

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1834

H.P. 1265

House of Representatives, May 9, 1991

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative MacBRIDE of Presque Isle.

Cosponsored by Senator COLLINS of Aroostook, Representative RICHARDS of Hampden and Representative KETTERER of Madison.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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**An Act Creating the Victims' Compensation Board.**

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

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Sec. 1. 5 MRSA §12004-J, sub-§9 is enacted to read:

<u>9.</u>	<u>Victims'</u>	<u>Legislative</u>	<u>25 MRSA</u>
<u>Public Safety</u>	<u>Compensation</u>	<u>Per Diem and</u>	<u>§3952</u>
	<u>Board</u>	<u>Expenses</u>	

Sec. 2. 25 MRSA Pt. 11 is enacted to read:

PART 11

VICTIMS' COMPENSATION BOARD

CHAPTER 453

VICTIMS' COMPENSATION BOARD

§3951. Definitions

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

1. Board. "Board" means the Victims' Compensation Board as established in Title 5, section 12004-J, subsection 9.

2. Bodily injury. "Bodily injury" has the same meaning as defined in Title 17-A, section 2, subsection 5.

3. Crime. "Crime" means one of the following:

A. Offenses against the person as described in Title 17-A, chapter 9;

B. Sexual assaults as described in Title 17-A, chapter 11;

C. Kidnapping and criminal restraint as described in Title 17-A, chapter 13;

D. Robbery as described in Title 17-A, chapter 27; or

E. Operating under the influence of intoxicating liquor, drugs or with an excessive blood alcohol level, as described in Title 29, section 1312-B.

4. Eligible expenses and losses. "Eligible expenses and losses" means medical and medically related expenses, which may include psychological or mental health counseling expenses, lost wages, funeral expenses, eyeglasses, hearing aids, dentures or other prosthetic devices taken, lost, destroyed or damaged as the direct result of a crime specified in subsection 3. Expenses and

2 losses claimed under this subsection must be expenses or losses  
3 actually incurred.

4 5. Unreimbursed loss. "Unreimbursed loss" means a loss:

6 A. That is not covered by medical or hospitalization  
7 insurance, workers' compensation, other 3rd-party payment of  
8 obligation to pay, or federal or state entitlement or  
9 assistance programs;

10 B. That is not ordered by a court to be paid as restitution  
11 or other compensation from any person who engaged in the  
12 criminal conduct that resulted in the loss; or

13 C. That is ordered by a court but has not been paid.

14 §3952. Victims' Compensation Board; established; compensation

15 1. Establishment and membership. There is established  
16 within the Department of Public Safety, the Victims' Compensation  
17 Board. The board consists of 5 members appointed by the  
18 Governor. One member must be a physician licensed to practice  
19 medicine in the State; one member must be an attorney licensed to  
20 practice law in the State; one member must be a crime victim; and  
21 2 members must be of the Governor's choice.

22 2. Terms of appointment. The term of each member is 3  
23 years. The Governor shall appoint 2 members for a term of 3  
24 years, 2 members for a term of 2 years and one member for a term  
25 of one year. When a vacancy occurs prior to the expiration of a  
26 term, the appointment to fill that vacancy is for the balance of  
27 the unexpired term.

28 3. Compensation. Members of the board are entitled to the  
29 legislative per diem plus compensation for actual and necessary  
30 expenses.

31 4. Rules. The board may adopt rules pursuant to the Maine  
32 Administrative Procedure Act to carry out the purposes of this  
33 chapter.

34 §3953. Award of compensation

35 1. Eligibility. The board may award compensation to any  
36 person who:

37 A. Suffers bodily injury as a direct result of a crime  
38 specified in section 3951, committed within the jurisdiction  
39 of the State;

2 B. Has been sexually assaulted within this State in  
3 violation of the Maine Criminal Code, chapter 11 without  
4 regard to whether bodily injury occurred; or

5 C. Would otherwise be eligible for compensation, even  
6 though:

7 (1) The criminal conduct occurred in this State but  
8 within the exclusive jurisdiction of the United States;

9 (2) The bodily injury resulted from conduct that  
10 violates a criminal law of the United States; or

11 (3) The crime occurred in another state, but only if  
12 the person is a resident of this State and the other  
13 state does not have a victim compensation program and  
14 the person would have been eligible under this chapter  
15 if the conduct had occurred in this State.

16 §3954. Requirements and exclusions

17 1. Compensation. Compensation may not be paid for any  
18 crime unless:

19 A. The crime was reported to a law enforcement officer  
20 within 5 days of the occurrence or discovery of the crime or  
21 of the resultant injury; and

22 B. The claim was filed with the board within 60 days of the  
23 occurrence or discovery of injury or compensable loss.

24 2. Cooperation. Compensation may not be paid:

25 A. To any claimant who does not fully cooperate with law  
26 enforcement officers, prosecution authorities and the board;  
27 or

28 B. To or on behalf of any person who violated a criminal  
29 law that caused or contributed to the injury or death for  
30 which compensation is sought.

31 3. Exception. The board may waive the time requirements of  
32 subsection 1 for good cause shown, and shall waive the time  
33 requirements when the claimant is a child or on behalf of a child  
34 and the crime and the claim have been properly reported to law  
35 enforcement officers and the board by an adult who becomes aware  
36 of the crime and of the compensable injury.

37 §3955. Claims

38 1. Submission of claims. Claims are submitted to the board  
39 as follows.

- 2           A. Claims must be in writing and under oath.
- 4           B. Claims must specify the date, the nature and  
6           circumstances of the crime and the law enforcement agency to  
              which the crime was reported.
- 8           C. Claims must include documentation of all eligible  
10           expenses and losses for which the claimant seeks  
12           compensation, including but not limited to medical reports,  
              records and bills, funeral bills and employment records when  
              lost wages are sought.
- 14           D. Claims must include records relating to insurance,  
16           workers compensation, federal and state entitlement and  
              assistance programs.

18           2. Release of records. If required by the board, the  
20           claimant shall execute a release of medical and employment  
22           records and information enabling the board to obtain the records  
24           and information directly. Additionally, the claimant shall  
              provide the board with other information or the release of such  
              other information as the board determines is reasonably necessary  
              to decide the claim.

26           3. Forms. The board may provide forms for the submission  
28           of claims and claims information.

30           §3956. Payment of awards; limits

32           The board may award compensation to a claimant of up to  
34           \$5,000 for actual and unreimbursed losses and eligible expenses  
              of any person who is sexually assaulted or who suffers bodily  
              injury or death as the result of a crime specified in section  
              3951, subsection 3.

36           Within the limits specified in this section, the spouse,  
38           child or parent of a person who dies as the direct result of a  
40           specified crime may seek compensation for unreimbursed medical,  
42           medically related and funeral expenses incurred by the spouse,  
              child or parent. Only a spouse, minor child, dependent parent or  
              dependent adult child may be awarded compensation for lost wages  
              of a deceased person.

44           The board may disburse funds awarded directly to the  
46           claimant or to the individuals or entities who provided the  
48           services for which compensation was awarded. In the case of more  
              than one survivor of a deceased person, the board may apportion  
              the total compensation as the board determines.

50           §3957. Determination of award

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2 1. Hearings. The board may hold a hearing on any claim and  
the board shall hold a hearing if requested by the claimant. The  
4 claimant may address the board at a hearing on the claim and the  
board may take testimony under oath.

6 2. Information. In addition to the material and  
information required by law and by the board, the claimant may  
8 provide the board with any other information pertinent to the  
nature or the amount of the claim. The board shall receive and  
10 consider information provided by law enforcement agencies and  
prosecution authorities. Identified perpetrators may also submit  
12 information.

14 3. Determination of award. The board shall determine by a  
preponderance of the evidence whether a specified crime occurred,  
16 whether the bodily injury or death was the result of that  
criminal conduct, the amount of unreimbursed eligible expenses  
18 and losses suffered by the claimant, whether to award  
compensation and the amount of the compensation. In determining  
20 the amount of compensation to be paid, the board shall consider  
the amount available to pay victim compensation claims, the  
22 history of claims paid by the board, the number and amount of  
currently pending claims and the nature and cost of expenses  
24 submitted by the claimant.

26 4. Action by majority. The board shall determine action on  
a claim with a majority of members participating on that claim,  
28 but any award of compensation requires the concurrence of at  
least 2 members.

30 5. Final decision. The board's final decision must contain  
32 reasons for the determination.

34 §3958. Appeal

36 An appeal of the board's final decisions must be to the  
38 Superior Court as provided for other administrative actions under  
Title 5, chapter 375, subchapter VII. Board decisions and the  
40 amount of awards must be upheld unless the court finds no  
rational basis for the decision or that the board abused its  
42 discretion.

44 §3959. Victims' Compensation Fund

46 There is created a special fund to be known as the "Victims'  
Compensation Fund" for the purpose of providing for the payment  
48 of claims arising under this chapter and for the payment of all  
necessary and proper expenses incurred by the board. The  
50 Commissioner of Public Safety shall administer the fund.

2 All administrative costs of the board must be paid out of  
3 money collected pursuant to section 3960 and deposited in the  
4 Victims' Compensation Fund.

6 **§3960. Funding sources**

8 As part of the sentence or fine imposed, the court shall  
9 impose an assessment of \$20 on any person convicted of murder, a  
10 Class A crime, Class B crime or Class C crime; \$10 on any person  
11 convicted of a Class D crime or Class E crime; and \$5 on any  
12 person adjudicated of a civil violation or traffic infraction.  
13 For purposes of collection and collection procedures, these  
14 assessments are considered part of the fine. All funds collected  
15 as a result of these assessments accrue to the Victims'  
16 Compensation Fund.

18 When compensation is awarded from the Victims' Compensation  
19 Fund, 1/2 of any restitution ordered as part of a sentence  
20 imposed and paid by the convicted person, up to the amount of the  
21 award, must be paid to the fund. Similarly, 1/2 of any  
22 insurance, 3rd-party payment or recovery in a successful civil  
23 action against a person responsible for the eligible expenses and  
24 losses paid by the board, up to the full amount of the board's  
25 award, must be paid to the fund.

26 The board may establish a reserve fund approved by the State  
27 Auditor and the Treasurer of State. At the end of every quarter,  
28 the Treasurer of State shall credit unreserved funds in excess  
29 of \$2,000,000 to the General Fund.

30 **§3961. Use of funds**

32 1. Compensation of board. The Commissioner of Public  
33 Safety may use up to 15% of the Victims' Compensation Fund to  
34 defray the per diem and administrative expenses of the board.

36 2. Provide services. The board may contract with  
37 individuals and organizations to provide services to victims of  
38 crimes by agreement with the board.

40 3. Victim witness advocates. The board may use up to 25%  
41 of the Victims' Compensation Fund to defray the expenses of  
42 victim witness advocates who are employed by or in the offices of  
43 district attorneys.

44 **§3962. Effective dates**

46 1. Penalty imposed. The assessments required by section  
47 3960 apply to penalties imposed for criminal conduct or civil  
48 violations alleged to have occurred on or after October 1, 1991.  
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