeal by the claimant, the Attorney General or the offender in the same manner and to the same extent as the decision of the Superior Court.

§ 4218. Reports

The board shall prepare and transmit annually to the Governor and the Legislature a report of its activities, including the name of the claimant, a brief description of the facts and the amount of reparations awarded in each case and a statistical summary of claims and awards made and denied.

§ 4219. Uniformity of application and construction

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states enacting it.

Sec. 2. Appropriation. There is appropriated from the General Fund to the Crime Victims Reparations Board the sum of \$300,000 to carry out the purposes of this Act. The breakdown shall be as follows:

	1975-76		1976-77
<b>CRIME VICTIMS REPARATIONS BOARD</b>			
Personal Services	(2) \$ 13,500	(2)	\$ 18,000
All Other	99,000		169,500
	<hr/>		<hr/>
	\$112,500		\$187,500

STATEMENT OF FACT

This bill establishes the Crime Victims Reparations Board whose purpose is to award reparations for economic loss arising from criminally injurious conduct. The bill sets forth a detailed procedure for hearing claims and sets out specific standards to enable the board to determine which claims to grant.

The provisions of this bill have been approved and recommended for enactment by the National Conference of Commissions on Uniform State Laws.