

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1011

H. P. 759

House of Representatives, March 10, 1977

On motion of Mr. Spencer of Standish referred to the Committee on Judiciary. Sent up for concurrence and 1,800 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Curran of So. Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

**AN ACT to Pay for Out-of-pocket Medical Costs of Victims
of Criminal Assaults.**

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

Sec. 1. 5 MRSA § 2301, sub-§ 1, as last amended by PL 1975, c. 760, §§ 1 and 2, is further amended by adding after the 24th paragraph the following:

Crime Victims Compensation Commission

Sec. 2. 22 MRSA c. 956 is enacted to read:

CHAPTER 956

CRIME VICTIMS COMPENSATION ACT

§ 3421. Purpose

The purpose of this chapter is to reimburse victims of violent crime for medical expenses incurred for the treatment of physical and psychological injuries sustained by such victims as a direct result of such violent crime to the extent that such victim has not been and will not be reimbursed for such medical expenses from any other source.

§ 3422. Definitions

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

1. Applicant. "Applicant" means a person filing a claim for relief with the commission pursuant to this chapter,

2. Collateral source. "Collateral source" means a source of indemnification for medical expenses otherwise compensable under this chapter, which is readily available to him from, or on behalf of:

- 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;
- C. Social Security, Medicare, Medicaid or Workmen's Compensation;
- D. The proceeds of a contract of insurance payable to the victim for medical expenses incurred for injuries or death suffered as a result of the crime of violence; or
- E. A contract providing prepaid hospital and other health care services, or benefits for disability.

3. Commission. "Commission" means the Crime Victims Compensation Commission.

4. Crime of violence. "Crime of violence" means an act committed in the State of Maine involving the threat or application of force by an offender upon a person, or which otherwise poses a substantial threat of personal injury or death to such person, which, if committed by a mentally competent, criminally responsible adult, who has no legal exemption or defense, would constitute a crime as defined by the laws of this State. No act involving the operation of a motor vehicle, aircraft or watercraft which results in injury to the victim shall constitute a crime of violence for purposes of this chapter, unless such injury was intentionally inflicted through the use of such motor vehicle, aircraft or watercraft.

5. Immediate family. "Immediate family" of a victim or offender means the parents, spouse, children, brothers, sisters or any person wholly or partially dependent upon such victim or offender, and who is living with the victim or offender at the time of the perpetration of the crime of violence.

6. Offender. "Offender" means the perpetrator of a crime of violence as defined in this chapter.

7. Out-of-pocket medical expenses. "Out-of-pocket medical expenses" means the necessary expenses or indebtedness incurred, or which will be incurred for the diagnosis and treatment of physical and psychological injuries suffered by a victim of a crime of violence, and for the rehabilitation of such victim to the extent that the victim has not been or will not be readily indemnified for such expenses by any other collateral source.

8. Victim. "Victim" means:

A. A person who suffers personal injury or death

(1) As a direct result of force used or threatened to be used against him by his attacker who commits a crime of violence;

(2) While assisting or attempting to assist a person against whom a crime of violence is being perpetrated or attempted if that assistance would be expected of a reasonable person under the circumstances; or

(3) While assisting or attempting to assist a law enforcement official in the apprehension of a person who has committed a crime of violence, or in the prevention of any such crime, if the assistance was in response to the express request of a law enforcement official.

B. A person who suffers personal injury or death, who is a member of the immediate family of the person referred to in paragraph A, and who suffers such injury as a direct result of his perception, apprehension or discovery of the violent crime perpetrated upon the person referred to in paragraph A.

§ 3423. Commission established

1. Establishment. There is established a Crime Victims Compensation Commission placed within the Department of Human Services for administrative purposes.

2. Membership. The commission shall consist of 3 members appointed by the Governor, subject to review by the Joint Standing Committee on Human Resources and to confirmation by the Legislature. Not more than 2 members of the commission shall be of the same political party.

3. Term. Commission members shall serve for a term of 6 years, except that members first appointed shall serve for terms of 6, 4 and 2 years, respectively. Members may be removed by the Governor on the address of both branches of the Legislature or by impeachment. Any member appointed to fill a vacancy occurring otherwise than by the expiration of a term shall be appointed for the remainder of the unexpired term.

4. Chairman. The Governor shall designate one member of the commission as chairman, to serve in such capacity at the pleasure of the Governor.

5. Salary and expenses. Each member of the commission shall receive compensation of \$25.00 for each day spent at commission meetings and in addition shall be entitled to reimbursement for necessary and reasonable travel and expenses in connection with commission business.

§ 3424. Powers and duties

The commission or any of its members shall have the following powers and duties:

1. Establishment and maintenance of principal office. To establish and maintain a principal office within the Department of Human Services, appoint all necessary clerks, employees and agents, fix their compensation and prescribe their duties;

2. Rules and regulations. To make all needful rules and regulations consistent with the law for the purposes of carrying this chapter into effect;

3. Publish forms for applications for relief. To publish forms for applications for relief, and supply such forms to all medical care facilities and law enforcement agencies within the State;

4. Investigation and determination of application. To investigate and determine all applications for relief pursuant to this chapter;

5. Obtaining information from prosecuting attorneys and law enforcement officials. To request and obtain, by subpoena if necessary, all relevant information from prosecuting attorneys and law enforcement officials which is needed by the commission to determine whether, and to what extent, an applicant qualifies for relief;

6. Obtaining information from medical personnel and medical care facilities. To request and obtain, by subpoena if necessary, all relevant, non-privileged information from physicians, nurses and other medical personnel and hospitals, nursing homes and other medical care facilities which is needed by the commission to determine whether, and to what extent, an applicant qualifies for relief.

7. Hearings. To conduct hearings involving the production of records and documents and testimony by the applicant and other witnesses, if such hearing would contribute to the function of the commission;

8. Notification of applicants. To notify an applicant of any action by the commission which may become final, and the reasons for such action;

9. Filing records of commission actions. To file records of commission actions which may become final with the Commissioner of Human Services and the Attorney General.

§ 3525. Application for relief

1. Time limit. A victim of a violent crime shall file an application for relief not later than 90 days after the crime or incident which gives rise to the claim for relief, unless an extension is granted for good cause shown.

2. Information. The application, made under oath or affirmation, shall contain:

A. The name and address of the victim, or, if the victim is deceased, the name and address of the applicant and his relationship to the victim;

B. A description of the date, nature and circumstances of the crime or incident giving rise to the claim;

C. A statement that the victim was a resident of the State of Maine at the time of the incident or crime giving rise to the injury;

D. The place where, and the law enforcement official or agency to whom, notification of the occurrence of the crime of violence was given;

E. The nature of the injuries sustained by the victim as a direct result of the crime of violence, and the names and addresses of those providing medical and hospitalization treatment, or rehabilitative services to the victim;

F. A complete financial statement by or on behalf of the victim, including, but not limited to, the amount of medical expenses incurred or which will be incurred, the extent to which such victim has been or may be indemni-

fied for the expenses by any collateral source, and the ability of the victim to pay the expenses with personal resources;

G. A release authorizing surrender to the commission of reports, documents and other information specified above; and

H. Any further information that the commission requires.

3. Incomplete application. If the commission finds that the application for relief does not contain the required information or that further information is necessary in order to make the application complete, it shall notify the applicant in writing, by certified mail, of the specific additional items of information required. An applicant shall have 30 days after the date of the notice in which to furnish the required information. The commission shall reject the application of any applicant who, although notified, fails to furnish the requested information within the time specified, unless the applicant requests, and the commission grants, an extension of time for filing the information for good cause shown.

§ 3526. Processing of application

1. Referral. The chairman shall assign completed applications for relief to himself or another member of the commission.

2. Investigation. The commission member to whom the application for relief is assigned shall examine all papers, documents and other information filed in support of the application, and shall cause an investigation to be conducted in order to determine the validity of the claim asserted in the application.

3. Hearing. If the commission member is unable to determine the validity of a claim on the basis of the papers, documents and other information filed with the application and the results of investigation, he may order a hearing to be conducted. At such hearing, all relevant evidence, not legally privileged, shall be admissible.

4. Medical examination. The commission member may, if necessary for the proper determination of a claim, direct a medical examination of the victim by a physician selected by the commission.

5. Qualification. The commission member shall investigate and determine an application for relief, regardless of whether the alleged criminal has been apprehended or prosecuted for or convicted of any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to criminal irresponsibility or other legal exemption.

§ 3527. Disposition of application

1. Decision. After examining all papers, documents and other information filed in support of an application for relief, and the report of his investigation, and after a hearing, if any, the commission member to whom the application for relief is assigned shall render a decision granting or denying an award under this chapter.

2. **Criteria for decision.** The commission member to whom an application for relief is assigned shall award relief to the victim in the appropriate amount if:

A. It appears probable that a crime of violence has been perpetrated against the victim;

B. The victim has incurred or will incur out-of-pocket medical expenses for the treatment and care of injuries as a direct result of the crime of violence; and

C. The out-of-pocket medical expenses were or will be reasonably incurred for the receipt of necessary diagnostic, treatment and rehabilitative services.

3. **Modification of award.** The commission member to whom application for relief is assigned shall modify the amount of an award:

A. To the extent that the victim is reimbursed or will be reimbursed for his out-of-pocket medical expenses by other persons, including collateral sources; and

B. To the extent the commission member deems reasonable because of the contributory misconduct of the victim.

4. **Denial of award.** Notwithstanding any other provision of this chapter, a commission member to whom an application for relief is assigned shall deny an award of relief to victim if he determines:

A. Based upon a consideration of all financial resources of the applicant, the applicant will not suffer financial stress as a result of out-of-pocket medical expenses incurred or which will be incurred;

B. The applicant is criminally responsible for the crime of violence upon which the claim is based, or is an accomplice of such person or a member of the immediate family of such person;

C. The applicant fails to cooperate with any law enforcement agency in the apprehension and conviction of the offender committing the crime of violence;

D. The applicant fails to furnish all information requested by the commission within 2 years after the date of the crime or incident giving rise to the application for relief.

5. **Record.** The commission member to whom an application for relief is assigned shall compose a record of his findings of fact and reasons for granting or denying an award to an applicant. The commission member shall file a copy of such record with the chairman of the commission, the Commissioner of Human Services and the Attorney General.

6. **Notice.** The commission member to whom an application for relief is assigned shall promptly notify the applicant for relief of his decision and, if the amount of relief awarded is less than the amount of relief sought by the applicant, the reasons for such decision.

§ 3528. Review of decisions

1. Time limit. Not later than 30 days after the date of notification of decision of the commission member, an aggrieved applicant may make an application for review of the commission member's decision by the full commission, otherwise, the decision by the commission member to whom the application is assigned shall become the final decision by the commission.

2. Basis for review. Upon receipt of an application for review, the full commission shall review the decision of the commission member to whom the original application for relief is assigned. No review need be taken by the full commission if the written request for review states facts not before the commission member at the time of his original decision, unless the facts were not known or through the exercise of reasonable diligence could not have been ascertained by the applicant prior to the time of the commission member's original decision.

3. Decision upon review. Upon completing its review, the commission, by the agreement of at least 2 of its members, shall affirm or modify the original decision of the commission member to whom the application for relief was assigned. Such action by the commission shall be final.

4. Notice and filing. The commission shall promptly notify the applicant requesting review of the commission's decision not to review, or of its decision after review. Such notice shall contain a statement of reasons for the commission's decision. The commission shall file a written report of its decision upon review and reasons therefor with the Commissioner of Human Services and the Attorney General.

§ 3529. Appeal

Any person aggrieved by any final action of the commission may seek review of the final action by appeal to the Superior Court.

§ 3530. Limitation of awards

1. Minimum and maximum limits. The commission shall make no award to the victim unless such victim has incurred or will incur out-of-pocket medical expenses in excess of \$25.00. The commission shall deduct \$25.00 from the amount awarded to the victim. The total amount of relief awarded to a victim under this chapter as a result of medical expenses incurred for the care of injuries sustained in a single incident involving a crime or crimes of violence shall not exceed \$10,000.

2. Prospective application. This chapter shall apply only to injuries, including those resulting in death, which were sustained after the effective date of this Act.

§ 3531. Refunds

The recipient of an award made pursuant to this chapter is obligated to notify the commission of the receipt of any reimbursement for out-of-pocket medical expenses from any collateral source. Such recipient is obligated to refund to the State the amount of compensation awarded to him by the com-

mission, or the total amount received from collateral sources, whichever is less.

§ 3532. Confidentiality

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

§ 3533. Subrogation

Acceptance of an award made pursuant to this chapter shall subrogate the State, to the extent of such award, to any right or cause of action accruing to the victim to recover payments on account of out-of-pocket medical expenses incurred for the care of injuries resulting from the crime of violence with respect to which the award is made. The Attorney General is authorized to bring an action against such person or persons causing injury to the victim.

§ 3534. Compensation fund

There is established a Crime Victims Compensation Fund, from which the commission shall make awards pursuant to this chapter. The State Controller shall be custodian of the fund and all payments therefrom shall be promptly paid by him upon orders by the commission. The commission shall order payment of an award to the victim only after it has taken final action with respect to the application for relief.

§ 3535. Annual report

The commission shall transmit annually to the Governor and the State Controller, at least 30 days prior to the convening of the Legislature, a report of its activities under this chapter, including the name of the applicant for relief, a brief description of the facts surrounding the crime of violence and the amount, if any, of compensation awarded. The State Controller shall, within 10 days after the opening of the legislative session, transmit the report, together with a tabulation of the total amount of compensation awarded, and a legislative bill appropriating funds necessary to replenish the Crime Victims Compensation Fund for the compensation awarded.

Sec. 3. Appropriation. There is appropriated from the General Fund to the Department of Finance and Administration to be deposited in the Crime Victims Compensation Fund the sum of \$75,000 for fiscal year 1977-78. Any unexpended balance on June 30, 1978 shall not lapse, but shall be carried forward to be expended for the purposes of the Fund. The breakdown shall be as follows:

1977-78

FINANCE AND ADMINISTRATION, DEPARTMENT OF

State Controller

Crime Victims Compensation Fund

\$75,000

Sec. 4. Appropriation. There is appropriated from the General Fund to the Department of Human Services for fiscal years 1977-78 and 1978-79 the sum of \$45,500 to be expended for the purposes of this Act. The breakdown shall be as follows:

	1977-78		1978-79
HUMAN SERVICES, DEPARTMENT OF			
Crime Victims Compensation Commission			
Personal Services	(3) \$11,375	(3)	\$15,000
All Other	7,625		10,000
Capital Expenditures	1,000		500
	<hr/>		<hr/>
	\$20,000		\$25,500

STATEMENT OF FACT

The purpose of this bill is to establish a procedure for compensation of persons injured by persons committing violent crimes.