

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES (Filing No. H-214)  
109TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 644, L.D. 798, Bill,  
"AN ACT to Provide Restitution to Innocent Victims of  
Crimes."

Amend the bill by striking out everything after the  
enacting clause and inserting in its place the following:

'Sec. 1. 17 MRSA C. 133 is enacted to read:

CHAPTER 133

CRIME VICTIM REIMBURSEMENT

§4201. Policy

The Legislature recognizes that many innocent persons  
suffer physical injury or death as a result of criminal acts  
against them. These persons or their dependents may thereby  
incur unreimbursable expenses as a direct result of those  
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 finan-  
cial assistance to those 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 those vic-  
tims 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 4 members appointed

by the Governor under title 23, section 152, to the State Claims 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 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 that no act involving the operation of a motor vehicle which results in injury shall constitute a crime unless the injuries were intentionally inflicted through the use of the vehicle.

4. Out-of pocket loss. "Out-of-pocket loss" shall mean unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for the following services that are necessary as a direct result of the injury on which the claim is based:

A. Medical expenses;

B. Nonmedical remedial care or treatment rendered in accordance with a recognized religious method of healing;

or

C. Other services.

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

#### §4203. Powers and duties

The board shall have the following powers and duties.

1. Rules. The board may adopt rules in accordance with Maine the Administrative Procedure Act to carry out the pro-

visions and purposes of this chapter.

2. Assistance and data. The board may request assistance and data from the state police, county or municipal police departments and agencies or any other state or municipal department, agency or public authority. All those agencies may provide assistance and data as will enable the board to carry out its duties.

3. Claims. The board shall hear and determine all claims filed with it and may reinvestigate or reopen cases as it deems necessary.

4. Medical examination. The board may direct medical examination of <sup>a</sup>Victim.

5. Procedure. The board may hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and issue subpoenas requiring the attendance and giving of testimony of witnesses and the production of any books, papers, documents or other evidence. A subpoena issued under this subsection shall be regulated by the Maine Rules of Civil Procedure.

6. Affidavits and depositions. The board may take or cause to be taken affidavits or depositions within or without the State.

7. Single member hearings. The board chairman may appoint a member to act on behalf of the board in hearing or determining a claim. That member may exercise the powers granted to the board under subsections 2, 3, 4, 5 and 6 in hearing and determining the claim.

8. Report. Annually the board shall render to the Governor and Legislature a written report of its activities under this chapter.

§4204. Eligibility for reimbursement

1. Persons eligible. Except as provided in subsection 2, the following persons shall be eligible for awards:

A. A victim of a crime;

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

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

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

§4205. 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.

§4206. Filing of claims

1. Who may file. A claim may be filed by any person eligible to receive an award, as provided in sections 4204 and 4205. If the eligible person is a minor, the claim may be filed on his behalf by his parent or legal guardian. If he is mentally incompetent, the claim may be filed on his behalf

half by his parent, legal guardian or other individual authorized to administer his estate.

2. Time of filing. A claim shall be filed not later than 90 days after the occurrence of the crime on which that claim is based or 90 days after the death of the victim, whichever is later, on a showing of good cause, the board may extend the time for filing for a period not exceeding one year after that occurrence.

3. Place of filing. Claims shall be filed in the office of the clerk of the board in person or by mail. The clerk shall accept for filing all claims submitted by a person eligible to receive an award. The claim shall allege the jurisdictional requirements set forth in this chapter and meet the board's requirements as to form.

4. Physicians' reports. The claimant shall, before a hearing on his claim, submit reports from all physicians or surgeons who have treated or examined him in relation to the injury for which compensation is claimed at the time of or subsequent to the victim's injury or death. The board may order an additional report <sup>by an impartial medical expert</sup> ~~on the previous medical history~~ of the victim, on the examination of the injured victim, or on the cause of death of the victim.

§4207. Hearings; appeals

1. Hearing fixed. After the filing of a claim and the submission of required records, the board shall fix a time and place for a hearing and shall give notice to the claimant.

2. Hearing powers. The board may sit and act at the times and places and take testimony that it considers advisable. Subpoenas shall be issued under the signature of the clerk 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.

3. Witnesses and evidence. 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. It 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.

4. Criminal proceedings. Proceedings may be conducted and awards made whether or not a person is prosecuted or convicted of an offense arising out of the act on which the claim is based. On application by an appropriate prosecuting authority, the board may suspend proceedings for a period it considers appropriate on the ground that a prosecution for an offense arising out of the act on which the claim is based has been commenced or is imminent.

5. Conviction as proof of offense. If a person has been

convicted of an offense with respect to an act on which a claim 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.

6. Appeal from single member decision. An order or decision of a single member hearing a claim on behalf of the board may be appealed to the full board. The full board shall review that order or decision and the record on which it is based and, with the concurrence of at least 2 members of the board, may render its decision. The member whose order or decision is appealed shall not participate in the decision of the full board on that appeal.

7. Full board's decision. Orders or decisions of the full board shall be final.

§ 4208. Awards

1. Grounds for award. After considering the evidence presented at a hearing, the board may order the payment of compensation to any claimant found deserving of an award, The board shall make no award unless it finds that a crime was committed, the crime directly resulted in personal physical injury to, <sup>or</sup> death of, the victim and police records show that the crime was promptly reported to the proper authorities. In no case may an award be made where the police records show that the report was made more than 8 hours after the occurrence of that crime, unless the board, for good cause shown, finds the delay to have been justified.



Also, in no case may an award be made if the victim or claimant has not cooperated with the law enforcement authorities who are investigating or prosecuting the crime on which the claim is based.

2. Amount of award. An award shall be in an amount not exceeding the out-of-pocket loss and the loss of earnings or support resulting from the injury or death. An award for loss of earnings or support shall equal the actual loss sustained, unless it is reduced. It shall not exceed \$100 for each week of lost earnings or support, and it shall not exceed a total of \$15,000.

3. Apportioning an award. If there are 2 or more persons entitled to an award as a result of the death of a person, the award shall be apportioned among the claimants.

4. Reduction of award.

In determining the amount of an award, the board shall determine whether, because of his conduct, the victim 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 that determination. The board may disregard the responsibility of the victim for his own injury when the record shows that the injury 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.

§4209. Manner of payment.

1. Lump sum or periodic payments. 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 shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim.

2. Awards to minors or incompetents. When the claimant is a minor or an incompetent, the award may be paid to a relative, guardian or attorney on behalf of and for the benefit of the claimant. In that case, the payee shall be required to file a periodic accounting  $\angle$   $\rightarrow$  with the board and to take any other action the board determines is necessary and appropriate for the benefit of that minor or incompetent.

§4210. Emergency compensation

If it appears to the board 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, as follows:

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 claimant; and

3. Excess. The excess of the amount of the emergency compensation over the final amount shall be repaid by the

claimant to the board.

§4211. Recovery from collateral source

1. Deduction from award. The board shall deduct from any award any payments the claimant receives from the offender, from a person on behalf of the offender, from the United States, a state or any of its subdivisions or agencies, from a private source or as an emergency award under section 4210 for the injury or death which is the basis for the claim.

2. Repayment of excess. If the claimant receives a collateral sum as described in subsection 1. \_\_\_\_\_ which has not been deducted from an award, he shall pay to the board either the total collateral sum received or the amount of the award, whichever is less.

§4212. Subrogation

Acceptance of an award shall subrogate the State to the extent of that 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 on which the award is based.

§4213. False claim

A person who knowingly makes a false claim under this chapter is guilty of a Class D crime. He shall forfeit any benefit received and shall repay to the board the amount of any award made under this chapter.

§4214. 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. 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.

§4215. Attorney fees

The board may also, as part of any final order, determine and allow reasonable attorney fees, which shall not exceed 15% of the amount awarded as compensation under section 4208. The attorney fee shall be paid to the attorney representing the claimant. It shall be in addition to the award. It shall be unlawful for any attorney to ask for, contract for or receive any larger sum than the amount so allowed.

§4216. Confidentiality of records

The record of a proceeding before the board shall be a public record; provided 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 that law or regulation.

§4217. Funds

The board may accept, and expend, administer/loans, grants or other funds or gifts from the Federal Government and from other sources, public or private, for carrying out its func-

tions under this chapter.

Sec. 2. Appropriation. The following funds shall be appropriated from the General Fund to carry out the purposes of this Act.

1980-81

STATE CLAIMS BOARD

Unallocated \$113,000

Sec. 3. Effective date. This / chapter shall become effective July 1, 1980.

Fiscal Note

The appropriation for this bill is intended to cover the administrative costs of this program. The awards will be covered by funds from other sources.

Statement of Fact

This amendment clarifies the language of this bill. The amendment also provides that a single member of the State Claims Board may hear and decide these cases and that his decision may be appealed to the full board. The amendment further requires that a claimant cooperate with law enforcement authorities in order to be eligible for awards under this chapter.