

SENATE BILL No. 9

January 8, 2003, Introduced by Senator JOHNSON and referred to the Committee on Judiciary.

A bill to amend 1976 PA 223, entitled

"An act to create an agency concerned with crime victim services; to prescribe its powers and duties; to provide compensation to certain victims of crimes; to provide for the promulgation of rules; and to provide for penalties,"

by amending the title and sections 1, 4, 5, 6, and 10 (MCL 18.351, 18.354, 18.355, 18.356, and 18.360), as amended by 1996 PA 519, and by adding section 5a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to create an agency concerned with crime victim services; to prescribe its powers and duties; to provide compensation to certain ~~victims of crimes~~ **crime victims** and to **health care providers that provide medical services to certain crime victims; to regulate payment for medical services provided to certain crime victims;** to provide for the promulgation of rules; and to provide for penalties.

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1 Sec. 1. As used in this act:

2 (a) "Claimant" means a victim or intervenor who is injured,
3 or any other person eligible for an award under section 4(1),
4 ~~or~~ 5(1), **or 5a**, who files a claim under this act.

5 (b) "Commission" means the crime victim services commission.

6 (c) "Crime" means an act that is 1 of the following:

7 (i) A crime under the laws of this state or the United States
8 that causes an injury within this state.

9 (ii) An act committed in another state that if committed in
10 this state would constitute a crime under the laws of this state
11 or the United States, that causes an injury within this state or
12 that causes an injury to a resident of this state within a state
13 that does not have a victim compensation program eligible for
14 funding from the victims of crime act of 1984, chapter XIV of
15 ~~title II of~~ the comprehensive crime control act of 1984, **title**
16 **II of** Public Law 98-473, 98 Stat. 2170.

17 (iii) An act of international terrorism as defined in section
18 2331 of title 18 of the United States ~~code~~ **Code**, 18
19 U.S.C. 2331, committed outside the territorial jurisdiction of
20 the United States that causes an injury to a resident of this
21 state.

22 (d) "Intervenor" means a person who goes to the aid of one
23 who has become a victim of a crime and who suffers personal
24 physical injury.

25 (e) "Out-of-pocket loss" means the unreimbursed and
26 unreimbursable expenses or indebtedness reasonably incurred for
27 medical care, psychological counseling, replacement services, any

1 nonmedical remedial treatment rendered in accordance with a
2 recognized religious method of healing, or other services
3 necessary as a result of the injury upon which a claim is based.

4 (f) "Personal physical injury" means actual bodily harm and
5 includes pregnancy.

6 (g) "Replacement services" means homemaking tasks, child
7 care, transportation, and other services previously performed by
8 the victim that, because of the victim's injury, must temporarily
9 or permanently be performed by a person other than the victim.

10 (h) "Support" means actual monetary payments made by a victim
11 or intervenor to or for a person principally dependent on the
12 victim or intervenor.

13 (i) "Victim" means a person who suffers a personal physical
14 injury as a direct result of a crime.

15 Sec. 4. (1) Except as provided in subsection (2), the
16 following persons are eligible for awards:

17 (a) A victim or an intervenor of a crime.

18 (b) A surviving spouse, parent, grandparent, child, sibling,
19 or grandchild of a victim of a crime who died as a direct result
20 of the crime.

21 (c) Any other person dependent for his or her principal
22 support upon a victim of a crime who died as a direct result of
23 the crime.

24 **(d) A health care provider seeking compensation under**
25 **section 5a.**

26 (2) A person is not eligible to receive an award if the
27 person is either of the following:

1 (a) Criminally responsible for the crime.

2 (b) An accomplice to the crime.

3 (3) An award shall not be made on a claim unless the
4 claimant has incurred a minimum out-of-pocket loss of \$200.00 or
5 has lost at least 2 continuous weeks' earnings or support, but
6 the commission may waive the limitations of this subsection in
7 the case of a claimant retired by reason of age or disability.
8 If the claimant is a victim of criminal sexual conduct in the
9 first, second, or third degree, the commission may waive the
10 limitations of this subsection. **If the claimant is a health care
11 provider seeking compensation under section 5a, the commission
12 shall waive the limitation of this subsection.**

13 Sec. 5. (1) A claim may be filed by the person eligible to
14 receive an award or, if a person is a minor, by his or her parent
15 or guardian **or, for a claim under section 5a, by a health care
16 provider.**

17 (2) Except as provided in subsection (3), a claim shall be
18 filed by the claimant not later than 1 year after the occurrence
19 of the crime upon which the claim is based, except as follows:

20 (a) If police records show that a victim of criminal sexual
21 conduct in the first, second, or third degree was less than 18
22 years of age at the time of the occurrence and that the victim
23 reported the crime before attaining 19 years of age, a claim
24 based on that crime may be filed not later than 1 year after the
25 crime was reported.

26 (b) A claim may be filed within 1 year after the discovery by
27 a law enforcement agency that injuries previously determined to

1 be accidental, of unknown origin, or resulting from natural
2 causes, were incurred as the result of a crime.

3 (3) Upon petition by the claimant and for good cause shown,
4 the commission may extend the period in which a claim may be
5 filed under subsection (2).

6 (4) A claim shall be filed in the commission's office in
7 person or by mail. The commission shall accept for filing a
8 claim that is submitted by a person who is eligible and ~~which~~
9 **that** alleges the jurisdictional requirements set forth in this
10 act and meets the requirements as to form as approved by the
11 commission.

12 (5) Upon filing of a claim, the commission shall promptly
13 notify the prosecuting attorney of the county in which the crime
14 is alleged to have occurred. If, within 20 days after the
15 notification, the prosecuting attorney advises the commission
16 that a criminal prosecution is pending upon the same alleged
17 crime and requests that action by the commission be deferred, the
18 commission shall defer the proceedings until the criminal
19 prosecution is concluded. When the criminal prosecution is
20 concluded, the prosecuting attorney shall promptly notify the
21 commission. This section does not prohibit the commission from
22 granting emergency awards pursuant to section 9 **or an award under**
23 **section 5a.**

24 **Sec. 5a. (1) The commission shall compensate a health care**
25 **provider for the following services rendered to a victim of**
26 **criminal sexual conduct:**

27 (a) **The administration of a sexual assault evidence kit**

1 under section 21527 of the public health code, 1978 PA 368, MCL
2 333.21527. This subsection does not apply to the cost of a
3 sexual assault evidence kit that is provided to the medical care
4 provider free of charge.

5 (b) Initial venereal disease testing and treatment arising
6 out of a criminal sexual assault and not more than 2 return or
7 referral visits for venereal disease testing and treatment.

8 (c) Pregnancy testing.

9 (2) Compensation under subsection (1) shall be in the
10 following amounts for each visit:

11 (a) Not more than \$200.00 for use of an emergency room.

12 (b) Not more than \$125.00 for the use of a clinic or office
13 examination room.

14 (c) Not more than \$100.00 for an examination.

15 (d) Not more than \$200.00 for any procedure.

16 (e) All actual and reasonable laboratory fees.

17 (f) All actual and reasonable pharmacological fees.

18 (3) A health care provider seeking compensation under
19 subsection (1) shall submit the claim to the commission in the
20 manner required by the commission. The claim for compensation
21 shall include all of the following information:

22 (a) The victim's name and birthdate.

23 (b) An itemized statement of the services provided including
24 the date on which they were provided.

25 (c) The health care provider's federal identification
26 number.

27 (4) A victim is not responsible for paying costs determined

1 by the commission to be compensable under subsection (1). A
2 health care provider that is compensated under this section shall
3 not submit any portion of the claim to the victim or the victim's
4 insurer for payment.

5 (5) A victim is not required to submit the claim to his or
6 her insurance carrier for payment before the commission makes
7 payment to the health care provider under this section. This
8 section does not prohibit the victim from submitting the claim to
9 his or her insurance carrier if he or she chooses to do so.

10 (6) The commission shall not require a victim to file a
11 police report of the criminal sexual conduct violation as a
12 condition for disbursing funds under this section.

13 (7) If a claim is paid or overpaid under this section based
14 upon a clerical error, mistaken identity, innocent
15 misrepresentation, or other circumstance of a substantially
16 similar nature, other than fraud, the recipient of the payment is
17 liable to the commission for repayment of the claim or the
18 overpaid amount. However, if the commission fails to notify the
19 claimant of the payment or overpayment within 1 year after the
20 payment or overpayment is made, the recipient is not liable for
21 repayment to the commission. If a payment or overpayment has
22 been induced by fraud, the recipient is liable for repayment to
23 the commission as otherwise provided by law.

24 (8) As used in this section, "health care provider" means a
25 health professional, health facility, or local health department.

26 Sec. 6. (1) When a claim is accepted for filing, an
27 investigation and examination shall be conducted to determine the

1 validity of the claim. The investigation shall include an
2 examination of papers filed in support of the claim, official
3 records and reports concerning the crime, and an examination of
4 medical and hospital reports relating to the injury upon which
5 the claim is based. All claims ~~which~~ **that** arise from the death
6 of an individual as a direct result of a crime shall be
7 considered together, and the total compensation awarded for all
8 claims ~~which~~ **that** arise from the death of an individual shall
9 not exceed the maximum aggregate award.

10 (2) A claim shall be investigated and determined regardless
11 of whether the alleged criminal was apprehended, prosecuted,
12 convicted, acquitted, or found not guilty of the crime in
13 question, unless the disposition is a direct result of willful
14 noncooperation by the victim or other claimant with the law
15 enforcement agency or the prosecuting attorney. In the event of
16 determination of willful noncooperation by the victim or other
17 claimant, the commission shall reject the claim. **A police report**
18 **is not required for a claim filed under section 5a.**

19 (3) A claim may be decided on the basis of the papers filed
20 in support of the claim and the report of the investigation of
21 the claim. If the person authorized to decide a claim under
22 section 3(2) is convinced that a decision should not be made
23 without a hearing, that person may request the commission to
24 conduct a hearing under section 7. At the hearing any relevant
25 evidence, not legally privileged, is admissible.

26 (4) After an examination of the papers filed in support of a
27 claim and the report of investigation, and if no hearing is

1 requested under subsection (3), a decision granting or denying
2 the award shall be made.

3 (5) A written report setting forth the decision and reasons
4 for the decision shall be sent to the claimant.

5 Sec. 10. An award shall not be made unless the
6 investigation of the claim verifies the following facts:

7 (a) A crime was committed.

8 (b) The crime directly resulted in personal physical injury
9 to, or death of, the victim.

10 (c) ~~Police~~ **Except as otherwise provided in sections 5a and**
11 **6, police** records show that the crime was reported promptly to
12 the proper authorities. An award may not be made where the
13 police records show that the report was made more than 48 hours
14 after the occurrence of the crime unless either of the following
15 apply:

16 (i) The crime was criminal sexual conduct committed against a
17 victim who was less than 18 years of age at the time of the
18 occurrence and the crime was reported before the victim attained
19 19 years of age.

20 (ii) The commission, for good cause shown, finds the delay
21 was justified.

22 (d) That the crime did not occur while the victim was
23 confined in a federal, state, or local correctional facility.